

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ARTURO CERVANTES,  
Plaintiff,  
v.  
RGW CONSTRUCTION, INC.,  
Defendant.

Case No. 16-cv-05460-TEH

**ORDER GRANTING MOTION FOR  
REMAND**

This matter comes before the Court on Plaintiff’s motion to remand. Pursuant to Civil Local Rule 7-1(b), the Court finds oral argument unnecessary and now VACATES the January 23, 2017 hearing. After carefully considering the parties’ written arguments, Plaintiff’s motion to remand is GRANTED for the reasons discussed below.

**BACKGROUND**

On August 10, 2016, Plaintiff Arturo Cervantes commenced a civil action against his former employer, RGW Construction Inc., in Alameda County Superior Court. He brought five causes of action under state law on behalf of himself and other similarly situated individuals. On September 23, 2016, Defendant timely removed the case to this Court because Plaintiff’s claims involved interpretation of a collective bargaining agreement and thus implicated questions of federal law under the Labor Management Relations Act (“LMRA”).

In response to Defendant’s motion to dismiss the complaint, Plaintiff agreed to dismiss four out of five claims, submitting them instead to a grievance procedure outlined in the collective bargaining agreement. The only remaining claim is Plaintiff’s Third Cause of Action, in which Plaintiff alleges that wage statements issued by Defendant failed to include a “start date for the applicable pay period” in violation of California Labor Code

1 Section 226(a). Opp'n at 2. Shortly after an initial Case Management Conference held  
2 before this Court on December 12, 2016, Plaintiff filed the present motion for remand.

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4 **DISCUSSION**

5 Upon removal of a case to federal court, a district court has discretion to remand a  
6 case once federal claims are eliminated. *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1000  
7 (9th Cir. 1997). In determining whether to remand, “the balance of factors to be  
8 considered” are “judicial economy, convenience, fairness and comity.” *Carnegie-Mellon*  
9 *Univ. v. Cohill*, 484 U.S. 343, 357 (1988). A court may also consider “whether the plaintiff  
10 has engaged in any manipulative tactics” in order to inappropriately secure a particular  
11 forum. *Id.* The Supreme Court has noted that when all federal claims are eliminated early  
12 on, a district court has “a powerful reason to choose not to continue to exercise  
13 jurisdiction.” *Id.* at 350-51.

14 Defendant is correct that remand is not mandatory. Remand, however, “is generally  
15 preferable” when, as here, the sole remaining claim is a state law claim. *Harrell v. 20th*  
16 *Century Ins. Co.*, 934 F.2d 203, 205 (9th Cir. 1991). This is especially true when the  
17 “federal-law claims have dropped out of the lawsuit in its early stages.” *Carnegie-Mellon*  
18 *Univ.*, 484 U.S. at 350 (citing *Mine Workers v. Gibbs*, 383 U.S. 715, 726-27 (1966)).  
19 Plaintiff agreed to dismiss the four claims that implicated federal law less than a month  
20 after the case was removed to federal court. There has been an initial Case Management  
21 Conference held but the parties have yet not begun discovery or engaged in the Alternative  
22 Dispute Resolution process. Given that remand is sought early in the proceedings,  
23 Defendant fails to convince this Court that it should retain jurisdiction over the sole  
24 remaining state law claim.

25 The balance of the factors of judicial economy, convenience, fairness and comity  
26 further tips the scale in favor of remand. The Court has yet to delve into the merits of  
27 Plaintiff’s complaint; thus, there would be no duplication of efforts or resulting waste of  
28 judicial resources in remanding this action back to state court. Although Defendant lists

1 fairness as a factor opposing remand, Defendant does not explain its reasoning and the  
2 Court is unpersuaded. As neither the Alameda Superior Court nor this Court appear more  
3 convenient to the parties, the Court finds the convenience factor neutral. Lastly, comity  
4 weighs in favor of remand since the sole remaining claim arises under state law.

5 Defendant's primary argument against remand is that Plaintiff acted manipulatively  
6 when he sought to compel remand by dismissing the federal question claims. The Court  
7 finds nothing manipulative about responding to a motion to dismiss by dismissing claims  
8 that fall within the purview of the collective bargaining agreement and should thus be  
9 addressed through the agreement's grievance procedure. There is no evidence here that  
10 Plaintiff's actions constitute an effort at manipulative forum shopping. It is simply more  
11 appropriate for the state court to resolve Plaintiff's remaining claim.

12

13 **CONCLUSION**

14 With good cause appearing, the Court exercises its discretion and GRANTS  
15 Plaintiff's motion to remand. This matter is hereby remanded to the Superior Court of  
16 California for the County of Alameda. The Clerk shall close the file.

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19 **IT IS SO ORDERED.**

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21 Dated: 01/09/17

  
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THELTON E. HENDERSON  
United States District Judge

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