

United States District Court
For the Northern District of California

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

LILLIANA SANCHEZ, et al.,

No. C-14-2622 MMC

Plaintiffs,

**ORDER DIRECTING DEFENDANT TO
SHOW CAUSE WHY ACTION SHOULD
NOT BE REMANDED**

v.

CAPITAL CONTRACTORS INC.,

Defendant.

Before the Court is defendant Capital Contractors, Inc.'s ("Capital") Notice of Removal, filed June 6, 2014, by which it has removed from state court a complaint filed by plaintiffs Lilliana Sanchez, Yolanda Camey, Juan Carlos Ramirez, Jose Antonio Hernandez, Juan Carlos Hernandez, Jose Alfaro, Irma Gonzalez Aguilar, and Lucinda Calindo. Having read and considered the Notice of Removal,¹ the Court, for the reasons discussed below, will direct Capital to show cause why the above-titled action should not be remanded for lack of subject matter jurisdiction.

In their complaint, plaintiffs allege eleven causes of action under the Private Attorney General Act ("PAGA"), along with two other causes of action, specifically, a claim for negligent misrepresentation and a claim under § 17200 of the California Business and Professions Code. In its Notice of Removal, Capital asserts the district court has

¹On July 9, 2014, the above-titled action was reassigned to the undersigned.

1 jurisdiction over plaintiffs' complaint under the Class Action Fairness Act ("CAFA").

2 Under CAFA, a district court has jurisdiction over a class action in which (1) the
3 matter in controversy exceeds the sum of \$5,000,000, see 28 U.S.C. § 1332(d)(2),
4 (2) any member of the class is a citizen of a state different from any defendant, see 28
5 U.S.C. § 1332(d)(2)(A), and (3) the class consists of at least one hundred persons, see 28
6 U.S.C. § 1332(d)(5)(B). Here, Capital has sufficiently demonstrated that the parties are
7 diverse (see Notice of Removal ¶¶ 13-21), and plaintiffs bring the instant action on behalf of
8 a class that, plaintiffs allege, consists of more than one hundred persons (see Compl.
9 ¶¶ 22, 60). Accordingly, the remaining issue, for purposes of determining whether the
10 Court has jurisdiction under CAFA, is whether the amount in controversy exceeds the sum
11 of \$5,000,000.

12 In that regard, Capital has endeavored to calculate the amount in controversy as to
13 certain of the PAGA claims, and, as to those claims, contends the amount in controversy
14 totals at least \$8,518,200. (See Notice of Removal ¶ 61.) Capital concedes it has not
15 "assess[ed] the amount in controversy" with respect to plaintiffs' remaining claims, including
16 plaintiffs' claims for negligent representation and violation of § 17200. (See id.) In other
17 words, Capital seeks to show the requisite amount in controversy solely by reference to
18 plaintiffs' PAGA claims.

19 The Ninth Circuit has held that "PAGA actions are . . . not sufficiently similar to Rule
20 23 class actions to trigger CAFA jurisdiction." See Baumann v. Chase Investment Services
21 Corp., 747 F.3d 1117, 1122 (9th Cir. 2014). As the Ninth Circuit has explained, district
22 courts thus lack "original jurisdiction" over PAGA claims, see id. at 1124, and, where a
23 defendant removes a PAGA claim pursuant to CAFA, it must be remanded even where the
24 amount in controversy raised thereby exceeds the sum of \$5,000,000, see id. at 1120,
25 1124. Consequently, even assuming Capital has shown the amount in controversy raised
26 by plaintiffs' PAGA claims exceeds the sum of \$5,000,000, such showing is, as a matter of
27 law, insufficient to support the instant removal. See id. Put another way, the removal was
28 proper, only if the amount in controversy raised by plaintiffs' non-PAGA claims exceeds the

1 sum of \$5,000,000.

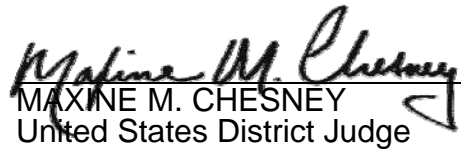
2 As noted above, however, Capital has not argued, let alone shown by a
3 preponderance of evidence, that the amount in controversy raised by the non-PAGA claims
4 exceeds the sum of \$5,000,000. See Watkins v. Vital Pharmaceuticals, Inc., 720 F.3d
5 1180, 1181 (9th Cir. 2013) (holding defendant removing action under CAFA has “burden of
6 proving by a preponderance of evidence that the amount in controversy . . . exceeds \$5
7 million”).

8 Accordingly, Capital is hereby DIRECTED to show cause, in writing and no later
9 than July 25, 2014, why the above-titled action should not be remanded to state court for
10 lack of subject matter jurisdiction. Plaintiffs shall file any response thereto no later than
11 August 1, 2014, on which date the Court will take the matter under submission.

12 **IT IS SO ORDERED.**

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14 Dated: July 11, 2014


MAXINE M. CHESNEY
United States District Judge

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