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Ninth Circuit makes multiple pro-removal rulings in reversing sua sponte CAFA remand

by C. Allen Garrett Jr.

Virtually every defendant facing a state court class action will examine its potential removability under the Class Action Fairness Act ("CAFA"). Indeed, CAFA's entire point was to move large class actions to federal court. But despite being on the books for nearly 15 years, the proper application of CAFA remains the subject of some debate, particularly among district courts within the Ninth Circuit. A recent published decision of the Ninth Circuit Court of Appeals should bring certainty to several critical issues presented by CAFA-based removals.

In *Arias v. Residence Inn by Marriott*, 936 F.3d 920 (9th Cir. 2019), the employee plaintiff alleged various violations of California state wage and hour laws. Marriott, the defendant, removed based on certain "assumptions" and "estimates" of the amount placed in controversy by the plaintiff's general allegations. *Id*. at 923-24. Thus, with respect to the employee's allegation Marriott "routinely" failed to pay overtime, Marriott assumed unpaid overtime of between 30 and 60 minutes a week. As for the employee's allegation Marriott provided insufficient rest breaks, Marriott assumed missed rest breaks of between one per day and one per week. The employee's allegation Marriott had supplied improper wage statements could be quantified specifically as giving rise to an amount-in-controversy of $1,788,150. And the employee sought statutory attorneys' fees, which Marriott assumed to be 25% of estimated damages. *Id.*

A month after Marriott removed, the district court sua sponte remanded the case to state court, finding Marriott's calculations of the amount-in-controversy "unpersuasive." 936 F.3d at 924. Faulting Marriott for failing to offer evidentiary support for its assumptions, the district court reasoned that "equally valid assumptions" could be made placing the amount-in-controversy below CAFA's $5 million threshold. *Id.* The district court similarly dismissed Marriott's inclusion of prospective attorneys' fees as "too speculative." *Id.*

The Court of Appeals granted Marriott's petition to appeal under 28 U.S.C. § 1453(c)(1) and reversed. First, the district court improperly had failed to give Marriott the opportunity to support the allegations in its notice of removal with evidence before remanding. 936 F.3d at 924-25. Under Supreme Court precedent, "a notice of removal 'need not contain evidentiary submissions.'" Id. at 925 (quoting *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81 (2014)). Only when "'the plaintiff contests, or the court questions, the defendant's allegation'" need evidence be submitted. *Id*. (quoting *Dart Cherokee*, 574 U.S. at 89). By remanding without allowing Marriott to submit evidence, the district court erred.

Second, the Ninth Circuit ruled Marriott properly may rely on "a chain of reasoning that includes assumptions" in establishing the amount in controversy. 936 F.3d at 925. Such assumptions "cannot be pulled from thin air but need some reasonable ground underlying them." *Id*. In the case before it, Marriott

had tied each of its assumptions to specific allegations as to the complaint, for example assuming six minutes of unpaid overtime per day based on the allegation in the complaint that Marriott "routinely" had failed to pay overtime. *Id*. at 926.

The Court of Appeals further rejected the district court's criticism of Marriott for failing to submit "evidence proving the assumptions correct." 926 F.3d at 927. Such a requirement essentially "would have imposed a requirement that Marriott prove it actually violated the law at the assumed rate." *Id*. Because a defendant need not "concede liability" in order to remove, the district court should have required only that Marriott show its estimated amount in controversy relied upon "reasonable assumptions." *Id*.

Third, the Ninth Circuit held attorneys' fees available under contract or statute properly should have been included when determining the amount in controversy. 936 F.3d at 927-28. But the Court of Appeals declined to endorse a per se rule holding fees could be estimated as 25% of the potential damages, instead remanding for a determination of appropriate estimated fees by the district court. *Id*. at 928.

At the end of the opinion, the *Arias* court summarily rejected the employee's argument that its purported stipulation the class's damages would be less than $5,000,000 barred removal under CAFA. 936 F.3d at 928-29. While individual plaintiffs may be "masters of their complaints" (including stipulating to damages "below the federal jurisdictional requirement"), the same is "not true for a putative class representative, who 'cannot yet bind the absent class.'" *Id*. at 929 (quoting *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 595-96 (2013)).

The *Arias* case provides an excellent roadmap for class defendants seeking to remove claims resting on generalized allegations as to the extent of the alleged wrongdoing. And it solidified key components of the amount-in-controversy calculus under CAFA. Finally, it reaffirmed that a defendant need not concede liability in order to remove. Each of these rulings provides critical certainty to a defendant seeking to invoke its federally-mandated right to remove significant class actions to federal court.