

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JEANNE RHOADES,)	
)	
On behalf of herself and all others)	
Similarly situated,)	
Plaintiff,)	
)	Cause No. 4:17-CV-02486
v.)	
)	
BJC HEALTH SYSTEM)	
Db a BJC HEALTHCARE, et al.)	
)	
Defendants.)	

MOTION FOR REMAND

AND MEMORANDUM IN SUPPORT

COMES NOW Plaintiff Jeanne Rhoades pursuant to 28 USC 1447 and timely moves the Court to remand this proceeding to the Circuit Court of St. Louis County, Missouri, as follows:

1. Defendants filed their Notice of Removal on September 27, 2017, based upon alleged original jurisdiction under 28 USC 1331, and more specifically upon allegations that Plaintiff's claims are completely preempted by ERISA under 29 USC 1332 (ERISA section 502).
2. Plaintiff's claims seek damages for breach of contractual promises to pay compensation for time worked "on call", for time worked on "call back", for specific additional work ("voucher" pay), and for improperly revoked "paid time off", as confirmed under various provisions of Defendants' employee manual. Plaintiff's claims for damages include "related retirement plan benefits" associated with the underlying compensation to be recovered.
3. Plaintiff has not made any claim against any ERISA plan or administrator thereof in such capacity.

4. Plaintiff's claims relative to retirement benefits do not seek any direct enforcement, clarification of rights or recovery of benefits under the authority of an ERISA benefit plan. Rather, Plaintiff's claims reference such benefits strictly as a measure of damages.

5. As held in *Agnifili v. KFC Corp*, 924 FSupp 78, 81 (WD Ky 1996)(citing *Warner v. Ford Motor Co*, 46 F3d 531 (6th Cir 1995)), under such circumstances as are presented herein, Plaintiff's common law claims under state law should not be characterized as a superseding ERISA action under 29 USC 1132 subject to complete preemption and removal. See also *Nagel v. Chukerman Packaging, Ltd*, 19 FSupp2d 826, 829 (ND Ill 1998); *New Jersey Carpenters v. Tishman*, 760 F3d 297, 304-05 (3d Cir 2014)(enforcement of rights under state law does not require interpretation of ERISA plan).


6. Any and all doubts about federal jurisdiction should be resolved in favor of remand to state court. See *In re Prempro Products Liability Litigation*, 591 F3d 613, 620 (8th Cir 2010); *Baker v. Martin Marietta*, 743 F3d 919, 923 (8th Cir 2014).

7. Accordingly, the Court should remand this proceeding.

WHEREFORE, Plaintiff moves the Court to remand this proceeding pursuant to 28 USC 1447 to the Circuit Court of St. Louis County, Missouri and for such other relief as the Court deems meet and proper.

CURTIS, HEINZ, GARRETT & O'KEEFE, P.C

By: _____


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via the Court's electronic filing system this 16 day of October, 2017 to all attorneys of record.

