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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHAD RHOADES and LUIS URBINA,)	
)	
Plaintiffs,)	2:10-cv-00763-GEB-KJM
)	
v.)	<u>ORDER GRANTING MOTION TO</u>
)	<u>REMAND</u>
PROGRESSIVE CASUALTY INSURANCE CO.,)	
INC.,)	
)	
Defendant.)	
)	

Plaintiffs move to remand this case to Sacramento County Superior Court from which Defendant removed it. This case was removed under the Class Action Fairness Act of 2005 ("CAFA"). CAFA "vests district courts with 'original jurisdiction of any civil action in which, inter alia, the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs,' and in which the aggregate number of proposed plaintiffs is 100 or greater, and any member of the plaintiff class is a citizen of a state different from any defendant." Lowdermilk v. U.S. Bank Nat'l Ass'n, 479 F.3d 994, 997 (9th Cir. 2007) (quoting 28 U.S.C. § 1332(d)(2)).

Plaintiffs argue Defendant has not satisfied its burden of showing that the amount in controversy exceeds the sum of \$5,000,000. Defendant "bears the burden of establishing . . . jurisdiction" under

1 CAFA. Abrego Abrego v. The Dow Chem. Co., 443 F.3d 676, 686 (9th Cir.
2 2006).

3 Plaintiffs allege in their "class action complaint" that the
4 members of the putative class were "employed in the State of
5 California by the Defendant[] to adjust insurance claims and their
6 positions were known as 'Claims Adjuster,' 'Claims Generalist
7 Associate,' or similar titles" "during the past four (4) years."
8 (Compl. ¶ 6.)

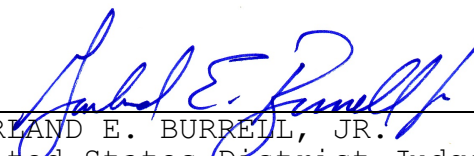
9 After removal, Plaintiffs filed their first amended
10 complaint in which they include the allegation: "Plaintiff is further
11 informed and believes, and based thereupon alleges, that because the
12 individual members of the classes herein have sustained damages under
13 the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold
14 and that the aggregate claim is under the five million dollar
15 (\$5,000,000.00) threshold, removal under the CAFA would
16 be improper." (First Amended Complaint ¶ 5.) Plaintiffs argue in
17 their remand motion that their first amended complaint should be
18 considered when determining whether the amount in controversy is
19 satisfied. However, Plaintiffs' "amended complaint . . . may not be
20 considered . . . in determining whether the suit was removable."
21 Thiel v. Southern Pac. Co., 126 F.2d 710, 712 (9th Cir. 1942).
22 Rather, "whether [this] suit was removable . . . must 'be determined
23 according to [Plaintiffs'] pleading at the time of the petition for
24 removal.'" Id. (quoting Pullman Co. v. Jenkins, 305 U.S. 534, 537
25 (1939) (emphasis added)).

26 Plaintiffs' original complaint does not specify the amount
27 of damages sought. "Where the complaint does not specify the amount
28 of damages sought, the removing defendant must prove by a

1 preponderance of the evidence that the amount in controversy
2 requirement has been met." Abrego Abrego, 443 F.3d at 683. "Under
3 this burden, the defendant must provide evidence that it is 'more
4 likely than not' that the amount in controversy" satisfies the
5 jurisdictional amount requirement. Sanchez v. Monumental Life Ins.
6 Co., 102 F.3d 398, 404 (9th Cir. 1996); see also Guglielmino v. McKee
7 Foods Corp., 506 F.3d 696, 699 (9th Cir. 2007) ("We have since applied
8 the preponderance holding in Sanchez to complaints filed under . . .
9 [CAFA] that do not specify a particular amount in controversy.").

10 Defendant's opposition to Plaintiffs' remand motion cites to
11 information in Plaintiffs' original complaint about Plaintiffs' claims
12 and concludes the information shows Plaintiffs seek \$2,215,476.00 for
13 waiting time claims, \$1,388,551.50 for inaccurate wage statements, and
14 \$707,889.00 for penalties, totaling \$4,311,916.50. (Opp'n 10:10-
15 11:3). Defendant also seeks to enlarge this amount by using the
16 allegation in Plaintiffs' first amended complaint that each class
17 member averaged two to five hours of overtime per week. However,
18 Plaintiffs' amended complaint may not be considered in determining
19 whether the case was removable. Since defendant has no other evidence
20 satisfying the jurisdictional amount requirement, Plaintiffs' remand
21 motion is granted. Therefore, this case is remanded to Sacramento
22 County Superior Court from which it was removed.

23 Dated: June 9, 2010

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25 
26 GARLAND E. BURRELL, JR.
27 United States District Judge
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