

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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United States District Court
For the Northern District of California

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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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.¹

7 BACKGROUND²

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.

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22

23 ¹ 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 ² 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


8 CLAUDIA WILKEN
9 United States District Judge
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