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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 LUIS ARCIGA, for himself and on behalf )  
12 of all others similarly situated, )

13 Plaintiff, )

14 v. )

15 DIAMOND ENVIRONMENTAL )  
16 SERVICES, L.P., *et al.*, )

17 Defendants. )  
18

Civil No. 13cv1002 L (WMC)

**ORDER GRANTING MOTION FOR  
REMAND [doc. #7]**

19 **1. Background**

20 Plaintiff brought a putative class action complaint in the Superior Court of the State of  
21 California, in and for the County of San Diego alleging violations of California statutory  
22 provisions and common claims: failure to pay prevailing wages and overtime; failure to pay  
23 meal period premium pay; failure to pay rest break premium pay; violations of the UCL; and  
24 penalties under California Labor Code §2699. In that portion of his complaint concerning class  
25 allegations, plaintiff asserts that he and the class he seeks to represent are

26 current and former employees who worked for defendants at and/or drove to and  
27 from various construction project subject to the California prevailing wage law  
28 (“PWL”), California Labor Code (“Labor Code”) sections 1720-1813 *and/or* the  
Davis Bacon and Related Acts (“DBRA”), 40 U.S.C. sections 3141-3148 . . . .

(Comp. at ¶ 13 (emphasis added.))

1 Plaintiff's fourth cause of action for violation of California's UCL alleges that defendants  
2 violated the California Labor Code *and/or* the Davis Bacon and Related Acts. Based on this  
3 allegation, defendants filed a notice of removal on April 26, 2013, contending that the Court has  
4 jurisdiction based on one or more issues arising under a federal statute, thereby invoking the  
5 court's federal question jurisdiction. Defendants rely on *Grable & Sons Metal Products, Inc. v.*  
6 *Darue Engineering & Manufacturing* to assert that federal jurisdiction exists because the  
7 allegations in the complaint implicate a substantial federal interest in seeking to recover, within a  
8 purported state law claim, wages under a federal statute. Defendants also invoke the Court's  
9 supplemental jurisdiction over plaintiff's remaining state law claims. 545 U.S. 308, 312 (2005).

10 Plaintiff moves to remand this action to the Superior Court of the State of California, in  
11 and for the County of San Diego contending the court lacks subject matter jurisdiction. The  
12 motion has been fully briefed and is considered on the papers submitted and without oral  
13 argument under Civil Local Rule 7.1(d)(1).

## 14 **2. Legal Standard**

15 The Court addresses the issue of subject matter jurisdiction first as "[t]he requirement that  
16 jurisdiction be established as a threshold matter 'spring[s] from the nature and limits of the  
17 judicial power of the United States' and is 'inflexible and without exception.'" *Steel Co. v.*  
18 *Citizens for a Better Env't*, 523 U.S. 83, 94-94 (1998) (quoting *Mansfield, C & L. M. Ry. Co. v.*  
19 *Swan*, 111 U.S. 379, 382 (1884)).

20 "Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of*  
21 *Am.*, 511 U.S. 375, 377 (1994). "They possess only that power authorized by Constitution or  
22 statute, which is not to be expanded by judicial decree." *Id.* (internal citations omitted). "It is to  
23 be presumed that a cause lies outside this limited jurisdiction and the burden of establishing the  
24 contrary rests upon the party asserting jurisdiction." *Id.* (internal citations omitted); *see also*  
25 *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006).

26 Consistent with the limited jurisdiction of federal courts, the removal statute is strictly  
27 construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992);  
28 *see also Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002); *O'Halloran v. University*

1 of Wash., 856 F.2d 1375, 1380 (9th Cir. 1988). “The strong presumption against removal  
2 jurisdiction means that the defendant always has the burden of establishing that removal is  
3 proper.” *Gaus*, 980 F.2d at 566; *see also Nishimoto v. Federman-Bachrach & Assoc.*, 903 F.2d  
4 709, 712 n.3 (9th Cir. 1990); *O’Halloran*, 856 F.2d at 1380.

5 “The propriety of removal . . . depends on whether the case originally could have been  
6 filed in federal court.” *Chicago v. Int’l Coll. of Surgeons*, 522 U.S. 156, 163 (1997). “Federal  
7 jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.”  
8 *Gaus*, 980 F.2d at 566. The Court’s removal jurisdiction must be analyzed on the basis of the  
9 pleadings at the time of removal. *See Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc.*,  
10 159 F.3d 1209, 1213 (9th Cir. 1998).

11 Defendants may remove any action filed in state court over which federal district courts  
12 have original jurisdiction. *See* 28 U.S.C. § 1441(a). Generally speaking, a party may bring a case  
13 within the jurisdiction of the federal courts by demonstrating the existence of either: (1) diversity  
14 of citizenship, under 28 U.S.C. § 1332; or (2) a federal question, under 28 U.S.C. § 1331.  
15 Defendants removed this action based on federal question jurisdiction under 28 U.S.C. § 1331:  
16 federal courts have subject matter jurisdiction of “all civil actions arising under the Constitution,  
17 laws, or treaties of the United States.” 28 U.S.C. § 1331.

### 18 **3. Discussion**

19 As noted above, defendants contend that plaintiff’s UCL cause of action is based on a  
20 violation of federal law – the DBRA – that would provide a federal remedy. The complaint does  
21 not allege a federal cause of action or seek federal remedies under the DRBA notwithstanding  
22 defendants’ assertion to the contrary. Plaintiff specifically asserts in his complaint that he is  
23 bringing “no claims under federal law.” (Comp. ¶13.) The five causes of action are based on  
24 California state statutes and only the UCL claim even mentions the DBRA. The DBRA  
25 functions as an alternative and independent predicate offense for the UCL claim.

26 The allegations in the Complaint make clear that federal law is not essential to the UCL  
27 claim. Although plaintiff alleges that defendants have violated the DBRA, he also alleges that  
28 the predicate violations for his UCL claim include violation of California prevailing wage law

1 and Labor Code. "When a claim can be supported by alternative and independent theories – one  
2 of which is a state law theory and one of which is a federal law theory – federal question  
3 jurisdiction does not attach because federal law is not a necessary element of the claim." *Rains v.*  
4 *Criterion Sys., Inc.*, 80 F.3d 339, 346 (9th Cir. 1996). Accordingly, the Court finds that plaintiff  
5 has not alleged a federal cause of action by basing their UCL claim in part on defendants'  
6 alleged violation of the DBRA. Nor have defendants shown that there is a substantial, disputed  
7 question of federal law that is necessary to the resolution of plaintiffs' UCL claim.

8 Further, and as plaintiff correctly notes, there is no private right of action for a federal  
9 claim under the DBRA. *See Operating Engineers Health and Welfare Trust Fund v. JWJ*  
10 *Contracting*, 135 F.3d 671, 676 (9th Cir. 1998). The DBRA therefore cannot implicate a  
11 substantial federal interest. *Utley v. Varian Associates, Inc.*, 811 F.2d 1279, 1283 (9th Cir.  
12 1987)("if a federal law does not provide a private right of action, then a state law action based on  
13 its violation perforce does not raise a 'substantial' federal question.").

14 Because the Court does not have subject matter jurisdiction over this case, plaintiffs'  
15 motion for remand is **GRANTED**. The Clerk of the Court shall return this action to the Superior  
16 Court of the State of California, in and for the County of San Diego.

17 **IT IS SO ORDERED.**

18 DATED: January 3, 2014

19   
20 M. James Lorenz  
United States District Court Judge

21 COPY TO:

22 HON. WILLIAM MCCURINE, JR.  
23 UNITED STATES MAGISTRATE JUDGE

24 ALL PARTIES/COUNSEL  
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