No. 12-55644

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSEPH BAUMANN, an individual,
Plaintiff-Appellant,

v.

CHASE INVESTMENT SERVICES CORP., ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California
Case No. 2:11-cv-06667-GHK-FMO

AMICUS CURIAE BRIEF OF THE CALIFORNIA EMPLOYMENT LAW COUNCIL AND CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF DEFENDANTS/APPELLEES

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1, the California Employment Law Council and Chamber of Commerce of the United States of America certify that they are nonprofit organizations with no parent corporations or any other corporations that owns more than ten percent of their stock, respectively.

DATED: September 11, 2012

Respectfully submitted,

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I. STATEMENT OF INTEREST

California Employment Law Council ("CELC") and the Chamber of Commerce of the United States of America ("Chamber") have concurrently filed their Motion For Leave To File *Amicus Curiae* Brief In Support Of Defendants/Appellees ("Motion for Leave") in accordance with Federal Rule of Appellate Procedure Rule 29(b). CELC's and the Chamber's interest in this matter are set forth below.

A. Identity of *Amici Curiae*.

CELC is a voluntary, nonprofit organization that promotes the common interests of employers and the general public in fostering the development in California of reasonable, equitable, and progressive rules of employment law. Fed. R. App. Proc. 29(c)(4).

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents 300,000 direct members and indirectly represents an underlying membership of more than three million businesses and professional organizations of every size, in every industry sector, and from every geographic region of the country. A principal function of the Chamber is to represent the interests of its members by filing amicus briefs in cases involving issues of vital concern to the nation's business community.

B. Interest of *Amici Curiae*.

Amici respectfully submit their views here because of the importance of this case to employers both inside and outside of California. Fed. R. App. Proc. 29(c)(4). If this Court reverses the decision of the District Court on the grounds that PAGA penalties cannot be considered as a whole for the purpose of analyzing the amount-in-controversy requirement for diversity jurisdiction, it will deny to Defendants/Appellees Chase Investment Services Corp., et al. ("Chase") (and other non-California employers in similar high-value PAGA cases) the federal jurisdiction expressly intended by Congress in creating diversity jurisdiction.[1] CELC represents the interests of both California-based employers and non-California-based employers doing business in California. The Chamber represents the interests of businesses throughout the nation. Members of both organizations recognize the critical importance of providing diverse employers with recourse to the federal courts in high-value cases (with no exception for those brought under PAGA), and of maintaining diverse employers' access to federal jurisdiction, in general.

[1] PAGA, or the Private Attorneys General Act, California Labor Code §§ 2698, et seq., deputizes private citizens to sue on a representative basis on behalf of the State of California to collect penalties for violations of the California Labor Code. PAGA penalties are based on the number of such violations, on a per employee, per work period basis.

C. Consent And Authority To File.

Amici sought the consent of the parties to file this *amici curiae* brief, prior to filing its Motion for Leave. Fed. R. App. Proc. 29(c)(4); 9th Cir. R. 29-3. Plaintiff/Appellant Joseph Baumann ("Plaintiff") does not object to the filing of this brief. Chase agreed to the filing of this brief on its behalf. *Amici* now seek leave from this Court to file this *amici curiae* brief, pursuant to their Motion for Leave and in accordance with Federal Rules of Appellate Procedure 29(b).

D. Authorship.

Counsel for CELC and the Chamber were the sole authors of this brief. Fed. R. App. Proc. 29(c)(5). No party, party's counsel or any person other than *Amici*, their members, or their counsel authored the brief in whole or part, or contributed money that was intended to fund preparing or submitting the brief.

II. SUMMARY OF ARGUMENT

Federal jurisdiction is determined by applying the specific parameters set forth by Congress. Plaintiff and his amicus seek an exception to those parameters because of the potential results to which they lead. But federal jurisdiction is not a result-oriented determination that permits manipulation to drive a particular outcome. And, in any event, the results that Plaintiff forecasts – the purported "federalization" of PAGA, with a resulting "doctrinal confusion" and an inability of state courts to shape the law – have no support in fact or law. *Amici* focus their brief on these issues.

From a procedural standpoint, the purported detriments that flow from Congress's diversity jurisdiction parameters have no relevance to the District Court's determination of federal jurisdiction. Congress has provided for diversity jurisdiction in exactly the circumstances presented here – diverse defendants, and an amount in controversy exceeding $75,000 – and the District Court was bound to, and did, apply these standards without recourse to ancillary concerns. There is no carve-out for particular causes of action, regardless of whether their features render them more susceptible to removal and regardless of the public policies underlying them.

Additionally, Plaintiff overstates the issue by suggesting that all PAGA actions will end up in federal court. Not so. Absent some other grounds for removal, only those actions with a diverse defendant (or defendants), and claims sufficient to lead to more than $75,000 in controversy will be subject to removal on diversity grounds. PAGA actions against California-based employers, and those involving a limited number of employees, claims, and incidents, will remain in California state court.

Plaintiff's purported concerns regarding the ability of the federal courts to resolve PAGA claims have no place in the removal analysis, misunderstand what federal courts do, and are, at bottom, policy reasons regarding why Plaintiff would prefer a state court to hear his claims. Federal courts regularly

analyze issues of California state law, and California courts routinely rely on federal interpretations of California law (even though such interpretations are not binding). In fact, federal courts have been instrumental in the development of California wage and hour law, the very type of claims for which PAGA actions may be brought.

Nor is there a risk of "doctrinal confusion." To the extent that federal courts disagree regarding the procedural treatment of PAGA claims in federal court, this is an issue for the federal courts. And to the extent that federal courts are addressing the underlying Labor Code allegations, they are as competent to do so in the PAGA context as in any other setting.

Finally, even if other public policy concerns were to factor into the diversity jurisdiction analysis (and they should not), they would *favor* federal jurisdiction here. Congress sought to provide a home for all disputes involving diverse defendants and significant amounts in controversy. Large, diverse PAGA actions are no exception – and in the absence of some other ground for removal, small or non-diverse PAGA actions will remain in the California courts, just like any other small or non-diverse action.

The District Court's order denying remand should be affirmed.

III. THE ALLEGED "FEDERALIZATION" OF PAGA PENALTIES IS IRRELEVANT TO THE COURT'S JURISDICTIONAL ANALYSIS

Plaintiff argues that aggregation of PAGA penalties will "'federalize' distinctly intrastate PAGA actions." AOB:58. This contention not only has no application to the instant case – which is not intrastate, but rather involves an out-of-state defendant – but also it has no application to a district court's proper analysis of diversity jurisdiction.

A. The District Court Properly Focused On The Relevant Inquiry: Whether Diversity Standards Were Met.

28 U.S.C. § 1332(a) expressly provides that "[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between – (1) citizens of different States . . . ."

Even if a district court narrowly construes these requirements, its analysis must focus upon whether, in this action, they are met. Congress created diversity jurisdiction to "provide 'a federal forum for out-of-state litigants where they are free from prejudice in favor of a local litigant.'" *Tosco Corp. v. Cmtys. for a Better Env't*, 236 F.3d 495, 502 (9th Cir. 2001) (citation omitted), *abrogated on other grounds*, *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010); *Lively v. Wild Oats Mkts., Inc.*, 456 F.3d 933, 940 (9th Cir. 2006) (*accord*). "Congress is naturally free to expand or contract the statutory diversity jurisdiction, and it has

done so from time to time." *Hart v. FedEx Ground Package Sys. Inc*., 457 F.3d 675, 676 (7th Cir. 2006). Absent such Congressional action, however, the district courts are bound to apply the standards as they exist.[2]

Moreover, the Ninth Circuit has recognized that "narrow construction" has its limits. *See Barrow Dev. Co. v. Fulton Ins. Co.*, 418 F.2d 316, 318 (9th Cir. 1969) (permitting amendment of removal petition's jurisdiction allegations, noting that it does not "believe this view violates the policy requiring strict construction of the statutes conferring diversity jurisdiction: 'To be observant of these restrictions is not to indulge in formalism or sterile technicality . . . .'")) (quoting *Buell v. Sears, Roebuck & Co*., 321 F.2d 468, 470 (10th Cir. 1963)). *See also Hendrix v. New Amsterdam Cas. Co.*, 390 F.2d 299, 301 (10th Cir. 1968) (disapproving approaches that "tend unduly to exalt form over

[2] The United States Supreme Court long ago admonished courts, in the fraudulent joinder setting, that they should "not sanction devices intended to prevent a removal to a Federal court where one has that right, and *should be equally vigilant to protect the right to proceed in the Federal court* as to permit the state courts, in proper cases, to retain their own jurisdiction." *Wecker v. Nat'l Enameling & Stamping Co*., 204 U.S. 176, 186 (1907) (emphasis added).

substance and legal flaw-picking over the orderly disposition of cases properly committed to federal courts.").[3]

Here, there is no dispute as to the defendants' diversity. Thus, the District Court properly focused on the only relevant inquiry: whether defendants established that the amount in controversy exceeded $75,000. As Chase discusses in detail in its answering brief, the District Court correctly found that PAGA penalties should be considered in their entirety, as a whole. Using that analysis, the District Court properly concluded that the amount-in-controversy requirement was satisfied and denied Plaintiff's Motion to Remand. AAB: 7. Ancillary, result-oriented considerations – including the fact that some, or even many, PAGA claims might end up in federal court as a result of aggregation (and the resulting consequences of such federal jurisdiction) – have no role in this analysis.

[3] District courts have taken heed. *See, e.g., Hunting v. Xium Corp.*, 2010 WL 5059675, at *5 (E.D. Cal. Dec. 3, 2010) (magistrate's report) (finding that notice of removal served three months after complaint was timely, where the complaint did not identify the parties' residences and plaintiff's motion to remand, admitting citizenship, cured premature notice: "Rather than exalting form over substance or engaging in 'legal flaw-picking over the orderly disposition of cases properly committed' to the Court, the Court recommends that the motion to remand be DENIED."), *adopted in full*, 2010 WL 5393844 (E.D. Cal. Dec. 22, 2010).

B. Congress Created No Carve-Out From Diversity Jurisdiction Based On The Nature Of The Cause of Action Or The Potential Outcomes.

Plaintiff argues that "an unintended effect" of aggregation "would be to render PAGA claims much more vulnerable to removal than individual or class claims." AOB:51. Even if there were any logic to this claim, or evidence in support of it – and Plaintiff offers neither – it remains irrelevant: 28 U.S.C. § 1332 does not carve out particular types of claims from diversity jurisdiction simply because their features render them more susceptible to removal or because of the public policies underlying them.

As an initial matter, Plaintiff's attempted comparison simply is not persuasive. Numerous individual and class claims are subject to removal for the same reasons that support removal here: a diverse defendant (or defendants) and an amount in controversy exceeding $75,000. Indeed, Plaintiff's PAGA claim is based upon alleged violations of the California Labor Code, which is rife with potential liabilities and penalties for employers. The potential size of these liabilities and penalties allows resolution of many disputes in federal court under diversity jurisdiction.

Likewise, many class actions are subject to removal, generally and under CAFA.[4] Plaintiff mistakenly suggests that Congress was somehow limiting federal jurisdiction over class actions by not providing CAFA coverage for a wider range of such matters. *See* AOB:51 ("Congress set a high dollar limit [for CAFA] precisely so federal courts would not become a repository for all class actions, limiting the expansion of federal jurisdiction only to large-scale interstate class actions."). Not so. CAFA is an *expansion* of federal diversity jurisdiction, not a limitation upon it, and Congress was free to set certain parameters for that expansion.[5] Other class actions remain removable, if they can meet the standard requirements for diversity jurisdiction.

Plaintiff's contention that it "will nearly always be the case" (AOB:52) that the aggregate amount exceeds $75,000 is based on speculation, not fact, and is irrelevant in any event. The threshold will not be met, and diversity

[4] CAFA, the Class Action Fairness Act of 2005, 28 U.S.C. §§1332(d) and 1453, expanded federal diversity jurisdiction for class actions, as described in Chase's answering brief. AAB:34-35.

[5] *See, e.g., Lewis v. Verizon Communications, Inc*., 627 F.3d 395, 398 (9th Cir. 2010) ("Congress, in 2005, passed CAFA, which *significantly expanded federal jurisdiction* in diversity class actions.") (emphasis added); *Westerfield v. Indep. Processing, LLC*, 621 F.3d 819, 822 (8th Cir. 2010) ("CAFA grants broad federal jurisdiction over class actions and establishes narrow exceptions to such jurisdiction. *See* S. Rep. No. 109-14, at 43 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3, 41 (CAFA 'is intended to expand substantially federal court jurisdiction over class actions.' . . .).").

jurisdiction will not be available, for small PAGA actions: those involving small numbers of employees, small numbers of claims, and/or small numbers of incidents.[6]

Plaintiff's concern regarding California's enforcement of its public policies likewise is misplaced. Plaintiff erroneously contends that aggregation places employees in a "catch-22," forced to choose between an individual action in state court or a representative action under PAGA in federal court, and will choose the individual action, leading to fewer PAGA filings, more limited California Labor Workforce Development Agency revenues,[7] and an "undercut[ting]" of the "state's interest in exercising its police powers to achieve maximum compliance with its labor laws." AOB:53. This is not a catch-22 (*i.e.*, a difficult situation

[6] An employee who makes broad, unbounded allegations, rather than identifying specific incidents of alleged wrongdoing, must accept the consequences of doing so: the district court must assume that he or she will prevail on those claims, for purposes of determining the amount in controversy. *See, e.g, Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) ("In measuring the amount in controversy, a court must 'assume that the allegations of the complaint are true and assume that a jury will return a verdict for the plaintiff on all claims made in the complaint.'") (citation and alterations omitted).

[7] The LWDA is an executive branch agency that oversees the Department of Industrial Relations, which in turn oversees the Labor Commissioner's office. *See also* AAB:4, n.3.

where a solution is logically foreclosed by the situation itself).[8] The employee simply is deciding between alternatives that confer different advantages, and the supposed advantages of the PAGA claim have nothing to do with the employee, but rather the purported public policy goals of California. Congress made no provision for consideration of such goals in a proper diversity jurisdiction analysis. Moreover, California courts will adjudicate claims between non-diverse defendants and claims not meeting the jurisdictional threshold, in the absence of some other ground for removal. Thus, California courts will continue to enforce the State's public policy goals.

IV. FEDERAL COURTS CAN EFFECTUATE THE GOALS OF PAGA TOGETHER WITH STATE COURTS

Plaintiff's next concern – the competence of the federal courts to resolve PAGA claims – is neither relevant to the diversity jurisdiction analysis, nor an actual cause for worry. Federal courts routinely address issues of state law. Moreover, contrary to Plaintiff's alarmist claims, numerous PAGA actions will remain in California state court, including, most significantly, those against California defendants, in the absence of another ground for removal. Plaintiff is

[8] According to the Merriam-Webster dictionary, a "catch-22" is "a problematic situation for which the only solution is denied by a circumstance inherent in the problem or by a rule <the show-business catch-22 – no work unless you have an agent, no agent unless you've worked – Mary Murphy>; also: the circumstance or rule that denies a solution." Merriam-Webster Dictionary 1194 (11th ed. 2005).

not actually challenging judicial competence here, but, rather, simply prefers that certain state claims never be eligible for removal. This is not permissible in a federal system.

A. Federal Courts Are Competent To Interpret And Develop PAGA.

Plaintiff's fears regarding federal jurisdiction are rooted in the erroneous assumption that federal courts are not as competent as California courts to interpret PAGA. There is no basis for this concern.

First, California courts routinely rely on federal authority interpreting California law, including in the employment setting. For example, in *Guz v. Bechtel National Inc.*, 24 Cal. 4th 317 (2000), the California Supreme Court canvassed both state and federal authorities applying California law, in its analysis of employment at-will provisions in employee handbooks and agreements. *See id.* at 349-50 & 349 n.10.[9] Likewise, before the California Supreme Court issued its long-awaited decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), California courts relied on both California and federal authority interpreting California's meal and rest period laws. *See, e.g., Hernandez v. Chipotle Mexican Grill, Inc.*, --- Cal. Rptr. 4th ---, 2012 WL 3579567, at *6-8 (Cal. Ct. App. 2 Dist., Aug. 21, 2012) (originally decided on September 30, 2010) (affirming denial of

[9] *See also id.* at 354 ("Because of the similarity between state and federal employment discrimination laws, California courts look to pertinent federal precedent when applying our own statutes.").

class certification in meal and rest period class action; citing *Brown v. Fed. Express Corp*., 249 F.R.D. 580 (C.D. Cal. 2008), *White v. Starbucks Corp*., 497 F. Supp. 2d 1080, 1089 (N.D. Cal. 2007), as well as California authorities, supporting its conclusion that employers must provide meal periods, but need not ensure that they are taken).[10] Even the California Supreme Court cited federal decisions when it issued its decision in *Brinker*, confirming that employers need only provide meal periods, not ensure them. *See, e.g.*, *Brinker*, 53 Cal. 4th at 1052 (citing *White*, 497 F. Supp. 2d at 1083-85) & 1040, 1054 (referencing meal period holdings in *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 526, 638 (S.D. Cal. 2010)).

Second, as the preceding authority makes clear, federal courts have played an important role in developing California wage and hour law, the very claims for which PAGA actions may be brought. As another example, federal courts have contributed to the development of California's independent contractor law under *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal. 3d 341 (1989), a critical preliminary hurdle for individuals classified as

[10] *Hernandez* initially was decided before *Brinker*, on September 30, 2010, as modified on denial of rehearing October 28, 2010. 118 Cal. Rptr. 3d 110 (2010). Following instructions from the California Supreme Court to reconsider its ruling in light of *Brinker*, the Court of Appeal again affirmed, again relying on both California and federal authorities. --- Cal. App. 4th ---, 2012 WL 3579567, at *6-8 (Cal. Ct. App. 2 Dist., Aug. 21, 2012). *See also Lamps Plus Overtime Litigation*, --- Cal. App. 4th ---, 2012 WL 3587610, at *7-8 (Cal. Ct. App. 2 Dist., Aug. 20, 2012) (same).

independent contractors, but seeking relief under the Labor Code. *See, e.g., Ali v. U.S.A. Cab Ltd.*, 176 Cal. App. 4th 1333, 1350-51 (2007) (discussing and distinguishing *Chun-Hoon v. McKee Foods Corp.*, 2006 WL 3093764, at *3 (N.D. Cal. Oct. 31, 2006), which applied the *Borello* factors); *In re Fedex Ground Package Sys., Inc. Employment Practices Litig.*, 758 F. Supp. 2d 638, 674-75 (N.D. Ind. 2007) (applying *Borello* factors, and holding that drivers were independent contractors under California state law).[11]

B. No Doctrinal Confusion Will Result.

Plaintiff's contention that "doctrinal confusion" will result from permitting aggregation of PAGA penalties is based on a single, erroneous example: that various district courts purportedly erred in finding that Rule 23 applies to PAGA actions in federal court. AOB:50-51. As Chase explains in its answering brief, the district courts cited by Plaintiff *properly* found that Rule 23 applies to PAGA actions brought in federal court. *See, e.g., Fields v. QSP, Inc.*, No. CV 12-

[11] *See also, e.g, Marr v. Bank of Am.*, 2011 WL 845914, at *1-6 (N.D. Cal. Mar. 8, 2011) (analyzing claims for failure to pay expense reimbursements under Labor Code section 2802, and unlawful wage deductions under Labor Code section 221, among others; noting that California law approves of wage adjustments attributable directly to the employee's conduct); *Churchill Village, L.L.C. v. GE*, 169 F. Supp. 2d 1119, 1126 (N.D. Cal. 2000) (addressing extraterritoriality of claims under California Business and Professions Code section 17200: "With respect to the UCL specifically, section 17200 does not support claims by non-California residents where none of the alleged misconduct or injuries occurred in California.").

1238 CAS (PJWx), 2012 WL 2049528, at *5-6 (C.D. Cal. June 4, 2012) (holding that PAGA is a procedural statute to which "Rule 23 automatically applies" in federal court) (citing *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 130 S. Ct. 1431, 1437 (2010). *See generally* AAB:35-36. To the extent there is disagreement among federal courts regarding the application of federal procedural standards, that is something for federal courts – including, ultimately, this Court and the United States Supreme Court – to resolve. It does not provide a basis for limiting federal jurisdiction expressly provided by Congress.[12]

C. Federal Court Will Not Be The Exclusive Jurisdiction For PAGA.

Plaintiff ignores the fact that PAGA cases against a *California* employer cannot be removed to federal court, regardless of the amount in controversy, in the absence of some other ground for removal. It is that kind of case that actually is "distinctly intrastate" (AOB:58), and for which diversity jurisdiction is not available. Diversity jurisdiction also will not be available for small PAGA actions: those involving small numbers of employees, small numbers of claims, and/or small numbers of incidents. Put succinctly, diversity jurisdiction is available only for those cases for which Congress intended it be available: large

[12] While Plaintiff focuses on purported doctrinal confusion with respect to Rule 23, a federal rule, there is equally little risk of confusion with respect to the underlying Labor Code allegations. As discussed *supra*, federal courts are more than competent to address these claims in a manner consistent with California law.

lawsuits against out-of-state defendants. Some PAGA actions will fit that profile – but many will not.

V. THE SAME POLICY OBJECTIVES THAT SUPPORT DIVERSITY JURISDICTION OVER LARGE ACTIONS, GENERALLY, AND CAFA JURISDICTION OVER LARGE CLASS ACTIONS, LIKEWISE SUPPORT REMOVAL OF LARGE PAGA ACTIONS

Amici submit that public policy considerations should not factor into the diversity jurisdiction analysis, but if they did, they would support diversity jurisdiction over PAGA actions like that at issue here: large, high-value matters involving diverse defendants.

While the primary purpose of diversity jurisdiction is to "provide a federal forum for out-of-state litigants," *Lively*, 456 F.3d at 940, the "amount-in-controversy requirement" serves its own significant role: "to ensure that a dispute is sufficiently important to warrant federal-court attention." *Exxon Mobil Corp. v. Allapattah Services, Inc*. 545 U.S. 546, 548 (2005). These principles support diversity jurisdiction over large PAGA claims for the same reasons they support diversity jurisdiction over large actions, generally, and large class actions removable under CAFA: all of these actions require fairness to out-of-state defendants and warrant the federal court attention appropriate to high-value disputes.

This Court discussed the role and development of the amount-in-controversy requirement in *Lewis v. Verizon Communications, Inc*.:

> Although CAFA is relatively new, the concept of an "amount in controversy" has a long history. Congress originally created a jurisdictional amount for diversity jurisdiction in the Judiciary Act of 1789. That statute established a $500 jurisdictional amount, intended as a floor for the size of cases that could reach the federal courts. "Congress has used the requirement of an amount in controversy to limit the original and derivative access to the lower federal courts." Thomas E. Baker, *The History and Tradition of the Amount in Controversy Requirement: A Proposal to "Up the Ante" in Diversity Jurisdiction*, 102 F.R.D. 299, 302-03 (1984). Over the years, Congress has seen fit to increase the amount, but its purpose has remained the same – "to ensure that a dispute is sufficiently important to warrant federal-court attention." *Exxon Mobil Corp.*, 545 U.S. at 548, 125 S. Ct. 2611.

Lewis, 627 F.3d at 399. *See also Davis v. HSBC Bank Nev, N.A.*, 557 F.3d 1026, 1037 n.44 (9th Cir. 2009) (Kleinfeld, J., concurring) ("*See* S. Rep. No. 109-14, at 11-12 (2005) (Conf. Rep.) (noting that in section describing abuses of jurisdiction that 'an important historical justification for diversity jurisdiction is the reassurance of fairness and competence that a federal court can supply to an out-of-state defendant facing suit in state court' and *commenting on cases where the out-of-state defendant was confronted with 'a state court system prone to produce gigantic awards against out-of-state corporate defendants*' (alterations omitted)).") (emphasis added).

CAFA's passage reflects and reinforces these principles, by ensuring that out-of-state defendants have a fair forum in high-value class actions. *See, e.g.*,

Smith v. Bayer Corp., 131 S. Ct. 2368, 2382 (2011) (CAFA was enacted to "enable[ ] defendants to remove to federal court *any sizable class action* involving minimal diversity of citizenship"); *Davis*, 557 F.3d at 1037 (Kleinfeld, J., concurring) ("Jurors may have no prejudice at all against citizens and corporations of other states, but still have a financial incentive to import their money. This incentive is especially strong when the corporate pockets are deep and the loss will not affect local employment. That may have been one of the reasons why Congress modified diversity jurisdiction in the Class Action Fairness Act. *Diversity protects against deep pocket justice as one form of prejudice*.") (emphasis added; footnote omitted).[13]

Relying primarily on *Abrego Abrego v. Dow Chemical Co.*, 443 F.3d 676, 685 (9th Cir. 2006), Plaintiff mistakenly contends that the routine exercise of federal jurisdiction over PAGA claims would "directly conflict with the policy articulated by the Ninth Circuit." AOB:48. But the section of *Abrego Abrego* from which Plaintiff quotes addresses only the Court's holding that the party

[13] *See also Luther v. Countrywide Home Loans Servicing LP*, 533 F.3d 1031, 1034 (9th Cir. 2008) ("CAFA was enacted, in part, to 'restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction.' Pub. L. No. 109–2, § 2(b)(2), 119 Stat. 4, 5 (codified as a note to 28 U.S.C. § 1711)."); *Freeman v. Blue Ridge Paper Prods., Inc*., 551 F.3d 405, 407 (6th Cir. 2008) (referencing "Congress's obvious purpose" in passing CAFA: "to allow defendants to defend large interstate class actions in federal court").

seeking to establish federal jurisdiction bears the burden of doing so. *Id.* And the quoted language itself reflects only that diversity jurisdiction is in certain ways narrowly construed – a proposition that does not resolve the issue at hand: whether policy considerations should inform the District Court's jurisdictional analysis. For the reasons discussed above, the answer is no, they should not. But even if policy concerns were considered, they would support removal, not counsel against it.

In short, large PAGA cases implicate the same concerns as any other high-value case. As a result, they will satisfy the amount-in-controversy requirement for federal diversity jurisdiction. Denying federal jurisdiction to these claims not only would ignore the explicit standards under 28 U.S.C. § 1332, but also would relegate large, diverse PAGA actions to state court, frustrating Congress's purpose and goals in enacting diversity jurisdiction and the amount-in-controversy requirement.

VI. CONCLUSION

The District Court decision should be affirmed for the reasons set forth in Chase's answering brief. The policy considerations raised by Plaintiff have no role in the diversity jurisdiction analysis, but even if they did, they would support removal in any event.

DATED: September 11, 2012

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 32(a)(7)(B) and 29(d), I certify that this Brief for *Amici Curiae* contains 4,704 words, as determined by our firm's word processing system, excluding the parts of the brief exempted by Federal Rules of Appellate Procedure 32(a)(7)(B)(iii).

This brief complies with the typeface requirement of Federal Rules of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rules of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using the word processing program Microsoft Word 2010, in 14-point, Times New Roman font.

DATED: September 11, 2012

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CERTIFICATE OF SERVICE

Case No. 12-55644

I hereby certify that on September 11, 2012, I have caused to be electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED: September 11, 2012

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