

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DARWIN CROSBY, on behalf of
himself and all others
similarly situated,

 Plaintiffs,

 v.

SAVE MART SUPERMARKETS, INC.,
a California corporation; and
DOES 1 through 50,

 Defendants.

No. 2:15-cv-00321-GEB-KJN

**ORDER DENYING PLAINTIFF'S MOTION
FOR FEES FOLLOWING REMAND**

Plaintiff moves under 28 U.S.C. § 1447(c) for attorney's fees incurred in remanding this case to the state court from which it was removed. (Pl.'s Mem. P.&A. Supp. Mot. Fees 1:10-11, ECF No. 13-1.) Plaintiff argues he is entitled to such fees both because "there was no objectively reasonable basis for removal" and "'unusual circumstances' warrant the award." (Id. at 5:1, 5:7-8.) Specifically, Plaintiff contends:

the operative complaint alleges no causes of action under federal law. At most, the Complaint mentions the FMLA as part of its state law claims . . . Defendant . . . based its removal solely on [Plaintiff's] discovery responses . . . Even after Defendant . . . stipulated to allow Plaintiff . . . to amend his discovery responses when Plaintiffs' counsel stated they were not pursuing any federal claims, Defendant would not agree to remand. This case was never a case under federal law. . . Without any federal claims plead, there was no

1 objectively reasonable basis for
2 removal. . . .

3 If the Court should find that removal
4 was objectively reasonable, it may still
5 award remand costs and fees under § 1447(c)
6 if it finds that "unusual circumstances"
7 warrant the award. . . .

8 . . . [Here, i]t is clear that removal
9 was a tactic by Defendant . . . to avoid
10 responding to . . . class discovery
11 If the Court finds that removal was
12 objectively reasonable, then it should
13 nevertheless award Plaintiffs attorney's fees
14 in obtaining remand because of Defendant[']s
15 delaying tactics.

16 (Id. at 4:21-5:1, 5:7-6:2 (heading omitted).)

17 Defendant opposes the motion, rejoining, *inter alia*:
18 "where removal was proper but the case was remanded because
19 Plaintiff's post-removal conduct eliminated the federal question
20 in the case, the Court is barred from awarding attorneys' fees."
21 (Def.'s Opp'n 1:10-13, ECF No. 14.) Defendant argues:

22 Plaintiff . . . served verified
23 discovery responses on Defendant . . . ,
24 testifying that he was pursuing a federal
25 claim under the Family and Medical Leave Act.
26 Within 30 days of receiving Plaintiff's
27 discovery responses, [Defendant] removed this
28 case to this Court under federal question
jurisdiction. After removal, this Court
granted the parties' stipulation to amend
[Plaintiff's] discovery responses so that he
was no longer pursuing an FMLA claim. The
Court then declined to exercise supplemental
jurisdiction over Plaintiff's remaining state
law claims and remanded the case
Under these circumstances, . . . the Court is
barred from awarding attorneys' fees.

29 (Id. at 1:2-13.)

30 "Absent unusual circumstances, courts may award
31 attorney's fees under § 1447(c) only where the removing party
32 lacked an objectively reasonable basis for seeking removal."
33

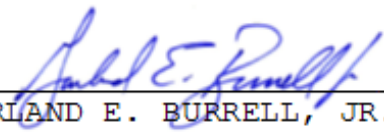
1 Martin v. Franklin Capital Corp., 546 U.S. 132, 141 (2005).
2 "[W]hen an objectively reasonable basis exists, fees should be
3 denied." Id.

4 Defendant avers in its "Notice of Removal" that removal
5 was "based upon the existence of a federal question in that
6 Plaintiff . . . , is pursuing a federal cause of action under the
7 Family and Medical Leave Act, 29 U.S.C. 2601 ("FMLA"), *et seq.*"
8 (Notice Removal 2:4-5, ECF No. 1.) Plaintiff's response to a
9 Request for Admission supports this basis for removal. (See id.
10 at ¶ 44; Decl. Tarun Mehta Supp. Notice Removal, Ex. MM, ECF No.
11 2-6.)

12 Subsequent to removal, the parties filed a Stipulation
13 and Proposed Order in which they sought court approval of their
14 agreement that Plaintiff's discovery response that was the basis
15 of removal "was erroneous." (Stip. & Proposed Order 2:9, ECF No.
16 7.) This Stipulation and Proposed Order was approved, following
17 which Plaintiff moved to remand the case to state court based on
18 lack of federal question jurisdiction. The remand motion was
19 granted. (Order Remanding Case, ECF No. 12.)

20 Under these circumstances, Plaintiff has not shown that
21 Defendant lacked an objectively reasonable basis for removal.
22 Further, Plaintiff has not shown that other "unusual
23 circumstances" justify an award of fees in this case. Therefore,
24 Plaintiff's motion for fees is DENIED.

25 Dated: July 16, 2015

26
27
28 

GARIAND E. BURRELL, JR.
Senior United States District Judge