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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT SOLIS, on behalf of  
himself and all others similarly  
situated, and on behalf of the general  
public,

Plaintiff,

v.

DUNBAR ARMORED, INC. and  
DOES 1-100,

Defendants.

Case No. 17-cv-2193 DMS (JLB)

**ORDER DENYING MOTION TO  
REMAND**

Pending before the Court is Plaintiff Robert Solis’s motion to remand. Defendant Dunbar Armored, Inc. filed an opposition, and Plaintiff filed a reply. For the reasons set forth below, the Court denies the motion.

**I.**

**BACKGROUND**

On October 18, 2017, Plaintiff filed a Complaint in Superior Court of California, County of San Diego pursuant to California’s Private Attorneys General Act (“PAGA”), Cal. Labor Code § 2698 *et seq.*, to recover civil penalties based on Defendant’s alleged wage-and-hour violations. On October 26, 2017, Defendant removed the action to this Court based on federal diversity jurisdiction pursuant to

1 28 U.S.C. § 1332. Defendant claims there is complete diversity between the parties  
2 because Plaintiff is a citizen of California, and Defendant is a citizen of Maryland.  
3 Defendant contends the amount in controversy is satisfied by the potential recovery  
4 of attorneys’ fees and civil penalties recoverable under PAGA. Plaintiff sole  
5 challenge is that the Court lacks subject matter jurisdiction because of the absence  
6 of complete diversity. Plaintiff seeks an order remanding the case to state court.

7 **II.**

8 **LEGAL STANDARD**

9 Federal courts are courts of limited jurisdiction, having subject matter  
10 jurisdiction only over matters authorized by the Constitution and Congress. *See*  
11 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A defendant  
12 may remove a civil action from state court to federal court only if the district court  
13 could have original jurisdiction over the matter. 28 U.S.C. § 1441(a). If, at any time  
14 before the entry of final judgment, it appears that the district court lacks subject  
15 matter jurisdiction over a case removed from state court, the court must remand the  
16 action. *See* 28 U.S.C. § 1447(c); *Kelton Arms Condo. Owners Ass’n, Inc. v.*  
17 *Homestead Ins. Co.*, 346 F.3d 1190, 1192 (9th Cir. 2003) (“Subject matter  
18 jurisdiction may not be waived, and, ... the district court must remand if it lacks  
19 jurisdiction.”).

20 Under 28 U.S.C. § 1441, a defendant may remove an action from state court  
21 to federal court on the basis of diversity jurisdiction if “none of the parties in interest  
22 properly joined and served as defendants is a citizen of the State in which such action  
23 is brought.” Where removal is based on diversity, there must be “complete  
24 diversity” between the parties and the amount in controversy requirement of \$75,000  
25 must be met. 28 U.S.C. § 1332(a). The Ninth Circuit has directed courts to “strictly  
26 construe the removal statute against removal jurisdiction,” so that any doubt as to  
27 the right of removal is resolved in favor of remanding the case to state court.” *Gaus*  
28 *v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The party asserting diversity

1 jurisdiction bears the burden of proof. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190,  
2 1195 (9th Cir. 1988); *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986).

### 3 III.

### 4 DISCUSSION

5 Plaintiff argues the Court should remand the present action because complete  
6 diversity between the parties does not exist. Plaintiff contends Defendant cannot  
7 rely on Plaintiff’s citizenship to establish diversity because he is a nominal party and  
8 the State of California is the real party in interest. Specifically, Plaintiff argues  
9 complete diversity is lacking because it is improper to consider the citizenship of a  
10 nominal PAGA plaintiff like Mr. Solis when the real party in interest in a PAGA  
11 action is the State of California.<sup>1</sup> In support Plaintiff relies on *Urbino v. Orkin Servs.*  
12 *of Cal., Inc.*, 726 F.3d 1118, 1122–23 (9th Cir. 2013) (quoting *Navarro Sav. Ass’n*  
13 *v. Lee*, 466 U.S. 458, 461 (1980)), for the proposition that diversity jurisdiction can  
14 be based only on the citizenship of “‘real parties to the controversy[,]’” and  
15 *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014), for the  
16 proposition that the named plaintiff in a PAGA action—who steps in the shoes of  
17 the State of California as a deputized attorney general—is a nominal party. (*See*  
18 *Mem. of P. & A. in Supp. of Mot. at 3, 5.*)

19 *Urbino* and *Baumann*, however, do not stand for the proposition that in PAGA  
20 actions, California is a “real party to the controversy” whose presence destroys  
21 diversity. Although the Ninth Circuit stated in dicta in *Urbino* that “[t]he state, as  
22 the real party in interest, is not a ‘citizen’ for diversity purposes,” this statement  
23 occurred in the context of a discussion about whether the portion of individual  
24 PAGA penalties which inure to the state could be aggregated and counted towards  
25 the amount in controversy requirement for purposes of conferring diversity  
26 jurisdiction. *See Urbino*, 726 F. 3d at 1122–1123. Similarly, in *Baumann*, the Ninth  
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28 <sup>1</sup> Diversity jurisdiction is absent if a state is the actual party to the controversy  
because a state is not a “citizen” under 28 U.S.C. § 1332.

1 Circuit addressed whether federal courts had jurisdiction over PAGA claims under  
2 the Class Action Fairness Act (“CAFA”) and explained “[b]ecause an identical suit  
3 brought by the state agency itself would plainly not qualify as a CAFA class action,  
4 no different result should obtain when a private attorney general is the nominal  
5 plaintiff.” *Baumann*, 747 F.3d at 1123. Plaintiff’s reliance on *Urbino* and *Baumann*  
6 is misplaced because neither case holds that in PAGA actions the state is always an  
7 actual party or that a representative plaintiff is always a nominal party, thereby  
8 precluding diversity jurisdiction.

9 District courts in California have routinely rejected similar arguments to those  
10 raised by Plaintiff here. *See, e.g., Olson v. Michaels Stores, Inc.*, No.  
11 CV1703403ABGJSX, 2017 WL 3317811, at \*3 (C.D. Cal. Aug. 2, 2017) (stating  
12 “district courts in California routinely exercise jurisdiction over PAGA claims when  
13 complete diversity exists between the PAGA plaintiff and the defendant”); *Gunther*  
14 *v. Int’l Bus. Mach. Corp.*, 2016 WL 3769335, at \*3 (C.D. Cal. July 14, 2016); *Chavez*  
15 *v. Time Warner Cable LLC*, No. CV 12-5291-RGK (RZX), 2016 WL 1588096, at  
16 \*3 (C.D. Cal. Apr. 20, 2016); *Lopez v. Ace Cash Express, Inc.*, 2015 WL 1383535,  
17 at \*2 n.2 (C.D. Cal. Mar. 24, 2015); *Thomas v. Aetna Health of Cal., Inc.*, No. 1:10-  
18 cv-01906-AWI-SKO, 2011 WL 2173715, at \*8 (E.D. Cal. June 2, 2011). The Court  
19 finds the reasoning of these courts persuasive.

20 Notably, the Ninth Circuit has stated “[a]lthough California may be a real  
21 party in interest to a PAGA action, this does not convert California into an actual  
22 party to all PAGA litigation.” *Archila v. KFC U.S. Properties, Inc.*, 420 F. App’x  
23 667, 668 (9th Cir. 2011). This is because when the state, “a real party in interest has  
24 declined to bring the action or intervene, there is no basis for deeming it a ‘party’ ....”  
25 *United States ex rel. Eisenstein v. City of N.Y.*, 556 U.S. 928, 935 (2009).

26 Here, based on the allegations of the Complaint, there is complete diversity  
27 between Plaintiff and Defendant. Plaintiff is a citizen of California, and Defendant  
28 is a citizen of Maryland. Because complete diversity exists between the parties,

1 Plaintiff's motion is denied. Plaintiff's request to recover fees associated with filing  
2 this motion is also denied.


3 **IV.**

4 **CONCLUSION**

5 For the foregoing reasons, the Court denies Plaintiff's motion to remand.

6 **IT IS SO ORDERED.**

7 Dated: January 2, 2018



8 Hon. Dana M. Sabraw  
9 United States District Judge

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