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United States District Court

For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MONET PARHAM, on behalf of herself and those similarly situated,

No. C 11-511 MMC

Plaintiff,

**ORDER GRANTING PLAINTIFF'S MOTION TO REMAND**

v.

McDONALD'S CORPORATION, and  
McDONALD'S USA, LLC.,

Defendants.

Before the Court is plaintiff Monet Parham's ("Parham") motion to remand, filed April 21, 2011. Defendants McDonald's Corporation and McDonald's USA, LLC (collectively, "McDonald's") have filed opposition, to which Parham has replied. The matter came on regularly for hearing on July 15, 2011. Stephen H. Gardner of the Center for Science in the Public Interest appeared on behalf of Parham; Scott A. Elder and Randall L. Allen of Alston and Bird LLP appeared on behalf of McDonald's. The Court, having considered the papers filed in support of and in opposition to the motion, as well as the arguments of counsel, and for the reasons stated on the record at the hearing, hereby rules as follows.

1. Contrary to Parham's assertion, the declarations of Peter Sterling are not inadmissible on grounds of perjury, hearsay, or any other asserted basis.
2. Given the questionable applicability of the "legal certainty" standard to a case

1 removed on the basis of a defendant's costs rather than a plaintiff's recovery, see  
2 Guglielmino v. McKee Foods Corp., 506 F.3d 696, 699 (9th Cir. 2007) (discussing  
3 applicability of "legal certainty" and "preponderance of the evidence" standards to removal  
4 under Class Action Fairness Act ("CAFA")), the Court has considered the sufficiency of  
5 McDonald's showing under both the "legal certainty" standard and the "preponderance of  
6 the evidence" standard.

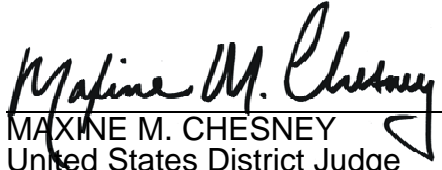
7         3. The Court finds, under either standard, McDonald's has failed to meet its burden  
8 of showing the amount in controversy meets CAFA's jurisdictional threshold. In particular,  
9 although McDonald's has made a sufficient evidentiary showing to support its calculation of  
10 costs associated with advertising Happy Meals "on a local and regional basis rather than a  
11 nationwide basis" (see Opp. 9:5-10), the Court finds such costs are "incidental" to, rather  
12 than "directly produce[d]" by, the requested injunction. See In re Ford Motor Co., 264 F.3d  
13 952, 958 (9th Cir. 2001) (holding, where injunctive relief sought, "amount in controversy is  
14 the pecuniary result to either party which the judgment would directly produce"); Tompkins  
15 v. Basis Research LL, No. CIV. S-08-244 LKK/DAD, 2008 WL 1808316, at \*4 (E.D. Cal.  
16 Apr. 22, 2008) (excluding from amount in controversy costs "incidental" to injunction).  
17 Contrary to McDonald's argument, an alteration in a defendant's business practice is not  
18 cognizable for purposes of removal unless such alteration is "require[d]" by the requested  
19 relief. See In re Brand Name Prescription Drugs Antitrust Litig., 123 F.3d 599, 609 (7th Cir.  
20 1997) (noting "amount in controversy would be present if the injunction sought by the  
21 plaintiffs would require some alteration in the defendant's method of doing business that  
22 would cost the defendant at least the statutory minimum amount") (citing McCarthy v.  
23 Amoco Pipeline Co., 595 F.2d 389, 391 (7th Cir. 1979) (holding, where plaintiff sought  
24 injunction enjoining defendant from using plaintiff's land for pipeline and requiring  
25 defendant to remove pipeline, defendant's cost of removal and value to defendant in  
26 maintaining pipeline properly considered in determining amount in controversy)).

27         4. Accordingly, Parham's motion to remand is hereby GRANTED and the action is  
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1 hereby REMANDED to the Superior Court of California in and for San Francisco County.

2 **IT IS SO ORDERED.**

3 Dated: July 20, 2011

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MAXINE M. CHESNEY  
United States District Judge

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