

GOLDSTEIN & RUSSELL, P.C.

7475 Wisconsin Ave.
Suite 850
Bethesda, MD 20814

July 17, 2019

VIA ECF

Molly C. Dwyer
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *County of San Mateo v. Chevron Corp.*, No. 18-15499, consolidated with *City of Imperial Beach v. Chevron Corp.*, No. 18-15502; *County of Marin v. Chevron Corp.*, No. 18-15503; *County of Santa Cruz v. Chevron Corp.*, No. 18-16376

Dear Ms. Dwyer:

Appellees are writing pursuant to Federal Rule of Appellate Procedure 28(j) to notify the Court of the Ninth Circuit's decision in *Wong v. Kracksmith, Inc.*, 764 Fed. Appx. 583 (9th Cir. 2019) (attached as Exhibit A), which was decided after the briefing in this appeal was completed. The decision is relevant to the scope of this Court's jurisdiction to review the remand order in this case.

In *Wong*, Judges Leavy, Bea, and N.R. Smith applied the rule established in *Patel v. Del Taco, Inc.*, 446 F.3d 996 (9th Cir. 2006), reviewing the appellants' argument that they had properly removed a case to federal court under the civil rights removal provision, 28 U.S.C. § 1443(1), but holding that the court lacked jurisdiction to consider the propriety of removal on the basis of federal subject matter jurisdiction under 28 U.S.C. § 1441. *See* 764 Fed. Appx. at 584 (reviewing Section 1443(1) claims); *id.* ("To the extent that defendants argue that removal was proper under 28 U.S.C. § 1441, we lack jurisdiction to review the remand order.") (citing 28 U.S.C. § 1447(d) and *Patel*).

The decision is relevant to the jurisdictional question addressed in Appellees' Motion for Partial Dismissal (Doc. 41 at 9-13), and Appellants' claim that *Patel* does not constitute controlling authority in this Circuit, *see* Opposition to Motion for Partial Dismissal (Doc. 52 at 15-18); Appellants' Opening Br. 23-25. To the contrary, the Court's decision in *Wong* – including the panel's judgment that its decision did not require publication – demonstrates that the Court treats *Patel* as establishing the Circuit's rule regarding the scope of its appellate jurisdiction when an appellant asserts multiple grounds for removal. *See* 9th Cir. R. 36-2(a) (an opinion must be published if it "[e]stablishes, alters, modifies or clarifies a rule of federal law").

2

Sincerely,

/s/ Kevin K. Russell
Kevin K. Russell
Goldstein & Russell, P.C.
Counsel for Appellees in Nos. 18-15499,
18-15502, and 18-15503

cc: All counsel of record (via ECF)

Exhibit A

764 Fed.Appx. 583 (Mem)

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure

32.1 generally governing citation

of judicial decisions issued on

or after Jan. 1, 2007. See also

U.S.Ct. of App. 9th Cir. Rule 36-3.

United States Court of

Appeals, Ninth Circuit.

Lisa WONG, Plaintiff-Appellee,

v.

KRACKSMITH, INC.,

Defendant-Appellant,

and

Boschal Lee; et al., Defendants,

v.

William Stocker, Movant-Appellant.

No. 17-56765

|

Submitted March 12, 2019*

|

Filed March 19, 2019

* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Attorneys and Law Firms

Shanon K. Quinley, Law Offices of Shanon K. Quinley, Pasadena, CA, for Plaintiff - Appellee

William Stocker, Law Offices of William Stocker, San Marino, CA, for Defendant - Appellant

William Stocker, Law Offices of William Stocker, San Marino, CA, for Movant - Appellant

Appeal from the United States District Court for the Central District of California, Stephen V. Wilson, District Judge, Presiding, D.C. No. 2:17-cv-05978-SVW-E

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

*584 MEMORANDUM**

** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Appellants Kracksmith, Inc., and William Stocker, its attorney in this action, appeal from the district court's order remanding plaintiff's action to California state court. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's decision to remand a removed case. *Patel v. Del Taco, Inc.*, 446 F.3d 996, 998 (9th Cir. 2006). We affirm.

The district court properly remanded the action to state court because appellants failed to establish that the state court could not enforce their rights. *See id.* at 998-99 (two-part test for removal under 28 U.S.C. § 1443(1)). Contrary to appellants' contentions, appellants have not identified a California statute or constitutional provision that purports to command the state court to ignore their federal civil rights. To the extent that defendants argue that removal was proper under 28 U.S.C. § 1441, we lack jurisdiction to review the remand order. *See* 28 U.S.C. § 1447(d) (court lacks jurisdiction to

review the district court's remand order based on § 1441); *Patel*, 446 F.3d at 998.

The district court did not abuse its discretion by sua sponte awarding sanctions against Stocker under Federal Rule of Civil Procedure 11(b) because Stocker filed a frivolous notice of removal. *See Holgate v. Baldwin*, 425 F.3d 671, 675-77 (9th Cir. 2005) (standard of review and factors for imposing Rule 11 sanctions); *Barber v. Miller*, 146 F.3d 707, 711 (9th Cir. 1998) (Rule 11's safe harbor provision only applies where sanctions are raised through motion of a party).

The district court did not abuse its discretion by denying appellants' motion for reconsideration because appellants provided no basis for

reconsideration. *See Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir.1993) (setting forth standard of review and requirements for reconsideration).

We reject as without merit appellants' contentions that the district court denied them due process.

Appellants' requests for fees and costs, set forth in their opening brief, is denied.

AFFIRMED.

All Citations

764 Fed.Appx. 583 (Mem)