

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MIZRA DEDIC,
Plaintiff,
v.
SECURITAS SECURITY SERVICES USA,
INC.,
Defendant.

Case No. [5:17-cv-06728-HRL](#)

**ORDER GRANTING PLAINTIFF’S
MOTION TO REMAND**

Re: Dkt. No. 23

Plaintiff Mizra Dedic sued his former employer, Securitas Security Services USA, Inc. (Securitas) in state court for alleged wage and hour violations under state law. Securitas answered the complaint and then removed the action here, asserting federal question jurisdiction based on a collective bargaining agreement (CBA) and complete preemption under section 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185(a).

Now before the court are plaintiff’s motion to remand this matter to state court and defendant’s motion for judgment on the pleadings. All parties have expressly consented that all proceedings in this matter may be heard and finally adjudicated by the undersigned. 28 U.S.C. § 636(c); Fed. R. Civ. P. 73. The matter is deemed suitable for resolution without oral argument, and the May 8, 2018 hearing is vacated. Civ. L.R. 7-1(b). Upon consideration of the moving and responding papers, the court grants plaintiff’s motion to remand and does not reach defendant’s

1 motion for judgment on the pleadings.

2 **BACKGROUND**

3 According to the complaint’s allegations: Securitas provides security services throughout
4 the United States and California. (Dkt. 1, Complaint ¶ 7). Dedic was employed by Securitas as a
5 security guard, a non-exempt position, from 2011 to 2013 in San Jose, California. (Id. ¶ 6). When
6 they are hired, Securitas (1) provides security guards, including Dedic, documents advising that
7 due to the nature of their duties, most assignments do not allow guards to leave the job site for
8 meal periods; and (2) requires guards to sign an agreement to that effect. (Id. 12-14). The
9 complaint goes on to allege that Dedic was never informed of his right under California law to an
10 off-duty meal period or the circumstances under which he would be entitled to an off-duty meal
11 period. Additionally, plaintiff says he routinely worked more than five hours (or multiples
12 thereof) without being provided off-duty meal periods. (Id. ¶¶ 15, 17). Plaintiff further claims
13 that Securitas failed to provide compliant rest breaks; failed to properly compensate him for all
14 overtime hours worked; and failed to provide accurate itemized wage statements as required by
15 Industrial Welfare Commission (IWC) Wage Orders and the California Labor Code.

16 Dedic brought this suit in Santa Clara County Superior Court, asserting five claims for
17 relief: (1) failure to provide meal periods or compensation therefor, IWC Wage Order 4-2001;
18 Cal. Labor Code §§ 200, 203, 226.7, 512; (2) failure to provide rest periods or compensation
19 therefor, IWC Wage Order 4-2001; Cal. Labor Code § 226.7; (3) failure to provide accurate wage
20 statements, Cal. Labor Code § 226; (4) unlawful, deceptive and/or unfair business practices, Cal.
21 Bus. & Prof. Code § 17200, et seq. (UCL claim); and (5) failure to pay overtime compensation,
22 Cal. Labor Code §§ 1194, 1197, 1197.1. Securitas removed the matter here, asserting federal
23 question jurisdiction under 28 U.S.C. § 1331 based on LMRA preemption, and supplemental
24 jurisdiction under 28 U.S.C. § 1367.

25 Plaintiff contends that his claims arise only under state law and are not preempted by the
26 LMRA. He therefore moves to remand on the ground that this court lacks subject matter

27
28

1 jurisdiction over this case.¹ Maintaining that plaintiff’s claims are preempted, Securitas seeks
2 judgment on the pleadings, arguing that Dedic (1) cannot pursue his claims in court because he
3 was required, but failed, to proceed with the grievance and arbitration process set out in the CBA;
4 (2) is exempt from California’s statutory meal and overtime requirements by virtue of Cal. Labor
5 Code §§ 512(e), 512(f), and 514; and (3) fails to state a claim for relief.²

6 Turning first to plaintiff’s motion for remand and, for the reasons to be discussed, the court
7 concludes that LMRA section 301 preemption does not apply and that the court lacks subject
8 matter jurisdiction over this case. As such, the court grants plaintiff’s motion for remand and does
9 not reach defendant’s motion for judgment on the pleadings.

10 **DISCUSSION**

11 **A. Legal Standard**

12 Removal to federal court is proper where the federal court would have original subject
13 matter jurisdiction over the complaint. 28 U.S.C. § 1441. The removal statutes are strictly
14 construed against removal and place the burden on the defendant to demonstrate that removal is
15 proper. *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (citing *Gaus*
16 *v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)). Additionally, the court has a continuing duty to
17 determine whether it has subject matter jurisdiction. Fed. R. Civ. P. 12(h). A case must be
18 remanded to the state court if it appears at any time before final judgment that the court lacks
19 subject matter jurisdiction. 28 U.S.C. § 1447(c).

20 Federal courts have original jurisdiction over civil actions “arising under the Constitution,
21 laws, or treaties of the United States.” 28 U.S.C. § 1331. A claim “arises under” federal law if,
22 based on the “well-pleaded complaint rule,” the plaintiff alleges a federal claim for relief. *Vaden*
23 *v. Discovery Bank*, 129 S. Ct. 1262, 1272 (2009). Defenses and counterclaims asserting a federal
24 question do not satisfy this requirement. *Id.*

25
26 _____
¹ No one claims that this court has diversity jurisdiction under 28 U.S.C. § 1332.

27 ² Defendant also argued plaintiff lacks standing to seek injunctive relief, a point that plaintiff now
28 concedes.

1 However, even when only state law claims have been pled, “complete preemption”
2 provides a basis for removal. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393 (1987). LMRA
3 section 301 has complete preemptive force and vests jurisdiction in federal courts for “[s]uits for
4 violation of contracts between an employer and a labor organization representing employees in an
5 industry affecting commerce . . .” 29 U.S.C. § 185(a). Once preempted, any claim purportedly
6 based on preempted state law “is considered, from its inception, a federal claim, and therefore
7 arises under federal law.” *Caterpillar*, 482 U.S. at 393.

8 To determine whether LMRA section 301 preemption applies, courts in the Ninth Circuit
9 apply a two-part test. First, the court makes “an inquiry into whether the asserted cause of action
10 involves a right conferred upon an employee by virtue of state law, not by a CBA.” *Burnside v.*
11 *Kiewitt Pacific Corp.*, 491 F.3d 1053, 1059 (9th Cir. 2007). “If the right exists solely as a result of
12 the CBA, then the claim is preempted, and [the] analysis ends there.” *Id.* (citing *Allis-Chalmers*
13 *Corp. v. Lueck*, 471 U.S. 202, 212 (1985)). But, if the right exists independently of the CBA, then
14 the court “must still consider whether it is nevertheless ‘substantially dependent on analysis of a
15 collective-bargaining agreement.’” *Id.* (quoting *Caterpillar*, 482 U.S. at 394). “If such
16 dependence exists, then the claim is preempted by section 301; if not, then the claim can proceed
17 under state law.” *Id.* at 1059-60. LMRA section 301 “cannot be read broadly to pre-empt
18 nonnegotiable rights conferred on individual employees as a matter of state law . . . it is the legal
19 character of a claim, as ‘independent’ of rights under the collective-bargaining agreement, (and
20 not whether a grievance arising from ‘precisely the same set of facts’ could be pursued) that
21 decides whether a state cause of action may go forward.” *Lividas v. Bradshaw*, 512 U.S. 107,
22 123-24 (1994) (citations omitted).

23 In determining whether complete preemption applies, the court properly may consider
24 documents beyond the complaint. *Parrino v. FHP, Inc.*, 146 F.3d 699, 704 (9th Cir.1998),
25 superseded by statute on other grounds as stated in *Abrego Abrego v. The Dow Chem. Co.*, 443
26 F.3d 676, 681-82 (9th Cir.2006) (“Because complete preemption often applies to complaints
27 drawn to evade federal jurisdiction, a federal court may look beyond the face of the complaint to
28 determine whether the claims alleged as state law causes of action in fact are necessarily federal

1 claims.”).

2 **B. Dedic’s claims exist independently of the CBA**

3 In determining “whether a particular right inheres in state law or, instead, is grounded in a
4 CBA,” the court considers “the legal character of a claim, as ‘independent’ of rights under the
5 collective-bargaining agreement [and] not whether a grievance arising from ‘precisely the same set
6 of facts’ could be pursued.” Burnside, 491 F.3d at 1060 (quoting *Lividas v. Bradshaw*, 512 U.S.
7 107, 123 (1994)). Additionally, “reliance on the CBA as an aspect of a defense is not enough to
8 ‘inject[] a federal question into an action that asserts what is plainly a state-law claim.’” *Id.*
9 (citing *Caterpillar*, 482 U.S. at 398-99).

10 **1. Meal break claim**

11 With certain qualifications, California Labor Code section 512(a) provides that “[a]n
12 employer may not employ an employee for a work period of more than five hours per day without
13 providing the employee with a meal period of not less than 30 minutes”³ As discussed, Dedic
14 basically complains that he was not permitted off-duty meal periods, even when on-duty meal
15 periods were not absolutely necessary. Securitas argues that plaintiff’s meal period rights do not
16 exist outside the CBA because, it contends, plaintiff falls within the statutory exemption in
17 California Labor Code section 512(e).

18 Section 512(e) of the California Labor Code provides that when certain conditions are
19 satisfied, then section 512(a) does not apply to various kinds of employees identified in section
20 512(f), including certain employees “employed in the security services industry as a security
21 officer”⁴ The conditions that must be satisfied for the section 512(e) exemption to apply are
22 as follows:

- 23 (1) The employee is covered by a valid collective bargaining agreement.

24 _____
25 ³ One qualification is “that if the total work period per day of the employee is no more than six
26 hours, the meal period may be waived by mutual consent of both the employer and employee.”
Cal. Labor Code § 512(a).

27 ⁴ Section 512(f)(3) concerns “[a]n employee employed in the security services industry as a
28 security officer who is registered pursuant to Chapter 11.5 (commencing with Section 7580) of
Division 3 of the Business and Professions Code, and who is employed by a private patrol
operator registered pursuant to that chapter.”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(2) The valid collective bargaining agreement expressly provides for the wages, hours of work, and working conditions of employees, and expressly provides for meal periods for those employees, final and binding arbitration of disputes concerning application of its meal period provisions, premium wage rates for all overtime hours worked, and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate.

Cal. Labor Code § 512(e)(1), (2). Dedic does not refute defendant’s showing that the section 512(e) conditions are satisfied and that he meets section 512(f)’s “security officer” specification. And, Securitas points to *Coria v. Recology, Inc.*, in which a court in this district held that if the section 512(e) exemption applies, “then 512(a) does not apply, and plaintiff’s claimed right to meal periods cannot be said to be based on state law.” 63 F. Supp.3d 1093, 1097 (N.D. Cal. 2014).

Nevertheless, plaintiff correctly notes that section 512(a) addresses when meal periods must be provided, not whether the meal period must be off-duty. The off-duty requirement, he says, is established by IWC Wage Order 4-2001(11)(A), providing that an on-duty meal period is permitted only if the employee signs a written on-duty meal period agreement and the nature of the employee’s work requires an on-duty meal period. In any event, plaintiff argues that the section 512(e) exemption is a defense, which cannot provide a basis for federal subject matter jurisdiction.

On this latter point, the court agrees with those in this circuit that have found *Coria*’s reasoning unpersuasive and have instead followed *Vasserman v. Henry Mayo Newhall Mem’l Hosp.*, 65 F. Supp.3d 932 (C.D. Cal. 2014), which held that such statutory exemptions are an affirmative defense that does not give rise to preemption under LMRA section 301. See, e.g., *Young v. Securitas Security Servs. USA, Inc.*, No. 17-cv-05342-JCS, 2018 WL 1142190, at *7 (N.D. Cal., Mar. 2, 2018) (“Because the statutory exceptions on which Securitas relies are affirmative defenses, they do not give rise to section 301 preemption, even if adjudication of those defenses would require reference to the CBA.”); *Cuellar-Ramirez v. US Foods, Inc.*, No. 16-cv-00085-RS, 2016 WL 1238603, at *4 (N.D. Cal., Mar. 22, 2016) (“In other words, the exemption--- which must be pleaded and proved---does not alter the substance of plaintiff’s claim; it means simply that plaintiff may not ultimately prevail on the merits of [his] state law cause of action.”);

1 Lopez v. Sysco Corp., No 15-cv-04420-JSW, 2016 WL 3078840, at *4 (N.D. Cal., Jan. 25, 2016)
2 (concluding that the defendant did not satisfy the first prong of the preemption analysis because
3 “the invocation of an exemption to the Labor Code is an affirmative defense.”).

4 Securitas has not satisfied the first prong of the preemption analysis with respect to
5 plaintiff’s meal break claim.

6 **2. Overtime Claim**

7 For the same reason, the court also concludes that defendant has not met the first prong of
8 the preemption analysis as to Dedic’s overtime claim. Section 510 of the California Labor Code
9 requires employees to be paid an overtime premium for “[a]ny work in excess of eight hours in
10 one workday and any work in excess of 40 hours in any one workweek” Cal. Labor Code §
11 510(a). Defendant argues that the overtime claim does not exist outside the CBA because it
12 claims that Dedic falls within an exemption under California Labor Code section 514. That statute
13 provides that section 510 does not apply “to an employee covered by a valid [CBA]” and where
14 the CBA “expressly provides for the wages, hours of work, and working conditions of the
15 employees, and if the agreement provides premium wage rates for all overtime hours worked and a
16 regular hourly rate of pay for those employees of not less than 30 percent more than the state
17 minimum wage.” Cal. Labor Code § 514. For the reasons already discussed, this court rejects
18 defendant’s contention. See Cuellar-Ramirez, 2016 WL 1238603 at *6 (“As discussed, [section]
19 301 preemption is not mandated simply because the defendant refers to the CBA in mounting a
20 defense”) (citation omitted); see also Plascencia v. Ancor Packaging Distribution, Inc., No.
21 SACV 14-0379 AG (JPRx), 2014 WL 2445957, at *2 (C.D. Cal., May 12, 2014) (“If Plaintiff’s
22 overtime claim under California law fails, that doesn’t mean this Court has jurisdiction, it means
23 [defendant] wins.”).

24 **3. Remaining Claims**

25 Plaintiff alleges that he was denied rest breaks in violation of California Labor Code §
26 226.7 and IWC Wage Order 4-2001, which he says require 10-minute breaks per 4 hours (or major
27 fraction thereof) of work. He also claims that, as a result of the alleged meal period, rest break,
28 and overtime violations, Securitas failed to provide accurate itemized wage statement as required

1 by California Labor Code section 226. Plaintiff contends that these claims are not preempted
2 because they are based on non-negotiable state law rights. See, e.g., *Zavala v. Scott Bros. Dairy*,
3 143 Cal. App.4th 585, 595 (2006) (concluding that “the Legislature made both rest breaks and
4 wage-stub itemization requirements specifically nonwaivable and non-abridgeable by contract.”)
5 Further, he argues that it is irrelevant whether the CBA might contain provisions governing such
6 matters. See *Lividas*, 512 U.S. at 123-24 (emphasizing that LMRA section 301 “cannot be read
7 broadly to pre-empt nonnegotiable rights conferred on individual employees as a matter of state
8 law . . . it is the legal character of a claim, as ‘independent’ of rights under the collective-
9 bargaining agreement, (and not whether a grievance arising from ‘precisely the same set of facts’
10 could be pursued) that decides whether a state cause of action may go forward.”); see also
11 *Balcorta v. Twentieth Century-Fox Film Corp.*, 208 F.3d 1102, 1111 (9th Cir. 2000) (“Moreover,
12 § 301 does not permit parties to waive, in a collective bargaining agreement, nonnegotiable state
13 rights . . .”).

14 Defendant argues that the rest break and wage statement claims are preempted. But, for
15 the reasons to be discussed, defendant’s arguments about the rest break claim focus on the second
16 prong of the preemption analysis, i.e., whether plaintiff’s claims substantially depend on
17 interpretation of the CBA. As for plaintiff’s derivative claims (plaintiff’s UCL claim indisputably
18 is derivative, and defendant argues that the wage statement claim is too), each side simply argues
19 that, they rise (or fall) with the others. Accordingly, the court now turns to the second prong of
20 the preemption analysis.

21 **C. Dedic’s claims do not substantially depend on interpretation of the CBA**

22 A state court action seeking to vindicate substantive state rights “is preempted only if it
23 ‘requires the interpretation of a [CBA].’” *Cramer v. Consolidated Freightways, Inc.*, 255 F.3d 683,
24 690 (9th Cir. 2001) (quoting *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 413
25 (1988)). In determining “whether a state law right is ‘substantially dependent’ on the terms of a
26 CBA,” the court must decide “whether the claim can be resolved by ‘look[ing] to’ versus
27 interpreting the CBA.” *Burnside*, 491 F.3d at 1060 (quoting *Livadas*, 512 U.S. at 125)). If
28 interpretation is required, the claim is preempted. *Id.*

1 The “‘look to’/‘interpret’ distinction is ‘not always clear or amenable to a bright-line test,’”
2 and “some assessments are easier to make than others.” Burnside, 491 F.3d at 1060 (quoting
3 Cramer, 255 F.3d at 691). Nevertheless, some general principles provide guidance: In this
4 context, “the term ‘interpret’ is defined narrowly---it means something more than ‘consider,’ ‘refer
5 to,’ or ‘apply.’” Balcorta, 208 F.3d at 1108. Thus, “when the meaning of contract terms is not the
6 subject of dispute, the bare fact that a collective-bargaining agreement will be consulted in the
7 course of state-law litigation plainly does not require the claim to be extinguished.” Livadas, 512
8 U.S. at 124 (citing Lingle, 486 U.S. at 413 n.12). Nor is “‘the simple need to refer to bargained-
9 for wage rates in computing [a] penalty,’ . . . enough to warrant preemption.” Burnside, 491 F.3d
10 at 1060 (quoting Livadas, 512 U.S. at 125). “Similarly, ‘alleging a hypothetical connection
11 between the claim and the terms of the CBA is not enough to preempt the claim.’” Id. (quoting
12 Cramer, 255 F.3d at 691). “Finally, in cases presenting the question whether the plaintiff’s union
13 ‘bargained away the state law right at issue. . . . a court may look to the CBA to determine whether
14 it contains a clear and unmistakable waiver of state law rights without triggering [section] 301
15 preemption.’” Id. (quoting Cramer, 255 F.3d at 692).

16 Dedic contends that none of his claims requires interpretation of the CBA. For example,
17 he says he does not dispute the wage rate, but claims only that he was not paid what he contends is
18 due. Additionally, plaintiff points out that his wage statement claim can be resolved simply by
19 looking at the statements themselves.

20 For its part, Securitas says that interpretation of the CBA is needed to resolve a dispute as
21 to whether plaintiff was obliged to first proceed through the CBA’s grievance/arbitration
22 procedures. Here, defendant contends that Dedic was required to do so; and, because Securitas
23 says that he did not, defendant argues that plaintiff must (at least impliedly) dispute that those
24 CBA procedures apply. Plaintiff, however, has not refuted defendant’s arguments as to the
25 mandatory nature of the CBA provisions re grievance and arbitration. The court is not persuaded
26 by *Raphael v. Tesoro Refining & Mktg. Co., LLC*, No. 2:15-cv-02862-ODW (Ex), 2015 WL
27 3970293 (C.D. Cal., June 30, 2015) or *Buck v. Cemex, Inc.*, No. 1:13-cv-00701-LJO-MJS, 2013
28 WL 4648579 (E.D. Cal., Aug. 29, 2013). In those cases, the courts concluded that interpretation

1 of the CBAs was required, in part, because the parties disputed whether the plaintiffs' claims had
2 to be resolved through the CBA's arbitration process. And, ultimately, the court agrees that
3 arguments about plaintiff's alleged failure to exhaust his claims is a defense that cannot provide
4 the basis for federal jurisdiction.

5 Defendant nevertheless argues that interpretation of the CBA is required because the CBA
6 itself provides: "If any state or local law, regulation or wage order dealing with meal and/or rest
7 periods provides more generous terms to the employee than are provided here, the state or local
8 law, regulation or wage order shall prevail." (Dkt. 1-5 at 12). As such, Securitas says that, at a
9 minimum, interpretation of the CBA will be required to determine whether, and to what extent,
10 state law provides terms more generous than those provided under the CBA. Defendant goes on to
11 argue that the CBA's provisions would need to be interpreted in order to determine "whether meal
12 or overtime pay violations occurred," "whether the exemptions to state law applied, what
13 constituted a meal period and/or rest break, when and for how long an employee may take meal
14 periods and rest breaks, how meal periods and rest breaks were to be treated in terms of the
15 employee's compensation, etc." (Dkt. 25 at 21-22). But, defendant does not convincingly
16 demonstrate, with reference to particular provisions, why such a determination would require
17 interpretation, as opposed to merely looking to the CBA's provisions and comparing them to state
18 law ones.

19 As such, Securitas has not satisfied the second prong of the analysis with respect to any of
20 plaintiff's claims. The court therefore concludes that LMRA section 301 preemption does not
21 apply and that the court lacks subject matter jurisdiction over this case. Accordingly, plaintiff's
22 motion for remand is granted, and the court does not reach defendant's motion for judgment on the
23 pleadings.

24
25
26
27
28

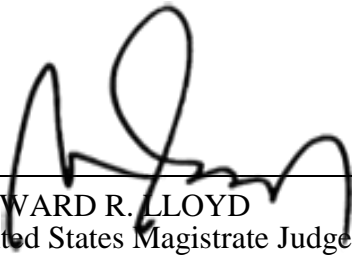
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

Based on the foregoing, plaintiff's motion for remand to the Santa Clara County Superior Court is granted. The Clerk is directed to close this file.

SO ORDERED.

Dated: May 7, 2018



HOWARD R. LLOYD
United States Magistrate Judge