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Ninth Circuit Holds that Last-Known Addresses of Putative Class Members Are Insufficient To Satisfy CAFA Exceptions

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The Class Action Fairness Act ("CAFA") permits removal of many class actions from state to federal court, but includes a "local controversy" exception that forbids removal where two-thirds or more of the proposed class resides in the state where the action is brought. In disputes over efforts to use CAFA to remove class actions, the residence of the class members often is difficult to assess. Earlier this month, in *King v. Great American Chicken Corp., Inc., d/b/a Kentucky Fried Chicken*, No. 18-55911, the Ninth Circuit reversed the district court's order remanding a California wage-and-hour putative class action to state court, holding that the district court improperly relied on the last-known addresses of current and former employees to find that most of them were likely citizens of California and the United States. The Ninth Circuit's holding may prove very helpful to defendants removing class actions to federal court.

The Ninth Circuit's Decision

Plaintiff-Appellee Celena King filed a putative class action in California state court on behalf of approximately 6,000 current and former non-exempt employees of Defendant-Appellant Great American Chicken Corp., Inc. d/b/a Kentucky Fried Chicken ("GAC") who were employed in California. King alleged that GAC violated various provisions of California's wage-and-hour law. GAC removed the case to the United States District Court for the Central District of California pursuant to CAFA, which requires that the amount in controversy be greater than $5 million; that the putative class size be greater than 100 members; and that any member of the class of plaintiffs be a citizen of a state different from any defendant. There are several exceptions to CAFA that deprive a federal court of jurisdiction, including the local controversy exception, which requires that the party opposing removal prove, by a preponderance of the evidence, that *more than* two-thirds of the putative class are citizens of the state in which the action was originally filed and the home state exception, which requires that the party opposing removal prove that *at least* two-thirds of the putative class (and the primary defendants) are citizens of that state.

To avoid conducting jurisdictional discovery, the parties agreed to stipulate that at least 67% of the last known addresses of the putative class members were in California. The Ninth Circuit was skeptical of the stipulation because a figure of "at least 67%" would only produce a figure "greater than two-thirds" by an extremely narrow margin. In light of GAC's evidence that former employees had moved to other states, and because the last-known addresses were several years old, the Court determined that it was likely that other employees had done the same. The Ninth Circuit also held that it was "very likely that some putative class members were not United States citizens" and therefore were not citizens of California. The Court explained that it could not be assumed that all residents of California were citizens of the United States. Accordingly, the Court indicated that it would have to consider the proportion of California residents who are not U.S. citizens and extrapolate that to the putative class in determining whether the CAFA exceptions has been satisfied. The Court then ordered that King be permitted to conduct jurisdictional discovery if she wished to renew her motion to remand.

Implications

While federal courts have consistently placed the burden of establishing the CAFA exceptions on the party seeking to remand, the Ninth Circuit has taken this burden a step further. Now, if a party wants to successfully oppose a motion to remand based on the local controversy or home state exceptions, it will need to prove not only that more than or at least two-thirds of the putative class members are citizens of the state in question but also that they are citizens of the United States. A party's ability to satisfy this burden will likely depend on the class of workers involved, as well as on the state in question. In short, the Ninth Circuit's decision signals that plaintiffs who attempt to bring class actions on behalf of classes comprised of non-U.S. citizens and/or in states with a higher proportion of residents who are not U.S. citizens may have a more difficult time availing themselves of CAFA's local controversy and home state exceptions and may be required to proceed in federal court.

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