

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALAN MOORE, AMY REED, and
DOMINIC GALLAGHER on behalf of
themselves, all others similarly situated, and
on behalf of the general public,

Plaintiffs,

v.

ARAMARK UNIFORM SERVICES, LLC;
ARAMARK UNIFORM SERVICES
(SANTA ANA), LLC; ARAMARK
UNIFORM & CAREER APPAREL, LLC;
and DOES 1-100,

Defendants.

Case No. 17-cv-06288-JST

**ORDER GRANTING MOTION TO
REMAND**

Re: ECF No. 17

I. INTRODUCTION

Before the Court is Plaintiffs’ Motion to Remand. ECF No. 17. For the reasons set forth below, the Court will grant the motion.

II. BACKGROUND

A. Facts and Procedural History

Plaintiffs Alan Moore, Amy Reed, and Dominic Gallagher (“Plaintiffs”) bring a putative class action suit asserting several claims under California wage laws and related statutes against Defendants Aramark Uniform Services, LLC, Aramark Uniform Services (Santa Ana), LLC, and Aramark Uniform & Career Apparel, LLC (collectively “Aramark”).

Aramark is a provider of food, facilities, and uniform services. ECF No. 1-1 (“FAC”) ¶ 37. The “uniform portion of its business includes the rental, sale, cleaning, maintenance, and delivery” of uniforms and other items to clients. *Id.* Aramark operates out of approximately twenty-six locations or work sites throughout California. *Id.* ¶ 38. During the relevant time

1 period, named Plaintiffs Alan Moore and Dominic Gallagher were employed by Aramark as non-
2 exempt route sales representatives and named Plaintiff Amy Reed was employed as a non-exempt
3 general floor laborer. FAC ¶¶ 26-28. Plaintiffs worked out of Aramark’s Stockton, California and
4 Novato, California locations. Id.

5 In their First Amended Complaint (“FAC”), Plaintiffs assert the following causes of action
6 under California law: (1) failure to pay for all time worked; (2) failure to authorize and permit rest
7 periods; (3) knowing and intentional failure to comply with itemized employee wage statement
8 provisions; (4) failure to pay all wages due at the time of termination of employment; (5) failure to
9 reimburse business expenses/illegal deductions; and (6) violation of California’s Unfair
10 Competition Law. FAC ¶¶ 87-152.

11 On October 30, 2017, Aramark removed the action to this Court pursuant to 28 U.S.C.
12 §§ 1331 and 1441. See ECF No. 1 at 3. Aramark argues that Plaintiffs’ claims for failure to pay
13 overtime, failure to provide meal periods, failure to pay all wages earned, and failure to authorize
14 and permit rest breaks are completely preempted by section 301 of the Labor Management
15 Relations Act (“LMRA”). ECF No. 1 at ¶¶ 12, 30, 36, 41. On December 19, 2017, Plaintiffs
16 moved to remand the action to the Alameda County Superior Court pursuant to 28 U.S.C. §
17 1447(c) on grounds that the Court lacks subject matter jurisdiction. ECF No. 17 at 9. Plaintiffs
18 contend that preemption under section 301 of the LMRA is not proper because their claims arise
19 out of state law and do not require interpretation of any of the terms in the relevant collective
20 bargaining agreements (“CBAs”). ECF No. 17 at 13.

21 **III. LEGAL STANDARD**

22 LMRA section 301 provides federal jurisdiction over “[s]uits for violation of contracts
23 between an employer and a labor organization.” 29 U.S.C. § 185(a). Section 301 encapsulates “a
24 congressional mandate to the federal courts to fashion a body of federal common law to be used to
25 address disputes arising out of labor contracts.” Allis-Chalmers Corp. v. Lueck, 471 U.S. 202,
26 209 (1985) (footnote omitted). “This federal common law, in turn, preempts the use of state
27 contract law in CBA interpretation and enforcement.” Matson v. United Parcel Serv., Inc., 840
28 F.3d 1126, 1132 (9th Cir. 2016) (internal citation and quotation marks omitted).

1 To give “the policies that animate § 301 . . . their proper range,” its preemptive force
2 “extend[s] beyond suits alleging contract violations” to include “questions relating to what the
3 parties to a labor agreement agreed, and what legal consequences were intended to flow from
4 breaches of that agreement.” Lueck, 471 U.S. 210-11. Despite the strong preemptive force of
5 section 301, however, “not every dispute concerning employment, or tangentially involving a
6 provision of a collective-bargaining agreement, is preempted by [it].” Id. at 211. “[T]he Supreme
7 Court has repeatedly admonished that § 301 preemption is not designed to trump substantive and
8 mandatory state law regulation of the employee-employer relationship; § 301 has not become a
9 ‘mighty oak’ that might supply cover to employers from all substantive aspects of state law.”
10 Humble v. Boeing Co., 305 F.3d 1004, 1007 (9th Cir. 2002) (citing Lingle v. Norge Div. of Magic
11 Chef Inc., 486 U.S. 399, 408-09 (1988); Livadas v. Bradshaw, 512 U.S. 107, 122 (1994)). “In
12 extending the pre-emptive effect of § 301 beyond suits for breach of contract, it would be
13 inconsistent with congressional intent under that section to preempt state rules that proscribe
14 conduct, or establish rights and obligations, independent of a labor contract.” Lueck, 471 U.S. at
15 212 (footnote omitted).

16 “The demarcation between preempted claims and those that survive § 301’s reach is
17 not . . . a line that lends itself to analytical precision.” Cramer v. Consolidated Freightways, Inc.,
18 255 F.3d 683, 691 (9th Cir. 2001). The Ninth Circuit has articulated a two-prong inquiry to
19 analyze whether section 301 preemption applies. Burnside v. Kiewit Pacific Corp., 491 F.3d
20 1053, 1059-60 (9th Cir. 2007). A court must first determine “whether the asserted cause of action
21 involves a right conferred upon an employee by virtue of state law, not by a CBA. If the right
22 exists solely as a result of the CBA, then the claim is preempted and our analysis ends there.” Id.
23 at 1059 (citation omitted). However, if the court determines the right underlying the state claim(s)
24 “exists independently of the CBA” the court then proceeds to the second prong, which examines
25 whether the right is “substantially dependent on analysis of a collective bargaining agreement.”
26 Id. (citation and internal quotation marks omitted).

27 In determining if the first prong is met (whether a right is independent of a CBA) a court
28 must evaluate whether the “legal character of a claim” is “independent of rights under the

1 collective bargaining agreement.” Livadas, 512 U.S. at 123 (internal citation and quotation marks
2 omitted). Section 301 preempts the claim if it is “founded directly on rights created by collective
3 bargaining agreements” Caterpillar v. Williams, 482 U.S. 386, 394 (1987).

4 In determining whether the second prong is met (whether the claim is “substantially
5 dependent” on a CBA) the Court must evaluate whether the claim can be resolved by “look[ing]
6 to’ versus interpreting the CBA. If the latter, the claim is preempted; if the former, it is not.”
7 Burnside, 491 F.3d at 1060 (internal citations omitted). “When the meaning of contract terms is
8 not the subject of dispute, the bare fact that a collective-bargaining agreement will be consulted in
9 the course of state-law litigation plainly does not require the claim to be extinguished.” Livadas,
10 512 U.S. at 124 (citation omitted). For example, “[a] collective-bargaining agreement may . . .
11 contain information such as rate of pay . . . that might be helpful in determining the damages to
12 which a worker prevailing in a state-law suit is entitled,” but that would not mean the claim is
13 preempted. Lingle, 486 U.S. at 413 n.12. Additionally, section 301 “cannot be read broadly to
14 pre-empt nonnegotiable rights conferred on individual employees as a matter of state law.”
15 Livadas, 512 U.S. at 123 (footnote omitted); see also Balcorta v. Twentieth Century-Fox Film
16 Corp., 208 F.3d 1102, 1111 (9th Cir. 2000).

17 **IV. DISCUSSION**

18 Before turning to the merits of the parties’ preemption arguments, the Court must first
19 decide what claims are at issue. Aramark argues that one reason removal is proper is that
20 Plaintiffs make claims for failure to pay overtime wages and failure to provide meal periods in the
21 first amended complaint, and these claims are preempted pursuant to section 301. ECF No. 1
22 ¶ 12; ECF No. 19 at 5. Plaintiffs respond that any references to such claims in the complaint are
23 inadvertent, ECF No. 17 at 8 n.4, and that the FAC does not actually plead causes of action for
24 failure to provide meal periods or failure to provide overtime pay. Id. at 8. A review of the
25 complaint supports Plaintiffs’ position, and the Court therefore addresses only the claims actually
26 identified as causes of action. See FAC ¶¶ 87-152.

27 Plaintiffs generally argue that the first cause of action – failure to pay for all time worked –
28 is not preempted because it arises out of state law and it does not require interpretation of the

1 CBAs. ECF No. 17 at 13-14. Aramark responds that this cause of action is preempted because it
2 alleges breach of a contractual obligation under the applicable CBA and requires interpretation of
3 the applicable language in the CBA. ECF No. 19 at 6-9. Plaintiffs also argue that the second
4 cause of action – failure to authorize and permit rest periods – is not preempted because it arises
5 out of state law and does not require interpretation of the CBAs. ECF No. 17 at 15-16. Aramark
6 responds that resolving the merits of the rest break claim “requires an analysis and interpretation
7 of the various different CBAs applicable to putative class members.” ECF No. 19 at 12.

8 **A. The Claim for Failure to Pay for All Time Worked is Not Preempted**

9 **1. Aramark Has Not Satisfied the First Prong of Burnside**

10 Under the first prong of the Burnside test, the Court first asks whether Plaintiffs’ claims
11 involve rights conferred upon an employee by state law or solely by a CBA. Burnside, 491 F.3d at
12 1059. Here, the Court concludes that Plaintiffs’ first cause of action, failure to pay for all time
13 worked, is independently rooted in state law. Plaintiffs assert that Aramark “ha[s] a continuous
14 and consistent policy of clocking-out Plaintiffs and those similarly situated for a thirty (30) minute
15 meal period, even though Plaintiffs . . . work through their meal periods.” FAC ¶ 88. Plaintiffs’
16 claim is analogous to “‘time-shaving’ . . . the practice of doctoring hourly employees’ time sheets
17 to reduce their pay.” In re Wal-Mart Stores, Inc. Wage & Hour Litig., 505 F.Supp. 2d 609, 616
18 (N.D. Cal. 2007); see also Ross v. U.S. Bank Nat. Ass’n, 542 F. Supp. 2d 1014, 1024 (N.D. Cal.
19 2008) (“The alleged truncation practice in this case is similar to the time-shaving practice in Wal-
20 Mart. Both . . . involve a continuous and systematic deprivation of the employees’ time worked
21 for the purpose of reducing the employees’ pay.”).

22 Aramark disagrees with Plaintiffs’ characterization of the first cause of action and instead
23 asserts that it “arises as a matter of contract between an employee and his or her employer.” ECF
24 No. 19 at 7 (emphasis omitted). Simply saying this doesn’t make it true. In fact, Plaintiffs ground
25 their claim for failure to pay for all time worked in California Labor Code sections 204(a) and
26 1194(a). Under California Labor Code section 204(a), “[a]ll wages . . . earned by any person in
27 any employment are due and payable.” Under section 1194(a), an “employee receiving less than
28 the legal minimum wage . . . applicable to the employee is entitled to recover in a civil action the

1 unpaid balance of the full amount of this minimum wage.” Plaintiffs claim not that Aramark
2 breached the CBA, but rather that they “have suffered, and continue to suffer, substantial unpaid
3 wages, lost interest on such wages, and expenses and attorneys’ fees in seeking to compel
4 Defendants to fully perform their obligations under state law.” FAC ¶ 95. “[T]he independent
5 state law right to be paid for all hours worked does not require any interpretation of the CBA
6 Plaintiffs’ unpaid wage claims are not based on a dispute over how to calculate their pay rate under
7 the CBA, but on Defendant’s alleged failure to pay them any regular or overtime pay at all for
8 certain time worked.”¹ Bryant v. Catholic Healthcare W., No. CV 11-07490 DDP JCGX, 2012
9 WL 3425649, at *3 (C.D. Cal. Aug. 13, 2012) (rejecting preemption argument regarding section
10 1194 claim); see also See Stone v. Sysco Corporation, No. 16-CV-01145-DAD-JLT, 2016 WL
11 6582598 at *9 (E.D. Cal. Nov. 7, 2016) (citing California Labor Code section 204(a) in finding
12 that defendants “continuous policy of not paying Plaintiffs . . . ‘arises from state law’”) (internal
13 citation omitted); see also Martinez v. Mann Packaging Co. Inc., No. 12-CV-02122-EJD, 2012
14 WL 4179237 at *1-2 (N.D. Cal. Sept. 18, 2012).

15 Plaintiffs’ first cause of action – failure to pay for all time worked – is not subject to
16 section 301 preemption under the first prong of the Burnside test. This claim exists independently
17 from the CBA and is “a right conferred upon an employee by virtue of state law. . . .” Burnside,
18 491 F.3d at 1059.

19 2. Aramark Has Not Satisfied the Second Prong of Burnside

20 Because the right exists independently of the CBA, the Court asks whether the right is
21 “nevertheless substantially dependent on the analysis of a collective-bargaining agreement.”
22 Burnside, 491 F.3d at 1059 (internal quotation marks and citations omitted). “[R]eview[ing]’ or
23 ‘analyz[ing]’ a CBA is not the same as ‘interpreting’ its text, as interpretation implies discordance
24 over the meaning of a term that requires authoritative explication.” Cuellar-Ramirez v. U.S.
25 Foods, Inc., No. 16-CV-00085-RS, 2016 WL 1238603 at *5 (N.D. Cal., Mar. 22, 2016).

26
27 ¹ That Aramark’s alleged conduct might also violate the CBA does not change this result. Bryant
28 v. Catholic Healthcare W., No. CV 11-07490 DDP JCGX, 2012 WL 3425649, at *2 (C.D. Cal.
Aug. 13, 2012) (“That Plaintiffs [also] state that these violations also violate the CBA does not
change the substantive basis for their claim.” (emphasis in original)).

1 Aramark argues that resolving Plaintiffs’ first cause of action requires interpretation of
2 “numerous different collective bargaining agreements” that include “complicated formula[s]
3 regarding how to calculate hourly rates of pay and certain weekly minimum pay.” ECF No. 19 at
4 9. See also ECF No. 3-1 at 27-30. However, the “need to consult the CBAs to determine the
5 wage rate to be used in calculating liability cannot, alone, trigger section 301 preemption.”
6 Burnside, 491 F.3d at 1074.

7 Aramark also asserts that “the determination of what Plaintiffs are allegedly owed in
8 unpaid wages will necessarily and substantially depend upon an analysis of the numerous different
9 collective bargaining agreements that applied to different groups of putative class members
10 throughout California, . . . [which] include a complicated formula regarding how to calculate
11 hourly rates of pay and certain weekly minimum pay, depending on whether commission are
12 earned based on sales targets.” ECF No. 19 at 9. This argument conflates the need to analyze the
13 agreements’ provisions with the need simply to apply those provisions. Plaintiffs “do not dispute
14 the hourly rate they are entitled to or how it was calculated.” ECF No. 22 at 7. In Livadas, the
15 plaintiff claimed that she was entitled to payment of a penalty for the employer’s failure to pay
16 wages immediately following her discharge under California Labor Code section 203. 510 U.S. at
17 111. The Livadas plaintiff argued that she was not paid immediately upon discharge, but did not
18 dispute how much she was owed. Id. at 114. The Court noted that there was not even a “colorable
19 argument” that a claim under section 203 was preempted because there was no “indication that
20 there was a ‘dispute’ in the case over the amount of the penalty to which [plaintiff] would be
21 entitled.” Id. at 124-25, 135 (finding preemption on other grounds). Similarly here, there is no
22 indication of a dispute. Any application of the CBA will be mechanical and require the Court only
23 to apply the relevant formulas listed in the CBAs to determine the liability amount. See also
24 Rodriguez v. Freshpoint, Inc., No. 16-cv-5271-PJH, 2016 WL 6780353 (N.D. Cal. Nov. 2, 2016)
25 (determining a claim for failure to pay straight-time wages was not preempted by section 301 of
26 the LMRA because no interpretation of the CBA was required); Santiago v. Aramark Uniform and
27 Career Apparel, LLC, No. C 12-04462 JSW, 2012 WL 5868954, at *4 (N.D. Cal. Nov. 19, 2012)
28 (finding a dispute regarding the “method by which premium pay is calculated and whether the

1 formula set forth in the CBA constitutes a premium wage rate” required interpretation of the
2 CBA.)

3 Accordingly, Plaintiffs’ claim for failure to pay for all time worked is not substantially
4 dependent on analysis of the CBA and would require, at most, reference to the relevant
5 provisions.² Therefore, Plaintiffs’ claim for failure to pay for all time worked is not preempted by
6 section 301 of the LMRA because it fails both prongs of the Burnside test.³

7 **B. The Claim for Failure to Authorize and Permit Rest Periods is Not Preempted**

8 Plaintiffs assert that Aramark violated California Labor Code section 226.7 by failing to
9 authorize and permit rest periods. FAC ¶¶ 99-116.

10 “Nonnegotiable rights are not subject to section 301 preemption, even if employees are
11 covered by a valid CBA.” Azpeitia v. Tesoro Ref. & Mktg. Co. LLC, No. 17-CV-00123-JST,
12 2017 WL 3115168, at *6 (N.D. Cal. July 21, 2017) (citing Valles v. Ivy Hill Corp., 410 F.3d 1071,
13 1081 (9th Cir. 2005). Although Valles concerned the state law provisions governing meal periods,
14 410 F.3d at 1081, a California appellate court has held that rest breaks are a non-waivable state
15 mandated “minimum labor standard.” Zavala v. Scott Bros. Dairy, 143 Cal. App. 4th 585, 594
16 (2006); see also Scott v. Traffic Management, Inc., No. CV 16-02475 SJO (KSx), 2016 WL
17 3212246 at *4 (C.D. Cal. June 6, 2016). Further, rest breaks, like meal periods, are similarly
18 regulated by Labor Code section 226.7 and “address some of the most basic demands of an
19 employee’s health and welfare.” Valles, 410 F.3d at 1081 (internal quotation marks and citation

20 _____
21 ² In the notice of removal, Aramark argues that the claim for failure to pay all wages is preempted
22 because the question of whether employees were provided a meal break or whether they were
23 “clocked-out” without being given a meal break is dependent upon the CBA and may be resolved
through interpreting provisions of the CBA. ECF No. 1 ¶¶ 36, 38. Aramark did not raise this
argument in its opposition to Plaintiffs’ motion to remand.

24 ³ The Court acknowledges, but does not follow, the Ninth Circuit’s recent unpublished disposition
25 in McKinley v. Southwest Airlines Company, 680 Fed. Appx. 522 (2017). There, the court
26 decided that a claim for overtime wages would require interpretation of the CBA because the court
27 would need to “examine each form of pay provided by the CBA, determine when that pay was
28 due, and then decide whether the pay should have been included in [p]laintiff’s regular rate.” Id.
at 524 (internal citation omitted). Perhaps the determination of wages under the CBA at issue in
McKinley required a degree of contractual analysis not present here, and the case is
distinguishable on that basis. To the extent the facts in McKinley are the same as those here,
however, the Court notes that McKinley is not precedential and declines to follow it. See Ninth
Circuit Rule 36-3(a).

1 omitted). Thus, this Court holds that the right to rest breaks is non-negotiable and therefore not
2 subject to section 301 preemption.

3 **C. Supplemental Jurisdiction Does Not Exist**

4 Because the LMRA does not preempt any of Plaintiff's claims, this Court lacks subject
5 matter jurisdiction over these claims and cannot exercise supplemental jurisdiction.

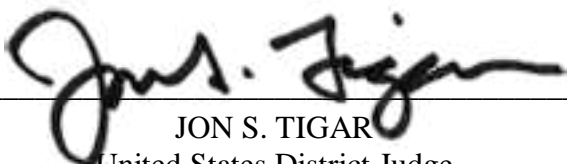
6 **CONCLUSION**

7 For the foregoing reasons, Plaintiffs motion to remand is granted. This action is hereby
8 REMANDED to the Alameda Superior Court for further proceedings.

9 The Case Management Conference scheduled for February 7, 2018 is vacated.

10 **IT IS SO ORDERED.**

11 Dated: February 5, 2018



JON S. TIGAR
United States District Judge

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