UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ELIZABETH COY, on behalf of herself and Aggrieved Employees, Plaintiff, v. SOUTHERN HOME CARE SERVICES, INC., a Delaware corporation; et al., Defendants.	No. 2:21-cv-00067-JAM-CKD **ORDER GRANTING MOTION TO REMAND**

Elizabeth Coy ("Plaintiff") moves to remand this wage and hour action back to the Sacramento County Superior Court. Mot. to Remand ("Mot."), ECF No. 4. Southern Home Care Services, Inc., Res-care California, Inc., Res-care, Inc., and RSCR California, Inc. ("Defendants") filed an opposition, Opp'n, ECF No. 6, to which Plaintiff replied, Reply, ECF No. 8. For the reasons set forth below, the Court GRANTS Plaintiff's Motion to Remand.[1]

[1] This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for March 9, 2021.

I. BACKGROUND

Defendants provide 24-hour residential and home-based care services to disabled and/or elderly individuals in California. Compl. ¶ 18, Ex. A to Montoya Decl., ECF No. 1-1. Plaintiff worked for Defendants as an on-call scheduler and care provider from approximately August 2017 to March 16, 2020. Id. Plaintiff alleges she and other aggrieved employees were, among other things, not properly paid reimbursement expenses, minimum and overtime wages, and reporting time pay wages. Id. ¶ 4. Additionally, for the last portion of her employment with Defendants, Plaintiff was a member of the Service Employees International Union Local 2015 for Long-Term Caregivers in California ("the Union") and thus covered by the Collective Bargaining Agreement ("CBA") entered into between the Union and Defendants. Not. of Removal ¶ 8, ECF No. 1.

On November 25, 2020, Plaintiff filed this lawsuit in the Sacramento County Superior Court. See generally Compl. Plaintiff brings nine individual state law claims against Defendants for: (1) failure to pay overtime wages, (2) failure to pay minimum wages, (3) failure to provide meal periods, (4) failure to provide rest periods, (5) failure to provide accurate itemized statements, (6) waiting time penalties, (7) failure to provide reimbursement expenses, (8) failure to keep accurate time records, and (9) violation of California Business and Professions Code § 17200 *et seq*. Id. ¶¶ 29-75. Additionally, Plaintiff asserts a Private Attorney General Act ("PAGA") claim for failure to pay minimum wages, failure to pay overtime wages, failure to pay reporting time pay wages, failure

to pay reimbursements for expenses, failure to pay final wages, failure to maintain accurate records, failure to provide accurate wage statements, and violation of the provisions regulating hours and days of work. Id. ¶¶ 76-80.

On January 13, 2021, Defendants filed a Notice of Removal, invoking this Court's federal question jurisdiction. Not. of Removal ¶ 5 (citing to 28 U.S.C. § 1331). Although Plaintiff has pled only state law claims, Defendants removed on the grounds that Plaintiff's claims are preempted by Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185. Id. ¶¶ 5-12. In response, Plaintiff filed this Motion to Remand. See Mot. Plaintiff additionally requests attorney's fees and costs associated with this Motion. Mot. at 13.

II. OPINION

A. Legal Standard

Under 28 U.S.C. § 1441, a defendant may remove a civil action from state to federal court if there is subject matter jurisdiction over the case. See City of Chicago v. Int'l Coll. of Surgeons, 522 U.S. 156, 163 (1997). Courts have federal question jurisdiction over all civil actions "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Courts strictly construe the removal statute against removal and federal jurisdiction must be rejected if there is any doubt as to the right of removal. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992); see also Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1244 (9th Cir. 2009) ("[A]ny doubt about the right of removal requires resolution in favor of remand.") The party seeking removal bears the burden of

establishing jurisdiction. Emrich v. Touche Ross & Co., 846 F.2d 1190, 1195 (9th Cir. 1988).

B. Analysis

Defendants removed this case on the grounds that Section 301 of the LMRA preempts Plaintiff's claims. Not. of Removal at ¶¶ 5, 10-12. Specifically, Defendants contend that these claims cannot be adjudicated without interpreting the CBA governing Plaintiff's and other aggrieved employees' employment with Defendants and therefore her claims are preempted. Opp'n at 1. Plaintiff does not dispute that there was a CBA in place for a portion of her employment with Defendants, but argues the "mere existence of, or consultation with" the CBA is insufficient to establish preemption under Section 301 of the LMRA. Mot. at 5.

As the parties acknowledge, the Ninth Circuit's Burnside test governs their dispute. See Burnside v. Kiewett Pac. Corp., 491 F.3d 1053 (9th Cir. 2007). In Burnside, the Ninth Circuit set forth a two-part test for determining whether a cause of action is preempted by Section 301 of the LMRA. Id. at 1059-1060. First, courts must determine if the "asserted cause of action involves a right conferred upon an employee by virtue of state law," independent of a CBA. Id. If the right exists solely because of the CBA, then the claim is preempted, and the analysis ends there. Id. If, however, the right does not exist solely because of the CBA, the court moves onto step two: deciding whether the claim "substantially depends" on an interpretation of a CBA. Id. "If such dependence exists, then the claim is preempted by Section 301; if not, then the claim can proceed under state law." Id.

Here, the parties agree that Plaintiff's claims are not preempted under part one of Burnside. Mot. at 6-7; Opp'n at 4. The parties do dispute, however, whether the claims are preempted under part two of Burnside.

The analysis under the second part of Burnside – which as stated above requires this Court to determine whether Plaintiff's claims are substantially dependent on interpretation of the CBA - turns on "whether the claim can be resolved by 'looking to' versus interpreting the CBA." Kobold v. Good Samaritan Reg'l Med. Ctr., 832 F.3d 1024, 1033 (9th Cir. 2016) (internal citations omitted). "If the latter, the claim is preempted; if the former, it is not." Id. Additionally, "interpret" in this context is "defined narrowly – it means something more than 'consider', 'refer to', or 'apply.'" Id.

Defendants argue that the CBA here must be interpreted, not just consulted or referenced, to resolve Plaintiff's claims and insist they have provided several examples demonstrating how and why the CBA must be interpreted. Opp'n at 4-5. Further, Defendants stress that not only do Plaintiff's individual claims require interpretation of the CBA, but those asserted on behalf of the alleged aggrieved employees "certainly do." Opp'n at 2. According to Plaintiff, however, Defendants have not carried their burden to show that interpretation of the CBA is required; at most, she argues, Defendants have shown that the CBA hypothetically may need to be consulted or referenced. Mot. at 10-13; Reply at 1, 3-5. The Court agrees and finds that Defendants have not carried their burden to show interpretation of the CBA is necessary as required under part two of Burnside.

The Supreme Court has instructed that "not every dispute concerning employment, or tangentially involving a provision of a collective-bargaining agreement, is preempted by § 301." Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 211 (1985). Therefore, "alleging a hypothetical connection between the claim and the terms of the CBA is not enough" to trigger preemption. Cramer v. Consol. Freightways, Inc., 255 F.3d 683, 691 (9th Cir. 2001); see also Humble v. Boeing Co., 305 F.3d 1004, 1010 (9th Cir. 2002) (explaining "a CBA provision does not trigger preemption when it is only potentially relevant to the state law claims, without any guarantee that interpretation or direct reliance on the CBA terms will occur").

Here, Article 13 of the CBA sets forth wage rates and premium pay applicable to Plaintiff and other alleged aggrieved employees. See generally CBA, Art. 13. Defendants characterize the CBA as establishing "a complex pay structure for caregivers based on various differentials including shift/visit length, the number of clients for whom care is provided during a shift, the specific behavioral/personal needs of the client receiving services, and/or the length/difficulty of traveling to the client." Opp'n at 3 (citing to Art. 13, §§ 3.1(c), 13.4-13.6). The CBA, according to Defendants, addresses compensation payable to Plaintiff and alleged aggrieved employees "under very context-specific and non-formulaic circumstances," such that the CBA is not "a straightforward or unambiguous chart with defined variables the Court can simply reference to determine wages owed to alleged aggrieved employees." Id. at 3, 6. As such, Defendants argue, interpretation of the CBA is required to

determine which pay provisions apply to on-call schedulers/caregivers, see Opp'n at 7-9, and to determine their regular rate of pay, see Opp'n at 9-13. In support of this position, Defendants provide a handful of examples indicating how and why interpretation of the CBA may be required. Opp'n at 7-13. For instance, they posit the Court would need to interpret the phrase "unable to work" in the context of the CBA's reporting time laws. Opp'n at 8. They also highlight other "ambiguous" phrases in the CBA - such as "certain assignments," "extreme behavioral issues," or "extensive personal care needs" – that they state the Court would need to interpret in order to decide when premium payments and shift differentials apply. Id. at 12.

Defendants' argument and proffered examples, however, fail to show these interpretation issues would necessarily arise. Indeed, Plaintiff contends that these issues will not arise as there is no actual dispute between her claims and the terms of the CBA. See Reply. The Court finds Defendants have not carried their burden to show otherwise. Rather, in the language of Humble, Defendants have shown only that the provisions set forth in Article 13 of the CBA are "potentially relevant to the state law claims, without any guarantee that interpretation or direct reliance on the CBA terms will occur." 305 F.3d at 1010. But, "speculative reliance on the CBA will not suffice to preempt a state law claim." Id. at 1008. Further, it bears repeating that federal jurisdiction must be rejected if there is any doubt as to the right of removal. Moore-Thomas, 553 F.3d at 1244. Here, there is such doubt.

Finally, the parties vigorously dispute the applicability of

Wilson-Davis v. SSP Am. Inc., 434 F.Supp.3d 806 (C.D. Cal. 2020). Mot. at 10-11; Opp'n at 10-12. Wilson-Davis involved a California state law wage and hour class action that, like the present case, was removed to federal court on the grounds that Section 301 of the LMRA preempted the plaintiff-employee's claims. 434 F.Supp.3d at 810. The Wilson-Davis plaintiff moved to remand, arguing in relevant part that none of his state-law claims required interpretation of the CBA and thus were not preempted under the second part of Burnside. Id. at 813-818. In granting the motion to remand, the Wilson-Davis court explained: ""[i]t is not enough for Defendants to provide a laundry list of provisions that they allege the Court must interpret to resolve Plaintiff's claims; Defendants must explain why interpretation, as opposed to mere reference to the CBA, is necessary." Id. at 813. That reasoning applies with equal force here: Defendants do not meet their burden under the second part of Burnside by simply providing a "laundry list of provisions" they allege this Court must interpret. Therefore, Defendants' attempts to distinguish the present case from Wilson-Davis, see Opp'n at 10-12, are of no avail.

Because Defendants have shown only a "hypothetical connection" between the claims and the terms of the CBA, the Court finds they have not made the requisite showing to trigger preemption under the second part of Burnside. Cramer, 255 F.3d at 691. Defendants' argument for removal jurisdiction based on Section 301 of the LMRA preemption therefore fails and this case must be remanded to the Sacramento County Superior Court.

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C. Plaintiff's Request for Fees and Costs

Plaintiff additionally requests the Court order Defendants to pay attorney's fees and costs incurred as result of the removal. Mot. at 13; Reply at 5. She argues that the Court should award fees and costs associated with this Motion because "even a cursory review of the claims alleged, and the governing CBA, would have revealed that Plaintiff's claims do not implicate the CBA." Mot. at 15. The Court does not agree and finds that, as demonstrated by the extensive caselaw cited to in their opposition brief, Defendants had a good faith basis for removal. Opp'n at 14. Accordingly, Plaintiff's request for fees is denied.

III. ORDER

For the reasons set forth above, the Court GRANTS Plaintiff's Motion to Remand this case to the Sacramento County Superior Court, but DENIES Plaintiff's request for fees and costs associated with the Motion.

IT IS SO ORDERED.

Dated: April 23, 2021

JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE