

Ninth Circuit

Plaintiffs Failed to Adequately Challenge Employer’s Plausible Showing that Amount in Controversy in Class Action Exceeded \$5 Million

Plaintiff is a truck driver employed by Quality Carriers. He filed a putative class action against Quality alleging that Quality failed to provide truck drivers with meal breaks, rest periods, overtime wages, minimum wages, and reimbursement for necessary expenditures as required by California law. In January 2020, Quality removed the action to the United States District Court for the Central District of California under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), asserting that the amount in controversy exceeded \$5 million. Plaintiff filed a motion to remand to state court on the grounds that Quality’s declaration in support of removal failed to provide supporting documentation and relied upon conclusory statements. Plaintiff argued that the “best evidence rule” applied which Quality failed to satisfy. The district court granted the motion finding that the declaration submitted by Quality failed to adequately show that the amount in controversy exceeded \$5 million. Quality appealed and the Ninth Circuit reversed.

The CAFA gives federal courts jurisdiction over specified class actions if the amount in controversy exceeds \$5 million. 28 U.S.C. § 1332(d). In order to remove a class action filed in state court to federal court, the defendant must file “a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal.” 28 U.S.C. § 1446(a). Where it is unclear or ambiguous from the face of

a state-court complaint whether the requisite amount in controversy is pled, the removing defendant bears the burden of establishing, by a preponderance of the evidence, that the amount in controversy exceeds the jurisdictional threshold.

The Ninth Circuit distinguished between a “facial” attack on jurisdictional allegations and a “factual attack.” “A facial attack accepts the truth of the [jurisdictional] allegations but asserts that they ‘are insufficient on their face to invoke federal jurisdiction.’ For a facial attack, the court, accepting the allegations as true and drawing all reasonable inferences in the Defendant’s favor, ‘determines whether the allegations are sufficient as a legal matter to invoke the court’s jurisdiction. A factual attack, by contrast, ‘contests the truth of the Defendant’s factual allegations, usually by introducing evidence outside the pleadings. When a factual attack is mounted, the responding party ‘must support her jurisdictional allegations with ‘competent proof’ . . . under the same evidentiary standard that governs in the summary judgment context.’” (citations omitted).

The Ninth Circuit concluded that Plaintiff failed to offer any argument or evidence to refute Quality’s declaration. Because he failed to challenge the plausible allegations of the Quality’s declaration, he mounted a facial attack rather than a factual attack. “Accordingly, because Quality only needed to ‘include a plausible allegation that the amount in controversy exceeds the jurisdictional threshold,’ the district court’s remand order is vacated and this matter is remanded to the district court.”

Salter v. Quality Carriers, Inc., 974 F.3d 959 (9th Cir. 9/8/2020). (O’Scannlain, Callahan, Watson (S.D. Ohio)

A Rule Prohibiting Arbitration of Class Actions Does Not Preclude Enforcement of Class Action Waiver in Employee’s Dispute Resolution Agreement

Plaintiff worked as a financial advisor. He brought a class action alleging he was denied deferred compensation. The employer moved to dismiss the class action claims and compel arbitration of the plaintiff’s individual claims. The employee argued that a Financial Industry Regulatory Authority (“FINRA”) rule prohibiting the arbitration of any claim certified as a class action prohibited the employer from compelling arbitration. The district court ruled that the FINRA rule prohibiting arbitration of class actions didn’t affect the class action waiver in the employee’s dispute resolution agreement. The Ninth Circuit agreed. The panel held that the employee’s reading of the rule would run afoul of U.S. Supreme Court precedent forbidding enforcement of neutral rules that interfere with arbitration.

Laver v. Credit Suisse Securities (USA) LLC, 976 F.3d 841(9th Cir. 9/18/2020) (Feinerman (N.D. Ill.), Gould, Murgia)

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