

1 L. Julius M. Turman (SBN 226126)
 Email: jturman@reedsmith.com
 2 Philip J. Smith (SBN 232462)
 Email: psmith@reedsmith.com
 3 Elizabeth J. Boca (SBN 255719)
 Email: eboca@reedsmith.com
 4 REED SMITH LLP
 101 Second Street
 5 Suite 1800
 San Francisco, CA 94105-3659
 6 Telephone: +1 415 543 8700
 Facsimile: +1 415 391 8269

7 Attorneys for Defendant
 8 CPM-US, LLC

9
 10 UNITED STATES DISTRICT COURT
 11 EASTERN DISTRICT OF CALIFORNIA

12
 13 JAMES LUSARDI, an individual; on behalf of
 himself and all other similarly situated current
 14 and former employees,

15 Plaintiff,

16 vs.

17 CPM-US, LLC, a Delaware Limited Liability
 Company, and DOES 1 through 50, Inclusive,

18 Defendant.
 19

Case No.: 2:13-cv-02649-TLN-EFB

**JOINT STIPULATION CONSENTING TO
 REMAND AND WITHDRAWAL OF
 MOTION TO DISMISS; ORDER**

Removal Filed: December 23, 2013
 Motion for Remand Filed: January 6, 2014
 Motion To Dismiss Filed: January 24, 2014

REED SMITH LLP
 A limited liability partnership formed in the State of Delaware

20
 21
 22
 23
 24
 25
 26
 27
 28

1
2 1. On November 20, 2013, Plaintiff James Lusardi (“Plaintiff” or “Lusardi”)
3 commenced an Action against CPM-US, LLC (“CPM-US”) by filing a Complaint (“Complaint”) in
4 the Superior Court of California, County of Sacramento, entitled JAMES LUSARDI v. CPM-US
5 LLC, Case No. 34-2013-00154871-CU-OE-GDS (hereinafter, the “the Action”).

6 2. On December 20, 2013, CPM-US timely filed its Answer to the Complaint in the
7 Superior Court of California, County of Sacramento.

8 3. On December 23, 2013, CPM-US timely removed the State Court Action to this
9 Court pursuant to 28 U.S.C. Sections 1332 and 1441(b) (diversity jurisdiction). (See, Dkt No. 1).

10 4. On December 23, 2013, CPM-US completed the removal process by filing a
11 conformed copy of the Removal papers with the Sacramento County Superior Court.

12 5. On January 6, 2014, Lusardi timely filed a First Amended Complaint as a matter of
13 right pursuant to Fed. Rules Civ. Proc. R. 15(a)(1)(B), which added a sixth cause of action for
14 violation of the Private Attorney General Act (Cal. Labor Code §§ 2698 et seq.). (See First
15 Amended Complaint (Dkt. No. 8)).

16 6. Also on January 6, 2014, Lusardi filed a Motion to Remand the action to state court
17 on the grounds that the Court lacks subject matter jurisdiction, because CPM-US purportedly failed
18 to provide facts and evidence sufficient to establish that the “amount in controversy” in this Action
19 exceeds \$75,000 as required under 28 U.S.C. § 1332(a). (See Notice of Motion and Motion to
20 Remand (Dkt. Nos. 9 and 9-1)).

21 7. Following closer review of Plaintiff’s Motion to Remand, including the damage
22 calculations and claims therein presented for the first time, on January 9, 2014, CPM-US offered to
23 stipulate to the remand of the matter to state court.

24 8. Lusardi rejected CPM-US’ offer to stipulate to removal because Ninth Circuit
25 precedent “the parties cannot by stipulation or waiver grant or deny federal subject matter
26 jurisdiction.” See Janakes v. United States Postal Service, 768 F.2d 1091, 1095 (9th Cir., 1985).

27 9. On January 14, 2014, CPM-US filed a Statement of Non-Opposition to Lusardi’s
28

1 Motion to Remand. (See Statement of Non-Opposition (Dkt. No. 11)). In so doing, CPM-US does
2 not dispute this Court lacks subject matter jurisdiction over this Action.

3 10. On January 24, 2014, Defendant filed a Motion to Dismiss the First Amended
4 Complaint, filed in this Court, on the grounds that this court lacks jurisdiction to hear the matter and
5 that the matter should be therefore heard in state court.

6 11. On January 27, 2014, Lusardi filed a Reply brief in support of his Remand Motion,
7 asserting that **(a)** the Motion to Dismiss was mooted by his unopposed Remand Motion, **(b)** the
8 Motion to Dismiss was improper because the First Amended Complaint was filed as a matter of right
9 pursuant to Fed. Rules Civ. Proc. R. 15(a)(1)(B), and thereon, the right to undertake the filing was
10 not contingent on the Court having jurisdiction over the case, and could not be stricken by the Court
11 under applicable law, and **(c)** the Motion to Dismiss was unnecessary, as Lusardi has a concurrent
12 right to amend his complaint to add a PAGA claim as a matter of right in state court pursuant to Cal,
13 Lab. Code § 2699.3 (2)(C).

14 **NOW THEREFORE**, the parties hereby stipulate as follows:

15 **STIPULATION**

- 16 1. The Plaintiff's unopposed Motion to Remand should be granted, and the Action
17 remanded to the Sacramento County Superior Court;
- 18 2. CPM-US' Motion to Dismiss is hereby Withdrawn, as moot;
- 19 3. The parties stipulate that the First Amended Complaint filed on January 6, 2014 is the
20 operative Complaint, and thereon, Lusardi shall file the same First Amended Complaint in the
21 Sacramento County Superior Court, with the exception of changing the caption to reflect that the
22 matter is being filed in state court and deleting paragraph 8, which is no longer relevant;
- 23 4. Thereafter, CPM-US shall file an Answer to the same First Amended Complaint that
24 Lusardi filed in this court, once it is filed in the Sacramento County Superior Court, and shall not
25 otherwise move to dismiss, file a demurrer, aver or otherwise respond.
- 26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: January 31, 2014

REED SMITH LLP

By: /s/ L. Julius M. Turman
Attorneys for Defendant
CPM-US, LLC

DATED: January 31, 2014

POLLARD BAILEY

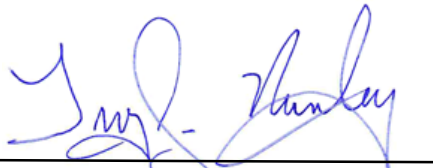
By: /s/ Matt C. Bailey
Matt C. Bailey
Attorneys for Plaintiff
JAMES LUSARDI, individual; on behalf of
himself and all other similarly situated employees

ORDER

Pursuant to the Parties' Joint Stipulation Consenting to the Motion to Remand, and good cause appearing, it is hereby Ordered that the Action be remanded to Sacramento County Superior Court. In furtherance of the Parties further stipulation, the Motion to Dismiss is hereby withdrawn as moot given the remand to state court

IT IS SO ORDERED.

Dated: January 31, 2014



Troy L. Nunley
United States District Judge