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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSE F. ANDINO,
Plaintiff,
v.
KAISER FOUNDATION HOSPITALS,
Defendant.

No. C 11-04152 CW
ORDER GRANTING
MOTION FOR REMAND

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United States District Court
For the Northern District of California

INTRODUCTION

Plaintiff Jose F. Andino brings eight causes of action against Defendant Kaiser Foundation Hospitals based on allegations that Defendant failed to pay overtime wages, provide second meal periods for shifts greater than twelve hours or pay additional wages in lieu of those meal periods, provide itemized wage statements, and timely pay wages upon termination. Plaintiff further alleges that Defendant engaged in unfair competition by failing to pay those wages. Defendant removed the case to federal court and Plaintiff moves for remand. Defendant opposes the motion, and Plaintiff has filed a reply to the opposition. For the reasons stated below, Plaintiff's motion for remand to state court is GRANTED.

BACKGROUND

Plaintiff was employed by Defendant, pursuant to a collective bargaining agreement (CBA), as a patient transporter aide from May 2008 through March 2011.

1 Plaintiff alleges he was underpaid for shifts when he worked
2 more than eight hours, both when his shifts started and ended on
3 the same calendar day and when the shifts started on one calendar
4 day and extended into the next. He brought eight causes of action
5 in Alameda County Superior Court: (1) underpayment of wages based
6 on alleged improper rounding methodologies that used fractions of
7 hours; (2) failure to pay all overtime wages; (3) failure to pay
8 overtime wages when an eight hour shift begins on one calendar day
9 continues into the next; (4) failure to provide meal periods or
10 pay in lieu thereof; (5) failure to provide accurate wage
11 statements; (6) failure to pay wages owed at termination; (7)
12 violation of California Business and Professions Code sections
13 17200 et. seq. Plaintiff's eighth listed cause of action claims
14 statutory damages for the preceding seven claims.

15 The CBA is between Defendant, its affiliated groups, and SEIU
16 United Healthcare Workers West. It provides that Defendant's
17 Northern California employees shall be paid at the rate of time
18 and one-half "for all hours of work performed in excess of eight
19 (8) hours in any one work day and/or for all hours worked in
20 excess of forty (40) within the work week." Ex. A, Art. XII,
21 § 1(C). The preceding subsection of the CBA defines the term
22 "payroll week" as the "seven (7) day period beginning at 12:01
23 a.m., Sunday, or at the shift changing hour nearest that time,"
24 and it defines the term "payroll day" as "a twenty-four (24) hour
25 period, beginning at the same time each Payroll Day as the Payroll
26 Week begins." Ex. A, Art. XII, § 2(B).

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1 Defendant opposes the motion to remand based on the argument
2 that federal law preempts Plaintiff's third, fifth, sixth, and
3 seventh causes of action.

4 DISCUSSION

5 I. Legal Standard

6 A defendant may remove a civil action filed in state court to
7 federal district court so long as the district court could have
8 exercised original jurisdiction over the matter. 28 U.S.C.
9 § 1441(a). Title 28 U.S.C. section 1447(c) provides that if, at
10 any time before judgment, it appears that the district court lacks
11 subject matter jurisdiction over a case previously removed from
12 state court, the case must be remanded. On a motion to remand,
13 the scope of the removal statute must be strictly construed. Gaus
14 v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). "The 'strong
15 presumption' against removal jurisdiction means that the defendant
16 always has the burden of establishing that removal is proper."
17 Id. Courts should resolve doubts as to removability in favor of
18 remanding the case to state court. Id.

19 "In general, district courts have federal-question
20 jurisdiction only if a federal question appears on the face of a
21 plaintiff's complaint." Brennan v. Southwest Airlines Co., 134
22 F.3d 1405, 1409 (9th Cir. 1998) (citing Louisville & Nashville R.
23 Co. v. Mottley, 211 U.S. 149, 152 (1908)). Because the plaintiff
24 is the master of the complaint, a court does not exercise original
25 jurisdiction over a matter solely because a federal defense may be
26 anticipated. Franchise Tax Bd. v. Construction Laborers Vacation
27 Trust, 463 U.S. 1, 14 (1983). A plaintiff chooses what claims he
28 or she wishes to bring and may forgo federal claims. There is,

1 however, an exception to the general rule: the artful pleading
2 doctrine. Artful pleading exists where a plaintiff states an
3 inherently federal claim in state-law terms. Brennan, 134 F.3d at
4 1409.

5 DISCUSSION

6 I. Remand

7 Defendant moves to dismiss on the basis of federal pre-
8 emption. Section 301 of the LMRA provides federal jurisdiction
9 over "[s]uits for violations of contracts between an employer and
10 a labor organization representing employees in an industry
11 affecting commerce as defined in this chapter, or between such
12 labor organizations." 29 U.S.C. § 185(a).

13 The Supreme Court has stated that section 301 of the LMRA
14 preempts equivalent remedies under state law and that "the
15 preemptive force of section 301 is so powerful as to displace
16 entirely any state cause of action 'for violation of contracts
17 between an employer and a labor organization.' Any such suit is
18 purely a creature of federal law, notwithstanding the fact that
19 state law would provide a cause of action in the absence of
20 [section] 301." Franchise Tax Bd. v. Construction Laborers
21 Vacation Trust, 463 U.S. 1, 23 (1983); see also Caterpillar Inc.
22 v. Williams, 482 U.S. 386, 393 (1987).

23 A state law claim is completely preempted by section 301 of
24 the LMRA if resolution of the claim requires the interpretation of
25 a collective bargaining agreement. Lingle v. Norge Div. of Magic
26 Chef, Inc., 486 U.S. 399, 413 (1988). "Section 301 governs claims
27 founded directly on rights created by collective-bargaining
28 agreements, and claims 'substantially dependent on analysis of a

1 collective-bargaining agreement.'" Caterpillar, 482 U.S. at 394
2 (citation omitted); Allis-Chalmers Corp. v. Lueck, 471 U.S. 202,
3 220 (1985) (tort claim preempted because extent of employer's duty
4 of good faith depends on terms of collective bargaining
5 agreement).

6 Preemption under section 301 will not apply, however, in all
7 instances in which a collective bargaining agreement is present.
8 Section 301 preemption does not apply where a state-law remedy is
9 independent of a collective bargaining agreement in the sense that
10 resolution of the state-law claim does not require construing the
11 collective bargaining agreement. Lingle, 486 U.S. at 407.
12 Section 301 does not preempt state-law causes of action simply
13 because they require analysis of the same facts that would be at
14 issue in a section 301 claim, Lingle, 486 U.S. at 408-09, or
15 because the court must refer to the collective bargaining
16 agreement, as opposed to interpreting its terms, in order to
17 decide the claim. Livadas v. Bradshaw, 512 U.S. 107, 123-24
18 (1994). Only state-law causes of action "that do not exist
19 independently of private agreements, and that as a result can be
20 waived or altered by agreement of private parties, are preempted
21 by those agreements." Lueck, 471 U.S. at 213.

22 A. Overtime Claims

23 Defendant asserts that the third cause of action for non-
24 payment of overtime requires interpretation of the CBA. Defendant
25 casts the issue as whether a workday is a calendar day or the
26 twenty-four hour period containing an entire eight-hour work
27 shift. The effect of Defendant's interpretation is that an eight-
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1 hour shift could span two workdays and not trigger overtime pay
2 for hours worked in excess of eight hours in a single shift.

3 Another judge in this district considered a similar issue in
4 2007, and found that the plaintiff properly alleged a claim for
5 failure to pay overtime, where an employer set the beginning of
6 the workday at the middle of a shift. The court ruled that an
7 employer cannot circumvent the overtime pay provisions of the
8 California Labor Code by starting the workday in the middle of a
9 shift that would otherwise require overtime pay. In re Wal-Mart
10 Stores, Inc. Wage and Hour Litigation, 505 F. Supp. 2d 609, 617
11 (N.D. Cal. 2007). The court stated that "California's overtime
12 laws are remedial" and should "be construed so as to promote
13 employee protection." The court read Labor Code section 510(a),
14 "Eight hours of labor constitutes a day's work," as indicating the
15 legislature's intent that "a shift of more than eight hours of
16 consecutive work qualifies for overtime pay." Id. The right to
17 overtime does not depend on an interpretation of the term
18 "workday" as provided by the CBA.

19 California Labor Code section 514 is an exemption providing
20 that sections 510 and 511, which establish the overtime
21 requirements, "do not apply to an employee covered by a valid
22 collective bargaining agreement if the agreement expressly
23 provides for the wages, hours of work, and working conditions of
24 the employees, and if the agreement provides premium wage rates
25 for all overtime hours worked and a regular hourly rate of pay for
26 those employees of not less than [thirty] percent more than the
27 state minimum wage." Section 514 provides that the CBA exemption
28 is only available when overtime is paid for "all overtime hours

1 worked." As the court in Gregory v. SCIE explained, whether
2 overtime is paid for "all overtime hours worked" is based on a
3 state right and requires an interpretation of state law, even
4 where the CBA provided for a premium wage rate. 317 F.3d 1050,
5 1053 (9th Cir. 2003). While the CBA here establishes a premium
6 rate over the state minimum, the right to overtime pay is a state
7 right, regardless of rate.

8 B. Accurate Wage Statements and Wages Owed at Termination

9 Plaintiff's fifth and sixth claims are for violations of
10 California Labor Code sections 203, 226(a) and 1174, and IWC Wage
11 Order section 5-2002(7). Defendant argues that because a section
12 226 claim requires "knowing and intentional" failure to provide
13 accurate wage statements and a section 203 claim requires a
14 finding that a defendant willfully failed to conform to the
15 statute, a fact finder would have to interpret the CBA to
16 determine whether Defendant reasonably believed that it owed no
17 additional pay. This might require reference to the CBA, but it
18 does not require interpretation of the contract terms. "Although
19 the line between reference to and interpretation of an agreement
20 may be somewhat hazy, merely referring to an agreement does not
21 threaten the goal that prompted preemption--the desire for uniform
22 interpretation of labor contract terms." Ramirez v. Fox
23 Television Station, Inc., 998 F.2d 743, 749 (9th Cir. 1993).

24 C. Unfair Competition

25 Plaintiff alleges that Defendant engaged in unfair
26 competition in violation of California Business and Professions
27 Code sections 17200 et. seq. by underpaying wages, allowing it to
28 gain an unfair advantage over other comparable companies doing

1 business in the state. Defendant argues in response that the
2 claim would require an interpretation of the CBA and even its
3 bargaining history, to determine whether it is fair "to schedule a
4 workday in a manner that causes some employees to work in two
5 different 'workdays' when they work a single shift" and whether
6 parties to the CBA gave fair value for those provisions. Opp. at
7 10. But the claim is about fairness to competitors, not fairness
8 to employees or the fairness of the bargaining process. An
9 allegation of unfair competition under California Business and
10 Professions Code section 17200 et. seq. involves examining the
11 allegedly unfair practice's "impact on the alleged victim,
12 balanced against the reasons, justifications, and motives of the
13 alleged wrongdoer," Motors, Inc. v. Times Mirror Co., 102
14 Cal.App.3d 735, 740 (1980), not the value of any purported
15 concessions in reaching the terms of the CBA.

16 CONCLUSION

17 For the foregoing reasons, Plaintiff's motion for remand is
18 GRANTED. The Clerk shall remand the case to the Alameda County
19 Superior Court.

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21 IT IS SO ORDERED.

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23 Dated: 11/23/2011

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CLAUDIA WILKEN
United States District Judge