

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KRYSTAL CAMPBELL, et al.,

Plaintiffs,

vs.

DEAN MARTIN DR – LAS VEGAS,
LLC, et al.,

Defendants.

Case No.: 2:15-cv-0452-GMN-NJK

ORDER

Pending before the Court is the case of Campbell v. Dean Martin Dr – Las Vegas, LLC, (2:15-cv-0452-GMN-NJK). On March 12, 2015, the Court entered an Order requiring Defendants to show cause as to why the Court should not decline to exercise jurisdiction over this case pursuant to 28 U.S.C. § 1332(d)(4). (ECF No. 5). On March 26, 2015, Defendants filed a Brief in Support of Removal Jurisdiction. (ECF No. 10). Plaintiffs filed a Response, (ECF No. 13), and Defendants filed a Reply, (ECF No. 16). For the reasons stated herein, the Court will remand this action to Clark County District Court.

I. BACKGROUND

This action centers upon claims that Plaintiffs, a putative class of over 3000 current and former dancers employed in Defendants’ adult entertainment establishments in Las Vegas, were paid insufficient wages in violation of several provisions of Nevada law. (Compl., Ex. 1 to Pet. for Rem., ECF No. 1).

Specifically, Plaintiffs seek to form a class including every “topless dancer, hostess, entertainer, erotic dancer, and stripper” who worked at Larry Flynt’s Hustler

1 Club in the three years immediately preceding the filing of the Complaint. (*Id.* ¶ 22).  
2 Plaintiffs allege that the owners and operators of Larry Flynt’s Hustler Club, Defendants  
3 Dean Martin Dr – Las Vegas, LLC, Las Vegas Bistro, LLC, and Modern Bookkeeping,  
4 Inc., failed to adequately compensate Plaintiffs pursuant to Nev. Rev. Stat. §§ 608.250,  
5 608.040, and 608.050. (*Id.* ¶¶ 33-55). Additionally, Plaintiffs set forth claims for  
6 conversion and unjust enrichment arising from their allegations that Defendants  
7 wrongfully withheld their wages. (*Id.* ¶¶ 56-66).

8 Defendants removed this case on March 11, 2015, citing the Court’s jurisdiction  
9 under the Class Action Fairness Act (“CAFA”), codified at 28 U.S.C. § 1332(d). (Pet. for  
10 Rem. ¶ 6, ECF No. 1). In their Response to the Court’s Order to Show Cause, Plaintiffs  
11 argue that the Court should decline to exercise jurisdiction over this case pursuant to 28  
12 U.S.C. § 1332(d)(3) because more than one third of the members of the putative class are  
13 Nevada residents, all of their claims arise under Nevada law, and this action does not  
14 involve matters of national interest. (Pls.’ Response, ECF No. 13).

## 15 **II. LEGAL STANDARD**

16 28 U.S.C. § 1332(d), added by CAFA, vests the federal district courts with  
17 “original jurisdiction of any civil action in which the matter in controversy exceeds  
18 \$5,000,000 and is a class action in which the parties satisfy, among other requirements,  
19 minimal diversity.” *Abrego Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 680 (9th Cir.  
20 2006). One way to satisfy minimal diversity is by demonstrating that any class member  
21 is a citizen of a state different from any defendant. 28 U.S.C. § 1332(d)(2). Thus, for  
22 covered class actions, CAFA abandons the normal requirement of complete diversity. *Id.*;  
23 *see also Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007) (citing *Bush*  
24 *v. Cheaptickets, Inc.*, 425 F.3d 683, 684 (9th Cir. 2005)).

1           However, under CAFA’s discretionary exception, the Court may decline to  
2 exercise jurisdiction “over a class action in which greater than one-third but less than  
3 two-thirds of the members of all proposed plaintiff classes in the aggregate and the  
4 primary defendants are citizens of the State in which the action was originally filed . . . .”  
5 28 U.S.C. § 1332(d)(3). In determining whether to decline jurisdiction under this  
6 exception, the Court considers the following factors:

7           (A) whether the claims asserted involve matters of national or  
8 interstate interest;

9           (B) whether the claims asserted will be governed by laws of  
10 the State in which the action was originally filed or by the  
11 laws of other States;

12           (C) whether the class action has been pleaded in a manner  
13 that seeks to avoid Federal jurisdiction;

14           (D) whether the action was brought in a forum with a distinct  
15 nexus with the class members, the alleged harm, or the  
16 defendants;

17           (E) whether the number of citizens of the State in which the  
18 action was originally filed in all proposed plaintiff classes in  
19 the aggregate is substantially larger than the number of  
20 citizens from any other State, and the citizenship of the other  
21 members of the proposed class is dispersed among a  
22 substantial number of States; and

23           (F) whether, during the 3-year period preceding the filing of  
24 that class action, 1 or more other class actions asserting the  
25 same or similar claims on behalf of the same or other persons  
have been filed.

28 U.S.C. § 1332(d)(3). Additionally, it is important to note that the party seeking  
remand bears the burden to show that a CAFA exception applies. *See Serrano v. 180*  
*Connect, Inc.*, 478 F.3d 1018, 1019 (9th Cir. 2007).

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1 **III. ANALYSIS**

2 Plaintiffs argue that the Court should decline to exercise jurisdiction and should  
3 remand this action pursuant to CAFA’s discretionary exception. Defendants concede that  
4 roughly fifty percent of the putative class members are Nevada citizens. *See* (Defs.’ Brief  
5 8:17-18) (“[Defendant] Bistro’s evidence, even if imperfect, is highly probative and  
6 preemptively demonstrates that only 50%-51% of the putative class members’ [sic] are  
7 citizens of Nevada.”). Similarly, Defendants do not dispute Plaintiffs’ assertion that the  
8 primary defendants in this action are citizens of Nevada. Accordingly, as the threshold  
9 requirements of the discretionary exception are satisfied, the Court will analyze the facts  
10 of this case under the factors set forth in § 1332(d)(3) to determine if remand is  
11 warranted.

12 **A. National or Interstate Interest**

13 The Complaint makes it clear that this case involves a putative class of employees  
14 who worked in Nevada claiming that the owners of a nightclub in Nevada violated  
15 several provisions of Nevada law. Because all of the alleged violations occurred in  
16 Nevada, it is apparent that this action does not raise any matters of national or interstate  
17 interest. *See Foley v. Cordillera Golf Club, LLC*, No. 12-cv-0351-WJM-KMT, 2012 WL  
18 1144856, at \*6 (D. Colo. Apr. 5, 2012) (finding allegations that a Colorado golf club  
19 failed to fulfill its contractual obligations to its members did not raise issues of national  
20 interest). Accordingly, the Court finds that this factor weighs in favor of remand.

21 **B. Source of the Claims at Issue**

22 Each of Plaintiffs’ claims in this case arises under Nevada law.<sup>1</sup> Thus, this factor  
23 weighs in favor of remand.

24 \_\_\_\_\_  
25 <sup>1</sup> Defendants, citing *Terry v. Sapphire Gentlemen’s Club*, argue that some of Plaintiffs’ claims are governed by federal law. 336 P.3d 951 (Nev. 2014). In *Terry*, the Nevada Supreme Court adopted the “economic realities” test used in connection with the Fair Labor Standards Act to resolve claims arising

1                   **C. Avoidance of Federal Jurisdiction**

2                   Courts have drawn diametrically opposed conclusions regarding the purpose of  
3 this factor. Some courts have indicated that this factor was included in the § 1332(d)(3)  
4 analysis to grant some weight to a plaintiff’s choice of forum. *See, e.g., Commisso v.*  
5 *PricewaterhouseCoopers LLP*, No. 11-cv-5713-NRB, 2012 WL 3070217, at \*6  
6 (S.D.N.Y. July 27, 2012). Other courts have viewed it as a safety mechanism to ensure  
7 that federal courts can hear cases of national importance even when plaintiffs attempt to  
8 exploit technicalities to ensure a state forum. *See, e.g., Henry v. Warner Music Grp.*  
9 *Corp.*, No. 13-cv-5031-PGG, 2014 WL 1224575, at \*7 (S.D.N.Y. Mar. 24, 2014). Thus,  
10 in cases in which it is apparent that a complaint was pled to avoid federal jurisdiction, it  
11 is unclear whether this factor should weigh for or against remand.

12                   Nevertheless, in the instant case, there is no indication that Plaintiffs sought to  
13 avoid federal jurisdiction. The Complaint meets the prima facie requirements for CAFA  
14 jurisdiction, as it makes clear that the putative class contains well over 100 members, and  
15 seeks relief well in excess of the \$5,000,000 minimum. 28 U.S.C. § 1332(d)(2); 28  
16 U.S.C. § 1332(d)(5)(B). Nothing in the Complaint indicates that the allegations were  
17 specifically crafted to either avoid or attain federal jurisdiction. Thus, this factor weighs  
18 neither for nor against remand.

19                   **D. Relationship Between the Class and the Forum**

20                   This action was filed in Clark County District Court, the jurisdiction where every  
21 member of the class was employed and where the alleged violations occurred. Therefore,  
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25 under Nev. Rev. Stat. § 608.010. *Id.* at 958. However, the mere fact that the Nevada Supreme Court  
decided to utilize a federal standard in interpreting Nevada law did not somehow transform Nevada’s  
statutory scheme into a federal statutory scheme. The Court therefore finds Defendants’ argument to be  
unavailing.

1 there is a clear nexus between Plaintiffs' chosen forum and the events at issue in this  
2 action. Accordingly, the Court finds this factor weighs heavily in favor of remand.

### 3 **E. Number of Class Members from the Forum State**

4 Defendants have made clear that roughly half of the members of the putative class  
5 are citizens of Nevada. *See* (Defs.' Brief 8:17-18). The state with the next highest  
6 number of class members—California—has less than half as many as Nevada. *See* (Pls.'  
7 Summary of Defendants' Exhibits, Ex. 1 to Pls.' Resp., ECF No. 13) (stating that  
8 between twenty and twenty two percent of the putative class members are citizens of  
9 California). Thus, this factor weighs in favor of remand. *See Foley v. Cordillera Golf*  
10 *Club, LLC*, 2012 WL 1144856, at \*7.

### 11 **F. Similar Class Actions**

12 Though Defendants point to several recent cases involving classes of dancers who  
13 claim to have been paid insufficient wages,<sup>2</sup> none of these actions involve Defendants,  
14 nor do they include claims arising under Nevada law. Similarly, it does not appear that  
15 any members of the putative class in the instant case could have been included in the  
16 plaintiff classes in these other cases. Thus, because there are no common parties or  
17 claims between this case and other recent actions, this factor weighs in favor of remand.

18 As five of the § 1332(d)(3) factors weigh in favor of remand, and the final one is  
19 neutral, the Court finds that it is in the interest of justice to decline to exercise jurisdiction  
20 over this action. Accordingly, this case will be remanded to Clark County District Court.

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25 <sup>2</sup> *See Holden v. Raleigh Rest. Concepts, Inc.*, No. 5:14-cv-348-F, 2014 WL 6609774 (E.D.N.C. Nov. 20, 2014); *Herzfeld v. 1416 Chancellor, Inc.*, No. 14-cv-4966, 2015 WL 4480829 (E.D. Pa. July 22, 2015); *Encarnacion v. J.W. Lee, Inc.*, No. 14-cv-61927, 2015 WL 6437686 (S.D. Fla. Oct. 22, 2015); *Roe v. SFBSC Mgmt., LLC*, No. 14-cv-3616-LB, 2015 WL 930683 (N.D. Cal. Mar. 2, 2015).

1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that this action is **REMANDED** to Clark County  
3 District Court. The Clerk is instructed to close the case.

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5 **DATED** this 21 day of December, 2015.

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12 Gloria M. Navarro, Chief Judge  
13 United States District Court  
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