

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NELSON GONZALEZ VILLA,  
Plaintiff,  
v.  
UNITED SITE SERVICES OF  
CALIFORNIA, INC,  
Defendant.

Case No. [13-cv-00944-JST](#)

**ORDER GRANTING MOTION TO  
REMAND**

Re: ECF No. 3

In this putative class action for violations of California’s labor laws, Plaintiff Villa moves to remand the action to the Superior Court of Santa Clara County on the ground that the action fails to satisfy the jurisdictional requirements of 28 U.S.C. Section 1332(d). For the reasons set forth below, the motion is GRANTED.

**I. BACKGROUND**

Plaintiff Nelson G. Villa, a citizen of California, filed this putative class action in the Superior Court of Santa Clara County. Not. of Removal, ECF No. 1. Defendant United, a citizen of California, removed the action under 28 U.S.C. Section 1332(d), as amended by the Class Action Fairness Act (“CAFA”). Id.

Villa asserts three claims against United: (1) failure to provide rest breaks under California Labor Code Section 226.7; (2) failure to pay wages at the time of discharge under California Labor Code Section 203; and (3) failure to pay rest period premiums under California’s Unfair Competition Law. Id., Ex. 1, Compl.

Villa brings these claims on behalf of himself and the following class of individuals: “All current and former service technicians and pick-up delivery drivers of Defendant working within the State of California at any time during the period beginning four years before the filing of the

1 initial complain, who worked for shifts of greater than three and one-half (3 1/2) hours and who  
 2 were denied rest breaks, who were denied compensation, including premium pay on a daily basis,  
 3 and whose premium payments were delayed after their employment was terminated.” Id. ¶ 18.

4 Villa now moves to remand this action on the basis that removal under Section 1332(d)  
 5 was improper in part because the complaint asserts “only state law claims and there is no minimal  
 6 diversity.” Mot. at 11, ECF No. 3.

## 7 II. LEGAL STANDARD

8 “A civil action in state court may be removed to federal district court if the district court  
 9 had ‘original jurisdiction’ over the matter.” Lowdermilk v. United States Bank Nat’l Ass’n, 479  
 10 F.3d 994, 997 (9th Cir. 2007) (citing 28 U.S.C. § 1441(a)). “As amended by CAFA, 28 U.S.C. §  
 11 1332(d) vests district courts with original jurisdiction of any civil action in which, inter alia, the  
 12 amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and  
 13 in which the aggregate number of proposed plaintiffs is 100 or greater, and any member of the  
 14 plaintiff class is a citizen of a state different from any defendant.” Id. (citing 28 U.S.C. § 1332(d))  
 15 (internal quotation marks omitted). The burden of establishing removal jurisdiction under CAFA  
 16 is on the proponent of federal jurisdiction. Id. A district court must “strictly construe the removal  
 17 statute against removal jurisdiction.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)  
 18 (citations omitted).

## 19 III. DISCUSSION

20 The Court concludes that United has not met its burden to establish that minimal diversity  
 21 exists under Section 1332(d).

22 Minimal diversity under Section 1332(d) exists when “any member of a class of plaintiffs  
 23 is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). Because United  
 24 is a citizen of California, minimal diversity would exist in this action if at least one putative class  
 25 member is not a citizen of California.

26 United alleges in the Notice of Removal that “[a]t least one purported class member is not  
 27 a citizen of California.” Not. of Removal ¶ 6, ECF No. 1. In its Opposition, United states that at  
 28 least two putative class members are not citizens of California and that “there are likely others but

1 this showing is sufficient for purposes of CAFA.” Opp’n at 3, ECF No. 10. In support of this  
2 contention, United submitted the declarations of two of its lawyers.

3 In the first declaration, Susan Bishop states that she had a telephone conversation with  
4 Miriam Coehlo, a former employee of United, during which Coehlo informed Bishop that she  
5 moved to Kansas in 2009 and that “she was moving to Oklahoma the following week.” Bishop  
6 Decl. ¶ 2, ECF No. 14. Bishop further states that “Westlaw shows [Coehlo’s] address to be in  
7 Kansas” and that another Westlaw search revealed that another former employee of United named  
8 Isaias Canseco has an address in Texas. Id. ¶¶ 2, 3 (“As confirmation of the address [United] had  
9 on file for Isaias F. Garcia Canseco, I caused an address search to be completed. Westlaw shows  
10 his address to be in Texas.”).

11 In the second declaration, Gaetano D’Anna states that Garcia Canseco is a former  
12 employee of United. D’Anna Decl. ¶ 2, ECF No. 12.

13 Villa argues that these declarations are insufficient to establish that either of these putative  
14 class members is not a citizen of California because the relevant inquiry for minimal diversity  
15 purposes is citizenship, not residence. The Court agrees.

16 The relevant inquiry for determining whether minimal diversity exists is the citizenship of  
17 the parties. See 28 U.S.C. § 1332(d)(2)(A). When jurisdictional allegations are challenged, the  
18 party who bears the burden of establishing jurisdiction must support its allegations “by competent  
19 proof.” Hertz Corp. v. Friend, 130 S. Ct. 1181, 1194-95 (2010).

20 Here, United has not met its burden to support its allegations that minimal diversity under  
21 Section 1332(d) exists. The declarations submitted by United, at best, speak to the residence of  
22 the two purported class members, not to their citizenship. Allegations pertaining to the state in  
23 which a person resides are not conclusive as to whether that person is a citizen of that state. See  
24 Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001) (“To be a citizen of a state, a  
25 natural person must first be a citizen of the United States. The natural person’s state citizenship is  
26 then determined by her state of domicile, not her state of residence. A person’s domicile is her  
27 permanent home, where she resides with the intention to remain or to which she intends to return.  
28 A person residing in a given state is not necessarily domiciled there, and thus is not necessarily a

1 citizen of that state.”) (internal citations omitted). The declarations do not establish that the  
2 putative class members’ permanent home is in a state other than California, because they contain  
3 no information as to whether the putative class members intend to remain in the places where  
4 United claims that they currently reside.

5 Moreover, courts evaluate a person’s domicile “in terms of objective facts.” See Lew v.  
6 Moss, 797 F.2d 747, 750 (9th Cir. 1986). United has not submitted any objective facts to establish  
7 the citizenship of the two putative class members. Instead, United submitted two declarations of  
8 its own lawyers, which contain factual statements that are not based on personal knowledge. For  
9 that reason, the Court accords them little weight.

10 United admits that it has access to at least some of the putative class members’ contact  
11 information. See D’Anna Decl. ¶ 2 (“[United] attempts to maintain a database of its current and  
12 former employees.”). United also claims to have been able to contact at least one putative class  
13 member who does not currently reside in California. Bishop Decl. ¶ 2. As a result, United  
14 appears to have been in a position to submit “competent proof” as to the putative class members’  
15 citizenship, either by submitting declarations of the putative class members themselves, or by  
16 submitting other proof of citizenship that courts normally consider in these circumstances, such as  
17 “voting registration and voting practices, location of personal and real property, location of  
18 brokerage and bank accounts, location of spouse and family, membership in unions and other  
19 organizations, place of employment or business, driver’s license and automobile registration, and  
20 payment of taxes.” See Lew, 797 F.2d at 750. United does not explain why it failed to submit any  
21 such proof.

22 Given that United’s jurisdictional showing fails to establish the citizenship of the putative  
23 class members, and because the Court must resolve any doubts pertaining to removal jurisdiction  
24 in favor of remand, Villa’s motion to remand is GRANTED. See Alderman v. Pitney Bowes  
25 Mgmt. Serv., 191 F. Supp. 2d 1113, 1115 (N.D. Cal. 2002) (“The removal statute is strictly  
26 construed against removal jurisdiction and any doubt must be resolved in favor of remand.”)  
27 (citations omitted).

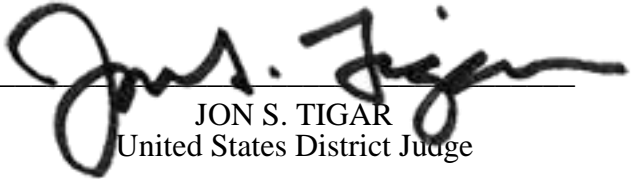
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**IV. CONCLUSION**

Villa's motion to remand is GRANTED. The Clerk shall mail a copy of this Order to the Superior Court of Santa Clara County and terminate this case.

**IT IS SO ORDERED.**

Dated: June 4, 2013

  
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JON S. TIGAR  
United States District Judge

United States District Court  
Northern District of California

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