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CLASS ACTION BLOG

“Anti-Removal Presumption” Improper for CAFA Cases—Ninth Circuit Vacates Sua Sponte Remand.

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Blanca Arias sued her employer, Residence Inn (Marriott), for multiple alleged wage and hour violations. In this class action case, she sought compensatory damages, civil penalties, disgorgement of “ill-gotten gains”, and attorneys’ fees. Marriott removed, alleging that the amount in controversy was conservatively $5.5 million and potentially exceeded $15 million based on its assumptions and calculations (set forth in a chart for the district court). One month after the notice of removal was filed, the district court issued an order, *sua sponte,* remanding the case after finding “Marriott’s calculations of the amount in controversy ‘unpersuasive,’ concluding that the calculations rested on speculation and conjecture.” In addition, the court objected to Marriott’s failure to offer “evidentiary support” for some of its assumptions and concluded that different “valid assumptions could be made that result in damages that are less than the requisite $5,000,000 amount in controversy.” Marriott appealed.

The Ninth Circuit noted its obligation to follow the Supreme Court’s ruling in *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81 (2014), which stated in part that even if an anti-removal presumption exists in run-of-the-mill diversity cases, anti-removal presumptions are improper in “cases invoking CAFA.” The Ninth Circuit then “reaffirm[ed] three principles that apply in CAFA removal cases.” First, a removing defendant is not required to provide “evidentiary submissions” in the notice of removal, but only “plausible allegations of the jurisdictional elements.” In addition, if a defendant’s allegations of “removal jurisdiction are challenged, the defendant’s amount in controversy [calculations] may rely on reasonable assumptions.” Finally, whenever “a statute or contract provides for the recovery of attorneys’ fees, prospective attorneys’ fees must be included in the assessment of the amount in controversy.” Because the district court’s *sua sponte* remand had violated those principles, the remand order was vacated and the case was remanded to allow the district court to apply those principles.

The court agreed with Marriott that when notices of removal plausibly allege "a basis for federal court jurisdiction," district courts may not remand the case back to state court "without first giving the defendant an opportunity to show by a preponderance of the evidence that the jurisdictional requirements are satisfied." Furthermore, the Ninth Circuit found that Marriott's amount in controversy calculations were based on plausible assumptions which might "prove to be reasonable in light of the allegations in the complaint." Because Marriott's notice of removal contained plausible assumptions, the district court could not remand the case to state court without giving the defendant an opportunity to explain its position and put on evidence supporting its burden of demonstrating "that its estimated amount in controversy relie[s] on reasonable assumptions."

In cases where attorneys' fees are requested based on a statute, the defendant can include in its amount in controversy calculation both attorneys' fees which have been incurred and "future attorneys' fees recoverable by statute or contract" in order to properly assess "whether the amount-in-controversy requirement is met." In support of that conclusion, the court relied on its 2018 ruling in *Fritsch v. Swift Transp. Co. of Ariz., LLC,* 899 F.3d 785 (9th Cir. 2018) (a case this blog discussed on February 27, 2019).

The court also rejected plaintiff's argument that jurisdiction was defeated because she tried to stipulate that the case did had a value less than $5 million. In rejecting that position, the Ninth Circuit relied on the Supreme Court's holding in *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588 (2013). Even though an individual plaintiff is the master of her complaint, a putative class representative is not allowed to "bind the absent class." *Id* at 595-96.

The *Arias* case is important for Ninth Circuit class action litigators because it reaffirms principles the Ninth Circuit will follow when confronting CAFA removal cases. It makes clear that in CAFA removals, no anti-removal presumption is allowed. This 2019 Ninth Circuit ruling adds support for that rule stated by the Supreme Court's ruling in *Dart Cherokee*. It also supports rejection of attempts to limit CAFA jurisdiction by way of putative class representative stipulations seeking to preclude CAFA removals.

Case Citation: Arias v. Residence Inn by Marriott, 936 F.3d 920 (9th Cir. 2019)