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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 Robert Angelo, Trent Cosse, Don Davis,
10 Hans Epprecht, Lucien Riley, and Does 1–
11 238, on their own behalf and on behalf of
12 all others similarly situated,

11 Plaintiffs,

12 v.

13 Stewart Title & Trust of Phoenix, Inc.,

14 Defendant.
15

No. CV13-8031 PCT DGC

ORDER

16 On January 16, 2013, Plaintiffs filed a class action lawsuit in Yavapai County
17 Superior Court against Defendant Stewart Title & Trust of Phoenix, Inc. Doc. 1-2. On
18 February 6, 2013, Defendant timely removed the case to this Court. Doc. 1. Defendant
19 invoked the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), as the basis for
20 the Court’s subject-matter jurisdiction. *Id.* Defendant has now filed a motion to dismiss
21 for failure to state a claim. Doc. 6. Plaintiffs have responded, and do not mention or
22 contest the Court’s subject-matter jurisdiction. *See* Doc. 10. The Court nonetheless,
23 acting *sua sponte*, orders the parties to show cause why the Court should not remand this
24 case pursuant to either the discretionary or mandatory exceptions to CAFA subject-matter
25 jurisdiction. *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it
26 lacks subject-matter jurisdiction, the court must dismiss the action.”).

27 **I. Class Action Fairness Act**

28 Congress enacted CAFA, in part, to ““restore the intent of the framers of the

1 United States Constitution by providing for Federal court consideration of interstate cases
2 of national importance under diversity jurisdiction.” *Luther v. Countrywide Home*
3 *Loans Servicing LP*, 533 F.3d 1031, 1033–34 (9th Cir. 2008) (quoting Pub. L. No. 109–2,
4 § 2(b)(2), 119 Stat. 4, 5). As explained by the Ninth Circuit,

5 CAFA applies to “class action” lawsuits where the aggregate number of
6 members of all proposed plaintiff classes is 100 or more persons and where
7 the primary defendants are not “States, State officials, or other
8 governmental entities against whom the district court may be foreclosed
9 from ordering relief.” § 1332(d)(5) Once the prerequisites of
10 § 1332(d)(5) are satisfied, CAFA vests federal courts with “original”
11 diversity jurisdiction over class actions if: (1) the aggregate amount in
controversy exceeds \$5,000,000, and (2) any class member is a citizen of a
state different from any defendant. § 1332(d)(2). Thus, under CAFA,
complete diversity is not required; “minimal diversity” suffices.

12 *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1020–21 (9th Cir. 2007) (footnote omitted).

13 In this case, the prerequisites for subject-matter jurisdiction under CAFA are
14 clearly satisfied. Plaintiffs bring their case on behalf of 238 putative class members.
15 Doc. 1-2, ¶ 1. Defendant is not a State or State official. *See* Doc. 1-1. The case involves
16 a dispute over membership deposits of \$26,804,350. Doc. 1-2, ¶ 1. Finally, minimal
17 diversity exists, as one of the named Plaintiffs is a resident of Texas (*Id.*, ¶ 7), unnamed
18 Plaintiffs may include citizens of other states and countries (*Id.*, ¶ 19), and Defendant is a
19 Delaware corporation with its principal place of business in Arizona (Doc. 1-1).

20 Although these prerequisites are satisfied, CAFA also has provisions under which
21 this Court either “may” or “shall” decline to exercise jurisdiction. 28 U.S.C.
22 § 1332(d)(3)–(4). As explained by the Ninth Circuit,

23 [§ 1332(d)(2)] sets out the contours of original jurisdiction. In contrast,
24 § 1332(d)(3) describes situations where district courts *may* “decline to
25 exercise jurisdiction” “in the interests of justice and looking at the totality
26 of the circumstances”; and § 1332(d)(4) sets out two circumstances that
27 *require* district courts to decline jurisdiction, the so-called “local
28 controversy” and “home-state controversy” exceptions. Implicit in both
subsections (d)(3) and (d)(4) is that the court has jurisdiction, but the court
either may or must decline to exercise such jurisdiction.

1 *Serrano*, 478 F.3d at 1022 (footnote omitted) (emphasis in original). Both the
2 discretionary and mandatory exceptions to CAFA jurisdiction depend on the citizenship
3 of the members of the Plaintiff class. For the discretionary exception to apply, “greater
4 than one-third but less than two-thirds of the members of all proposed plaintiffs classes
5 and the primary defendants [must be] citizens of the State in which the action was
6 originally filed.” § 1332(d)(3). For the mandatory exceptions to apply, greater than two-
7 thirds of the members of all proposed plaintiff classes must be citizens of the State in
8 which the action was originally filed. § 1332(d)(4).

9 Having read the pleadings, the Court believes that at least one-third, and perhaps
10 more than two-thirds, of the class may be citizens of Arizona. Four of the five named
11 Plaintiffs are Arizona residents. Doc. 1-2, ¶ 7. The case involves a golf resort located in
12 Arizona. *Id.*, ¶ 1. Finally, Defendant has its principal place of business in Arizona. Doc.
13 1-1. From these facts, it is a reasonable, although not certain, inference that at least one-
14 third and perhaps more than two-thirds of the class are citizens of Arizona. Therefore,
15 the Court may have discretion or be required to decline jurisdiction over this case.

16 **III. Further Briefing**

17 The Court concludes that briefing on this issue is required. The parties shall
18 address the six factors this Court must consider under CAFA’s discretionary exception to
19 jurisdiction, as listed in § 1332(d)(3)(A)–(F). The parties shall also address both the
20 “local controversy” exception under § 1332(d)(4)(A), and the “home-state controversy”
21 exception under § 1332(d)(4)(B). The parties shall file memoranda and supporting
22 material addressing these questions, specifically focusing on the citizenship of the
23 members of the Plaintiff class. In addressing these questions, the parties are reminded
24 that a person’s residence can be prima facie evidence of his or her place of domicile for
25 purposes of subject-matter jurisdiction. *See Hollinger v. Home State Mut. Ins. Co.*, 654
26 F.3d 564, 571 (5th Cir. 2011); *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520
27 (10th Cir. 1994). Plaintiffs shall file a memorandum, not to exceed 12 pages of
28 argument, by April 12, 2013. Defendant shall file a response, not to exceed 12 pages, by

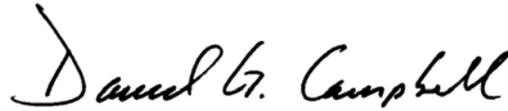
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April 19, 2013. No reply will be filed.

IT IS ORDERED THAT:

1. Plaintiffs shall respond to this Order to Show Cause by April 12, 2013.
2. Defendant shall respond by April 19, 2013.

Dated this 29th day of March, 2013.



David G. Campbell
United States District Judge