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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUSTIN CAREY; JOSEPH BORDEN; and)	
PEDRO ESPINOZA, each as an)	2:10-cv-2017-GEB-GGH
Individual, on his own behalf,)	
)	
Plaintiffs,)	<u>ORDER DENYING MOTION TO</u>
)	<u>REMAND</u> *
v.)	
)	
S.J. LOUIS CONSTRUCTION INC., a)	
Minnesota Corporation, LIBERTY)	
MUTUAL INSURANCE COMPANY, a)	
Massachusetts Corporation, and)	
DOES 1-200, inclusive,)	
)	
Defendants.)	
_____)	

On August 27, 2010, Plaintiffs Justin Carey and Joseph Borden filed a motion in which they seek to remand this case to the Sacramento County Superior Court in California from which it was removed. Defendant S.J. Louis Construction, Inc. ("S.J. Louis") opposes Plaintiffs' motion and Defendant Liberty Mutual Insurance Company ("Liberty Mutual") joins in S.J. Louis's opposition. Defendants argue diversity jurisdiction supports the removal of this case to federal court. For the reasons stated below, Plaintiffs' motion to remand will be DENIED.

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* This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 **I. Background**

2 On June 21, 2010, Plaintiffs filed a First Amended Complaint
3 in the Sacramento County Superior Court, alleging six claims under state
4 law. (First Am. Compl. ("FAC") ¶¶ 60-113.) Specifically, Plaintiffs
5 allege: (1) failure to pay overtime wages in violation of California
6 Labor Code section 1194 and illegal record keeping in violation of
7 California Labor Code section 226; (2) failure to pay prevailing wages
8 in violation of California Labor Code sections 1771 and 1774; (3)
9 failure to pay for missed meal and rest breaks in violation of
10 California Labor Code sections 226.7 and 512; (4) failure to timely pay
11 wages due employees at termination in violation of California Labor Code
12 sections 201-203; (5) recovery under public works payment bonds,
13 California Civil Code section 3250; and (6) unfair business practices in
14 violation of California Business and Professions Code sections 17200, *et*
15 *seq. Id.*

16 On July 29, 2010, S.J. Louis filed a Notice of Removal,
17 removing this case to federal court on the basis of diversity
18 jurisdiction. (Notice of Removal "Removal" ¶ 5.) S.J Louis's Notice of
19 Removal states that removal is proper since there is complete diversity
20 of citizenship between Plaintiffs and Defendants and the amount in
21 controversy exceeds the sum of \$75,000, exclusive of costs and interest.
22 *Id.* ¶¶ 3-5.

23 **II. Legal Standards**

24 **A. Removal**

25 A defendant may remove to federal court "any civil action
26 brought in a State court of which the district courts . . . have
27 original jurisdiction [.]" 28 U.S.C. § 1441(a). Removal, therefore, is
28 only proper when a case originally filed in state court presents a

1 federal question or is between citizens of different states and involves
2 an amount in controversy that exceeds \$75,000. See 28 U.S.C. §§ 1331,
3 1332(a). “The removal statute is strictly construed against removal
4 jurisdiction [and] [t]he defendant bears the burden of establishing that
5 removal is proper.” Provincial Gov’t of Marinduque v. Placer Dome, Inc.,
6 582 F.3d 1083, 1087 (9th Cir. 2009) (citations omitted). “Where doubt
7 regarding the right to removal exists, a case should be remanded to
8 state court.” Matheson v. Progressive Specialty Ins. Co., 319 F.3d
9 1089, 1090 (9th Cir. 2003).

10 **B. Diversity Jurisdiction**

11 Defendants argue removal is proper based upon diversity
12 jurisdiction. (Removal ¶ 5.) Diversity jurisdiction “requires that the
13 parties be in complete diversity and the amount in controversy exceed
14 \$75,000.” Matheson, 319 F.3d at 1090; 28 U.S.C. § 1332(a)(1). “Where it
15 is not facially evident from the complaint that more than \$75,000 is in
16 controversy, the removing party must prove, by a preponderance of the
17 evidence, that the amount in controversy meets the jurisdictional
18 threshold.” Matheson, 319 F.3d at 1090.

19 For the purposes of sections 1332 and 1441, “a corporation
20 shall be deemed to be a citizen of any State by which it has been
21 incorporated and of the State where it has its principal place of
22 business[.]” 28 U.S.C. § 1332(c)(1). “The Supreme Court has recently
23 clarified that the term ‘principal place of business’ means, for
24 purposes of federal diversity jurisdiction, the locale where a
25 ‘corporation’s high level officers direct, control, and coordinate the
26 corporation’s activities,’ often called the ‘nerve center.’”
27 ProShipLine Inc. v. Aspen Infrastructures Ltd., 609 F.3d 960, 974 n.2
28 (9th Cir. 2010) (quoting Hertz Corp. v. Friend, --- U.S. ----, 130 S.

1 Ct. 1181, 1186 (2010)). "And in practice it should normally be the
2 place where the corporation maintains its headquarters-provided that the
3 headquarters is the actual center of direction, control, and
4 coordination, i.e., the 'nerve center,' and not simply an office where
5 the corporation holds its board meetings (for example, attended by
6 directors and officers who have traveled there for the occasion)." Hertz
7 Corp., 130 S. Ct. at 1192. For diversity jurisdiction to exist in the
8 instant case, none of the defendants can be a citizen of the same state
9 as one of the plaintiffs. Since Plaintiffs are citizens of California,
10 none of Defendants can be citizens of California.

11 **III. Discussion**

12 Plaintiffs argue this action should be remanded to state court
13 since Defendants failed to offer facts "to support the assertion that
14 the principal place of business stated in the notice [of removal] is the
15 corporate parties' principal place of business" and did not provide
16 evidence "that the amount of damages to each plaintiff exceeds
17 \$75,000.00." (Mot. for Remand ("Mot.") 2:3-7.) Defendants respond,
18 arguing diversity jurisdiction exists since the proffered evidence
19 proves S.J. Louis's principal place of business is Rockville, Minnesota,
20 and Liberty Mutual's principal place of business is Boston,
21 Massachusetts because that is where each respective corporation's high
22 level officers direct, control, and coordinate the corporations'
23 activities. (S.J. Louis's Opp'n ("Opp'n") 1:7-11.) Defendants further
24 argue that the amount in controversy exceeds \$75,000 for both Carey and
25 Borden and "[t]he Court can exercise supplemental jurisdiction over the
26 entire matter as one of the Plaintiffs' claims has been properly removed
27 pursuant to the Court's diversity jurisdiction." Id. 1:11-17.

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1 **A. Complete Diversity**

2 Plaintiffs argue that "Defendant(s) fail(s) to offer adequate
3 facts to support the assertion that the principal place of business
4 stated in the notice is the corporate party's principal place of
5 business." (Mot. 4:17-19.) Defendants have attached the affidavit of
6 James L. Schueller, President and Chief Operating Officer of S. J.
7 Louis, and the declaration of James F. Kelleher, the Senior Vice
8 President and Deputy General Counsel of Liberty Mutual Group, in support
9 of their contention that S.J. Louis's principal place of business is
10 Rockville, Minnesota, and Liberty Mutual's principal place of business
11 is Boston, Massachusetts. (Scheueller Aff. ¶¶ 3-21; Kelleher Dec. ¶¶ 2-
12 14.)

13 **1. S.J. Louis**

14 Scheueller declares that S.J. Louis is a privately owned
15 company which is incorporated in Minnesota. (Scheueller Aff. ¶ 3.)
16 Scheueller also declares that the President of S.J. Louis is a resident
17 and taxpayer of Minnesota. Id. Scheueller further declares that S.J.
18 Louis's office, from which the President primarily manages the company,
19 is located in Rockville, Minnesota. Id. ¶¶ 4-5. Scheueller also declares
20 that "the direction, control and coordination of every aspect of S.J.
21 Louis' [s] operation resides in the higher managing officers and managers
22 of S.J. Louis, all of whom perform these activities in Rockville
23 Minnesota." Id. ¶ 7. S.J. Louis's evidence is sufficient to show that
24 its principal place of business is Rockville, Minnesota.

25 **2. Liberty Mutual**

26 Kelleher declares that Liberty Mutual Group is the 100 percent
27 parent of Liberty Mutual. (Kelleher Dec. ¶ 3.) Kelleher also declares
28 that Liberty Mutual is incorporated in Massachusetts and its

1 headquarters is in Boston, Massachusetts. Id. ¶¶ 6-7. Kelleher further
2 declares that the leadership of Liberty Mutual Group is located at the
3 corporate headquarters in Boston and the core executive functions as
4 well as the major administrative operations are carried out there. Id.
5 ¶¶ 7-9. In addition, Kelleher declares Liberty Mutual's "core executive
6 and major administrative functions are carried out in Boston,
7 Massachusetts." Id. ¶ 10. Kelleher also declares that all of Liberty
8 Mutual's corporate policies and operations are formulated and carried
9 out in Boston and the initial and ultimate decisions concerning
10 governance and oversight rests with the Board of Directors and high
11 level officers that work out of and regularly meet in Boston. Id. ¶¶ 7-
12 13. Kelleher avers that while Liberty Mutual "maintains several regional
13 and local offices in California, it performs none of the core executive
14 and administrative functions or major administrative operations . . . in
15 California." Id. ¶ 14. Liberty Mutual's evidence is sufficient to show
16 that its principal place of business is Boston, Massachusetts.

17 Since Plaintiffs are all residents of California, there is
18 complete diversity. (FAC ¶ 9, 19, 26.)

19 **B. Amount in Controversy**

20 Plaintiffs also argue that Defendants have not proven that the
21 claims for each Plaintiff exceeds \$75,000. (Mot. 5:19-21.) Defendants
22 respond that "Plaintiffs' claims in this case are sufficient to meet the
23 amount in controversy requirement, particularly when considering
24 permissible statutory attorneys' fees." (Opp'n 11:14-15.) Defendants
25 have attached an affidavit from Donald B. Meyer, the Vice President of
26 S.J. Louis, a declaration from Jamie L. Woods, the Assistant Controller
27 of S.J. Louis, and the payroll records of all three Plaintiffs, as
28

1 support of their amount in controversy arguments. (Meyer Aff. ¶ 1, Ex.
2 A-C, Woods Decl. ¶ 1.)

3 **1. Carey's claims**

4 Defendants argue the amount in controversy with respect to
5 Carey's claims easily exceeds \$75,000. (Opp'n 11:27-28.) Carey filed an
6 untimely stop notice on which he could not collect; the notice is
7 attached to the FAC as support for his claim. (FAC ¶ 15, Ex. A.) Carey
8 requested \$58,594.33 in the stop notice for labor, the "nonpayment of
9 the appropriate wages[.]" Id. The first two claims allege Defendants
10 failed to pay Plaintiffs the minimum required hourly rate and overtime
11 compensation. Id. ¶¶ 60-79.

12 Defendants argue that the maximum penalty for the wage
13 statement violations, also alleged in Plaintiffs' first claim, is
14 \$4,000. (Opp'n 12:4.) Under California Labor Code section 226(e),

15 An employee . . . is entitled to recover the greater of
16 all actual damages or fifty dollars (\$50) for the initial
17 pay period in which a violation occurs and one hundred
18 dollars (\$100) per employee for each violation in a
subsequent pay period, not exceeding an aggregate penalty
of four thousand dollars (\$4,000), and is entitled to an
award of costs and reasonable attorney's fees.

19 Defendants argue each week Plaintiffs worked constituted a separate pay
20 period. (Opp'n 5:17.) Meyer declares that Carey received pay for a total
21 of seventy nine pay periods. (Meyer Aff. ¶¶ 2-3, Ex. A.) To reach the
22 maximum penalty for wage statement violations, an employee would only
23 need to have worked forty one pay periods.

24 Defendants estimate Carey's damages for the failure to pay
25 wages of terminated or resigned employees ("waiting time violations")
26 alleged in Plaintiffs' fourth claim are approximately \$12,991.20, \$54.13
27 multiplied by eight hours per day for thirty days. (Opp'n 5:7.)
28 California Labor Code sections 201 and 202 require employers to pay

1 their employees all wages due within seventy two hours of termination.
2 If an employer willfully fails to timely pay such wages, "the wages of
3 the employee shall continue as a penalty from the due date thereof at
4 the same rate until paid or until an action therefor is commenced; but
5 the wages shall not continue for more than 30 days." Cal. Lab. Code §
6 203(a). Meyer declares that the payroll records show Carey earned \$54.13
7 per hour at the time of termination. (Meyer Aff. Ex. A.) Plaintiffs
8 allege in the FAC that "[m]ore than 30 days have passed since Plaintiffs
9 have left Defendants' employ." (FAC ¶ 92.)

10 Defendants argue that with just these claims, the amount in
11 controversy concerning Carey's damages is \$75,585.53, exclusive of
12 statutory attorneys' fees, meal period or rest break penalties, punitive
13 damages, or the value of injunctive relief. (Opp'n 12:2-8; Meyer Aff. ¶¶
14 2-3, Ex. A; Woods Decl. ¶¶ 1-7; FAC ¶¶ 59, 70, 76-79, 87-88, 93, 101,
15 Ex. A.) Plaintiff Carey's evidence is sufficient to show that his claims
16 exceed \$75,000 in controversy jurisdiction amount.

17 **2. Borden and Espinoza's respective claims**

18 Defendants argue Borden and Espinoza assert similar claims to
19 Carey, and therefore, their claims should be valued similarly to
20 Carey's. (Opp'n 7:24-8:2.) Defendants argue in the alternative that the
21 Court should exercise supplemental jurisdiction under 28 U.S.C. §
22 1367(a) over these claims since Carey's claims exceed the jurisdictional
23 limit and complete diversity is present. Id. 8:2-4.

24 In an action involving multiple plaintiffs, a federal court
25 may exercise supplemental jurisdiction over a co-plaintiff's claims that
26 fail to meet the jurisdictional amount in controversy if (1) at least
27 one plaintiff satisfies the amount in controversy, (2) the other
28 elements of diversity jurisdiction are satisfied, and (3) the

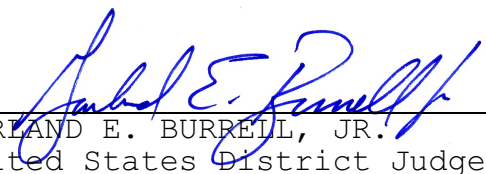
1 plaintiff's claims are part of the same "case or controversy." See Exxon
2 Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 549 (2005) ("We
3 hold that, where the other elements of jurisdiction are present and at
4 least one named plaintiff in the action satisfies the
5 amount-in-controversy requirement, § 1367 does authorize supplemental
6 jurisdiction over the claims of other plaintiffs in the same Article III
7 case or controversy, even if those claims are for less than the
8 jurisdictional amount specified in the statute setting forth the
9 requirements for diversity jurisdiction.") In order to determine whether
10 the claims are part of the same case or controversy, the Court examines
11 whether the claims involve a "common nucleus of operative fact." See
12 United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 725 (1966) (requiring
13 a "common nucleus of operative fact" to confer supplemental jurisdiction
14 over pendant state law claims).

15 Espinoza and Borden allege claims arising from the same
16 violations of law as Carey. All three Plaintiffs worked for S.J. Louis
17 on the "Folsum south Canal Connection Project." (FAC ¶¶ 10, 20, 27.)
18 Since Espinoza and Borden's respective claims are part of the same case
19 or controversy involved with Carey's claims, supplemental jurisdiction
20 is exercised over Espinoza and Borden's respective claims.

21 IV. Conclusion

22 For the stated reasons, Plaintiffs' motion to remand is
23 DENIED.

24 Dated: September 29, 2010

25
26 
27 GARLAND E. BURRELL, JR.
United States District Judge