

1 **BLUMENTHAL, NORDREHAUG & BHOWMIK**

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5 **UNITED EMPLOYEES LAW GROUP**

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9 Attorneys for Plaintiffs

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF ORANGE**

12
13 STEVENSON TAN, DEEPAK MATHUR,
14 CLAUDIA ADAMS, and SIMON AU, as
15 individuals, on behalf of themselves, and on
behalf of all persons similarly situated and on
behalf of the general public,

16 Plaintiffs,

17 vs.

18 CALIFORNIA STATE AUTOMOBILE
19 ASSOCIATION, a California Corporation,
and Does 1 to 100,

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21 Defendants.
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CASE NO. 30-2008-00231219-CU-BT-CXC

**DECLARATION OF NORMAN B.
BLUMENTHAL IN SUPPORT OF
MOTION FOR CLASS
CERTIFICATION**

Hearing Date: August 4, 2009

Hearing Time: 9:00 a.m.

Judge: Hon. Nancy Stock

Courtroom: CX-105

Action Filed: December 19, 2008

1 I, NORMAN B. BLUMENTHAL, declare:

2 1. I am an attorney duly licensed to practice before the courts of the State
3 of California. I am a partner with the law firm of Blumenthal, Nordrehaug & Bhowmik and submit
4 this declaration in support of Plaintiffs' Motion for Class Certification. I have personal knowledge
5 of the matters set forth herein and, if called upon to do so could and would testify competently
6 thereto.

7
8 **A. CONSTITUTION OF THE CLASS**

9 2. The proposed Class consists of "all those persons employed by CSAA under or as
10 Systems Engineers II-III or under equivalent job title in California beginning August 31, 2003 and
11 ending on the date as set by the Court (the "CALIFORNIA CLASS PERIOD") who were classified
12 by Defendant as exempt, and who have been or may still be subject to the challenged exemption
13 classification policies and practices used by Defendant (the "CALIFORNIA CLASS") or
14 ("CLASS")." *See* Complaint at ¶23. "PLAINTIFFS further bring the Second, Third, Fourth, and
15 Fifth causes of action on behalf of a subclass which consists of all members of the CALIFORNIA
16 CLASS who were employed by Defendant CSAA during beginning August 31, 2003 and ending on
17 the date as determined by the Court (CALIFORNIA LABOR SUB-CLASS PERIOD), with
18 documented overtime hours who were classified by Defendant as exempt, and who performed work
19 in excess of eight (8) hours in one day and/or forty (40) hours in one week and/or hours on the
20 seventh (7th) consecutive day of a workweek and did not receive overtime compensation as required
21 by Labor Code Section 510 and Wage Order 4-2001 (the "CALIFORNIA LABOR SUBCLASS")."
22 *See* Complaint at ¶36. The common conduct engaged in by the defendant here at issue is uniform
23 as to the Plaintiffs and all Class Members in all principal respects and, at this time, there does not
24 appear to be any actual or likely issues which must be litigated between Class Members. The class
25 is comprised solely of California residents, and as such, there are no variations in the applicable law
26 to be applied to the claims of the class members.

27 3. In response to discovery as to the number of members of the Class, Defendant
28 provided a list of employees which evidences that since the beginning of the Class Period on

1 August 31, 2003, CSAA has employed ninety-two (92) SE IIs and SE IIIs employees (the “Class
2 Members”). See Class List produced by CSAA, Bates No. 001792-D001805, a true and correct
3 copy of which is attached to the Declaration of Bhowmik as Exhibit 5.

4
5 **B. COUNSEL FOR CLASS PLAINTIFFS ARE QUALIFIED TO CONDUCT THE**
6 **PENDING LITIGATION AND PROTECT THE INTEREST OF THE CLASS**

7 4. Plaintiffs’ counsel are experienced in prosecuting class action lawsuits and can
8 competently represent the Class. A true and correct copy of my firm’s resume is attached hereto as
9 Exhibit #1.

10
11 **C. PROCEDURAL HISTORY OF THE LITIGATION**

12 5. The original federal complaint was filed August 31, 2007 alleging FLSA collective
13 action claims for overtime that CSAA failed to pay Plaintiff Stevenson Tan and all Systems
14 Engineer I, II, III, & IV, and state law class claims pursuant to Fed. R. Civ. Proc. 23, for (a)
15 restitutionary disgorgement and injunctive relief for CSAA’s unfair, lawful and deceptive business
16 practices in violation of Cal. Bus & Prof. Code §§ 17200, et seq; (b) damages for overtime that
17 CSAA failed to pay Plaintiff and the Class for all hours worked more than eight (8) in one day,
18 forty (40) in one week, and for all hours worked on the seventh (7th) consecutive day of a
19 workweek in violation of Cal. Lab. Code § 510, et seq.; (c) damages for every missed meal and rest
20 period CSAA failed to make available to Plaintiff and the Class in violation of Cal. Lab. Code
21 §226.7; (d) penalties for CSAA’s failure to provide accurate itemized statements to Plaintiff and the
22 Class in violation of Cal. Lab. Code § 226; and, (e) penalties for CSAA’s failure to provide wages
23 when due in violation of Cal. Lab. Code § 203. Following extensive discovery in the federal action,
24 Plaintiffs eventually limited their class to all Systems Engineer II and III, and voluntarily dismissed
25 the FLSA claim without prejudice.

26 6. Discovery in the federal action revealed that Plaintiffs and the former employees of
27 CSAA worked as Systems Engineers II and Systems Engineers III (“SEIIs and SEIIIs”), whose
28 primary duties were and still are the installation, configuration, implementation, maintenance,

1 troubleshooting and decommissioning of the computer hardware and software that is used to run
2 CSAA's 24/7/365 business enterprise. These job duties were also performed after regular business
3 hours, often pursuant to an on-call rotation by which the SEIIs and SEIIIs were and still are
4 responsible to respond to the HelpDesk trouble tickets and perform troubleshooting work to resolve
5 the problems at issue at all hours of the night. Although the SEIIs and SEIIIs perform(ed) primarily
6 non-exempt functions, many of which are and were also performed by Systems Engineers I (SEIs)
7 that are classified by CSAA as non-exempt, CSAA took no steps as a matter of company policy and
8 practice to analyze the services performed by any of the SEIIs and SEIIIs to ensure that the
9 classification of each employee as exempt was, in fact, properly based on the actual job duties
10 performed.

11 7. Plaintiffs moved for class certification in the federal action, however, before the issue
12
13 of class certification was reached, the federal action was dismissed without prejudice because the
14 District Court ruled that there was no federal jurisdiction over the state law claims, and the District
15 Court denied Plaintiffs leave to re-allege the federal claim under FLSA. The Orders by the District
16 Court are attached hereto as Exhibit #2. As set forth in the Orders:

17 The Association now moves to dismiss this action under Federal Rule of Civil
18 Procedure 12(b)(1) **because the Court lacks subject matter jurisdiction**. At the
19 same time, Plaintiffs move the Court for leave to amend the TAC. For the following
reasons, Defendants' motion to dismiss is GRANTED and the Plaintiffs' motion for
leave to amend is STRICKEN.

20 Order dated December 18, 2008, at p. 2

21 **The Court dismissed this case for lack of personal jurisdiction and made no**
22 **ruling on the merits**. Additionally, Plaintiffs have filed this litigation in state court,
23 and, presumably, the parties' controversy will be resolved on the merits. Finally, the
24 Court does not believe that Plaintiffs filed the federal action in bad faith or litigated
the action for nefarious purposes. The shifting claims and amended pleadings that
CSAA complains of are common occurrences in the litigation process.

25 Order dated January 21, 2009, at p. 2, Exhibit #2 hereto.

26 8. Accordingly, Plaintiffs filed their state law claims in this Court on December 19,
27 2008. All of the necessary discovery and preparation was completed in the federal action, so
28 Plaintiffs now move for class certification of their state law claims only. Because the federal court

1 made no ruling on the merits and made no ruling on class certification, the federal action does not
2 prevent class certification in this case and the pendency of the federal action tolled the claims in this
3 case.

4 9. Plaintiffs have followed the procedures set forth in Labor Code 2699.3 by sending a
5 “written notice by certified mail to the Labor and Workforce Development Agency and the
6 employer of the specific provisions of this code alleged to have been violated, including the facts
7 and theories to support the alleged violation.” (Complaint at ¶96). In response to this notice, on
8 March 10, 2008, the Agency informed Plaintiffs that the Agency would not be investigating the
9 allegations. See LWDA Letter, attached hereto as Exhibit #3. Following this procedure, Plaintiffs
10 then alleged claims pursuant to Cal. Lab. Code § 2699, et seq. This pleading of this claims is
11 proper because Plaintiff Stevenson Tan had been duly appointed by the California Labor &
12 Workforce Development Agency to act as the Private Attorney General for the State of California
13 to collect additional penalties for the State and the members of the Class. (Complaint at ¶96-¶98).

14 10. The discovery conducted to prosecute the claims on behalf of the Plaintiffs and the
15 Class thus far has been extensive. Eleven (11) Fed. R. Civ. Proc. 30(b)(6) depositions were taken.
16 CSAA also took the depositions to date of all three (3) named Plaintiffs and one Class Member.
17 CSAA has produced over 70,000 pages of documents and answered twenty-one (21) interrogatories.
18 To date, declarations of eighteen (18) Class Members have been signed, and Plaintiffs have
19 interviewed eleven (11) Class Members. This evidence produced overwhelmingly support
20 Plaintiff’s claim of violations of California law common to all Class Members.

21
22 **D. TRIAL PLAN**

23 11. Plaintiffs estimate that we will be able to present their case to the Court within five
24 (5) to seven (7) trial days.

25 12. Plaintiffs will evidence a common practice of CSAA to which the Class Members
26 were systematically subjected. The testimony of CSAA’s 30(b)(6) witnesses, as well as the
27 testimony offered in the depositions of the Plaintiffs and the declarations proffered by both sides in
28 this case will confirm the common practice.

EXHIBIT #1

Blumenthal, Nordrehaug & Bhowmik (AV)

2255 Calle Clara, La Jolla, California 92037

Tel: (858) 551-1223

Fax: (885) 551-1232

FIRM RESUME

Areas of Practice: Consumer and Securities Class Action, Civil Litigation, Transactional Law, Business Litigation, Products Liability and Construction Defects.

ATTORNEY BIOGRAPHIES

Norman B. Blumenthal

Partner

Practice Areas: Consumer and Securities Class Action, Civil Litigation, Transactional Law

Admitted: 1973, Illinois; 1976, California

Biography: Law Clerk to Justice Thomas J. Moran, Illinois Supreme Court, 1973-1975. Instructor, Oil and Gas Law: California Western School of Law, 1981; University of San Diego School of Law, 1983. President and Chairman of the Board, San Diego Petroleum Club Inc., 1985-1986. Chief Operating Officer and General Counsel, Brumark Corporation, 1980-1987.

Member: San Diego County, Illinois State and American Bar Associations; State Bar of California.

Educated: University of Wisconsin (B.A., 1970); Loyola University of Chicago (J.D., 1973)

Born: Washington, D.C., January 31, 1948

Kyle R. Nordrehaug

Partner

Practice Areas: Consumer and Securities Class Actions, Civil Litigation

Admitted: 1999, California

Member: State Bar of California

Educated: University of California at Berkeley (B.A., 1994); University of San Diego School of Law (J.D. 1999)

Born: San Diego, California, October 21, 1972

Aparajit Bhowmik

Partner

Practice Areas: Civil Litigation; Consumer Class Actions

Admitted: 2006, California

Educated: University of California at San Diego (B.A., 2002); University of San Diego School of Law (J.D. 2006)

Scott Macrae

Contract Attorney

Practice Areas: Consumer and Securities Class Action

Admitted: 1982, California

Educated: Bowdoin College (B.A., 1978); University of California at Berkeley, Boalt Hall School of Law (J.D., 1982)

Born: Summit, New Jersey, November 26, 1956

REPORTED CASES

In re Tobacco Cases II, 41 Cal. 4th 1257 (2007); Hall v. County of Los Angeles, 148 Cal. App. 4th 318 (2007); Coshov v. City of Escondido, 132 Cal. App. 4th 687 (2005); Daniels v. Philip Morris, 18 F.Supp 2d 1110 (1998 S.D. Cal.); Washington Mutual Bank v. Superior Court, 24 Cal. 4th 906 (2001); Gibson v. World Savings & Loan Asso., 103 Cal. App. 4th 1291 (2003); Jordan v. Department of Motor Vehicles, 75 Cal. App. 4th 445 (1999); Jordan v. Department of Motor Vehicles, 100 Cal.App. 4th 431 (2002); Norwest Mortgage, Inc. v. Superior Court, 72 Cal.App.4th 214 (1999); Hildago v. Diversified Transp. Sya, 1998 U.S. App. LEXIS 3207 (9th Cir. 1998); Kensington Capital Mgal. v. Oakley, Inc., 1999 U.S. Dist LEXIS 385; Fed.Sec.L.Rep. (CCH) P90, 411 (1999 C.D. Cal.); Olszewski v. Scripps Health, 30 Cal. 4th 798 (2003); Taiheiyo Cement Corp. v. Superior Court, 105 Cal.App. 4th 398 (2003); McMeans v. Scripps Health, Inc., 100 Cal. App. 4th 507 (2002); Ramos v. Countrywide Home Loans, 82 Cal.App.4th 615 (2002); Tevssier v. City of San Diego, 81 Cal.App. 4th 685; Rocker v. KPMG LLP, 148 P.3d 703; 2006 Nev. Lexis 137; 122 Nev. Adv. Rep. 101(2006); Silvas v. E*Trade Mortg. Corp., 514 F.3d 1001 (9th Cir. 2008); Silvas v. E*Trade Mortg. Corp., 421 F. Supp. 2d 1315 (S.D. Cal. 2006); McPhail v. First Command Fin. Planning, Inc., 247 F.R.D. 598 (S.D. Cal. 2007); Puentes v. Wells Fargo Home Mortgage, Inc., 160 Cal. App. 4th 638 (2008); Rezec v. Sony Pictures Entertainment, Inc., 116 Cal. App. 4th 135 (2004).

LEAD COUNSEL - CLASS ACTION

Adkins v. Washington Mutual Bank - Settled

Orange County Superior Court

Nature of Case: Unfair Competition - Bank Interest Overcharges

Plaintiff's Counsel: Blumenthal & Nordrehaug

Agah v. CompUSA - Settled

U.S. District Court, Southern District of California

Case No. SA CV05-1087 DOC (Anx)

Nature of Case: Unfair Competition - Unfair Rebate Program

Plaintiff's Counsel: Blumenthal and Nordrehaug

Allec v. Cross Country Bank - Settled

Orange County Superior Court

Nature of Case: Unfair Business Practices-Deceptive Advertising

Plaintiff's Counsel: Blumenthal & Nordrehaug

Arreguin v. Impact Solutions - "In Litigation"

Los Angeles Superior Court, Case No. BC 340107

Nature of Case: Labor Code Violations

Plaintiff's Counsel: Blumenthal and Nordrehaug

Barcia v. Contain-A-Way - Settled

U.S. District Court, Southern District California

Case No. 07 cv 0938

Nature of Case: ERISA and Labor Code Violations

Plaintiff's Counsel: Blumenthal & Nordrehaug, United Employees Law Group

Bermant v. Bank of America, Investment Services, Inc. - Settled

Los Angeles Superior Court, Civil Action No. BC342505

Nature of Case: Labor Code Violations

Plaintiff's Counsel: Blumenthal and Nordrehaug &
Arias, Ozzello & Gignac, L.L.P. &
United Employees Law Group

Bolger v. Dr. Martens - Settled

San Diego Superior Court

Nature of Case: Unfair Business Practices-Deceptive Advertising

Plaintiff's Counsel: Blumenthal & Nordrehaug

Bova v. Washington Mutual Bank / JP Morgan Chase - In Litigation

U.S. District Court, Southern District California

Case No. 07 cv 2410

Nature of Case: Overtime and Labor Code Violations

Plaintiff's Counsel: Blumenthal & Nordrehaug, United Employees Law Group

Briseno v. American Savings Bank - Settled

Orange County Superior Court

Nature of Case: Unfair Competition - Force Ordered Insurance Overcharges

Plaintiff's Counsel: Blumenthal & Nordrehaug; Chavez & Gertler

Buonomo v. ValueVision - Settled

Minnesota District Court

Nature of Case: False Advertising, Breach of Warranty

Plaintiff's Counsel: Blumenthal & Nordrehaug; Mansfield, Tanick & Cohen, P.A.

Butler v. Oberman, Tivoli, Miller and Pickert, Inc. - "In Litigation"

Los Angeles Superior Court, Case No. BC 339051

Nature of Case: Labor

Plaintiff's Counsel: Blumenthal and Nordrehaug

Cabral v. Creative Communication Tech. - In Litigation

Los Angeles Superior Court

Nature of Case: Labor Code Violations

Plaintiff's Counsel: Blumenthal & Nordrehaug, United Employees Law Group

Citizens for Fair Treatment v. Quest Communications - Settled

San Diego Superior Court

Nature of Case: Failure to Pay for Vacation Time

Plaintiff's Counsel: Blumenthal and Nordrehaug

Cohen v. Bosch Tool - Settled

San Diego Superior Court, Case No. GIC 853562

Nature of Case: Unfair Business Practices-Deceptive Advertising

Plaintiff's Counsel: Blumenthal and Nordrehaug

Collins v. Galpin Motors - "In Litigation"

Los Angeles Superior Court, Case No. BC 343915

Nature of Case: Overtime

Plaintiff's Counsel: Blumenthal and Nordrehaug

Comstock v. Washington Mutual Bank - Settled
San Diego County Superior Court
Nature of Case: Unfair Competition - Force Order Insurance
Plaintiff's Counsel: Blumenthal & Nordrehaug

Conley v. Norwest - Settled
San Diego County Superior Court
Nature of Case: Unfair Business Practices-Force Ordered Insurance Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

Connell v. Sun Microsystems - Settled
Alameda Superior Court, Case No. RG06252310
Nature of Case: Labor Code Violations
Plaintiff's Counsel: Blumenthal and Nordrehaug &
United Employees Law & Group Chavez & Gertler, LLP

Curry v. California Testing Bureau/McGraw Hill - Dismissal Affirmed on Appeal
United States Court of Appeals for the Ninth Circuit
U.S. District Court, Northern District of California, San Jose
Civil Action No. C-05-4003 JW
Nature of Case: ERISA Claim
Plaintiff's Counsel: Blumenthal and Nordrehaug & Chavez & Gertler

Danford v. Movo Media - Settled
San Diego Superior Court
Nature of Case: Unfair Business Practices-Unlawful Violation of Unruh Civil Rights Act
Plaintiff's Counsel: Blumenthal & Nordrehaug

Daniels, et al. v. Philip Morris, et al. – On Review before the California Supreme Court
San Diego Superior Court
Nature of Case: Unfair Business Practices-Unlawful, Deceptive and Unfair Marketing of Cigarettes to Children
Plaintiff's Counsel: Blumenthal & Nordrehaug

Dewane v. Prudential - Settled
U.S. District Court, Central District of California
Case NO. SA CV 05-1031
Nature of Case: Labor Code Violations
Plaintiff's Counsel: Blumenthal and Nordrehaug &
Wynne Law Firm & Thierman Law Firm P.C.

Downtown Inns v. Pac Bell - Settled
California Public Utilities Commission
Nature of Case: Illegal Charge
Plaintiff's Counsel: Blumenthal & Nordrehaug; Sullivan Hill.

Fallah v. Cingular Wireless - Settled
Orange County Superior Court / U.S. District Court, Central District of California
Case No.
Nature of Case: Unfair Competition - Unfair Rebate Program
Plaintiff's Counsel: Blumenthal and Nordrehaug

Fierro v. Chase Manhattan - Settled
San Diego Superior Court
Nature of Case: Unfair Competition - Bank Interest Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

Friend v. Wellpoint - Settled
Los Angeles Superior Court, Case NO. BC345147
Nature of Case: Labor Code Violations
Plaintiff's Counsel: Blumenthal & Nordrehaug, United Employees Law Group

Gabisan v. Pelican Products - Settled
U.S. District Court, Southern District California
Case No. 08 cv 1361
Nature of Case: Labor Code Violations
Plaintiff's Counsel: Blumenthal & Nordrehaug, United Employees Law Group

Getchius v. National Private Security - "In Litigation"
Los Angeles Superior Court, Case No. BC 338907
Nature of Case: Overtime
Plaintiff's Counsel: Blumenthal and Nordrehaug

Gibson v. World Savings - Judgment for Class after Appeal - Settled
Orange County Superior Court
Nature of Case: Unfair Business Practices-Force Ordered Insurance Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

Gill v. Parabody, Inc. - Settled
San Diego Superior Court
Nature of Case: Product Defect
Plaintiff's Counsel: Blumenthal & Nordrehaug

Greer v. Fleet Mortgage - Settled
San Diego Superior Court
Nature of Case: Unfair Business Practices-Bank Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

Guzman v. GNC, Inc. - "In Litigation"
U.S. District Court, Central District of California
Case No. CV 06-2326 MMM FMOx
Nature of Case: Unfair Competition - Illegal Product Sales
Plaintiff's Counsel: Blumenthal and Nordrehaug &
Trenam, Kemker, Scharf, Barkin, Frye,
O'Neill & Mullis, P.A.

Guzman v. Muscletech. - "In Litigation"
U.S. District Court, Central District of California
Case No. Case No. CV06-2377 CAS JTLx
Nature of Case: Unfair Competition - Illegal Product Sales
Plaintiff's Counsel: Blumenthal and Nordrehaug &
Thanasides, Zalkin & Acero & Trenam, Kemker, Scharf,
Barkin, Frye, O'Neill & Mullis, P.A.

Hahn v. Circuit City – Settled

San Diego Superior Court; U.S. District Court, Southern District of California

Nature of Case: Unfair Business Practices, Failure to Pay Vacation Time

Plaintiff's Counsel: Blumenthal & Nordrehaug

Hall v. County of Los Angeles - On Appeal

Los Angeles Superior Court, Case No. BC208582

Nature of Case: Gender Discrimination

Plaintiff's Counsel: Blumenthal and Nordrehaug &

The Lewis Law Firm

Handler v. Oppenheimer - On Appeal

Los Angeles Superior Court, Civil Action No. BC343542

Nature of Case: Labor Code Violations

Plaintiff's Counsel: Blumenthal and Nordrehaug &

Perona, Langer, Beck, Lallande and Serbin

Higgins v. Maryland Casualty - Settled

San Diego Superior Court

Nature of Case: Unfair Business Practices-Deceptive Insurance Overcharges

Plaintiff's Counsel: Blumenthal & Nordrehaug

Hoffman v. National Warranty Insurance - Settled

District Court for the State of Nevada

Nature of Case: Auto Warranty Fraud

Plaintiff's Counsel: Blumenthal & Nordrehaug; Greco, Traficante & Edwards;

Gerard, Osuch & Cisneros, LLP

Hollander v. Vitamin Shoppe Industries - "In Litigation"

Los Angeles Superior Court

Case No.L.A.S.C. Case No. BC311446

Nature of Case: Unfair Competition - Illegal Product Sales

Plaintiff's Counsel: Blumenthal and Nordrehaug &

Thanasides, Zalkin & Acero & Trenam, Kemker, Scharf,

Barkin, Frye, O'Neill & Mullis, P.A.

Jones v. E*Trade Mortgage - Settled

U.S. District Court, Southern District California

Case No. 02-CV-1123 L (JAH)

Nature of Case: TILA Violations

Plaintiff's Counsel: Blumenthal and Nordrehaug &

Robert C. Fellmeth, Esq.

Kennedy v. Natural Balance - On Appeal

U.S. District Court, Southern District California

Nature of Case: Deceptive Advertising

Plaintiff's Counsel: Blumenthal & Nordrehaug

King v. Nordstrom - Settled

San Diego Superior Court

Nature of Case: Unfair Business Practices-Failure to Pay for Vacation Time

Plaintiff's Counsel: Blumenthal & Nordrehaug

Linder v. OCWEN - In Litigation

U.S. District Court, Central District California

Case No. 07cv501

Nature of Case: Lender Placed Insurance Overcharges

Plaintiff's Counsel: Blumenthal & Nordrehaug, Nicholas & Butler

Lopez v. K-Mart - "In Litigation"

Ventura County Superior Court, Case No. BC 351983

Nature of Case: Overtime - Unfair Business Practice

Plaintiff's Counsel: Blumenthal and Nordrehaug & Arias, Ozzello, & Gignac, LLP & United Employees Law Group

Louie / Stringer v. Kaiser - Settled

U.S. District Court, Southern District California, Case No. 08 cv 0795

Nature of Case: Overtime and Labor Code Violations

Plaintiff's Counsel: Blumenthal & Nordrehaug, United Employees Law Group

Mann v. Vital Pharmaceuticals - "In Litigation"

Los Angeles Superior Court

Case No. L.A.S.C. Case No. : BC 310790

Nature of Case: Unfair Competition - Illegal Product Sales

Plaintiff's Counsel: Blumenthal and Nordrehaug &

Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, P.A.

Mandell v. Republic Bank - Settled

Los Angeles County Superior Court

Nature of Case: Breach of Fiduciary Duties to IRA Account Holders

Plaintiff's Counsel: Blumenthal & Nordrehaug

Manzanarez v. Home Savings of America - Settled

San Francisco Superior Court

Nature of Case: Unfair Business Practices-Overcharge for Inspection Fees

Plaintiff's Counsel: Blumenthal & Nordrehaug

Marchese v. Ty, Inc. - Settled

San Diego Superior Court

Nature of Case: Unfair Business Practices-Deceptive Advertising

Plaintiff's Counsel: Blumenthal & Nordrehaug

Martinez v. Yahoo, Inc. - Settled

Nature of Case: Deceptive Advertising

Plaintiff's Counsel: Blumenthal & Nordrehaug

Matloubian v. Home Savings of America - Settled

San Diego Superior Court

Nature of Case: Unfair Business Practices-Force Ordered Insurance Overcharges

Plaintiff's Counsel: Blumenthal & Nordrehaug; Chavez & Gertler

McMeans v. ScrippsHealth, - Settled

San Diego Superior Court
Nature of Case: Unfair Competition, Lien Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

McPhail v. First Command - Settled

United States District Court for the Southern District of California

Case No.05CV0179 IEG (JMA)

Nature of Case: Securities Fraud, 10(b)(5) violations

Plaintiff's Counsel: Blumenthal & Nordrehaug appointed Lead Counsel, Greco & Traficante & Whatley Drake LLC & Gray & White, & Brewer & Carlson, LLP & Franklin & Hance, PSC

Meco v. International Medical Research (and related cases) - Judgment for Class After Trial

Los Angeles Superior Court

Nature of Case: Unfair Competition, Product Adulteration, Illegal Sale of Drugs

Plaintiff's Counsel: Blumenthal & Nordrehaug

Nakagawa v. LPJ Pharmaceuticals - "In Litigation"

Los Angeles Superior Court

Case No. FRESNO S.C. Case No. : 04CECG 00453

Nature of Case: Unfair Competition - Illegal Product Sales

Plaintiff's Counsel: Blumenthal and Nordrehaug &

Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, P.A.

Navarette v. Edwards Theaters/Century - "In Litigation"

Orange County Superior Court, Case No. 05CC00211

Nature of Case: Overtime

Plaintiff's Counsel: Blumenthal and Nordrehaug

Nelson v. St. Paul Fire & Marine Insurance - Settled

Brazoria County District Court, Texas

Nature of Case: Deceptive Business Practices in sale of oil & gas reserve insurance

Plaintiff's Counsel: Blumenthal & Nordrehaug

Nguyen v. Wells Fargo Home Mortgage - "In Litigation"

Orange County Superior Court, Case No. 05 CC 00116

Nature of Case: Unfair Business Practices - Force Ordered Insurance Overcharges

Plaintiff's Counsel: Blumenthal & Nordrehaug

Olszewski v. ScrippsHealth - Judgment for Plaintiff

California Supreme Court Decision in Favor of Plaintiff

San Diego Superior Court

Nature of Case: Unfair Competition, Lien Overcharges

Plaintiff's Counsel: Blumenthal & Nordrehaug

Pacheco v. Lexicon Marketing - "In Litigation"

Los Angeles Superior Court, Case No. BC 342265

Nature of Case: Overtime

Plaintiff's Counsel: Blumenthal and Nordrehaug

Patelski v. The Boeing Company - Settled

United States District Court, Southern District of New York;

transferred to United States District Court, Eastern District of Missouri
Nature of Case: Refund Action
Plaintiffs' Counsel: Blumenthal & Nordrehaug, Sigman, Lewis & Feinberg, P.C.

Pearlman v. Bank of America - Settled
San Diego Superior Court
Nature of Case: Unfair Business Practices-Force Ordered Insurance Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug; Chavez & Gertler

Picus v. Wal-Mart Stores - In Litigation
U.S. District Court, District of Nevada
Case No. 2:07-CV-00682
Nature of Case: Deceptive Advertising
Plaintiff's Counsel: Blumenthal & Nordrehaug, Gerard & Associates

Pittard v. Salus Homecare - In Litigation
U.S. District Court, Southern District California
Case No. 08 cv 1398
Nature of Case: Overtime and Labor Code Violations
Plaintiff's Counsel: Blumenthal & Nordrehaug, United Employees Law Group

Prince v. ClientLogic - In Litigation
Eighth Judicial District Court, Clark County, Nevada
No Case No. A517624
Nature of Case: Overtime
Plaintiff's Counsel: Blumenthal and Nordrehaug & Gerard & Osuch, LLP

Puentes v. Wells Fargo Home Mortgage - Decision on Appeal
San Diego Superior Court
Nature of Case: Unfair Business Practices - Bank Interest Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

Ralphs v. Blockbuster, Inc. – Settled
San Diego Superior Court
Nature of Case: Unlawful Late Fees
Plaintiff's Counsel: Blumenthal & Nordrehaug, Morris and Associates, Pettersen and Bark

Ramos v. Countrywide - Settled
San Diego Superior Court
Nature of Case: Unfair Business Practices-Force Ordered Insurance Overcharges
Plaintiffs' Counsel: Blumenthal & Nordrehaug; Sullivan Hill; Chavez & Gertler

Redin v. Sterling Trust - Settled
Los Angeles Superior Court
Nature of Case: Breach of Fiduciary Duties of IRA Administrator
Plaintiff's Counsel: Blumenthal & Nordrehaug

Reynolds v. Marlboro/Philip Morris U.S.A. - "In Litigation"
United States Court of Appeals for the Ninth Circuit
U.S. District Court, Southern District of California
Civil Action No. 05 CV 1876 JAH

Nature of Case: Unfair Competition
Plaintiff's Counsel: Blumenthal and Nordrehaug

Rezec v. Sony – Settled
San Diego Superior Court
Nature of Case: Fraudulent Advertising
Plaintiffs' Counsel: Blumenthal & Nordrehaug, Prongay & Borderud; The Cifarelli Law Firm

RocheFord v. SC&E Administrative Service - Settled
Orange County Superior Court
Nature of Case: Auto Warranty Fraud
Plaintiffs' Counsel: Blumenthal & Nordrehaug; Greco, Traficante & Edwards;
Gerard, Osuch & Cisneros, LLP

Santone v. AT&T – Settled
United States District Court, Southern District of Alabama
Nature of Case: Unconscionable Business Practices
Plaintiff's Counsel: Blumenthal & Nordrehaug, Morris & Associates

Santos v. Sleep Train - In Litigation
Orange County Superior Court
Case No. 30-2008-00214586
Nature of Case: Overtime and Labor Code Violations
Plaintiff's Counsel: Blumenthal & Nordrehaug, United Employees Law Group

Scott v. Blockbuster, Inc. – Settled
Court of Appeals, Ninth District of Texas, Beaumont, Texas
Nature of Case: Unlawful Late Fees
Plaintiff's Counsel: Blumenthal & Nordrehaug, Brothers & Thomas, LLP, Vaughan O. Stewart

Shiell v. County of Los Angeles - On Appeal
Los Angeles Superior Court
Case Number BC208583; [Related to]: BC208582
Nature of Case: Claim for Common Law Employment
Plaintiff's Counsel: Blumenthal and Nordrehaug &
The Lewis Law Firm

Silvas v. E*Trade - Dismissal Affirmed on Appeal
U.S. District Court, Southern District
CASE NO. 05cv02348 - W (NLS)
Nature of Case: TILA Violations
Plaintiff's Counsel: Blumenthal and Nordrehaug & Robert Fellmeth & The Law Offices of Daniel
Harris & The Nygaard Law Firm

Sims v. Philip Morris, Inc. – “In Litigation”
United States District Court, For the District of Columbia
Nature of Case: Unlawful Marketing of Cigarettes to Children
Plaintiffs' Counsel: Blumenthal & Nordrehaug, Thorsnes, Bartolotta & McGuire;
Chavez & Gertler, Thomas E. Sharkey and Fleishman & Fisher

Sirota v. Swing-N-Slide - Settled

Wisconsin District Court, County of Rock Wisconsin

Case No. 95CV726J

Nature of Case: Fraudulent Stock Buy Back-Derivative Claim

Plaintiff's Counsel: Blumenthal & Nordrehaug; Sullivan Hill; Milberg, Weiss, Bershad, Hynes & Lerach; Nowlan & Mouat

Sorensen v. Binions, - "In Litigation"

Nature of Case: ERISA violation

Plaintiff's Counsel: Blumenthal & Nordrehaug; Gerard & Osuch

Steroid Hormone Product Cases - On Appeal

Los Angeles Superior Court, JCCP4363

Nature of Case: Unfair Competition - Sale of Illegal Products

Plaintiff's Counsel: Blumenthal and Nordrehaug &

Trenam, Kemker, Scharf, Barkin, Frye,

O'Neill & Mullis, P.A.

Stevens v. Robinsons-May - Settled

San Diego Superior Court

Nature of Case: Unfair Business Practices-Failure to Pay for Vacation Time

Plaintiff's Counsel: Blumenthal & Nordrehaug

Strauss v. Bayer Corporation – Settled

United States District Court, District of Minnesota

Nature of Case: Baycol Products Liability Litigation

Plaintiffs' Counsel: Blumenthal & Nordrehaug; Fleishman & Fisher

Sussex v. Turnberry/MGM Grand Towers - In Litigation

U.S. District Court, District of Nevada

Case No. 08-cv-00773

Nature of Case: Securities Violations, Fraud

Plaintiffs' Counsel: Blumenthal & Nordrehaug; Gerard & Associates

Tan v. CSAA - In Litigation

U.S. District Court, Central District California, Case No. 07cv1011

Nature of Case: Overtime and Labor Code Violations

Plaintiff's Counsel: Blumenthal & Nordrehaug, United Employees Law Group

Tauber v. Alaska Airlines, et al. - Settled

Los Angeles Superior Court

Nature of Case: Unfair Business Practice - Employment Practices

Plaintiff's Counsel: Blumenthal & Nordrehaug

Trujillo v. LivHome - In Litigation

Orange County Superior Court

Case No. 30-2008-00100372

Nature of Case: Overtime and Labor Code Violations

Plaintiff's Counsel: Blumenthal & Nordrehaug, United Employees Law Group

Tull v. Stewart Title - In Litigation

U.S. District Court, Southern District California,

Case No. 08-CV-1095
Nature of Case: Overtime and Labor Code Violations
Plaintiff's Counsel: Blumenthal & Nordrehaug

Van Gorp v. Ameriquest Mortgage/Deutsche Bank - "In Litigation"
U.S. District Court, Central District of California
Case No. SACV05-907 CJC (ANx)
Nature of Case: Overtime
Plaintiff's Counsel: Blumenthal and Nordrehaug

Wadhwa v. Escrow Plus - Settled
Los Angeles Superior Court
Nature of Case: Investment Fraud
Plaintiff's Counsel: Blumenthal & Nordrehaug

Walsh v. Apple, Inc. - In Litigation
U.S. District Court, Northern District California, Case No. 08-04918
Nature of Case: Overtime and Labor Code Violations
Plaintiff's Counsel: Blumenthal & Nordrehaug, United Employees Law Group

Weltman v. Ortho Mattress - In Litigation
U.S. District Court, Southern District California,
Case No. 08 cv 0840
Nature of Case: Overtime and Labor Code Violations
Plaintiff's Counsel: Blumenthal & Nordrehaug, United Employees Law Group

Wilson v. D.R. Horton, - In Litigation
U.S. District Court, Southern District California, Case No. 08-0592
Nature of Case: Antitrust
Plaintiff's Counsel: Blumenthal & Nordrehaug, Gerard & Associates

Yao v. Bodyonics, Ltd. - "In Litigation"
Los Angeles Superior Court, JCCP No. 4363
Nature of Case: Unfair Competition - Illegal Product Sales
Plaintiff's Counsel: Blumenthal and Nordrehaug

Zugich v. Wells Fargo Bank - Settled
San Francisco Superior Court
Nature of Case: Unfair Business Practices-Force Ordered Insurance Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

Zurlo v. Mission Linen - In Litigation
U.S. District Court, Central District, Case No. 08cv1326
Nature of Case: Overtime and Labor Code Violations
Plaintiff's Counsel: Blumenthal & Nordrehaug

CO-COUNSEL - Class Actions

Baxt v. Scor U.S. - Settled

Delaware Court of Chancery

Nature of Case: Takeover

Plaintiffs' Counsel: Blumenthal & Nordrehaug; Sullivan Hill;
Rosenthal, Monhait, Gross & Goddess, P.A.

Bronson v. Blech Securities - Settled

U.S. District Court, Southern District of New York

Nature of Case: Securities Fraud

Plaintiffs' Counsel: Blumenthal & Nordrehaug; Milberg; Weiss, Bershad, Hynes & Lerach; Kaplan, Kilsheimer & Fox; Berstein, Liebhard & Lifshitz; Berstein & Ostraff; Law Office of Dennis J. Johnson; John T. Maher; Sullivan Hill; Weil, Gotshal & Manges; Paul, Hastings, Janofsky & Walker; Andrews & Kurth; Paul, Weiss, Rifkind, Wharton & Garrison; Wolff & Samson; Heller, Horowitz & Feit, P.C.; Shereff, Friedman, Hoffman & Goodman, LLP; Debevoise & Plimpton; Smith, Campbell, Paduano; Thelen, Marrin, Johnson & Bridges; The Offices of Robert Swetnick; Crummy Del Deo; Robinson, Silverman, Pearce, Aronsohn & Berman; Buchanan Ingersoll, P.C.; Morgan, Lewis & Bockius, Schwartz, Kelm, Warren & Ramirez; Porter & Hedges, L.L.P.; MicroProbe Corp.; NeoRX Corp.; Solomon, Zauderer, Ellenhorn, Frischer & Sharp;

Caushon v. General Motors Corp. - "In Coordinated Litigation"

In re Automobile Antitrust Cases

San Diego Superior Court, coordinated in San Francisco

Nature of Case: Unfair Competition; Antitrust

Plaintiff's Co-Counsel: Blumenthal & Nordrehaug

Dibella v. Olympic Financial - Settled

U.S. District Court, District of Minnesota

Nature of Case: Securities Fraud

Plaintiff's Counsel: Blumenthal & Nordrehaug

Ferrari v. Read-Rite - Settled

U. S. District Court, Northern District of California

Nature of Case: Securities Fraud

Plaintiff's Counsel: Blumenthal & Nordrehaug; Milberg, Weiss, Bershad, Hynes & Lerach

Hart v. United States Tobacco Co. - Settled

Los Angeles Superior Court

Coordinated in Smokeless Tobacco Litigation

Nature of Case: Unfair Competition; Antitrust

Plaintiff's Co-Counsel: Blumenthal & Nordrehaug; the Cuneo Law Group P.C.; Gordon Ball

Kensington Capital v. Oakley - Settled

U. S. District Court, Southern District of California

Nature of Case: Securities Fraud

Plaintiffs' Counsel: Blumenthal & Nordrehaug; Milberg, Weiss, Bershad, Hynes & Lerach

Kensington Capital v. Vesta - Settled

U. S. District Court, Northern District of Alabama

Nature of Case: Securities Fraud

Plaintiffs' Counsel: Blumenthal & Nordrehaug; Milberg, Weiss, Bershad, Hynes & Lerach

Manaster v. SureBeam - Settled

United States District Court
Nature of Case: Violation of Securities Act
Plaintiffs' Counsel: Blumenthal & Nordrehaug; Milberg Weiss Bershad Hynes & Lerach

Jordan/Ramos v. DMV - Judgment for Plaintiff
Superior Court, Sacramento
Nature of Case: Commerce Clause Violation - Tax declared unconstitutional -
Affirmed on appeal
Plaintiffs' Counsel: Blumenthal & Nordrehaug; Milberg, Weiss, Bershad, Hynes & Lerach;
Weiss & Yourman; Sullivan Hill.

Ridgewood Capital Management v. Gensia - Settled
U.S. District Court, Southern District of California, #CV-92-1500H
Plaintiffs' Counsel: Barrack, Rodos & Bacine; Kaplan, Kilsheimer & Fox; Wolf, Popper, Ross, Wolf
& Jones; Law Offices of Joseph H. Weiss; Kaufman, Malchman, Kaufman & Kirby; Sullivan Hill;
Blumenthal & Nordrehaug

Shurman v. Scimed - Settled
State of Minnesota District Court, Fourth District, #94-17640
Plaintiffs' Counsel: Blumenthal & Nordrehaug; Milberg, Weiss, Bershad, Hynes & Lerach; Kaplan,
Kilsheimer & Fox; Sullivan Hill; Law Offices of Lawrence G. Soicher.

Sirota v. Swing-N-Slide - Settled
Wisconsin District Court, County of Rock Wisconsin
Nature of Case: Fraudulent Stock Buy-Back-Derivative Claim
Plaintiff's Counsel: Blumenthal & Nordrehaug; Sullivan Hill;
Milberg, Weiss, Bershad, Hynes & Lerach; Nowlan & Mouat

Slatton v. G.E. Capital Mortgage Services - Settled
Camden County Superior Court, New Jersey, #CAML0256198
Nature of Case: Forced order insurance
Plaintiff's Counsel: Blumenthal & Nordrehaug

Somkin v. Molten Metal - Settled
U.S. District Court, District of Massachusetts, #9710325PBS
Nature of Case: Securities Fraud
Plaintiff's Counsel: Blumenthal & Nordrehaug

Sparks v AT&T - Settled
Illinois District Court - Madison County
Deceptive Practice claim - Leased consumer telephone equipment
Plaintiff's counsel - Carr Korein Tillery; Blumenthal & Nordrehaug; Whatley Drake

EXHIBIT #2

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS6

CIVIL MINUTES – GENERAL

Case No. SACV 07-01011-CJC(RCx)

Date: December 18, 2008

Title: TAN STEVENSON, et al. v. CALIFORNIA STATE AUTOMOBILE ASSOCIATION, et al.

PRESENT:

HONORABLE CORMAC J. CARNEY, UNITED STATES DISTRICT JUDGE

Michelle Urie
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

None Present

None Present

**PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS AND STRIKING PLAINTIFFS’ MOTION FOR LEAVE
TO AMEND [filed 11/25/08]**

Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* FED. R. CIV. P. 78; LOCAL RULE 7-15. Accordingly, the hearing set for December 22, 2008 at 1:30 p.m. is hereby vacated and off calendar.

Background

This case arises from allegations in a putative class action that Defendant California State Automobile Association (the Association”) misclassified Plaintiffs Stevenson Tan, *et al.*, (collectively “Plaintiffs”), employees with the job titles Systems Engineer II and Systems Engineer III as nonexempt employees, resulting in the unlawful denial of overtime compensation. (Third Amended Compl. (“TAC”) ¶ 5.) Plaintiffs’ TAC alleges that the misclassification and failure to pay overtime violates sections of the California Business and Professions Code and the California Labor Code. (TAC ¶¶ 50-104.) In the TAC, Plaintiffs asserted federal jurisdiction over this case pursuant to the federal Class Action Fairness Act of 2005 (“CAFA”). (TAC ¶ 48.) During discovery, the Association found—and Plaintiffs do not deny—that the class of possible plaintiffs numbers only 92, while CAFA requires a class consist of 100 or more plaintiffs in order

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 07-01011-CJC(RNBx)

Date: December 18, 2008

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to qualify for federal jurisdiction. (Decl. of Aparajit Bhowmik in Support of Motion for Class Certification (Bhowmik Decl., ¶ 5.)

When Plaintiffs initially filed this action, they alleged violations of the federal Fair Labor Standards Act (“FLSA”) in addition to their state-law claims. (Compl. ¶ 35.) In exchange for the Association’s agreement to withdraw a motion to dismiss Plaintiffs’ Second Amended Complaint (“SAC”), Plaintiffs submitted their TAC deleting the FLSA claims and related allegations. (Decl. of Scott L. Lidman (“Lidman Decl.”) Ex. D, Letter of August 25, 2008, from A.J. Bhowmik to Jim. E. Hart.) Plaintiffs’ counsel explained the strategic and legal reasons for its proposed amendment in a letter to the Association’s counsel:

The Amended Complaint will eliminate any conflict between Plaintiffs’ state law class claims and the FLSA opt-in procedure. By deleting the FLSA allegations, we intend to streamline this case for trial without effecting (sic) anyone’s FLSA claim.

Id. The Association now moves to dismiss this action under Federal Rule of Civil Procedure 12(b)(1) because the Court lacks subject matter jurisdiction. At the same time, Plaintiffs move the Court for leave to amend the TAC. For the following reasons, Defendants’ motion to dismiss is GRANTED and the Plaintiffs’ motion for leave to amend is STRICKEN.

Standard of Review

The party seeking to invoke the jurisdiction of the Court has the burden of establishing that jurisdiction exists. *See Prescott v. United States*, 973 F.2d 696, 701 (9th Cir. 1992). The defendant may challenge the factual basis for the Court’s jurisdiction under Rule 12(b)(1) by disputing the truth of the allegations that would otherwise invoke federal jurisdiction. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In that circumstance, the court may consider extrinsic evidence and, if disputed, weigh the evidence to determine the facts substantiating federal jurisdiction. *See Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987); *see also Velasco v. Gov’t of Indonesia*, 370 F.3d 392, 398 (4th Cir. 2004) (holding that the court may consider evidence outside the pleadings in deciding a 12(b)(1) motion). The court may evaluate evidence on a jurisdictional challenge even if that evidence goes to the merits of the

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 07-01011-CJC(RNBx)

Date: December 18, 2008

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dispute. *See Da Silva v. Kinsho Int'l Corp.*, 229 F.3d 358, 363 (2d Cir. 2000). A federal court can assert subject matter jurisdiction where a case either: (1) raises a question under federal law; or (2) is between diverse parties and involves an amount in controversy of over \$75,000. 28 U.S.C. § 1331; 28 U.S.C. § 1332.

Analysis

(1) Subject Matter Jurisdiction under the Class Action Fairness Act

Plaintiffs allege the Court has jurisdiction over this case based upon the jurisdiction conferred by CAFA. (TAC ¶ 48.) CAFA grants original jurisdiction to federal courts to hear class action cases where the amount in controversy is over \$5 million and there are 100 or more proposed class members. 28 U.S.C § 1332(d)(5)(B). CAFA also bars federal court jurisdiction over a case where: “two thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.” 28 U.S.C. § 1332(d)(4)(B).

Plaintiffs’ proposed class consists of 92 people employed as Systems Engineers II and Systems Engineers III in California. (Bhowmik Decl. ¶ 5.) Thus, there are not 100 members aggregated in the proposed class, and the Court does not have jurisdiction over this case under CAFA. More than two-thirds of the proposed class members are California citizens, further barring the Court’s CAFA jurisdiction over this case.

(2) Amendment

The Court cannot grant Plaintiffs leave to amend to add a new claim to recapture the federal subject matter jurisdiction they gave away by deleting their FLSA allegations from their SAC. The United States Supreme Court has held that “when a plaintiff files a complaint in federal court and then voluntarily amends the complaint, courts look to the amended complaint to determine jurisdiction.” *Rockwell Intern. Corp. v. U.S.*, 549 U.S. 457; 127 S.Ct. 1397, 1408 (2007). In the Ninth Circuit, a voluntary amendment that strips a case of subject matter jurisdiction cannot be corrected: once a plaintiff gives up jurisdiction by voluntary amendment, a district court no longer has the jurisdiction to allow the party to amend its complaint to add, or reinstate, a claim. *Morongo Band of Mission Indians v. California State Board of Equalization*, 858 F.2d 1376, 1380-81. The

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 07-01011-CJC(RNBx)

Date: December 18, 2008

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Ninth Circuit has ruled that “when subject matter jurisdiction is lacking, the district court has no power to do anything, other than dismiss the action.” *Id.*, quoting *United States v. Boe*, 543 F.2d 151, 159 (Fed. Cir. 1976). The Ninth Circuit also explained that district courts lack power to grant leave to amend a complaint where subject matter jurisdiction is lacking because of a defect in substance, not in form. *Morongo*, 858 F.2d at 1381 n.3. Finally, the Ninth Circuit cited *Boelens v. Redman Homes, Inc.*, for the proposition that once plaintiffs voluntarily amends away federal jurisdiction, a district court may not grant amendment. *Morongo*, 858 F.2d at 1381 n.2 (“The Fifth Circuit held that the district court should have ordered dismissal because the amended complaint failed to support jurisdiction.”)

In *Boelens*, plaintiffs brought a suit to court originally alleging four federal causes of action. *Boelens v. Redman Homes, Inc.*, 759 F.2d 504, 506 (5th Cir. 1985). The plaintiffs amended their complaint to drop all but one federal claim. *Id.* The Fifth Circuit found that claim faulty, and remanded the case to the district court to dismiss for lack of jurisdiction. *Id.* The plaintiffs then sought leave to amend their complaint to restore the three other federal causes of action they lost through amendment. *Id.* The Fifth Circuit ruled that “the plaintiff must be held to the jurisdictional consequences of a voluntary abandonment of claims that would otherwise provide federal jurisdiction.” *Id.* at 507-08.

The present case is nearly identical to *Boelens*. Plaintiffs here originally alleged one cause of action. They voluntarily gave up that claim. They substituted a new basis for jurisdiction that was fatally flawed. Now they seek to turn back the clock and reassert the claim they voluntarily dropped. However, the Court, as is clear from the rulings in *Morongo* and *Boelens*, lacks jurisdiction to allow the plaintiffs to add a new claim, or reassert their old one.

For the foregoing reasons, the Association’s motion to dismiss is GRANTED, and Plaintiffs’ motion for leave to amend its complaint is STRICKEN.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 07-1011-CJC(RCx)

Date: January 21, 2009

Title: TAN STEVENSON et al. v. CALIFORNIA STATE AUTOMOBILE ASSOCIATION

PRESENT:

HONORABLE CORMAC J. CARNEY, UNITED STATES DISTRICT JUDGE

Michelle Urie
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

None Present

None Present

PROCEEDINGS: (IN CHAMBERS) ORDER DENYING COSTS [filed 01/02/09]

Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* FED. R. CIV. P. 78; LOCAL RULE 7-15. Accordingly, the hearing set for January 26, 2009 at 1:30 p.m. is hereby vacated and off calendar.

On December 18, 2008, this Court entered an order dismissing Plaintiffs' complaint for lack of personal jurisdiction. Defendant California State Automobile Association ("CSAA") now seeks to recover its costs pursuant to 28 U.S.C. § 1920.

In general, defendants are not necessarily entitled to their costs when an action is dismissed on jurisdictional grounds. 28 U.S.C. § 1919 provides that "[w]henver any action or suit is dismissed in any district court, the Court of International Trade, or the Court of Federal Claims for want of jurisdiction, such court *may* order the payment of just costs." 28 U.S.C. § 1919 (emphasis added). The Ninth Circuit has confirmed that a court has discretion to deny or grant costs to a defendant after an action against them has been dismissed for lack of jurisdiction. *See Miles v. State of Calif.*, 320 F.3d 986, 988, n.2 (9th Cir. 2003) ("Where the underlying claims is dismissed for want of jurisdiction, the award of costs is governed by 28 U.S.C. § 1919. Unlike Rule 54(d), § 1919 is

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES – GENERAL

Case No. SACV 07-01011-CJC(RCx)

Date: January 21, 2009

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permissive, allows the district court to award ‘just costs,’ and does not turn on which party is the ‘prevailing party.’”)

The Court dismissed this case for lack of personal jurisdiction and made no ruling on the merits. Additionally, Plaintiffs have filed this litigation in state court, and, presumably, the parties’ controversy will be resolved on the merits. Finally, the Court does not believe that Plaintiffs filed the federal action in bad faith or litigated the action for nefarious purposes. The shifting claims and amended pleadings that CSAA complains of are common occurrences in the litigation process. Accordingly, CSAA’s request for the award of costs is DENIED.

jls

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EXHIBIT #3

C A L I F O R N I A

Labor & Workforce Development Agency

Date March 10, 2008



Governor
Arnold
Schwarzenegger

Secretary
Victoria L. Bradshaw

Agricultural
Labor
Relations
Board

California
Unemployment
Insurance
Appeals
Board

California
Workforce
Investment
Board

Department of
Industrial
Relations

Economic
Strategy
Panel

Employment
Development
Department

Employment
Training
Panel

Blumenthal & Nordrehaug
2255 Calle Clara
La Jolla, CA 92037

California State Automobile Association
c/o James E. Hart
Littler Mendelson
1920 Main Street, Suite 900
Irvine, CA 92614

Re: LWDA No: 3127
Employer: California Automobile Association
Employee: Stevenson Tan

Dear Employer and Representative of the Employee:

This is to inform you that the Labor and Workforce Development Agency (LWDA) received your notice of alleged Labor Code violations pursuant to Labor Code Section 2699, postmarked January 23, 2008 and after review, does not intend to investigate the allegations.

As a reminder to you, the provisions of Labor Code Section 2699(i) provides that "...civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the LWDA for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code". Labor Code Section 2699(l) specifies "[T]he superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part".

Consequently you must advise us of the results of the litigation, and forward a copy of the court judgment or the court-approved settlement agreement.

Sincerely,

Robert A. Jones

Robert A. Jones
Deputy Secretary