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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TIMOTHY NEILSON, an individual,
Plaintiff,
vs.
KC HOTELS GROUP, INC. dba
HILLTOP INN & SUITES, a
California corporation; MOHMED
CHAUHAN, an individual; and DOES
1 through 50, inclusive,
Defendants.

Case No. 5:24-cv-00755-KK-SHK
**ORDER GRANTING MOTION TO REMAND
TO STATE COURT**
Date: June 13, 2024
Time: 9:30 a.m.
Judge: Hon. Kenly Kiya Kato

Action Filed: July 11, 2023
Removal Date: April 10, 2024
Trial Date: None Set
[NOTE CHANGES BY COURT]

1 Before the Court is Plaintiff Timothy Nielson’s (“Plaintiff”) Motion to Remand to
2 State Court (“Motion”) made under 28 U.S.C. section 1446(b) on the ground that
3 Defendants KC Hotels Group, Inc. dba Hilltop Inn & Suites and Mohmed Chauhan’s
4 (collectively, “Defendants”) notice of removal was filed more than 30 days after
5 Defendants were served a copy of the complaint setting forth the claim upon which this
6 action is based. Plaintiff’s motion is further made under 28 U.S.C. section 1447(c) on the
7 ground that the district court lacks original jurisdiction.

8 After considering all of the papers filed in support thereof, and in opposition where
9 applicable, the Court GRANTS the Motion.

10 **I. BACKGROUND**

11 On July 11, 2023, Plaintiff filed his Complaint alleging causes of action for
12 (1) retaliation in violation of Labor Code section 1102.5, (2) adverse action in violation
13 of Labor Code section 98.6, (3) wrongful termination in violation of public policy,
14 (4) failure to pay minimum wages in violation of Labor Code section 1197.1, (5) failure
15 to pay overtime wages in violation of Labor Code section 510, (6) failure to pay earned
16 wages in violation of Labor Code sections 201 and 202, (7) failure to provide accurate
17 itemized wage statements in violation of Labor Code section 226, and (8) violation of
18 Business and Professions Code section 17200.

19 On July 17, 2023, Defendants were served the Summons and Complaint.

20 On September 19, 2023, Defendants filed their Answer.

21 On September 26, 2023, Plaintiff served Form Interrogatories—General (Set One),
22 Form Interrogatories—Employment (Set One), Special Interrogatories (Set One),
23 Requests for Production of Documents (Set One) and Requests for Admission (Set One)
24 on Plaintiff.

25 On November 1, 2023, having received no responses, Plaintiff sent a meet and
26 confer letter to Defendants regarding the initial discovery. No response to the letter or
27 responses to Plaintiff’s discovery were provided.

1 On December 20, 2023, Plaintiff filed motions to compel responses to the
2 discovery. The hearing on the motions was set for April 15, 2024.

3 On April 2, 2024, Defendants filed an opposition to Plaintiff’s motions to compel.

4 On April 11, 2024, two weeks later—and two court days before the April 15th
5 hearing on Plaintiff’s motions to compel—Defendants filed their Notice of Removal.

6 **II. LEGAL STANDARD**

7 “The strong presumption against removal jurisdiction means that the defendant
8 always has the burden of establishing that removal is proper, and that the court resolves
9 all ambiguity in favor of remand to state court.” *Hunter v. Philip Morris USA*, 582 F.3d
10 1039, 1042 (9th Cir. 2009). “The party invoking the removal statute bears the burden of
11 establishing federal jurisdiction.” *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389,
12 1393 (9th Cir. 1988).

13 Because it is presumed that a case is outside of the Court’s jurisdiction, Plaintiff’s
14 motion for remand effectively forces Defendants—the parties who invoked the federal
15 court’s removal jurisdiction—to prove by a preponderance of evidence whatever is
16 necessary to support the petition: e.g., the existence of diversity, the amount in
17 controversy, or the federal nature of the claim. Phillips *et al.*, *Rutter Group Practice*
18 *Guide: Federal Civil Procedure Before Trial*, Calif. & 9th Cir. Editions (The Rutter
19 Group 2020) § 2:3739.

20 “The burden of establishing federal jurisdiction is on the party seeking removal,
21 and the removal statute is strictly construed against removal jurisdiction.” *Prize Frize,*
22 *Inc. v. Matrix (U.S.) Inc.*, 167 F.3d 1261, 1265 (9th Cir. 1999) (rev’d on other grounds).
23 “The removal statute authorizes a defendant to remove to federal court any civil action
24 brought in a state court of which the district courts of the United States have original
25 jurisdiction. Consequently, only those state court actions that originally could have been
26 filed in federal court may be removed to federal court by the defendant.” *Ethridge*, 861
27 F.2d at 1393 (internal citations, quotations, and brackets omitted).

1 **III. DISCUSSION**

2 **A. Original Jurisdiction**

3 In order to show substantive propriety for removal, Defendants must demonstrate
4 that this Court has original jurisdiction over the claims asserted, i.e., either that this case
5 presents a federal question under 28 U.S.C. section 1331 or that all of the requirements
6 for diversity of citizenship under 28 U.S.C. section 1332 are present. In addition, in cases
7 where diversity of citizenship is asserted as a basis for removal, Defendants must establish
8 that no named defendant is a citizen of the state where the action was filed. 28 U.S.C. §
9 1441(b).

10 In the Notice of Removal, Defendants argue subject matter jurisdiction exists
11 pursuant to the Federal Arbitration Act, 9 U.S.C. Section 1, et seq.; the Commerce Clause
12 under the United States Constitution, Article 1, Section 8, Clause 3; 42 U.S.C. Section
13 1982 prohibiting nongovernmental discrimination in the ownership or leasing of rental
14 property based on race or religion; and the Federal Fair Housing Act, 42 U.S.C. Section
15 3604(c), prohibiting private and non-governmental discrimination in the renting of real
16 property. None of the above federal statutes are at issue in this case. Plaintiff's Complaint
17 stems from California Labor Code violations between employee and employer. A motion
18 for remand is appropriate when a claim does not in fact "arise under" federal law. Such
19 defects go to the court's subject matter jurisdiction and can be raised at any time.
20 *International Primate Protection League v. Administrators of Tulane Educational Fund*
21 500 US 72, 87 (1991); see *Bromwell v. Michigan Mut. Ins. Co.*, 115 F3d 208, 213 (3rd
22 Cir. 1997) (remand required even where federal court previously dismissed identical
23 action).

24 **B. Timeliness of Removal**

25 In order to show procedural propriety, Defendants must demonstrate that all of the
26 requirements of 28 U.S.C. § 1446 are present, including that (1) a notice of removal
27 containing the required allegations was filed within the time allowed, (2) all relevant
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1 parties have joined in the removal, and (3) Defendants attached all of the relevant
2 pleadings from the Superior Court to the notice of removal. 28 U.S.C. § 1446(a), (b).

3 Pursuant to 28 U.S.C. section 1446(b):

4 **(1)** The notice of removal of a civil action or proceeding shall be filed within
5 30 days after the receipt by the defendant, through service or otherwise, of a
6 copy of the initial pleading setting forth the claim for relief upon which such
7 action or proceeding is based, or within 30 days after the service of summons
8 upon the defendant if such initial pleading has then been filed in court and is
9 not required to be served on the defendant, whichever period is shorter.

10 **(2) (A)** When a civil action is removed solely under section 1441(a), all
11 defendants who have been properly joined and served must join in or consent
12 to the removal of the action.

13 **(B)** Each defendant shall have 30 days after receipt by or service on that
14 defendant of the initial pleading or summons described in paragraph (1) to
15 file the notice of removal.

16 Defendants failed to timely file their notice of removal. The Complaint was filed
17 on July 11, 2023, Defendants were served on July 17, 2023, and Defendants filed their
18 Answer on September 19, 2023. The deadline for Defendants to file a notice of removal
19 was August 16, 2023, i.e., 30 days following service. 28 U.S.C. § 1446(b). Instead of
20 doing so, Defendants waited eight months before filing their Notice of Removal on April
21 10, 2024.

22 **C. Defendants' Failure to Oppose**

23 On May 9, 2024, Plaintiff filed the instant Motion to Remand ("Motion") with a
24 hearing on the motion set for June 13, 2024. Dkt. 10. Defendants' opposition was due
25 by May 23, 2024. See L.R. 7-9 (requiring an opposition brief to be filed not later than
26 twenty-one days before the hearing). To date, Defendants have not filed an opposition.
27 Defendants' failure to address Plaintiff's claims are deemed consent to the granting of the
28 Motion on these issues. L.R. 7-12; see Travelers Cas. Ins. Co. of Am. v. Geragos &
Geragos, 495 F. Supp. 3d 848, 854 (C.D. Cal. 2020) ("Arguments to which no response
is supplied are deemed conceded.").

1 **D. Attorney Fees and Costs**

2 Plaintiff moves the Court pursuant to 28 U.S.C. section 1447(c) for an order that
3 Defendants pay to Plaintiff \$3,420.00, which comprises all costs and actual expenses,
4 including attorney’s fees, incurred and anticipated to be incurred as a result of the
5 improper removal of this case.

6 Pursuant to 28 U.S.C. section 1447:

7 (a) In any case removed from a State court, the district court may
8 issue all necessary orders and process to bring before it all proper
9 parties whether served by process issued by the State court or
10 otherwise.

11 . . .

12 (c) A motion to remand the case on the basis of any defect other than
13 lack of subject matter jurisdiction must be made within 30 days after
14 the filing of the notice of removal under section 1446(a). If at any
15 time before final judgment it appears that the district court lacks
16 subject matter jurisdiction, the case shall be remanded. An order
17 remanding the case may require payment of just costs and any actual
18 expenses, including attorney fees, incurred as a result of the
19 removal. A certified copy of the order of remand shall be mailed by
20 the clerk to the clerk of the State court. The State court may
21 thereupon proceed with such case.

22 Plaintiff’s request for attorney fees and costs is GRANTED. Defendants are
23 ordered to pay \$3,420.00 to Plaintiff, which comprises all costs and actual expenses,
24 including attorney’s fees, incurred, and anticipated to be incurred, as a result of the
25 improper removal of this case.

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1 **IV. CONCLUSION**

2 The Court therefore GRANTS Plaintiff's Motion to Remand to State Court.
3 Defendants are ordered to pay \$3,420.00 to Plaintiff.

4
5 **IT IS SO ORDERED.**

6 Dated: June 5, 2024



8 Honorable Kenly Kiya Kato
9 United States District Judge