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E-Filed 09/17/2010

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RANDALL G. HUCK,

No. C 10-1845 RS

Plaintiff,

ORDER OF REMAND

v.

KONE, INC.,

Defendant.

_____/

Plaintiff Randall Huck filed a complaint in the Superior Court of California, County of San Francisco, alleging wrongful termination in violation of California’s Fair Employment and Housing Act against his former employer, Kone, Inc. Huck raised only state law claims. Kone duly removed the action, pursuant to 28 U.S.C. § 1441. In its removal motion, Kone iterated that the parties are in fact diverse. Kone instructs that it is incorporated in Delaware and maintains its principal place of business in Illinois. Although Huck did not identify the amount in controversy in his Complaint, Kone asserted in its removal papers that this amount exceeds \$75,000. Kone did not, however, introduce any facts to support or explain this claim. Huck timely filed the instant motion to remand. He disavows that the amount in controversy exceeds \$75,000 and argues that this Court lacks subject matter jurisdiction. Kone has not filed papers in opposition or otherwise submitted any material to defend its jurisdictional claim. The matter is appropriate for resolution without oral

No. C 10-1845 RS
ORDER

1 argument pursuant to Civil Local Rule 7-1(b) and the motion hearing set for **September 23, 2010** is
2 **vacated.**

3 The Ninth Circuit has emphasized that the removal statute must be construed strictly against
4 removal. *See, e.g., Boggs v. Lewis*, 863 F.2d 662, 663 (9th Cir. 1988). Federal jurisdiction “must be
5 rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v. Miles, Inc.*,
6 980 F.2d 564, 566 (9th Cir. 1992) (*quoting Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064
7 (9th Cir. 1979)). Where, as is the case here, it is unclear what amount of damages the plaintiff has
8 sought, the defendant “bears the burden of actually proving the facts to support jurisdiction,
9 including the jurisdictional amount.” *Id.* at 566-67 (“If [a defendant’s] allegations of jurisdictional
10 facts are challenged by his adversary in any appropriate manner, he must support them by competent
11 proof.”). Kone has submitted no facts whatsoever to support its jurisdiction claim and has therefore
12 utterly failed to meet its burden. Huck’s motion to remand must therefore be granted. The matter
13 shall be remanded to the Superior Court of California, County of San Francisco and the clerk shall
14 close this case.

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17 IT IS SO ORDERED.

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19 Dated: 09/17/2010



20 RICHARD SEEBORG
21 UNITED STATES DISTRICT JUDGE

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THIS IS TO CERTIFY THAT A HARD COPY OF THIS ORDER WAS MAILED TO:

Randall G. Huck
1631 Lake Street
San Francisco, CA 94121

DATED: 09/17/2010

/s/ Chambers Staff
Chambers of Judge Richard Seeborg

* Counsel are responsible for distributing copies of this document to any co-counsel who have not registered with the Court's electronic filing system.