

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MEMORANDUM

Case No. CV 16-6965 DSF (FFM)

Date 7/25/17

Title Pae v. Fox Restaurant Concepts, LLC et al.

Present:
The Honorable DALE S. FISCHER, United States District Judge

Debra Plato

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiff

Attorneys Present for Defendants

Not Present

Not Present

Proceedings: (In Chambers) Order DENYING Plaintiff's Motion to Remand to Superior Court (Docket No. 16)

I. INTRODUCTION¹

Defendants removed this case based on Class Action Fairness Act (CAFA) jurisdiction. 28 U.S.C. § 1332(d)(2). Plaintiff moves to remand based on the “local controversy” and “home state” exceptions to CAFA. 28 U.S.C. §§ 1332(d)(4)(A), (B). Defendants are four limited liability corporations doing business in California. Defendant Fox Restaurant Concepts, LLC (FRC) is the parent company of Defendants FRC True Food SMP, LLC; FRC True Food SDFV, LLC; and FRC True Food NBF, LLC (collectively True Food LLCs). FRC is headquartered and incorporated in Arizona, while each True Food LLC is incorporated in Arizona and operates a single restaurant in California.

¹ The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MEMORANDUM

On July 22, 2016, Plaintiff filed this putative class action in Los Angeles Superior Court, alleging that Defendants routinely violated California labor laws relating to the employment of their servers, waiters, and waitresses at restaurants in California. Compl. ¶¶ 1–2.

Defendants removed the action pursuant to CAFA. Plaintiff filed a motion to remand, which Defendants opposed. Neither party disputed that the jurisdictional requirements of CAFA were met, or any element of the local controversy or home state exceptions, except the principal place of business of the True Food LLCs. The Court therefore permitted Plaintiff to conduct jurisdictional discovery and provide supplemental briefing limited to the principal place of business of each True Food LLC in order to determine whether CAFA’s local controversy or home state exceptions applied.² Plaintiff filed a supplemental brief to its motion to remand (PSB), Dkt. 31, and Defendants filed a supplemental brief in opposition (DSB), Dkt. 34. Plaintiff also requested an extension of jurisdictional discovery, which the Court granted. Plaintiff filed a second supplemental brief (PSSB), Dkt. 43, and Defendants filed their second supplemental opposition brief (DSSB), Dkt. 46.

II. LEGAL STANDARD

Federal courts have original jurisdiction over class actions where (1) “any member of the class of plaintiffs is a citizen of a State different from any defendant” and (2) “the matter in controversy exceeds the sum or value of \$5,000,000.” 28 U.S.C. § 1332(d)(2). There are two relevant exceptions to CAFA: the “local controversy” exception, 28 U.S.C. § 1332(d)(4)(A), and the “home state” exception, *id.* § 1332(d)(4)(B). If either exception is satisfied, the Court “shall decline to exercise jurisdiction under [CAFA].” *Id.* § 1332(d)(4). These exceptions are not jurisdictional. See Visendi v. Bank of Am., N.A., 733 F.3d 863, 869 (9th Cir. 2013) (holding that implicit in the statutory structure of (d)(4) is that the court has jurisdiction, even though it must decline it). Plaintiff bears the burden of proving one of these CAFA exceptions has been met, Serrano v. 180 Connect, Inc., 478 F.3d 1018, 1024 (9th Cir. 2007), by a preponderance of the evidence, Mondragon v. Capital One Auto Fin., 736 F.3d 880, 884 (9th Cir. 2013). The Court may examine extrinsic evidence in determining the citizenship of the parties. See Coleman v. Estes Exp. Lines, Inc., 631 F.3d 1010, 1016 (9th Cir. 2011) (holding that for the local

² Because the supplemental briefing was limited to the principal place of business of each True Food LLC, the Court will disregard arguments raised in the supplemental briefing that go to other issues.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MEMORANDUM

controversy exception courts can examine extrinsic evidence to determine the citizenship of parties). In making factual findings under the local controversy exception district courts may draw reasonable inferences from the facts in evidence. Mondragon, 736 F.3d at 886.

III. DISCUSSION

The local controversy and home state exceptions to CAFA respond to concerns “that class actions with a truly local focus should not be moved to federal court” See Benko v. Quality Loan Serv. Corp., 789 F.3d 1111, 1119 (9th Cir. 2015) (citing S.Rep. No. 109–14, 39, 2005 U.S.Code Cong. & Admin. News 3, 38). Both exceptions are satisfied if the True Food LLCs are citizens of California. 28 U.S.C. §§ 1332(d)(4)(A)(i)(II)(cc), (d)(4)(B). The parties agree that a limited liability corporation is an unincorporated association for the purposes of CAFA. Under CAFA, an unincorporated association “shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.” 28 U.S.C. § 1332(d)(10). A corporation’s principal place of business is “the place where a corporation’s officers direct, control, and coordinate the corporation’s activities.” Hertz Corp. v. Friend, 559 U.S. 77, 91–92 (2010).

In order to determine the citizenship of a subsidiary, the Court looks to the principal place of business of the subsidiary separate from that of the parent. See Danjaq, S.A. v. Pathe Commc’ns Corp., 979 F.2d 772, 775 (9th Cir.1992) (holding that the citizenship of parent company is not imputed to the subsidiary).³

Defendants have identified 36 individuals as the “senior-level employees” of each True Food LLC, 30 of whom are based in Arizona. PSB, Kizirian Decl., Ex. 31 (Resp. to Special Interrog.) at 4–26; PSSB, Kizirian Decl., Ex. 1, Alain Ané Dep. Defendants have also identified the general managers of each True Food LLC, as the highest ranking positions at each True Food LLC location. PSB, Kizirian Decl., Ex. 31 (Resp. to Special Interrog.) at 3 (True Food SMP LLC); id., Ex. 32 at 3 (True Food SDFV LLC); id., Ex.

³ Danjaq left open the possibility of an exception to this rule when the subsidiary is the alter ego of the parent. See Danjaq, 979 F.2d at 776 (noting that some courts had acknowledged the exception but declining to reach the issue). Plaintiff has alleged that the True Food LLCs are alter egos of the parent company FRC. Compl. ¶ 8. However, in the three rounds of briefing on this motion neither party has argued that this exception, if it exists, should apply at this stage. Because this is not a jurisdictional issue, the Court declines to address it *sua sponte*.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MEMORANDUM

33 at 3 (True Food NBF LLC). FRC owns “a few dozen restaurants,” and each restaurant is a separate LLC. PSSB, Kizirian Decl., Ex. 1, Alain Ané Dep at 254:15, 255:13–19. Defendants do not dispute that these senior-level employees were employed or paid by FRC. Instead, Defendants argue that these senior employees were jointly employed by each of a few dozen restaurant LLCs owned by FRC, including the three True Food LLCs. DSSB at 9. Plaintiff has submitted the wage statements for 29 of the 36 “senior-level employees” identified by Defendants. PSSB, Kizirian Decl., Ex. 2. These wage statements are stamped with either the True Food or FRC logo. Only two employees, Mike Wilcox and Taylor Domet, have a True Foods logo on their wage statement and are based in Arizona. PSSB, Kizirian Decl., Ex. 2 at 33, 54⁴. Based on the wage statements and Defendants’ corporate structure, Plaintiff contends that it is “extremely unlikely” that a business organized as dozens of separate LLCs would have its senior employees working for the parent company and each individual LLC. PSB at 3. Plaintiff argues that these senior-level employees all work solely for FRC and make decisions on its behalf. PSSB at 10. Therefore, in Plaintiff’s view the most consequential decisions being made by the True Food LLCs can only be made by its general managers, who are based in the California restaurant locations. *Id.* But Plaintiff provides no convincing support for her position – and her complaint supports Defendants’ position. She alleges the wrongful conduct was committed by “Defendants.” Compl. at ¶ 2. She provides no explanation for why or how three separate locations would commit identical wrongful acts if independent general managers control management policies, etc. Indeed, she alleges that FRC “exercised control over the operations” of all three locations to the degree that those locations were agents of FRC. Compl. ¶¶ 7–8.

Though the Court agrees that “joint employment” is not a particularly unusual practice, there is little else in the record beyond conclusory statements that any senior-level employees identified by Defendants actually work for each restaurant’s respective LLC.⁵ Nor is there specific evidence that they direct, control, or coordinate any activity by the True Food LLCs. But there is also no evidence that the general manager of each restaurant is a “high-level officer” of the individual LLC who controls the respective True Food LLC. The only evidence in the record about the general manager position is that it is “the most senior ranking position” at each True Food LLC restaurant location. *E.g.*, PSB, Kizirian Decl., Ex. 31 (Resp. to Special Interrog.) at 3 (True Food SMP LLC).

⁴ The Court cites to the ECF pagination of the wage statements.

⁵ It is not clear that “joint employment” should even be considered in the context of determining the principal place of business.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MEMORANDUM

This is not enough for the Court to find that each general manager directs, controls, or coordinates the activities of the LLC, or that the restaurant location also serves as the LLC's headquarters. The Court has no evidence before it on such basic questions as the duties or powers of the general managers, who the board members of each True Food LLC are, who can hire and fire the employees of each True Food LLC, who has the authority to sign contracts on its behalf, who sets policies concerning wage and hour issues, and who controls resources, food offerings and preparation, and management. Indeed, Plaintiff alleges that the latter matters are controlled by FRC. Compl. ¶ 7. Plaintiff has therefore failed to meet her burden to establish the True Food LLCs are California citizens.⁶

Plaintiff's motion to remand is denied.

IT IS SO ORDERED.

⁶ Plaintiff has also filed two requests for judicial notice. RJN, Ex. 2–4, Dkt. 16–2; Second RJN, Ex. 1–30, Dkt. 31–1. Because the “evidence” does not meet Plaintiff's burden, the Court need not rule on the request.