IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ANGELA SHEPHERD and LAUREN BETANCOURT, Plaintiffs, v. VINTAGE PHARMACEUTICALS, LLC, ENDO PHARMACEUTICALS, INC., ENDO PHARMACEUTICALS HOLDINGS, INC., PATHEON INC., JOHN DOE COMPANY I, JOHN DOE COMPANY II, JOHN DOE COMPANY III, JOHN DOE COMPANY IV, JOHN DOE COMPANY V, JOHN DOE COMPANY VI, and JOHN DOE COMPANY VII, Defendants.	:	CIVIL ACTION FILE NO. 1:11-CV-3805-SCJ

ORDER

This matter is before the Court on Plaintiffs' motion to remand [154] and Defendants' motion for leave to file sur-reply [157].

This proposed class action products liability case was filed by Plaintiff Lauren Betancourt in the State Court of Cobb County on September 30, 2011, seeking to recover damages for injuries arising from her purchase and consumption of allegedly defective birth control pills. The case was removed to this Court as a putative class action having federal diversity under the Class Action Fairness Act. In an order dated November 4, 2015, the Court denied Plaintiffs' motion for class

certification. See Docket Entry [152]. Plaintiffs then filed the instant motion to remand. See Docket Entry [154].

Defendants oppose Plaintiffs' motion to remand on two bases: (1) once removal jurisdiction has been established, subsequent events do not divest the Court of jurisdiction and (2) even if the Court determines it no longer has jurisdiction over the case through the Class Action Fairness Act, the Court can still exercise diversity jurisdiction due to the value of Ms. Betancourt's alleged damages.

As to the first argument, it is important to recognize that this case was originally filed in state court and removed to federal court on the basis of diversity jurisdiction under the Class Action Fairness Act. Thus, this case falls into the "species" of subject matter jurisdiction known as "removal jurisdiction." See, e.g., Cogdell v. Wyeth, 366 F.3d 1245, 1248 (11th Cir. 2004) (removal jurisdiction means case was originally filed in state court, defendant removed suit to proper federal district court, and that federal district court has original jurisdiction to entertain lawsuit). In "removal jurisdiction" cases, subsequent events do not divest the court of jurisdiction. See, e.g., Poore v. American-Amicable Life Ins. Co., 218 F.3d 1287, 1290-91 (11th Cir.2000) (holding court erred in relying on amended complaint to conclude the parties did not meet the amount in controversy requirement), overruled in part on other grounds in Alvarez v. Uniroyal Tire Co., 508 F.3d 639,

640-41 (11th Cir.2007). As the Supreme Court has noted, "removal cases raise forum-manipulation concerns that simply do not exist when it is the plaintiff who chooses the federal forum and then pleads away jurisdiction through amendment." Rockwell Int'l Corp. v. United States, 549 U.S. 457, 474 n.6 (2007); see also Pintando v. Miami-Dade Housing Agency, 501 F.3d 1241 (11th Cir. 2007).

Here, no party disputes that the complaint was originally filed in state court, it was properly removed to federal court under 28 U.S.C. § 1441, and at the time of removal, the court had original jurisdiction under 28 U.S.C. § 1332(d) of the Class Action Fairness Act (prior to any determination of class certification).

In "removal jurisdiction" cases, the Eleventh Circuit has held that an order denying class certification is a post-removal event that does not alter jurisdiction. See, e.g., Vega v. T-Mobile USA, Inc., 564 F.3d 1256, 1268 n.12 (11th Cir. 2009) (Class Action Fairness Act case). "[J]urisdictional facts are assessed at the time of removal; and post-removal events (including non-certification, de-certification, or severance) do not deprive federal courts of subject matter jurisdiction." Id.; see also Metz v. Unizan Bank, 649 F.3d 492 (6th Cir. 2011) (federal jurisdiction under Class Action Fairness Act did not depend on certification); United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union v. Shell Oil Co., 602 F.3d 1087, 1091 (9th Cir.2010) ("denial of class certification does not divest federal

courts of jurisdiction"); Cunningham Charter Corp. v. Learjet, Inc., 592 F.3d 805 (7th Cir. 2010) (Posner, J.) (federal jurisdiction under Class Action Fairness Act does not depend on certification and order of de-certification does not eliminate subject-matter jurisdiction or require remand to state court).

Because this case was first filed in state court and came to federal court under "removal jurisdiction," Plaintiffs' reliance on Karhu v. Vital Pharmaceuticals, No. 13-60768, 2014 WL 1274119 (S.D. Fla. Mar. 27, 2014), is misplaced. Karhu holds – on the basis of Walewski v. Zanimax Media, Inc., 502 F. App'x 857 (11th Cir. 2012) – that the court lacked subject matter jurisdiction after it denied the plaintiffs' motion for class certification. Karhu and Walewski, however, were both first filed in federal court. As such, unlike "removal jurisdiction" cases, subsequent changes in jurisdictional facts do impact the court's subject-matter jurisdiction.

Plaintiffs also claim that Walewski implicitly rejects the "dicta" in Vega stating that de-certification is a post-removal jurisdictional fact which does not deprive a court of subject matter jurisdiction. As an initial matter, the Court is not convinced that the relevant discussion in Vega is "dicta." Moreover, as the Court noted above, Walewski was originally filed in federal court and thus never needed to address the impact of "post-removal" events on jurisdiction. Finally, the Court notes that the author of the opinion in Vega was on the panel of Walewski making

it unlikely that Walewski would reject even dicta in Vega without any comment. See also South Florida Wellness, Inc. v. Allstate Ins. Co., 745 F.3d 1312, 1315 (11th Cir. 2014) ("What counts is the amount in controversy at the time of removal. . . Potential developments, such as the possibility that the putative class will not be certified, or that some of the unnamed class members will opt out, are irrelevant to the jurisdictional analysis." (quotations and citations omitted).

Thus, the Court finds that it retains jurisdiction over this matter despite the fact that the Court denied Plaintiffs' motion for class certification.[1] For the foregoing reasons, the Court DENIES Plaintiffs' motion to remand [154]. The Court DENIES AS MOOT Defendants' motion for leave to file sur-reply [157].

IT IS SO ORDERED this 7th day of December 2015.

Steve C. Jones

HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE

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[1]The Court finds no support in 28 U.S.C. § 1332(d)(8) of the Class Action Fairness Act for the contention that the Court is divested of jurisdiction once it denies a motion for class certification. See, e.g., Cunningham Charter, 592 F.3d at 807; Delsing v. Starbucks Coffee Corp., Civil Action No. 08-CV-1154, 2010 WL 1507642, at * 2 (D. Minn. Apr. 14, 2010).

Because the Court finds it has jurisdiction under the Class Action Fairness Act, the Court need not address Defendants' alternative argument that diversity jurisdiction exists based on Ms. Betancourt's alleged damages.