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

NANCY DARDARIAN, individually and
on behalf of others similarly situated,

No. C 11-00946 WHA

Plaintiff,

v.

**ORDER REQUESTING BRIEFING
REGARDING SUBJECT-MATTER
JURISDICTION**

RESTORATION HARDWARE, INC.,

Defendant.

Plaintiff herein brings a proposed class action asserting one claim of violation of California Civil Code Section 1747.08, the Song-Beverly Credit Card Act. Subject matter jurisdiction is solely asserted based on the Class Action Fairness Act (Compl. ¶ 5). Defendant answered the complaint and “admit[ted] that this Court has jurisdiction over this action.” Immediately after filing its answer, defendant filed a motion to dismiss or stay because of a pending state-court action that concerns the same claim as to the same defendant on behalf of a similar class. Defendant’s opening brief did not contest subject-matter jurisdiction based on CAFA. In a footnote in its reply in support of its motion, however, defendant states: “It has [] come to [defendant]’s attention that the Court lacks subject matter jurisdiction over this action under the Class Action Fairness Act” (Reply 1 n.1). No more is said on the matter.


“Nothing is to be more jealously guarded by a court than its jurisdiction.” *In re Disciplinary Action Against Mooney*, 841 F.2d 1003, 1006 (9th Cir. 1988) (overruled on other grounds). If the parties fail to raise the issue, the absence of subject-matter jurisdiction must

1 be raised by the district court *sua sponte*. The parties' concessions that jurisdiction exists is
2 not a bar to this inquiry: "A party cannot estop itself into jurisdiction where none exists."
3 *Hajek v. Burlington N. R.R. Co.*, 186 F.3d 1105, 1108 (9th Cir. 1999). Federal courts must
4 normally determine jurisdictional issues before considering the merits of a case. *See Steel Co.*
5 *v. Citizens for a Better Env't*, 523 U.S. 83, 94–101 (1998).

6 Accordingly, this order finds that it is necessary to determine whether CAFA
7 jurisdiction is properly invoked by plaintiff before proceeding to decide whether to dismiss or
8 stay the action because of a substantially similar pending state-court action. The motion
9 hearing and case management conference on June 16 are accordingly **VACATED**; they will be
10 re-set by the Court if and when necessary. Both sides shall please file submissions concerning
11 whether subject-matter jurisdiction over this action exists, of no more than 15 pages in length,
12 by **JUNE 20, 2011**. The parties may then reply to the other side's submission, in no more than
13 10 pages, by **JUNE 27, 2011**.

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15 **IT IS SO ORDERED.**

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17 Dated: June 6, 2011.

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20 WILLIAM ALSUP
21 UNITED STATES DISTRICT JUDGE
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