

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

KATHRINE ROSAS, on behalf of  
herself and all others similarly  
situated, and as Private Attorney  
General,

Plaintiff,

v.

USFASTCASH; AMERILOAN; UNITED  
CASH LOANS; PREFERRED CASH LOANS;  
ONE CLICK CASH; MIAMI TRIBE OF  
OKLAHOMA, also known as MIAMI  
NATION OF OKLAHOMA; MIAMI NATION  
ENTERPRISES, also known as MNE;  
SANTEE SIOUX NATION; SFS, INC.;  
AMG SERVICES, INC.; AMG CAPITAL  
MANAGEMENT, LLC; BLACK CREEK  
CORPORATION; BLACK CREEK CAPITAL,  
LLC; BROADMOOR CAPITAL PARTNERS;  
HALLINAN CAPITAL CORPORATION;  
LEADFLASH CONSULTING, LLC; LEVEL  
5 MOTORSPORTS, LLC; N.M. SERVICE  
CORP., formerly known as NATIONAL  
MONEY SERVICE; PARTNER WEEKLY  
LLC; PARK 269, LLC; ST. CAPITAL,  
LLC; THE MUIR LAW FIRM, LLC;  
TRIBAL FINANCIAL SERVICES; WEST  
FUND, LLC; SCOTT'S TRIBAL  
ENTITIES; SCOTT A. TUCKER; BLAINE  
A. TUCKER; CHARLES M. HALLINAN;  
CAROLYN HALLINAN; DON E. BRADY;  
ROBERT D. CAMPBELL; and TIMOTHY  
J. MUIR,

Defendants.

No. C 12-5066 CW

ORDER GRANTING  
PLAINTIFFS'  
MOTIONS TO REMAND  
(Docket Nos. 45 in  
12-5066 and 40 in  
12-5067) AND  
DENYING  
DEFENDANTS'  
MOTIONS (Docket  
Nos. 13 and 14 in  
12-5066 and 16 and  
27 in 12-5067)

United States District Court  
For the Northern District of California

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1 AMY LYNNE BAILLIE, and KATHRINE  
2 ROSAS, on behalf of themselves  
3 and all others similarly  
4 situated, and as Private Attorney  
5 General,

No. C 12-5067 CW

6 Plaintiffs,

7 v.

8 ACCOUNT RECEIVABLE MANAGEMENT OF  
9 FLORIDA, INC., formerly known as  
10 UNITED LEGAL CORPORATION; MTE  
11 FINANCIAL SERVICES, INC.;  
12 INSTANTCASHLOANTILLPAYDAY.COM;  
13 PROCESSING SOLUTIONS, LLC;  
14 INSTANT CASH USA, INC.; FIRST  
15 EAST, INC.; RIO RESOURCES; THOMAS  
16 ASSENZIO; JOLENE HART ASSENZIO;  
17 CHARLES HALLINAN; CAROLYN  
18 HALLINAN; CLK MANAGEMENT, LLC;  
19 WEB CASH NETWORK, LLC, doing  
20 business as RIO RESOURCES; DEXTER  
21 EMERALD GROUP, LLC; AMG SERVICES,  
22 INC.; SCOTT TUCKER; BLAINE  
23 TUCKER; PROFESSIONAL RECOVERY  
24 SYSTEMS; CHECK STOP UTAH, LLC;  
25 and EAST FINCHEY, LLC,

26 Defendants.

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Plaintiffs Kathrine Rosas and Amy Lynne Baillie move to remand these related cases to state court. Defendant Charles M. Hallinan opposes the motion to remand in Rosas v. US FastCash, Case No. C12-5066 (Rosas), and Defendant Processing Solutions, LLC (PSL), who shares counsel with Hallinan, opposes the motion to remand in Baillie v. Account Receivable Management of Florida, Inc., Case No. C12-5067 (Baillie).

Hallinan and Defendant Hallinan Capital Corporation also move to dismiss the first amended complaint in Rosas (Rosas 1AC). Defendant Thomas Assenzio moves to dismiss the third amended complaint in Baillie (Baillie 3AC). PSL and Defendants First

1 East, Inc. and Instant Cash USA, Inc. move to compel arbitration  
2 in Baillie. Plaintiffs oppose each of these motions.

3 The Court took the motions under submission on the papers.  
4 Having considered the papers filed by the parties, the Court  
5 GRANTS Plaintiffs' motions to remand and DENIES Defendants'  
6 motions.<sup>1</sup>

7 BACKGROUND<sup>2</sup>

8 I. Relevant procedural history

9 On May 22, 2007, Plaintiff Amy Lynne Baillie initiated the  
10 Baillie action in the Alameda County Superior Court. On March 9,  
11 2009, PSL, First East and Instant Cash filed a motion to stay the  
12 case pending arbitration. The trial court denied the motion, and  
13 these Defendants appealed. On May 27, 2010, the state court of  
14 appeal affirmed the trial court's decision on the motion to stay.  
15 On June 11, 2010, these Defendants filed a petition for re-hearing  
16 before the state court of appeal, which was denied. On July 6,  
17 2010, these Defendants filed a petition for review in the  
18 California Supreme Court, which was denied on August 11, 2010. On  
19 January 18, 2011, the United States Supreme Court denied PSL's  
20 petition for certiorari.

21  
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23 <sup>1</sup> The Court's denial of these motions is without prejudice to  
24 Defendants refiling them in state court to the extent otherwise  
25 permissible. The Court notes that the state court has already  
26 considered and denied the motion to compel arbitration and Thomas  
Assenzio's motion to dismiss, Docket Nos. 16 and 27 in Case No.  
C12-5067, and that Defendants may be precluded from refiling these  
motions in state court.

27 <sup>2</sup> Defendants have objected to certain evidence offered by  
28 Plaintiffs. The Court decides the motion without considering  
evidence to which Defendants have objected. Accordingly,  
Defendants' objections are OVERRULED as moot.

1 On July 1, 2009, Rosas initiated the Rosas action in the San  
2 Francisco Superior Court.

3 On November 3, 2010, the Baillie 3AC was filed, adding  
4 Kathrine Rosas as a Plaintiff and the Assenzios as Defendants.

5 On January 4, 2011, Thomas Assenzio removed Baillie from  
6 state court to this Court for the first time. See Baillie v.  
7 Account Receivable Management of Florida, Inc., Case No. C11-21.

8 On February 14, 2011, this Court granted Plaintiffs' motion  
9 to remand Baillie to state court. See Docket No. 30 in Case No.  
10 C11-21. The Court held, "Plaintiffs' complaint does not specify  
11 the amount in controversy, and Mr. Assenzio fails to establish  
12 that it is more likely than not that the amount in controversy in  
13 this action exceeds \$5 million." Id. at 10.

14 On October 27, 2011, the state court entered an order  
15 coordinating Baillie with Rosas and recommending that the  
16 coordinated proceedings take place in the Alameda County Superior  
17 Court. Docket No. 1-1 in Case No. C12-5066. See also Internet  
18 Lending Cases, Alameda Co. Case No. JCCP004688.

19 On December 5, 2011, Judge Wynne S. Carvill of the Alameda  
20 County Superior Court was appointed as the coordination trial  
21 judge. Docket No. 30-2 in Case No. C12-5067.

22 On July 31, 2012, the Rosas 1AC was filed, naming Hallinan as  
23 a Defendant for the first time in that action. Service was  
24 completed upon Hallinan on September 3, 2012.

25 On September 19, 2012, Plaintiffs filed a motion for leave to  
26 file a fourth amended complaint (4AC) in Baillie. Notice of  
27 Removal, Ex. C, Docket No. 1 in Case No. C12-5067.

28

1 On September 28, 2012, PSL removed Baillie to this Court.  
2 Docket No. 1 in Case No. C12-5067. On the same day, Hallinan  
3 removed Rosas to this Court. Docket No. 1 in C 12-5066. In both  
4 actions, PSL and Hallinan assert that this Court has jurisdiction  
5 under the Class Action Fairness Act (CAFA).

6 At the time of removal, the state court had not yet acted on  
7 Plaintiffs' motion for leave to file a 4AC in Baillie.

8 II. Factual allegations in Rosas

9 The following factual allegations are set forth in the Rosas  
10 1AC.

11 Rosas collectively refers to Defendants US FastCash;  
12 Ameriloan; United Cash Loans; Preferred Cash Loans; One Click  
13 Cash; Miami Nation Enterprises; SFS, Inc.; AMG Services, Inc.;  
14 Miami Tribe of Oklahoma, also known as Miami Nation of Oklahoma;  
15 Santee Sioux Nation; Scott A. Tucker; and Blaine A. Tucker as  
16 Defendant Lenders. Rosas 1AC 2-3. Rosas alleges that Defendant  
17 Timothy J. Muir, through Defendant The Muir Law Firm, LLC, pays  
18 for the domain name registrations and other fees of multiple  
19 websites used by Defendants to market high-fee, short-term  
20 "payday" loans. Id. at ¶¶ 24, 36. The domain names include  
21 www.usfastcash.com, www.ameriloan.com, www.unitedcashloan.com and  
22 www.oneclickcash.com. Id. She further contends that the Muir  
23 Firm advertised, marketed, distributed or sold the payday loans  
24 "to consumers throughout the United States and participated in the  
25 collection of those loans." Id. at ¶ 24.

26 Rosas alleges that she obtained five payday loans from  
27 Defendant Lenders, on September 2, 2005, October 24, 2005,  
28 February 19, 2006 and October 24, 2006. Id. at ¶ 56. The

1 interest rate on each loan was 782.14% per annum. Id. She  
2 alleges that this rate is unconscionable under California law.  
3 Id. at ¶ 49. Over the following months, Rosas was charged and  
4 paid interest to Defendant Lenders on each of these loans and  
5 repaid all of the loans in full. Id. at ¶ 57.

6 Rosas alleges that Defendant Lenders utilized a standard form  
7 agreement to execute loans to members of the putative class. Id.  
8 at ¶¶ 47-49. She refers to the form as the Instant Cash Agreement  
9 and alleges Defendant Lenders used "various iterations" of this  
10 agreement. Id. Rosas accuses Defendant Lenders of charging all  
11 putative class members unconscionable and usurious rates. She  
12 alleges that Defendant Lenders advertised these loans to  
13 individuals in California, that the class members entered into the  
14 agreements while in California and that Defendant Lenders debited  
15 their bank accounts located in California to collect on the loans.  
16 Id. at ¶ 64.

17 Rosas further alleges that various individuals and entities  
18 received funds that can be traced to the usurious loans made by  
19 Defendant Lenders. See, e.g., id. at ¶¶ 22, 31-33. In 2010 and  
20 2011, Hallinan Capital purportedly received from AMG at least  
21 twenty-two million dollars, "money which was obtained from the  
22 payday lending described below" in the 1AC. Id. at ¶ 32.  
23 Hallinan Capital is allegedly owned and controlled by Carolyn and  
24 Charles Hallinan, who knew of the payday lending scheme, and who  
25 personally received the twenty-two million dollars. Id. at  
26 ¶¶ 32-33.

27 Rosas seeks to bring various claims on behalf of a class of  
28 people "whose bank accounts . . . located in the State of

1 California [were] debited to pay on a payday loan whose annual  
2 interest rate was in excess of ten percent (10%) per annum," and  
3 who "entered into Instant Cash Agreements with Defendant Lenders  
4 and paid money to discharge the debt." Id. at ¶ 89.

5 On behalf of the putative class, Rosas asserts three claims  
6 against Defendant Lenders: (1) usury and/or unconscionable  
7 lending; (2) violation of California's Unfair Competition Law,  
8 Cal. Bus. & Prof. Code §§ 17200, et seq.; and (3) money had and  
9 received. Rosas seeks monetary relief, including recovery of all  
10 interest payments made by class members during the four years  
11 prior to filing of the complaint, imposition of statutory  
12 penalties, restitution and injunctive relief.

13 In her fourth cause of action, Rosas seeks imposition of a  
14 constructive trust upon the Defendants, including the Hallinans  
15 and Hallinan Capital, who she alleges received "proceeds from  
16 unlawful, unconscionable and despicable usurious loans made to the  
17 Plaintiff class by the Defendant Lenders." Id. at ¶ 113. The  
18 portion of the prayer for relief related to the fourth cause of  
19 action seeks an order declaring among other things that these  
20 Defendants "hold all monies received from Defendant Lenders" as  
21 constructive trustees, and for "an accounting of all monies  
22 received by" these Defendants since July 1, 2005. Id. at 30.

23 III. Factual allegations in Baillie

24 A. Allegations made in the Baillie 3AC

25 Thomas Assenzio "owned, controlled, managed and/or directed"  
26 Defendants MTE Financial Services, Inc.; Instant Cash USA; Rio  
27 Resources; PSL; First East Inc.; and  
28 Instantcashloantillpayday.com. 3AC ¶ 4. All of these entity

1 Defendants conducted business as consumer lenders in California.  
2 Id. at ¶¶ 10-16. Defendant Jolene Hart Assenzio, who is Mr.  
3 Assenzio's wife, held an ownership interest in PSL and First East.  
4 Plaintiffs refer to the Assenzios and all of these entity  
5 Defendants as "Defendant Lenders." Id. at ¶ 18.

6 Baillie alleges that she obtained a "payday loan" for \$300  
7 from MTE Financial, doing business as Instant Cash USA, with an  
8 Annual Percentage Rate of 1,216.667%. 3AC ¶ 2 and Ex. A, at 1. A  
9 "Loan Note and Disclosure" provided the following payment terms:

10 You must make one payment of \$390 due on 7/14/2006, if  
11 you decline the option of renewing your loan. If  
12 renewing is accepted, you will pay the finance charge of  
13 \$90 only, on 7/14/2006. You will accrue new finance  
14 charges with every renewal of your loan. On your fifth  
15 renewal and every renewal thereafter, your loan will be  
16 paid down by \$50 (\$100 on balances over \$500). This  
17 means your account will be debited the finance charge  
18 plus \$50 (\$100 on balances over \$500) on the due date.  
19 This will continue until your loan is paid in full.

20 3AC, Ex. A, at 1. Between July 14, 2006 and December 1, 2006,  
21 Baillie's checking account was debited eleven times on nine  
22 different dates, for an amount totaling \$977.00. 3AC ¶ 36. On or  
23 about October 15, 2006, Baillie's loan was assigned to Defendant  
24 United Legal Corporation, predecessor in interest to Defendant  
25 Account Receivable Management of Florida (ARM). Id. at ¶ 37. On  
26 February 8, 2007, United Legal, notified Baillie that,  
27 notwithstanding her payments, \$430 remained due on her loan. Id.  
28 at ¶ 38.

On or about June 19, 2006, Rosas obtained a \$300 loan from  
Rio Resources. Id. at ¶ 3. Between June 30, 2006 and September  
22, 2006, Rio Resources debited Rosas's checking account on seven  
different dates, for an amount totaling \$825. Id. at ¶¶ 3, 40.

1 On or about November 3, 2006, Rosas obtained a \$300 loan from  
2 Instant Cash USA; thereafter, Instant Cash USA debited her  
3 checking account for principal and interest payments for an  
4 undisclosed amount. Id. at ¶¶ 3, 41. The interest rates  
5 associated with her loans were usurious and unconscionable under  
6 California law. Id. at ¶¶ 3, 40, 41. With respect to her  
7 November 2006 loan, Rosas was charged interest at a rate in excess  
8 of 700 percent per annum; Rosas does not specify how much she paid  
9 on this loan. Id. at ¶ 41.

10 Plaintiffs seek to bring claims on behalf of themselves and a  
11 class, defined as, "All persons . . . who are residents of the  
12 State of California and entered into Instant Cash Agreements with  
13 Defendant Lenders . . . and may have been a recipient of a  
14 collection Notice from Defendant Account Receivable Management of  
15 Florida, Inc., formerly known as United Legal Corporation . . ."  
16 Plaintiffs allege that "thousands of people in California entered  
17 into Instant Cash Agreements with Defendant Lenders" and that  
18 "thousands of California consumers have been subjected to the  
19 wrongful collection actions of the Defendants ARM." Id. at ¶ 67.

20 In the 3AC, Plaintiffs assert claims for: (1) "usury and/or  
21 unconscionable lending," against Defendant Lenders; (2) violation  
22 of California's Unfair Competition Law (UCL), Cal. Bus. & Prof.  
23 Code §§ 17200, et seq., against Defendant Lenders; (3) violation  
24 of the UCL, against Defendant ARM; (4) unjust enrichment, against  
25 Defendant Lenders and Defendant ARM; and (5) an accounting,  
26 against Defendant Lenders and Defendant ARM.

27 On their first claim, Plaintiffs seek "a penalty equal to  
28 three times the interest paid during the year immediately prior to

1 the filing" of their complaint and "to cancel all future interest  
2 that Defendants claim is due." Id. at 27:18-20. They also seek  
3 "to recover all interest paid to Defendants during the two years  
4 immediately preceding the filing of" their action and to recover  
5 all interest they or putative class members paid "that is not  
6 otherwise allowed by law commencing with the date four years  
7 immediately preceding the filing" of their action. Id. at  
8 27:20-25. Plaintiffs seek trebling of damages suffered by class  
9 members sixty-five years or older. Id. at 27:26-27.

10 On their second and third claims, Plaintiffs seek to enjoin  
11 Defendants from charging an interest rate in excess of the legal  
12 maximum. Id. at 28:2-5. They also seek restitution for any  
13 unlawful, unfair or fraudulent act committed by Defendants. Id.  
14 at 28:6-10.

15 Finally, on their fourth and fifth claims, Plaintiffs seek  
16 recovery for "all interest payments and other monies" Defendants  
17 received from them and the putative class, "commencing with the  
18 date four years immediately preceding the filing" of their action.  
19 Id. at 28:15-21. On March 11, 2011, the state court sustained a  
20 demurrer, filed by PSL, First East and Instant Cash, to the fourth  
21 and fifth causes of action, without leave to amend. Docket No.  
22 37-3 in Case No. C12-5067.

23 Plaintiffs also seek attorneys' fees and costs, pursuant to  
24 California Code of Civil Procedure § 1021.5. Id. at 28:23-25.

25 B. Plaintiffs' motion for leave to amend

26 In the motion for leave to file a 4AC, Plaintiffs seek to  
27 make a number of changes to the 3AC, which include the following.  
28

1 Plaintiffs seek to add new Defendants, including Dexter  
2 Emerald Group, alleged to be solely owned and controlled by Thomas  
3 Assenzio, and additional Defendant Lenders, among them Web Cash  
4 Network, LLC, alleged to be controlled by Thomas Assenzio and  
5 newly added Defendant Charles Hallinan. Plaintiffs seek to add an  
6 allegation "that Dexter Emerald received from Web Cash more than  
7 \$6,500,000 without consideration, all of which were proceeds from  
8 the payday lending at issue in this case during the Class Period."  
9 Proposed 4AC ¶ 18.

10 Plaintiffs also seek to add three new causes of action to  
11 their complaint. In the new sixth cause of action to "set aside  
12 or annul fraudulent transfers," Plaintiffs seek to set aside  
13 transfers of proceeds from the payday lending in this case,  
14 including, but not limited to, "the payment by Web Cash to Dexter  
15 Emerald of more than \$6,500,000.00 all of which were proceeds from  
16 the payday lending in this case." Id. at ¶¶ 99-100. In their  
17 prayer for relief related to this claim, Plaintiffs request to set  
18 aside the transfer or conveyances between Defendants "to the  
19 extent necessary to satisfy plaintiffs' judgment, plus interest."  
20 Id. at 26-27.

21 In the new fifth cause of action, "Plaintiffs seek imposition  
22 of a Constructive Trust as to all . . . defendants who each  
23 received proceeds from unlawful, unconscionable and despicable  
24 usurious loans made to the Plaintiff class by the Defendant  
25 Lenders." Id. at ¶ 95. In their prayer for relief related to  
26 this claim, Plaintiffs request an order declaring that these  
27 Defendants hold "all monies received from Defendant Lenders" and  
28 others as constructive trustees and "an accounting of all monies

1 received by defendants named . . . for imposition of a  
2 Constructive Trust since July 1, 2005." Id. at 26.

3 LEGAL STANDARD

4 A defendant may remove a civil action filed in state court to  
5 federal district court so long as the district court could have  
6 exercised original jurisdiction over the matter. 28 U.S.C.  
7 § 1441(a). Title 28 U.S.C. § 1447(c) provides that if, at any  
8 time before judgment, it appears that the district court lacks  
9 subject matter jurisdiction over a case previously removed from  
10 state court, the case must be remanded. On a motion to remand,  
11 the scope of the removal statute must be strictly construed. Gaus  
12 v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). "The 'strong  
13 presumption' against removal jurisdiction means that the defendant  
14 always has the burden of establishing that removal is proper."  
15 Id.; see also Wash. State v. Chimei Innolux Corp., 659 F.3d 842,  
16 847 (9th Cir. 2011) ("The burden of establishing removal  
17 jurisdiction, even in CAFA cases, lies with the defendant seeking  
18 removal.")). Courts should resolve doubts as to removability in  
19 favor of remanding the case to state court. Gaus, 980 F.2d at  
20 566.

21 DISCUSSION

22 I. Motion to Remand in Rosas

23 CAFA provides that district courts have jurisdiction over  
24 certain class actions in which the amount in controversy exceeds  
25 five million dollars. 28 U.S.C. § 1332(d)(2). The parties  
26 dispute whether it is facially apparent from the Rosas 1AC that  
27 this amount in controversy requirement has been met.  
28

1           Hallinan contends that it is facially apparent that the Rosas  
2 1AC puts in controversy at least twenty-two million dollars  
3 through the fourth cause of action. Rosas argues that she did not  
4 specify an amount in controversy in her prayer for relief, that  
5 she has not plead that the twenty-two million dollars relates to  
6 loans made to class members, which is limited to individuals  
7 located in California, and that Hallinan has not introduced  
8 evidence sufficient to establish by a preponderance of the  
9 evidence that the jurisdictional amount is met.

10           When assessing whether a removing defendant has met the  
11 amount in controversy requirement, "[t]he ultimate inquiry is  
12 what amount is put 'in controversy' by the plaintiff's complaint,  
13 not what a defendant will actually owe.'" Jasso v. Money Mart  
14 Express, Inc., 2012 U.S. Dist. LEXIS 27215, at \*6 (N.D. Cal.)  
15 (quoting Korn v. Polo Ralph Lauren Corp., 536 F. Supp. 2d 1199,  
16 1205 (E.D. Cal. 2008)). In making this assessment, the "district  
17 court may consider whether it is 'facially apparent' from the  
18 complaint that the jurisdictional amount is in controversy."  
19 Singer v. State Farm Mut. Auto. Ins. Co., 116 F.3d 373, 377 (9th  
20 Cir. 1997) (quoting Allen v. R & H Oil & Gas Co., 63 F.3d 1326,  
21 1335-36 (5th Cir. 1995)). When this is not facially apparent, a  
22 "court may consider facts in the removal petition, and may require  
23 parties to submit summary-judgment-type evidence relevant to the  
24 amount in controversy at the time of removal." Id. (quoting  
25 Allen, 63 F.3d at 1335-36).

26           The Ninth Circuit has "identified at least three different  
27 burdens of proof which might be placed on a removing defendant in  
28 varying circumstances." Guglielmino v. McKee Foods Corp., 506

1 F.3d 696, 699 (9th Cir. 2007). First, "when a complaint filed in  
2 state court alleges on its face an amount in controversy  
3 sufficient to meet the federal jurisdictional threshold, such  
4 requirement is presumptively satisfied unless it appears to a  
5 'legal certainty' that the plaintiff cannot actually recover that  
6 amount." Id. (citing Sanchez v. Monumental Life Ins. Co., 102  
7 F.3d 398 (9th Cir. 1996)). Second, if "it is unclear or ambiguous  
8 from the face of a state-court complaint whether the requisite  
9 amount in controversy is pled," the removing party must establish  
10 by a preponderance of the evidence that the amount in controversy  
11 exceeds the jurisdictional amount. Id. (citing Sanchez, 102 F.3d  
12 at 404). Finally, "when a state-court complaint affirmatively  
13 alleges that the amount in controversy is less than the  
14 jurisdictional threshold, the 'party seeking removal must prove  
15 with legal certainty that CAFA's jurisdictional amount is met.'" Id.  
16 (quoting Lowdermilk v. United States Bank Nat'l Assoc., 479  
17 F.3d 994, 1000 (9th Cir. 2007)).

18 Because of the "varying burdens of proof depending on the  
19 situation and nature of the plaintiff's complaint," the Court  
20 "must as a threshold matter determine precisely what" the Rosas  
21 1AC alleged and in which of these three categories this case  
22 falls. Guglielmino, 506 F.3d at 699.

23 Resolving doubts in favor of remand, the Court concludes that  
24 it is not clear, and it is ambiguous from its face, whether the  
25 twenty-two million dollars to which the complaint refers is in  
26 controversy in the action. The pleading clearly limits the class  
27 to persons "whose bank accounts are located in the State of  
28 California." Rosas 1AC ¶ 89. In the fourth cause of action,

1 Rosas seeks imposition of a constructive trust upon Defendants who  
2 received "proceeds from unlawful, unconscionable and despicable  
3 usurious loans made to the Plaintiff class by the Defendant  
4 Lenders." Id. at ¶ 113 (emphasis added). She has thus explicitly  
5 limited this cause of action to proceeds from loans made to  
6 persons with bank accounts in California. It is not facially  
7 apparent whether the twenty-two million dollars allegedly given by  
8 AMG to Hallinan Capital was limited to proceeds from such loans.  
9 The Rosas 1AC describes this amount as being obtained from the  
10 payday lending scheme as a whole; it does not limit this scheme to  
11 California. There are indications that it may have involved  
12 consumers throughout the United States, not just in California.  
13 See, e.g., id. at ¶ 24. Although the portion of her prayer for  
14 relief that is related to the fourth cause of action seeks an  
15 order declaring, among other things, that Defendants "hold all  
16 monies received from Defendant Lenders" as constructive trustees,  
17 id. at 30, without explicitly limiting the constructive trust to  
18 proceeds from loans made to class members, such a limitation is  
19 logically inferred from the limitation in the cause of action  
20 itself. Further, if the prayer for relief sought to impose a  
21 constructive trust on proceeds beyond those actually at issue in  
22 the cause of action based on loans made to the putative class,  
23 such a request would not be legally plausible.

24 Having concluded that it is "unclear or ambiguous from the  
25 face of a state-court complaint whether the requisite amount in  
26 controversy is pled," Guglielmino, 506 F.3d at 699, the Court  
27 applies the second burden of proof described above. Accordingly,  
28 Hallinan must establish by a preponderance of the evidence that

1 the amount in controversy exceeds the jurisdictional amount.  
2 Because the first standard does not apply, Rosas need not  
3 establish to a "legal certainty" that she cannot actually recover  
4 the jurisdictional amount. Thus, Hallinan's repeated arguments  
5 that she has not done so are unavailing.

6 Hallinan has not submitted any summary-judgment-type evidence  
7 as to the amount in controversy. For example, he has not offered  
8 evidence that the amount transferred from AMG to Hallinan Capital  
9 represented proceeds from loans made to individuals with  
10 California bank accounts. Instead, he argues that the allegations  
11 in the Rosas 1AC constitute an admission by Rosas that the amount  
12 in controversy requirement is satisfied, and that this constitutes  
13 sufficient evidence to meet his evidentiary burden. Although a  
14 formal judicial admission by a plaintiff of such a fact may  
15 constitute sufficient evidence, Hallinan bases his argument that  
16 such an admission was actually made on his assertion that the 1AC  
17 facially discloses that twenty-two million dollars is in  
18 controversy. Having already found that the Rosas 1AC does not  
19 clearly disclose this on its face, the Court concludes that it  
20 also does not constitute such an admission.

21 Accordingly, Hallinan has not met his burden to establish  
22 that federal jurisdiction exists under CAFA, and the Court GRANTS  
23 Rosas's motion to remand.

24 II. Motion to Remand in Baillie

25 In Baillie, the parties dispute both whether PSL could remove  
26 the action to federal court based on the proposed 4AC before the  
27 state court had decided whether to allow it to be filed, and  
28 whether the proposed 4AC reveals that the jurisdictional amount is

1 in controversy through the fifth and sixth causes of action and  
2 the allegation related to the transfer between Web Cash and Dexter  
3 Emerald.

4 The Ninth Circuit has not squarely answered the question of  
5 whether the thirty day time period for removal under 28 U.S.C.  
6 § 1446(b)(3) commences when a motion for leave to amend a pleading  
7 is filed in the state court or at some other time, such when the  
8 court rules on the motion or when the amended pleading is  
9 ultimately filed. Courts considering the issue have articulated a  
10 number of different views. See 16 Moore's Federal Practice  
11 § 107.30[3][a][iv][B] (summarizing approaches). Because the Court  
12 concludes that remand is warranted, even if the proposed 4AC could  
13 serve properly as the basis for removal before the state court  
14 ruled on the motion for leave to amend, the Court does not reach  
15 this issue.

16 The Court has previously held that the Baillie 3AC does not  
17 specify the amount in controversy on its face. As with the Rosas  
18 1AC, it is not clear from the face of the proposed 4AC in Baillie  
19 whether the six and a half million dollars to which it refers is  
20 in controversy under either the Baillie 3AC or the proposed 4AC,  
21 so as to constitute "other paper" under 28 U.S.C. § 1446(b)(3), as  
22 PSL argues. Neither Defendant involved in that transfer was named  
23 in the Baillie 3AC. In addition, as in Rosas, the class is  
24 limited to individuals who reside in California or whose bank  
25 accounts are located within the state. See Baillie 3AC ¶ 65;  
26 Proposed 4AC ¶ 65. Although Plaintiffs seek to prosecute only  
27 claims on behalf of a California class, neither pleading states  
28 that the payday loan scheme described only resulted in loans made

1 to putative class members or within California. Thus, although  
2 Plaintiffs allege that the six and a half million dollars were  
3 "proceeds from the payday lending at issue in this case," Proposed  
4 4AC ¶ 100, this does not make clear whether this sum was proceeds  
5 of the payday lending scheme as a whole, which may or may not  
6 encompass loans made to non-class members, or proceeds only of  
7 loans made to class members and in controversy. The constructive  
8 trust claim in the proposed 4AC is similar to the corresponding  
9 claim in Rosas and clearly limits the claim to proceeds upon  
10 "loans made to the Plaintiff class." Id. at ¶ 95. Although the  
11 claim to set aside or annul fraudulent transfers may have been  
12 phrased more precisely, in this cause of action, Plaintiffs could  
13 seek only to set aside the transfers to the extent necessary to  
14 satisfy the claims of the named Plaintiffs and the class members.

15 Like Hallinan, PSL has not introduced any evidence, aside  
16 from the proposed 4AC itself, to show by a preponderance of the  
17 evidence that the amount in controversy exceeds the jurisdictional  
18 amount. Because the proposed 4AC does not clearly disclose this  
19 on its face, it does not constitute an admission against  
20 Plaintiffs' interest in the choice of forum, as PSL contends.

21 Accordingly, PSL has not met its burden to establish that  
22 federal jurisdiction exists under CAFA, and the Court GRANTS  
23 Plaintiffs' motion to remand in Baillie.

#### 24 CONCLUSION

25 For the reasons set forth above, the Court GRANTS the motions  
26 to remand (Docket Nos. 45 in 12-5066 and 40 in 12-5067) and DENIES  
27 Defendants' motions to dismiss and compel arbitration (Docket Nos.  
28 13 and 14 in 12-5066 and 16 and 27 in 12-5067), without prejudice

1 to refiling them in state court to the extent otherwise  
2 permissible.

3 The Clerk shall remand these cases to the Alameda County  
4 Superior Court and close the file.

5 IT IS SO ORDERED.

6

7 Dated: 12/5/2012

  
CLAUDIA WILKEN  
United States District Judge

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