Case No. 09-14107-BB

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RENATO CAPPUCCITTI AND DAVID WARD,
ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Plaintiffs-Appellees,

v.

DIRECTV, INC.,

Defendant-Appellant.

On Appeal from the United States District Court
For The Northern District Of Georgia, Atlanta Division
District Court Case No. 1:09-cv-627-CAP
Hon. Charles A. Pannell, Jr., District Judge

PLAINTIFFS-APPELLEES' PETITION FOR REHEARING *EN BANC*

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

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b. David Ward, a resident of Houston County, Georgia.

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3. The statements contained in ¶¶ 1, 3, and 4 of DIRECTV, Inc.'s Certificate of Interested Persons and Corporate Disclosure Statement dated August 21, 2009 are adopted.

Dated: August 9, 2010

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BASIS FOR REHEARING *EN BANC*

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decision(s) of the Supreme Court of the United States or the precedents of this circuit and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this court: *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 163 (1997); *Pretka v. Kolter City Plaza II*, 608 F.3d 744, 772 (11th Cir. 2010); *Thomas v. Bank of America Corp.*, 570 F.3d 1280, 1283 (11th Cir. 2009); *Dial v. Healthspring of Ala., Inc.*, 541 F.3d 1044 (11th Cir. 2008); *West Coast Roofing & Waterproofing, Inc. v. Johns Manville, Inc.*, 287 Fed. Appx. 81 (11th Cir. 2008) (unpublished); *Miedema v. Maytag Corp.*, 450 F.3d 1322 (11th Cir. 2006); *Evans v. Walter Industries, Inc.*, 449 F.3d 1159 (11th Cir. 2006); *University of S. Ala. v. American Tobacco Co.*, 168 F.3d 405 (11th Cir. 1999).

The panel decision also conflicts with authoritative decisions of the following other circuits: *Bonime v. Avaya, Inc.*, 547 F.3d 497 (2d Cir. 2008); *DiCarlo v. St. Mary Hosp.*, 530 F.3d 255 (3d Cir. 2008); *Savedoff v. Access Group, Inc.*, 524 F.3d 754 (6th Cir. 2008); *Blockbuster, Inc. v. Galeno*, 472 F.3d 53 (2d Cir. 2006); and *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676 (9th Cir. 2006).

I further express a belief, based on a reasoned and studied professional judgment, that this appeal involves one or more questions of exceptional importance: (1) whether CAFA class action jurisdiction requires any assertion of an individual amount in controversy when bringing a case in federal court, and (2) whether CAFA allows different rules for jurisdiction over cases depending on whether the case was originally filed in federal court or removed to federal court from state court.

Dated: August 9, 2010

Carlos A. González
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I. STATEMENT OF ISSUES MERITING *EN BANC* CONSIDERATION

Plaintiffs respectfully request rehearing *en banc* of this Court's decision of July 19, 2010 (the "Opinion").[1] The Opinion held that in a CAFA[2] class action originally filed in federal court, at least one plaintiff must satisfy the individual $75,000 amount-in-controversy requirement of 28 U.S.C. § 1332(a), among other requirements, for a federal court to have subject matter jurisdiction under 28 U.S.C. § 1332(d)(2). *Id.* at *3. The Opinion incorrectly reasoned that "there is no evidence of congressional intent in § 1332(d) to obviate § 1332(a)'s $75,000 requirement as to at least one plaintiff." *Id.* at *4. It also erred in stating that "the $75,000 requirement expressly applies in actions removed under CAFA, 28 U.S.C. § 1332(d)(11)(B)(i)," citing language regarding CAFA mass action jurisdiction, despite the fact that that subsection (d)(11) does not apply here, because this case is a class action, not a mass action. *Id.*

Plaintiffs respectfully submit that the Opinion is erroneous in two respects. First, the Opinion misreads Section 1332(d), misapprehending Congress' intent in passing CAFA. The error appears to stem from a conflation of "class actions" and "mass actions," which are different procedural devices treated differently by CAFA and by the Federal Rules of Civil Procedure. Second, the Opinion

[1] Citations to the Opinion herein are to pages in 2010 WL 2803093. Plaintiffs respectfully request both rehearing *en banc* and rehearing before the original Panel.

[2] "CAFA" is the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4.

misconstrues the nature of removal jurisdiction, which is generally premised on federal courts' original jurisdiction. By suggesting that jurisdiction depends on whether a case is the product of removal or original filing, the Opinion introduces an asymmetry that contradicts a century of removal jurisprudence. In both respects, the Opinion conflicts with holdings of the United States Supreme Court, this Court, and other Circuits. The issuance of the Opinion three weeks ago has already led to an uproar among commentators in both the plaintiffs' and defense bars and confusion among district courts throughout the nation.

Rehearing *en banc* is appropriate because (A) the Opinion conflicts with this Court's other decisions, and consideration by the full Court is therefore necessary to secure and maintain uniformity of decisions, and (B) clarification of the bounds of CAFA diversity jurisdiction is of exceptional importance, because the Opinion conflicts with the settled law of other Circuits.[3] Fed. R. App. P. 35(b)(1).

II. PROCEDURAL BACKGROUND AND DISPOSITION OF THE CASE

In this action, Plaintiffs challenge DirecTV, Inc.'s ("DTV") practice of charging cancellation penalties without notice or permission. On March 6, 2009, Plaintiff Cappuccitti filed this case in the Northern District of Georgia,[4] asserting

[3] The conflicting law of other Circuits listed below at 7, 10 n. 11, & 11 n.12.

[4] Plaintiff pled jurisdiction under CAFA to comply with Congress' intent to shift adjudication of large interstate class cases like this one to federal court. Appellants' ER at 10.

consumer claims of approximately $175-480 per class member against DTV. Opinion at *4; Appellants' ER at 8-22. DTV moved to compel arbitration. The district court denied the motion, finding the arbitration clause unconscionable and unenforceable. *Id.* at 46-54. DTV timely appealed. The parties briefed the arbitration issues to this Court. At oral argument, the Court asked whether the district court had subject matter jurisdiction under CAFA, though the parties had not briefed or argued the question at any stage of the litigation. The parties agreed that jurisdiction was proper. The Court issued the Opinion on July 19, 2010.

Plaintiffs seek a rehearing *en banc* and an opportunity to brief the new question of jurisdiction.

III. ARGUMENT

A. CAFA's Text And History Establish That There Is No Individual $75,000 Amount-In-Controversy Requirement.

1. The Plain Text Of Section 1332 Extends Federal Jurisdiction To Class Actions Regardless Of Whether They Satisfy An Individual Amount In Controversy.

The only portion of Section 1332 applicable here – § 1332(d)(2)-(10) – exhaustively sets forth the requirements for federal jurisdiction in class actions like the one at bar. This portion of the statute is distinct from subsection (a) (the traditional basis for diversity jurisdiction, which preceded CAFA and continues to exist), and from subsection (d)(11) (the other new type of federal jurisdiction established by CAFA – mass action jurisdiction).

a. The Structure Of Section 1332 Reveals That Traditional Diversity Jurisdiction Is Different From CAFA Jurisdiction, And That There Are Two Types Of CAFA Jurisdiction.

The plain language of 28 U.S.C. § 1332, which sets forth the sole basis for diversity jurisdiction, confirms that there is no individual amount-in-controversy requirement for class actions that satisfy certain other basic requirements of CAFA. Significantly, the two types of diversity jurisdiction under Section 1332 are defined in two separate subsections: subsection (a) defines traditional diversity jurisdiction, and subsection (d) defines CAFA jurisdiction. Section 1332(a) sets forth what can be called "traditional diversity jurisdiction": district courts "have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000" and satisfies one of four enumerated diversity requirements. Section 1332(d), created by Congress' passage of CAFA in 2005, sets forth a new, additional basis for diversity jurisdiction ("CAFA jurisdiction").

CAFA jurisdiction exists in two discrete, non-overlapping varieties: one for class actions (in § 1332(d)(2)-(10)) and another for mass actions (in § 1332(d)(11)). Under § 1332(d)(2), "district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000" and satisfies one of three enumerated diversity requirements (hereinafter, "CAFA class action jurisdiction"). Subsections (2) through (10) set forth certain exceptions and clarifications to subsection (d)(2). Subsection (11)

sets forth the other type of CAFA jurisdiction, which is limited to mass actions ("CAFA mass action jurisdiction"). *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1202-03 (11th Cir. 2007); *see generally* Exhibit A (diagram of § 1332).

b. Four Aspects Of The Text And Structure Of Section 1332 Show That CAFA Class Action Jurisdiction Includes No Individual Amount In Controversy.

It is evident from four aspects of CAFA's revision to the structure and language of the diversity jurisdiction statute that CAFA class action jurisdiction includes no individual amount-in-controversy requirement. District courts therefore have CAFA class action jurisdiction over cases like this one, regardless of whether they are filed originally in federal court or removed from state court.

First, subsection (d)(2) plainly enumerates sufficient conditions for "original [federal] jurisdiction": (a) the aggregate $5,000,000 amount in controversy, (b) class action status (as defined in subsequent subsections), and (c) diversity (as defined in the subsection). It lists no individual amount in controversy.

Second, the statutory language creating CAFA jurisdiction (subsection (d)(2)) is identical to the statutory language creating traditional diversity jurisdiction (subsection (a)), except that it substitutes the aggregate "$5,000,000" for the individual "$75,000" and makes two other changes not relevant here. In short, Congress chose to replace the $75,000 individual amount-in-controversy requirement with an aggregate $5,000,000 one.

Third, the statute eschews an individual approach to the amount in controversy in favor of an explicit aggregate approach: subsection (d)(6) explains that "the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000." The subsection does not mention any individual amount-in-controversy requirement.

Fourth, subsection (d)(11), which defines CAFA mass action jurisdiction (and which does *not* apply to class actions), is the only place in the CAFA portion of the statute where an individual amount in controversy is mentioned. 28 U.S.C. § 1332(d)(11) (limiting federal jurisdiction in mass actions (as distinct from class actions) to "only . . . those plaintiffs whose claims . . . satisfy the [$75,000] jurisdictional amount requirements under subsection (a)"). Congress' decision to include the individual $75,000 threshold for mass actions highlights the fact that it could have done so – but chose not to – for *class actions*.

c. <u>The Opinion Incorrectly Conflates Class Actions With Mass Actions.</u>

Class actions and mass actions are different in many respects, including for purposes of the amount-in-controversy analysis. CAFA recognizes this by addressing them separately – class actions in subsections (d)(2)-(10) and mass actions in (d)(11). They are governed by different requirements. Class actions must comply with Fed. R. Civ. P. 23 or a similar rule. 28 U.S.C. § 1332(d)(1)(B). By contrast, mass actions need not; they are not representative suits, because each

plaintiff is named. S. Rep. No. 109-14, at 46 (2005) ("[M]ass actions [are] suits . . . brought on behalf of numerous named plaintiffs. . . .").

"An important difference between class actions and mass actions under CAFA is the applicable amount in controversy. A class action is removable only if the aggregated claims of the class exceed $5,000,000. With respect to mass actions, each plaintiff's claims must exceed $75,000." 16 James Wm. Moore *et al.*, *Moore's Fed. Prac.*, § 107.15[13][b][iv][A] at 107-152.12 (Matthew Bender 3d ed.) ("*Moore's*").[5] For example, in *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676 (9th Cir. 2006), the Ninth Circuit analyzed a mass action under subsection (d)(11), including the $75,000 and $5,000,000 requirements, and distinguished class actions from mass actions. *Id.* at 686-90.

The Opinion errs by conflating the two types of actions.[6] The Opinion states that "the $75,000 requirement expressly applies in actions removed under CAFA," citing subsection (d)(11)(B)(i)'s *mass action* standard. Opinion at *4. That section has no bearing on *class actions*. The Opinion misperceives Congress' distinction

[5] *Compare* 7A Wright, Miller & Kane, *Fed. Prac. & Proc.* § 1756.2 at 103 ("*FPP*") *with* 7 *FPP* § 1659 at 66 (2010 Supp.) (discussing class action and mass action jurisdiction under CAFA in different volumes).

[6] Paragraph (11)(A)'s directive that "a mass action shall be deemed to be a class action removable . . ." confirms this distinction: mass actions, though not the same as class actions, are *treated* as class actions for jurisdictional purposes if they satisfy certain additional prerequisites (listed in ¶ 11). That treatment does not affect the prerequisites for jurisdiction over actual class actions (listed in ¶¶ 2-10).

between class actions and mass actions as a distinction between removal jurisdiction and original jurisdiction. *See* Section III.B., below.

2. The Opinion's Creation Of A $75,000 Requirement Defies Congress' Intent And Conflicts With The Well-Established Law Of This And Other Circuits.

This Court has recognized that CAFA shifted large interstate class actions typically aggregating small damages claims from state courts to federal courts by broadening federal jurisdiction. "Congress contemplated broad federal court jurisdiction, *see e.g.*, Pub.L. No. 109-2, § 2(b)(2), 119 Stat. 4 ('providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction'), with only narrow exceptions. These notions are fully confirmed in the legislative history." *Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1164 (11th Cir. 2006); 7A *FPP* § 1756.2 at 105; 15 *Moore's* § 102.26[1][a][i] at 102-66.4 (observing that CAFA "raise[s] the amount in controversy" and "requires . . . aggregat[ion]," which "greatly increases the possibility that a federal court will have subject matter jurisdiction over large class actions involving a number of small monetary claims").[7]

Congress accomplished this jurisdictional expansion in part by replacing the traditional $75,000 individual requirement with a $5,000,000 aggregate damages

[7] Of course, if Congress had simply added the $5,000,000 requirement while maintaining the individual $75,000 requirement, as the Opinion holds, the possibility of a federal court having jurisdiction would be *decreased*, not increased.

threshold for class actions. 7A *FPP* § 1756.2 at 103-04; 15 *Moore's* § 102.26[1][c][ii] at 102-66.11 to 102-66.12 (CAFA's "aggregation requirement" is "a major departure from" the old regime, in which at least one class member had to meet the $75,000 threshold). Congress intended CAFA to federalize class actions asserting many *small-value* (well under $75,000 per person) claims.[8] S. Rep. No. 109-14, at 10 ("[R]equiring each plaintiff to reach the $75,000 mark makes little sense in the class action context."); *id.* at 33 (noting that CAFA is intended to cover class actions where each plaintiff "only [has] a small financial stake in the litigation"). Congress criticized as "nonsensical" the pre-CAFA regime that would allow a multi-billion-dollar class action with average damages of $600 per individual to "be heard in state court (because each individual class member's claim is for less than $75,000)." *Id.* at 11; *see also id.* at 69-70 (CAFA simplifies calculations by focusing on aggregate, not individual, damages).

This Court has repeatedly held that CAFA includes no $75,000 individual threshold. In *West Coast Roofing & Waterproofing, Inc. v. Johns Manville, Inc.*, 287 Fed. Appx. 81 (11th Cir. 2008) (unpublished),[9] this Court held that "28 U.S.C. § 1332(d) . . . confers diversity jurisdiction in a class action when a member of the

[8] This legislative preference belies the Opinion's concern about federal courts becoming "small claims courts." *Id.* at *3. In the sense feared by the Opinion, they already have. For better or worse, that was Congress' expressed intent.

[9] That decision is persuasive but not binding. 11th Cir. L.R. 36-2.

class has citizenship diverse from that of defendant and the amount in controversy exceeds $5,000,000" in a case filed originally in federal court. *Id.* at 91. Likewise, in *Miedema v. Maytag Corp.*, 450 F.3d 1322 (11th Cir. 2006), this Court carefully assessed whether class claims worth at most an average of $881.55 each, and $5,931,971 in aggregate, satisfied CAFA's amount-in-controversy requirement. *Id.* at 1324-26. Although those claims, individually, plainly fell well below $75,000, and the Court could easily have disposed of the matter on that basis (were that the correct standard), the Court spent pages addressing whether the claims met the $5,000,000 requirement. *Id.* at 1330-32; *see also Pretka v. Kolter City Plaza II*, 608 F.3d 744, 772 (11th Cir. 2010); *Thomas v. Bank of America Corp.*, 570 F.3d 1280, 1283 (11th Cir. 2009);[10] *Evans v. Walter Industries, Inc.*, 449 F.3d 1159, 1163-65 (11th Cir. 2006) (all using $5,000,000 – not $75,000 – requirement).

At least three other Circuits have held the same in non-removal cases.[11] All addressed the $5,000,000 aggregate threshold; none mentioned a $75,000

[10] Although the Court incorrectly stated that the defendant invoked "mass action" jurisdiction, its removal notice and appellate briefing asserted *class action* jurisdiction, citing subsection (d)(2) and not mentioning mass actions or (d)(11). *Thomas*, 570 F.3d at 1282 (*per curiam*) (citing *Lowery* (a mass action case)).

[11] *See Bonime v. Avaya, Inc.*, 547 F.3d 497, 499-500 (2d Cir. 2008); *DiCarlo v. St. Mary Hosp.*, 530 F.3d 255, 261 (3d Cir. 2008); *Savedoff v. Access Group, Inc.*, 524 F.3d 754, 760 n.5 (6th Cir. 2008).

individual threshold. Other cases hold the same in the removal context.[12]

B. Removal Jurisdiction Is Not Distinct From Original Jurisdiction.

The Opinion relies on a false distinction between removal jurisdiction and original jurisdiction. The Opinion reasons that "we face a situation different from that in the cases cited above . . ., because Cappuccitti initiated this case in federal court; it was not removed from state court."[13] *Id.* at *2. This distinction contradicts a century of caselaw linking removability to original jurisdiction.

It is well established that "[t]he propriety of removal . . . depends on whether the case originally could have been filed in federal court." *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 163 (1997); *Dial v. Healthspring of Ala., Inc.*, 541 F.3d 1044 (11th Cir. 2008) (holding that cases may be removed only when district courts have original jurisdiction over them); *University of S. Ala. v.*

[12] *See, e.g.*, *Blockbuster, Inc. v. Galeno*, 472 F.3d 53, 57-58 (2d Cir. 2006) ("Unlike the general diversity statute which requires at least one claim to meet the amount-in-controversy minimum of $75,000, CAFA explicitly provides for aggregation of each class member's claims in determining whether the amount of controversy is at least $5,000,000.") (citations omitted).

[13] The Opinion hypothesized that CAFA class actions filed, like this one, originally in federal court (as opposed to reaching federal court through removal) "are relatively rare." Opinion at *2. In fact, the data refute this statement. "[P]laintiffs' attorneys in a large number of cases were choosing, post-CAFA, to file class actions raising state-law causes of action in the federal courts, a marked departure from the pre-CAFA period." Emery G. Lee III & Thomas E. Willging, *The Impact of the Class Action Fairness Act on the Federal Courts: An Empirical Analysis of Filings and Removals*, 156 U. Pa. L. Rev. 1723, 1753 (2007-08); *see also id.* at 1752 (observing that post-CAFA, original filings of diversity class actions increased by 192%, while removals increased by 43%).

American Tobacco Co., 168 F.3d 405, 410 (11th Cir. 1999) ("[O]ur removal jurisdiction is no exception to a federal court's obligation to inquire into its own jurisdiction. . . . If there is jurisdiction, then removal is appropriate and the court may proceed to the merits of the case.").

> [R]emoval is not a kind of jurisdiction—analogous to federal question jurisdiction and diversity of citizenship jurisdiction. Rather, it is a means of bringing cases within federal courts' original jurisdiction into those courts, as is commencement of a suit in federal court. . . . In general, and of cardinal importance, an action is removable only if it originally might have been brought in a federal court. This requirement that all of the conditions for original jurisdiction must be satisfied has been enforced in innumerable cases, decided by courts at all levels of the federal judiciary. . . . [T]he principles governing . . . the jurisdictional amount-in-controversy requirement[] therefore apply to cases seeking entry into the federal court system by removal.

14B *FPP* § 3721 at 27, 7, & 16; 16 *Moore's* § 107.04 at 107-25 ("[R]emoval is keyed to original jurisdiction over cases filed in federal court . . .[;] removal jurisdiction requires that the case originally could have been filed in federal court.").[14]

The authors of CAFA acknowledged this tradition, explicitly equating removal and original jurisdiction. S. Rep. No. 109-14, at 9 ("The general removal statute, 28 U.S.C. § 1441(a), provides that any civil action brought in a state court may be removed . . . to federal court if the claim could have originally been brought in federal court. In other words, so long as a federal district court could

[14] There are some exceptions, but CAFA is not one. 17A *Moore's* § 120.12[3][a] at 120-34; 14B *FPP* § 3721 at 19-20.

exercise original jurisdiction over a claim, a defendant may remove the case to federal court."). Congress provided that "[t]he general removal provisions currently contained in Chapter 89 of Title 28 would continue to apply to class actions, except where they are inconsistent with the provisions of the Act." *Id.* at 48. Commentators agree. *See, e.g.*, 14C *FPP* § 3725 at 1-2.[15]

In short, nothing in CAFA implies that Congress intended to disturb the coextensive nature of removal jurisdiction and original jurisdiction. The Opinion's suggestion to the contrary misapprehends the nature of "removal jurisdiction."

C. A New Rule Denying Federal Jurisdiction For Class Actions Such As These Would Result In Confusion And Inefficiency.

By conflicting with other opinions of this Circuit and introducing a novel, unsupported asymmetry between removed cases and originally filed ones, the Opinion is leading to confusion and unnecessary work for lower courts.[16]

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[15] This Court "presume[s] that Congress legislates against the backdrop of established principles of state and federal common law, and that when it wishes to deviate from deeply rooted principles, it will say so." *Miedema*, 450 F.3d at 1329 (internal quotations and citations omitted). Since Congress did not state an intention to alter the linkage between removal and original jurisdiction when passing CAFA, that linkage remains in effect.

[16] It has already generated significant speculation among practitioners and commentators. *See, e.g.*, http://tinyurl.com/cafa001 (arguing that the Opinion conflicts with *Pretka* and other Eleventh Circuit cases and is therefore not binding, and "there is a significant chance that the full Eleventh Circuit or the Supreme Court will clean up the decision"); http://tinyurl.com/cafa002 ("[B]ecause this new threshold in *Cappuccitti* could rarely be met, . . . CAFA cases as we now know them might all but cease to exist."); http://tinyurl.com/cafa003 ("The court's

To the extent that the Opinion is limited to originally filed cases (and not removed ones), it leads to a highly counterintuitive and inefficient result: plaintiffs who have attempted to comply with Congress' mandate by filing directly in federal court must see their cases dismissed, only to refile and be removed back to federal court (likely before the same judge). Surely Congress did not intend to create such a Rube Goldberg dismiss-refile-remove mechanism.

In addition, such a rule would be unfair to plaintiffs. Normally, plaintiffs, as masters of the complaint, can choose to file in state or federal court. Under CAFA, this remains true, though defendants are given the removal option. But the Opinion strips plaintiffs' choice, forcing them to state court, while preserving defendants' choice. There is no evidence that Congress intended to create that imbalance. To the contrary, CAFA's standard rationales make no distinction based on whether plaintiffs or defendants invoke its jurisdiction.[17]

A separate danger is that district courts may interpret the Opinion's logic

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holding is very hard to square with CAFA's text and purpose."); http://tinyurl.com/cafa004 ("[F]or now, the Eleventh Circuit effectively is a de-CAFA-nated circuit.") (all websites last visited August 4, 2010).

[17] "In fact, Section 2(b) of CAFA describes its purposes as follows: (1) '[to] assure fair and prompt recoveries for class members with legitimate claims; (2) [to] restore the intent of the framers of the United States Constitution by providing for . . . interstate cases of national importance under diversity jurisdiction; and (3) [to] benefit society by encouraging innovation and lowering consumer prices.'" *Miedema*, 450 F.3d at 1330, n.6. None of those express purposes squares with or is served by removal-only access to federal court.

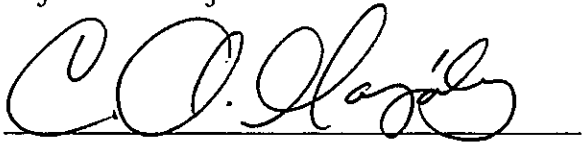
and its dicta that "the $75,000 requirement expressly applies in actions removed under CAFA" to require remand of removed cases. Opinion at *4 (citing 28 U.S.C. § 1332(d)(11)(B)(i)). Although that statement is silent as to whether it addresses class actions or mass actions, lower courts may interpret it to address class actions, since *Cappuccitti* is a class action and the paragraph discusses class actions (although the cited portion of CAFA addresses mass actions only). Such an interpretation would eviscerate CAFA by reestablishing the $75,000 requirement CAFA sought to override.

In short, the opinion undoes Congress' effort to move large interstate class actions addressing small-value claims to federal court, based on a misunderstanding of the distinction between class actions and mass actions and an erroneous decoupling of removal and original jurisdiction.

IV. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court rehear the case *en banc* after allowing the parties an opportunity to brief the question of whether the district court had subject matter jurisdiction under CAFA.

Dated: August 9, 2010



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CERTIFICATE OF SERVICE VIA U.S. MAIL

I hereby certify that a true and accurate copy of the foregoing PLAINTIFFS-APPELLEES' PETITION FOR REHEARING *EN BANC* has been furnished by First Class U.S. Mail, this 9th day of August 2010, to the following counsel of record:

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Exhibit A

Diagram Of The Types Of Diversity Jurisdiction
28 U.S.C. § 1332

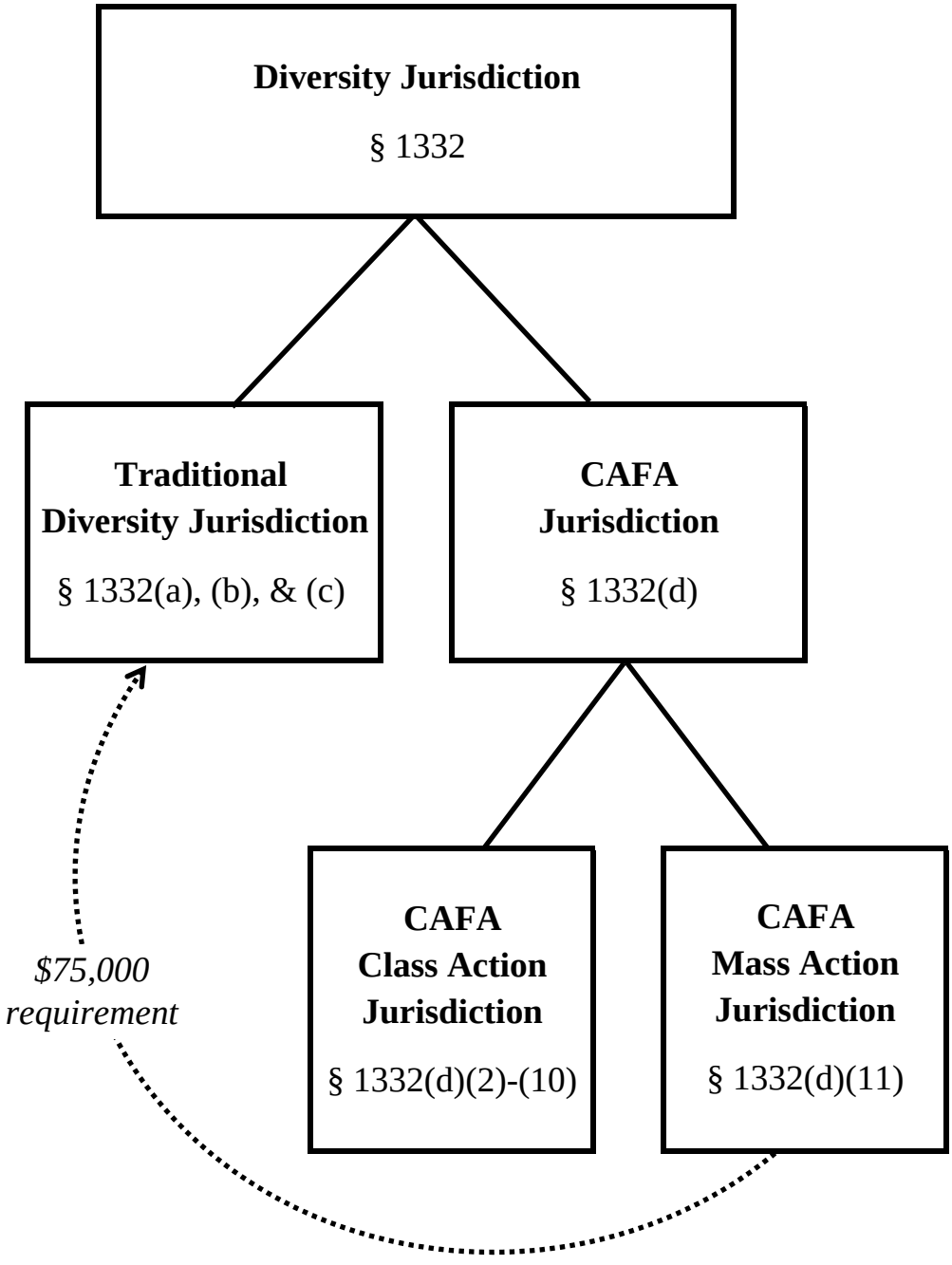

EXHIBIT B

--- F.3d ----, 2010 WL 2803093 (C.A.11 (Ga.))
(Cite as: 2010 WL 2803093 (C.A.11 (Ga.)))

Only the Westlaw citation is currently available.

United States Court of Appeals,
Eleventh Circuit.
Renato CAPPUCCITTI, on behalf of himself and all others similarly situated, Plaintiff-Appellee,
v.
DIRECTV, INC., a California Corporation, Defendant-Appellant.
No. 09-14107.

July 19, 2010.

Background: Subscribers brought action under the Class Action Fairness Act (CAFA) against cable television provider, seeking damages and declaratory and injunctive relief, and alleging that provider improperly charged its subscribers for canceling their subscriptions prior to subscriptions' expiration. The United States District Court for the Northern District of Georgia, Charles A. Pannell, Jr., J., Doc. No. 09-00627-CV-CAP-1, denied provider's motion to compel arbitration, and dismissed subscribers' claims for damages. Provider appealed denial of its motion to compel arbitration.

Holding: The Court of Appeals, Tjoflat, Circuit Judge, held that as matter of apparent first impression, District Court lacked jurisdiction over original CAFA action since subscribers failed to allege individual amount in controversy over $75,000 for at least one class member.

Vacated and remanded with instruction.

West Headnotes

[1] Alternative Dispute Resolution 25T 213(5)

25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk204 Remedies and Proceedings for Enforcement in General
25Tk213 Review
25Tk213(5) k. Scope and Standards of Review. Most Cited Cases
The Court of Appeals reviews de novo a district court's denial of a motion to compel arbitration.

[2] Federal Courts 170B 288

170B Federal Courts
170BIV Citizenship, Residence or Character of Parties, Jurisdiction Dependent on
170BIV(B) Controversies Between Citizens of Different States
170Bk286 Coplaintiffs and Codefendants
170Bk288 k. Class and Derivative Actions; Interpleader. Most Cited Cases

Federal Courts 170B 346

170B Federal Courts
170BV Amount or Value in Controversy Affecting Jurisdiction
170Bk344 Aggregation or Joinder of Claims or Demands
170Bk346 k. Representative or Class Actions. Most Cited Cases
The Class Action Fairness Act (CAFA) provides federal courts with original jurisdiction over class actions in which the amount in controversy exceeds $5,000,000 and there is minimal diversity, i.e., at least one plaintiff and one defendant are from different states. 28 U.S.C.A. § 1332(d).

[3] Removal of Cases 334 2

334 Removal of Cases
334I Power to Remove and Right of Removal in General
334k2 k. Constitutional and Statutory Provisions. Most Cited Cases
The Class Action Fairness Act (CAFA) simplifies the removal of state court class actions to federal court by establishing only minimal requirements for removal while preserving the traditional rule that the party seeking to remove the case to federal court bears the burden of establishing federal jurisdiction. 28 U.S.C.A. § 1332(d)(11).

[4] Federal Courts 170B 356

170B Federal Courts
170BV Amount or Value in Controversy Affecting Jurisdiction
170Bk355 Sufficiency of Allegations
170Bk356 k. Particular Cases. Most Cited Cases
In a Class Action Fairness Act (CAFA) action originally filed in federal court, at least one of the plaintiffs must allege an amount in controversy that satisfies the current congressional requirement for diversity jurisdiction. 28 U.S.C.A. §§ 1332(a), 1332(d)(2).

[5] Federal Courts 170B 5

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk3 Jurisdiction in General; Nature and Source
170Bk5 k. Limited Jurisdiction; Dependent on Constitution or Statutes. Most Cited Cases
Federal courts are tribunals of limited jurisdiction whose power to hear cases must be authorized by the Constitution and by Congress.

[6] Federal Courts 170B 313

170B Federal Courts
170BIV Citizenship, Residence or Character of Parties, Jurisdiction Dependent on
170BIV(C) Pleading
170Bk312 Sufficiency of Allegations
170Bk313 k. Particular Cases. Most Cited Cases
Although named plaintiff did not specifically allege that class of cable television subscribers consisted of more than 100 plaintiffs, as required to bring action in federal court under Class Action Fairness Act (CAFA), such was the necessary implication from range of individual damages he alleged, $175 to $480 in early cancellation fees per plaintiff, and alleged amount in controversy of $5,000,000. 28 U.S.C.A. § 1332(d)(2).

[7] Federal Courts 170B 356

170B Federal Courts
170BV Amount or Value in Controversy Affecting Jurisdiction
170Bk355 Sufficiency of Allegations
170Bk356 k. Particular Cases. Most Cited Cases
District court lacked jurisdiction over Class Action Fairness Act (CAFA) action brought by cable television subscribers as original action in federal court, where subscribers failed to allege an individual amount in controversy over $75,000 for at least one class member, and instead alleged that maximum penalty suffered by any individual plaintiff for early cancellation of subscription was $480. 28 U.S.C.A. § 1332(a), (d)(2).
Matthew Dexter, Richardson, Alston & Bird, Atlnata, GA, Melissa D. Ingalls, Robyn E. Bladow, Kirkland & Ellis, LLP, Los Angeles, CA, for Defendant-Appellant.

Carlos A. Gonzalez, Vaughan & Evans, LLC, Cartersville, GA, Deanna D. Dailey, Sprenger & Lang, PLLC, Charles Stein Siegel, Waters and Kraus, LLP, Dallas, TX, Kristen E. Law, Lieff Cabraser Heimann Bernstein, San Francisco, CA, for Plaintiff-Appellee.

Appeal from the United States District Court for the Northern District of Georgia.

Before TJOFLAT, WILSON and EBEL,[FN*] Circuit Judges.

TJOFLAT, Circuit Judge:

I.

***1** This is a class action brought under the provisions of the Class Action Fairness Act of 2005 ("CAFA"), Pub.L. No. 109-2, 119 Stat. 4 (codified in scattered sections of 28 U.S.C.).[FN1] Renato Cappuccitti and David Ward (together "Cappuccitti"), citizens of Georgia, have sued DirecTV, Inc., a California corporation ("DirecTV"), seeking the recovery, on behalf of themselves and similarly situated DirecTV subscribers in Georgia, of the fees DirecTV charged its subscribers for cancelling their subscriptions prior to the subscriptions' expiration. The fees ranged from $175 to $480. Cappuccitti asserts that the fees are proscribed by Georgia common law and seeks damages for himself and the class in excess of $5,000,000.[FN2]

The subscriber agreements between Cappuccitti and the members of his class and DirecTV contain arbitration and class action waiver provisions. In responding to Cappuccitti's complaint, DirecTV moved the district court to compel Cappuccitti to submit to arbitration and, alternatively, to dismiss his claims for damages under Federal Rule of Civil Procedure 12(b)(6). The court denied the motion to compel arbitration,[FN3] but granted the motion to dismiss Cappuccitti's claims for damages for failure to state a claim.[FN4] DirecTV now appeals the district court's denial of its motion to compel arbitration. [FN5] We hold that the district court lacked jurisdiction to entertain the complaint, vacate its order, and remand with instructions to dismiss the case.

II.

[1] We review *de novo* a district court's denial of a motion to compel arbitration. *Becker v. Davis*, 491 F.3d 1292, 1297 (11th Cir.2007). We begin, as we always must, by considering whether the district court possessed subject matter jurisdiction over the action. *See, e.g.*, *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93-95, 118 S.Ct. 1003, 1012-13, 140 L.Ed.2d 210 (1998) (explaining "[t]he requirement that jurisdiction be established as a threshold matter"). In doing so, we conclude that subject matter jurisdiction under CAFA was absent from the moment Cappuccitti brought this case.

III.

Congress enacted CAFA in 2005 with an eye toward curbing "abuses of the class action device that have (A) harmed class members with legitimate claims and defendants that have acted responsibly; (B) adversely affected interstate commerce; and (C) undermined public respect for our judicial system." Pub.L. No. 109-2, § 2(a)(2), 119 Stat. 4, 4 (2005). In particular, Congress perceived that state courts were overly friendly toward class certification, provided insufficient notice to class members, and favored some plaintiffs over others in making class awards. *Id.*, 119 Stat. at 4-5. To remedy these abuses, Congress amended existing sections of the portion of the United States Code governing federal court jurisdiction to situate more class actions in federal court *ab initio* and to make it easier for defendants in a state court class action to remove the action to federal court. *See id.* § 2(b)(2), 119 Stat. at 5 (stating that CAFA's purposes include "providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction").

[2][3] CAFA effectuated Congress's goals largely by adding a new subsection to the diversity jurisdiction statute: 28 U.S.C. § 1332(d). [FN6] This subsection provides federal courts with original jurisdiction "over class actions in which the amount in controversy exceeds $5,000,000 and there is minimal diversity (at least one plaintiff and one defendant are from different states)." *Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1163 (11th Cir.2006). The subsection defines a "class action" as "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). The new subsection also simplifies the removal of state court class actions to federal court by establishing only minimal requirements for removal, 28 U.S.C. § 1332(d)(11), while preserving "the traditional rule that the party seeking to remove the case to federal court bears the burden of establishing federal jurisdiction." *Evans*, 449 F.3d at 1164; *see also Miedema v. Maytag Corp.*, 450 F.3d 1322, 1329 (11th Cir.2006) ("[T]he text of CAFA plainly expands federal jurisdiction over class actions and facilitates their removal.").

***2** This court has extensively interpreted CAFA's jurisdictional requirements in the removal context. *Lowery v. Ala. Power Co.*, 483 F.3d 1184 (11th Cir.2007). In *Lowery*, nine named Alabama plaintiffs brought an action in state court, on behalf of a class, against a group of corporations and fictitious entities, alleging that the defendants had polluted the air and ground water. The defendants removed the case under the "mass action" provision of CAFA, 28 U.S.C. § 1332(d)(11), asserting that § 1332(d)(11)'s jurisdictional requirements had been met. *Id.* at 1187-88. The plaintiffs moved to remand the case to state court, arguing that the defendants had not met their burden of establishing federal jurisdiction by providing evidence of the specific amount of damages the plaintiffs claimed. *Id.* at 1189. The district court ordered the case remanded, agreeing with the plaintiffs that the removing defendants bore the burden of establishing the jurisdictional amount by a preponderance of the evidence, and that the defendants did not prove that the jurisdictional mounts had been satisfied. *Id.*

at 1192.

Reviewing the district court's decision required this court to wade through the "opaque, baroque maze of interlocking cross-references" in CAFA. *Id.* at 1198. That examination concluded that "mass actions" removable under CAFA are class actions that meet the requirements of § 1332(d)(2) through (10), the provisions of which "cover a variety of terrain": authorizing district courts to decline jurisdiction over cases with primarily intrastate impact, excepting states and state officials from jurisdiction, and providing guidance on how to treat citizenship for CAFA's purposes. *Id.* at 1199-1200. Mass actions also include several requirements applicable to class actions invoking CAFA jurisdiction, such as a $5,000,000 aggregate amount in controversy, 28 U.S.C. § 1332(d)(2), (6), and minimal diversity, *id.* § 1332(d)(2). *Lowery*, 483 F.3d at 1201. *Lowery* also concluded that a mass action requires 100 or more plaintiffs, common questions of law or fact, and that it cannot be a class action certified under Federal Rule of Civil Procedure 23. *Id.* at 1202-03.[FN7]

In this case, we face a situation different from that in the cases cited above- *Lowery*, *Miedema*, and *Evans*- as well as from the mine run of CAFA cases heard in federal court, because Cappuccitti initiated this case in federal court; it was not removed from state court. Such cases are relatively rare, which is not surprising given Congress's goals in enacting CAFA-to place more class actions in federal court by lifting barriers to their removal (which would result in most published CAFA cases being heard in a removal posture). We therefore now consider what jurisdictional requirements CAFA imposes on a putative class action originally filed in federal court (an "original CAFA action").[FN8]

***3** Two jurisdictional requirements for original CAFA actions are clear from the face of CAFA, which provides that

> [t]he district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which-
>
> (A) any member of a class of plaintiffs is a citizen of a State different from any defendant;
>
> (B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or
>
> (C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

28 U.S.C. § 1332(d)(2). Thus, § 1332(d)(2) provides two of the requirements for original CAFA jurisdiction: an amount in controversy over $5,000,000 (obtained by aggregating the claims of the individual class members, *id.* § 1332(d)(6)), and minimal diversity. In addition, the preceding subsection adds a third requirement, which differs from the removable mass action requirement: the class action must have been filed under Federal Rule of Civil Procedure 23.[FN9] *Id.* § 1332(d)(1)(B). Fourth and finally, since "[p]aragraphs (2) through (4) shall not apply to any class action in which ... the number of members of all proposed plaintiff classes in the aggregate is less than 100," *id.* § 1332(d)(5), a plaintiff bringing an action under CAFA must allege that there are 100 or more plaintiffs within the proposed class(es).

Thus, many of the requirements for an original CAFA action resemble those for a mass action removable under CAFA. But what of the individual class members in an original CAFA action-does at least one of them have to meet a minimum amount in controversy to maintain the action? CAFA did not alter the general diversity statute's requirement that the district court have original jurisdiction "of all civil actions where the matter in controversy exceeds the sum or value of $75,000" and is between citizens of different States. *Id.* § 1332(a). No court of appeals case of which we are aware has expressly held that at least one plaintiff must meet the § 1332(a) amount in controversy requirement to maintain an original CAFA action, and *Lowery* expressly reserved the question.[FN10] 483 F.3d at 1206 ("[W]e need not decide today whether the $75,000 provision might yet create an additional threshold requirement that the party bearing the burden of establishing the court's jurisdiction must establish at the outset, i.e., that the claims of at least one of the plaintiffs exceed $75,000."). We address this question now.

[4][5] We hold that in a CAFA action originally filed in federal court, at least one of the plaintiffs must

allege an amount in controversy that satisfies the current congressional requirement for diversity jurisdiction provided in 28 U.S.C. § 1332(a). Such a conclusion is compelled by the language of § 1332 as well as the general principle that federal courts are tribunals of limited jurisdiction whose power to hear cases must be authorized by the Constitution and by Congress. *See, e.g., Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 1675, 128 L.Ed.2d 391 (1994). If we held that § 1332(a)'s $75,000 requirement for an individual defendant did not apply to § 1332(d)(2) cases, we would be expanding federal court jurisdiction beyond Congress's authorization. We would essentially transform federal courts hearing originally-filed CAFA cases into small claims courts, where plaintiffs could bring five-dollar claims by alleging gargantuan class sizes to meet the $5,000,000 aggregate amount requirement. While Congress intended to expand federal jurisdiction over class actions when it enacted CAFA, surely this could not have been the result it intended.

***4** Nor does it require analytical acrobatics to apply § 1332(a)'s jurisdictional requirement in the CAFA class action context. While § 1332(d) may have altered § 1332(a) to require only minimal diversity in CAFA actions, *Lowery*, 483 F.3d at 1193 n. 24, there is no evidence of congressional intent in § 1332(d) to obviate § 1332(a)'s $75,000 requirement as to at least one plaintiff.[FN11] Moreover, the $75,000 requirement expressly applies in actions removed under CAFA, 28 U.S.C. § 1332(d)(11)(B)(i),[FN12] and we can think of no reason why Congress would have intended the requirement in the context of CAFA removal jurisdiction but not CAFA original jurisdiction. Holding otherwise would cause a nonsensical result: a case in which a plaintiff claimed less than $75,000 in controversy in state court could not enter federal court by removal (defeating Congress's purposes in enacting CAFA), but could, if the plaintiff chose, be brought in federal court under CAFA original jurisdiction (assuming the case met all of CAFA's other requirements). Again, we highly doubt that Congress intended this result.

[6] In this case, Cappuccitti has alleged that the matter in controversy exceeds $5,000,000, that it is a Rule 23 class action, and that more than two-thirds of the members of the proposed class are citizens of a state different from DirecTV. There is no dispute over diversity, be it minimal or complete, as DirecTV is incorporated and its principal place of business is in California, and Cappuccitti is a Georgia resident asserting claims on behalf of a putative class of other Georgia residents. Though Cappuccitti does not specifically allege that the class consists of more than 100 plaintiffs, such is the necessary implication from the range of individual damages he alleges-$175 to $480 in early cancellation fees per plaintiff. If Cappuccitti is correct about his $5,000,000 aggregate amount in controversy allegation, there must be between 10,417 and 28,572 plaintiffs in the class.[FN13] Thus, Cappuccitti's claim satisfies most of the requirements for bringing an action under CAFA's provisions in federal court.

[7] Where Cappuccitti's claim falls short, however, is the requirement that at least one plaintiff allege an individual amount in controversy over $75,000. Nowhere in his complaint does Cappuccitti make such an allegation. Nor could he-he alleges that the maximum early cancellation penalty suffered by any individual plaintiff was $480. There is simply nothing in the complaint to satisfy this essential requirement of CAFA actions filed originally in federal court.

***5** Cappuccitti's complaint is not saved by the Supreme Court's decision in *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005). In *Allapattah*, the Supreme Court considered whether the supplemental jurisdiction statute, 28 U.S.C. § 1367, enabled federal courts to exert jurisdiction over plaintiff class members who did not individually meet § 1332(a)'s amount in controversy requirement. The Supreme Court answered in the affirmative, holding that

> where the other elements of jurisdiction are present and at least one named plaintiff in the action satisfies the amount-in-controversy requirement, § 1367 does authorize supplemental jurisdiction over the claims of other plaintiffs in the same Article III case or controversy, even if those claims are for less than the jurisdictional amount specified in [§ 1332(a)].

Id. at 549, 125 S.Ct. at 2615. This means that "[w]hen the well-pleaded complaint contains at least one claim that satisfies the amount-in-controversy requirement, and there are no other relevant jurisdictional defects, the district court, beyond all question, has original jurisdiction over that claim." *Id.* at 559,

125 S.Ct. at 2620. Here, however, Cappuccitti has not alleged even one claim that, on an individual basis, approaches the current $75,000 amount in controversy requirement. Instead, he has alleged that any given member of the proposed class suffered an early cancellation penalty of, at most, $480. There exists no basis, therefore, for exerting supplemental jurisdiction over Cappuccitti's claims under *Allapattah.*

Having determined that Cappuccitti lacked a basis for invoking the federal courts' subject matter jurisdiction under CAFA, our disposition of the district court's order becomes clear. Since the district court lacked subject matter jurisdiction over this case, it lacked the power to consider DirecTV's motion to compel arbitration, and the case should be dismissed. Count III, however, is still pending before the district court because it denied the motion to compel arbitration and did not dispose of that count. Accordingly, we vacate the district court's order and remand the case with the instruction that the district court dismiss it for lack of subject matter jurisdiction.

SO ORDERED.

FN* Honorable David M. Ebel, United States Circuit Judge for the Tenth Circuit, sitting by designation.

FN1. The plaintiffs invoked the district court's subject matter jurisdiction under 28 U.S.C. § 1332(d)(2), which incorporates CAFA's provisions.

FN2. Cappuccitti's amended complaint (which we refer to as the complaint) claims these damages in two counts, under theories of money had and received (Count I) and unjust enrichment (Count II). The complaint also contains, in Count III, a claim for declaratory and injunctive relief, on the theory that the early cancellation fee constitutes an unenforceable penalty.

FN3. In refusing to compel arbitration, the district court reasoned that although the Federal Arbitration Act favors a policy of arbitration by making arbitration clauses enforceable in federal court, *Dale v. Comcast Corp.*, 498 F.3d 1216, 1219 (11th Cir.2007), the arbitration clause and class action waiver in the subscription agreements were unconscionable (and hence unenforceable) because Cappuccitti's total possible recovery was far lower than the costs he would have to pay to prevail against DirecTV, *id.* at 1223-24, and under Cappuccitti's Counts I and II claims, if Cappuccitti were the prevailing party, he could not recover attorney's fees.

FN4. DirecTV did not move the district court to dismiss Cappuccitti's Count III for declaratory and injunctive relief. That claim was therefore still pending when DirecTV took this appeal. In light of our determination that the district court lacked subject matter jurisdiction to entertain Cappuccitti's complaint, however, we will instruct the court to dismiss Count III following receipt of our mandate.

FN5. We have jurisdiction pursuant to 9 U.S.C. § 16(a)(1)(B).

FN6. CAFA redesignated the then-current § 1332(d) as § 1332(e).

FN7. *Lowery* affirmed the district court's decision remanding the action to state court, albeit on different grounds-namely, that the removing defendants did not "meet their burden of establishing the requirements for federal jurisdiction over a mass action." 483 F.3d at 1221.

FN8. In this case, the burden rests with Cappuccitti to establish these jurisdictional requirements by a preponderance of the evidence, as he is the party seeking federal court jurisdiction.

FN9. Certification under Rule 23, or a state equivalent thereof, distinguishes a class action from a mass action removable under § 1332(d)(11). *Lowery*, 483 F.3d at 1202 (citing 28 U.S.C. § 1332(d)(11)(B)(i)).

FN10. We note, however, that one of our sister circuits has held that at least one plaintiff must meet the $75,000 amount in con-

troversy requirement in the CAFA removal context. *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 689 (9th Cir.2006), *cited in Lowery*, 483 F.3d at 1206 n. 51.

FN11. Congress's primary concern in this regard was that some courts of appeals were interpreting *Zahn v. International Paper Co.*, 414 U.S. 291, 94 S.Ct. 505, 38 L.Ed.2d 511 (1973), to require *each* plaintiff in a class action to demonstrate the current statutory jurisdiction requirement in diversity class actions. *See* S.Rep. No. 109-14, at 10 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3, 11 ("The Committee believes that requiring each plaintiff to reach the $75,000 mark makes little sense in the class action context."); *see also Allapattah Servs. v. Exxon Corp.*, 362 F.3d 739, 746-47 (11th Cir.2004) (Tjoflat, J., dissenting from denial of rehearing en banc) (pointing out, prior to CAFA's enactment, the "deep and abiding" split in the federal courts of appeals over whether the supplemental jurisdiction statute, 28 U.S.C. § 1367, allowed for jurisdiction over unnamed plaintiffs who did not satisfy § 1332(a)'s amount in controversy requirement). This requirement is different in kind, however, from requiring at least one plaintiff to meet § 1332(a)'s jurisdictional minimum.

FN12. This subsection reads:

> As used in subparagraph (A), the term "mass action" means any civil action (except a civil action within the scope of section 1711(2)) in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, *except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).*

28 U.S.C. § 1332(d)(11)(B)(i) (emphasis added). In turn, CAFA defines a "mass action" as a "class action removable under paragraphs (2) through (10) [of § 1332(d)] if it otherwise meets the provisions of those paragraphs." *Id.* § 1332(d)(11)(A).

FN13. $480 x 10,417 = $5,000,160; $175 x 28,572 = $5,000,100.

C.A.11 (Ga.),2010.
Cappuccitti v. DirecTV, Inc.
--- F.3d ----, 2010 WL 2803093 (C.A.11 (Ga.))

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