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July 22, 2013

No.: 13-80166
D.C. No.: 3:13-cv-00760-JST
Short Title: David Calkins v. TeleTech Services Corporation, et al

Dear Appellant/Counsel

This is to acknowledge receipt of your Petition for Permission to Appeal under 1453(c).

All subsequent letters and requests for information regarding this matter will be added to your file to be considered at the same time the cause is brought before the court.

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No. _____

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DAVID F. CALKINS,
plaintiff and respondent,

v.

GOOGLE, INC.,
defendant,

and

TELETECH SERVICES CORPORATION,
defendant and petitioner.

On petition for review of order of remand of
U.S. District Court for the Northern District of California

Case no. 3:13-cv-00760-JST

**TELETECH SERVICES CORPORATION'S
PETITION FOR PERMISSION TO APPEAL**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, defendant and petitioner TeleTech Services Corporation hereby discloses the following corporate interests:

1. The parent companies of the corporation: TeleTech Holdings Corporation.
2. Any publicly held company that owns 10% or more of the corporation: TeleTech Holdings Corporation.

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I. INTRODUCTION

This case presents a suitable opportunity for the Court to provide much needed guidance on the “principal injuries” element of the “local controversy” exception to federal jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”). 28 U.S.C. § 1332(d)(4)(A).

At stake is whether a plaintiff may extinguish a defendant’s right to defend in federal court a genuinely multistate controversy over disputed nationwide business practices simply by pleading the putative class to contain citizens of a single state.

The plaintiff here claims that he suffered an invasion of privacy when the defendants recorded phone calls they placed to him as part of a nationwide marketing campaign. California, along with at least eleven other states, prohibits recording of phone calls without the recipients’ knowledge or consent.

Pleading tactically in hopes of keeping this matter out of federal court, the plaintiff asserts only a California state law claim on behalf of a California class. Following removal, the Northern District of California remanded the case to California Superior Court, finding that plaintiff succeeded in bringing this otherwise multistate controversy within CAFA’s local controversy exception by limiting class membership to Californians, despite the nationwide scope of the telemarketing campaign in dispute and the potential for litigation in other states.

The district court's order raises an unsettled question about a key element of CAFA's local controversy exception: whether by artful pleading alone a plaintiff can transmute a multistate controversy into a superficially "local" one. By this petition, defendant and petitioner TeleTech Services Corporation ("TeleTech") asks the Court to review this important issue, as "CAFA was clearly designed to prevent plaintiffs from artificially structuring their suits to avoid federal jurisdiction." *Freeman v. Blue Ridge Paper Prods., Inc.*, 551 F.3d 405, 407 (6th Cir. 2008).

II. FACTS AND PROCEDURAL HISTORY

Defendant Google, Inc. ("Google"), offers an internet advertising service called "AdWords." In February 2012, plaintiff David F. Calkins ("Plaintiff"), a California citizen, filed his original class action complaint in the Superior Court of California against Google, a Delaware corporation headquartered in California. Plaintiff alleges that his phone conversations with customer service representatives concerning Google's AdWords service were recorded without his knowledge or consent in violation of California Penal Code section 632. Original complaint, doc. 1 (exhibit A).

Plaintiff later learned that, at relevant times, Google engaged TeleTech to conduct the AdWords telemarketing campaign, and that TeleTech's sister company, Revana, Inc. ("Revana"), made the disputed calls to Plaintiff. Plaintiff

filed his first amended complaint (“FAC”) in state court on October 12, 2012, naming TeleTech, a Colorado citizen, as an additional defendant. FAC, doc. 1 (exhibit B). The FAC asserts a single cause of action for violation of section 632 against Google and TeleTech (together, “Defendants”) on behalf of a class defined as follows:

All persons in California other than employees of Google or TeleTech who, at any time since February 24, 2009, spoke on the telephone with a customer service representative who called on behalf of Google and were not advised by the customer service representative prior to the conversation that it was being or might be recorded. *Id.* at ¶ 11.

The FAC alleges that class members are “entitled under Penal Code section 637.2 to statutory damages of \$5,000 for every violation of Penal Code section 632” (FAC, doc. 1 (exhibit B), ¶ 12(b)(4); *see id.* at ¶ 19), but does not allege the total number of violations, nor anything else to establish an amount in controversy in excess of CAFA’s \$5 million jurisdictional minimum.

On February 20, 2013, after determining by its own investigation that the amount in controversy exceeds \$5 million, TeleTech filed a notice of removal in the Northern District of California. Notice of removal, doc. 1.

Plaintiff moved to remand the matter to state court. Motion for remand, doc. 18. After full briefing (docs. 21 and 24), but without hearing oral argument, the Northern District granted Plaintiff’s motion to remand and entered the

corresponding order on July 12, 2013. Order, doc. 30.

In granting remand, the district court ruled that this matter falls within the local controversy exception to CAFA jurisdiction set forth at 28 U.S.C. section 1332(d)(4)(A). Order, doc. 30, pp. 6-8. The district court found that Plaintiff met his burden to establish that the principal injuries wrought by Defendants' conduct were suffered in California (*id.* at p. 8), despite TeleTech's introduction of evidence that the Google AdWords telemarketing campaign was nationwide in scope. Declaration of Rebecca Couturier ("Couturier decl."), doc. 21 (exhibit 3), ¶ 6 (calls "not limited to California," but placed "across the nation," even "into other countries").

In its order, the district court acknowledged that Defendants' conduct could be actionable under laws "similar to [Penal Code section] 632" in a "handful" of other states. Order, doc. 30, p. 8. Nonetheless, the court concluded that Plaintiff satisfied the principal injuries requirement because "the class definition includes only individuals who received calls 'in California.'" *Id.*

TeleTech now files this timely petition for permission to appeal the remand order pursuant to 28 U.S.C. section 1453(c)(1).

III. QUESTION PRESENTED

For purposes of 28 U.S.C. section 1332(d)(4)(A)'s "local controversy" exception to CAFA jurisdiction, may a plaintiff seeking remand to state court meet

his burden to establish that the principal injuries were incurred in that state merely by pleading a class limited to that state, even when the challenged conduct was nationwide in scope and potentially actionable in multiple other states?

IV. RELIEF SOUGHT

By this petition, TeleTech seeks permission to perfect an appeal of the order remanding this matter to California Superior Court, entered on July 12, 2013, by the United States District Court for the Northern District of California.

V. REASONS THE COURT SHOULD PERMIT THE APPEAL

This Court should exercise its jurisdiction to consider the important question of whether putative class plaintiffs may invoke CAFA's local controversy exception in a multistate controversy by limiting class membership to citizens of a single state.

The Court wields discretion to decide this issue under 28 U.S.C section 1453(c)(1), which provides that "a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand...if application is made to the court of appeals not more than 10 days after entry of the order." This "discretion to hear appeals exists in part to develop a body of appellate law interpreting CAFA." *Coleman v. Estes Express Lines, Inc.*, 627 F.3d 1096 (9th Cir. 2010).

This Court has articulated several criteria to guide determinations of when it is appropriate to hear discretionary CAFA appeals under section 1453(c)(1). A “key factor” is (1) “the presence of an important CAFA-related question in the case.” *Coleman*, 627 F.3d at 1100. The Court should also consider (2) “the importance of the CAFA-related question to the case at hand”; (3) “the likelihood that the question will evade effective review if left for consideration only after final judgment”; (4) “whether the record is sufficiently developed and the order sufficiently final to permit intelligent review”; and (5) the “familiar inquiry into the balance of harms.” *Id.* (internal quotations omitted).

Each of these considerations calls for appellate review of the district court’s application of CAFA’s local controversy exception in this case.

A. This Case Presents An Important, Unsettled Question About the Principal Injuries Element of CAFA’s Local Controversy Exception.

As the Court noted in *Coleman*, 627 F.3d at 1100, a key factor favoring appellate review is the presence of an important CAFA-related question, particularly when the question is unsettled and “appears to be either incorrectly decided [by the court below] or at least fairly debatable.” *Id.* (quoting *Coll. of Dental Surgeons of P.R. v. Conn. Gen. Life Ins. Co.*, 585 F.3d 33, 38-39 (1st Cir. 2009)).

This case squarely presents an important and unsettled question about the principal injuries element of CAFA's local controversy exception: namely, whether a plaintiff can satisfy the principal injuries requirement merely by limiting class membership to citizens of a single state, even when the challenged conduct is nationwide in scope and potentially actionable in multiple other states.

CAFA's local controversy exception appears at 28 U.S.C. section 1332(d)(4)(A). That statute provides that a district court shall decline to exercise its CAFA jurisdiction if it finds each of the following: (1) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the state in which the action was originally filed; (2) at least one defendant is a defendant (a) from whom significant relief is sought, (b) whose alleged conduct forms a significant basis for the class claims, and (c) who is a citizen of the state in which the action was originally filed; (3) "principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the state in which the action was originally filed"; and (4) during the three-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons. 28 U.S.C. § 1332(d)(4)(A).

Once CAFA removal jurisdiction has been established, the party seeking remand bears the burden of establishing that the local controversy exception

applies, and all doubts must be resolved in favor of exercising jurisdiction over the case. *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1024 (9th Cir. 2007); *Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1163 (11th Cir. 2006). As this Court has made clear, “the local controversy exception to CAFA jurisdiction is ‘narrow,’” and is “intended to ‘identify...a controversy that uniquely affects a particular locality.’” *Coleman*, 627 F.3d at 1100 (*quoting Evans*, 449 F.3d at 1163-1164. The principal injuries requirement is central to that purpose. *Villalpando v. Exel Direct, Inc.*, 2012 U.S. Dist. Lexis 160631 at *34 (N.D. Cal., Nov. 8, 2012) (principal injuries requirement ensures that the local controversy exception applies narrowly only to “truly local controversies” and embodies an important limit on the scope of the local controversy exception).

Here, Plaintiff alleges that Google and TeleTech recorded telephone calls marketing Google’s AdWords service without the call recipients’ knowledge or consent. He alleges that this conduct injured the call recipients’ right of privacy. Even though the phone calls Plaintiff received were part of a nationwide telemarketing campaign, he pleads his case only on behalf of other people in California, asserting a single claim for violation of California Penal Code section 632.

The district court ruled that by limiting class membership to Californians, Plaintiff met his burden to demonstrate that the principal injuries resulting from

Defendants' conduct were confined to California. Order, doc. 30, p. 8. The court reached its finding despite TeleTech's introduction of evidence that Plaintiff's phone calls were part of a nationwide telemarketing campaign. Couturier decl., doc. 21 (exhibit 3), ¶¶ 6-7 (AdWords telemarketing campaign extended "across the nation and into other countries," and TeleTech's recording practices did not differ in California compared to rest of nation).

The court was also unmoved by the potential for litigation across the nation, despite acknowledging that a "handful" of other states' call recording laws are similar to California Penal Code section 632 in requiring consent or knowledge of all parties to the call. There are at least eleven such states. *See, e.g.*, CONN. GEN. STAT. § 52-570d (2013); DEL. CODE ANN. tit. 11, § 2402 (2013); FLA. STAT. ANN. § 934.03 (2012); 720 ILL. COMP. STAT. 5/14-2 (2013); MD. CODE ANN., [CTS. & JUD. PROC.] § 10-402 (2013); MASS. GEN. LAWS ch. 272, § 99 (2013); MONT. CODE ANN. § 45-8-213 (2013); NEV. REV. STAT. 179.410 *et seq.* (2013); N.H. REV. STAT. ANN. § 570-A *et seq.* (2012); 18 PA. CONS. STAT. § 5703 (2013); WASH. REV. CODE § 9.73.030(1) (2013). These eleven other states included some 72,853,000 Americans at the 2010 census, amounting to nearly double California's population of 37,253,000. U.S. Census Bureau, "State & County Quickfacts," *available at* <http://quickfacts.census.gov/qfd/index.html> (last visited Jul. 21, 2013).

Still, the district court concluded that principal injuries stemming from the AdWords campaign were confined to California.

No decision of this Court yet addresses whether a plaintiff can meet the principal injuries requirement in an otherwise multistate controversy simply by limiting class membership to citizens of a single state. However, the district court's order runs directly counter to a series of decisions of other district courts in this circuit.

For example, in *Waller v. Hewlett-Packard Co.*, 2011 U.S. Dist. Lexis 50408 (S.D. Cal., May 10, 2011), plaintiff purported to represent consumers who purchased computer hard drives that did not operate as advertised. *Id.* at *1. The putative class contained only California citizens. *Id.* at *6. The complaint asserted only California causes of action, including violations of California's Unfair Competition Law, Consumer Legal Remedies Act, and False Advertising Act. *Id.* at *1-*2.

Nonetheless, the Southern District could not find that the principal injuries were "in any meaningful way limited to California," because the computer hard drives in dispute were marketed and sold nationwide. *Waller*, 2011 U.S. Dist. Lexis 50408 at *14-*15. "Plaintiff alleges nothing wrongful about their marketing and sale that is peculiar to California, and there is no reason to believe that the Defendants aren't vulnerable to suit on very similar grounds beyond California.

That isn't characteristic of a local dispute." *Id.* at *14.

The *Waller* court emphatically rejected the plaintiff's contention that the California-only class definition and California-only claims rendered the principal injuries purely local in character. "Plaintiff's action is local only in the trivial and almost tautological sense that the definition of the putative class and the legal bases of the asserted claims make it so." *Waller*, 2011 U.S. Dist. Lexis 50408 at *13. The court continued, "Courts have routinely looked beyond these formalities -- and looked to the nature and scope of the alleged wrong -- and rejected a plaintiff's invocation of the local controversy exception that relies on them." *Id.*

A judge of the Northern District of California recently concurred with the *Waller* court's reasoning. In a class action on behalf of California consumers alleging violations of California statutes, Judge Breyer determined that CAFA's local controversy exception could not apply because the defendant's disputed business practices could also "support liability under other states' consumer protection laws." *Phillips v. Kaiser Foundation Health Plan, Inc.*, 2011 U.S. Dist. Lexis 80456 at *18 (N.D. Cal., Jul. 25, 2011). The *Phillips* decision excerpted a portion of CAFA's legislative history from a Senate report:

If the defendants engaged in conduct that could be alleged to have injured consumers throughout the country or broadly throughout several states, the case would not qualify for this [local controversy] exception, even if it were brought only as a single-state class action. In other words, this provision looks at where the principal injuries

were suffered by everyone who was affected by the alleged conduct -- not just where the proposed class members were injured. *Id.* at *17 (*quoting* S. Rep. No. 109-14 at 40-41).

Thus, ruled Judge Breyer, “Congress did not intend for plaintiffs to defeat federal jurisdiction by filing essentially national or regional class actions limited to plaintiffs from one state.” *Id.*; *see also Villalpando*, 2012 U.S. Dist. Lexis 160631 at *35-*36 (local controversy exception did not apply to California wage and hour claims asserted on behalf of California class, because defendants were “vulnerable to similar claims in other states”); *Kearns v. Ford Motor Co.*, 2005 U.S. Dist. Lexis 41614 (C.D. Cal., Nov. 21, 2005) (principal injuries requirement not met despite California-only claims and California-only class because certified pre-owned vehicle sales program was national in scope and subject to litigation in other states; plaintiff’s assertion that principal injuries limited to California “has no merit”); *Brook v. UnitedHealth Group, Inc.*, 2007 U.S. Dist. Lexis 73640 (S.D.N.Y., Sep. 28, 2007) (plaintiff could not satisfy principal injuries requirement despite New York-only class definition because “adverse effects suffered, as a result of defendants’ culpable conduct” extended to “several other states”).

The district court’s order in this case contravenes this entire line of cases, which cannot be distinguished in any meaningful way. Just as in *Waller, Phillips, Villalpando, Kearns*, and *Brook*, Plaintiff here complains of an alleged injury suffered beyond California. The AdWords telemarketing campaign was

nationwide in scope, such that any invasions of privacy inflicted by allegedly improper call recording took place across the nation and could prompt litigation in at least eleven other states.

Because there is nothing about this controversy unique or local to California, TeleTech submits that the district court erred in finding that Plaintiff met his burden to satisfy the principal injuries requirement. At the very least, the district court's ruling on the question is fairly debatable and warrants review by this Court. *Coleman*, 627 F.3d at 1100.

B. The Question Is Consequential to the Case's Resolution.

Under *Coleman*, 627 F.3d at 1100, the Court should also consider the importance of the CAFA-related question to the case. The local controversy exception is the sole basis of the district court's remand order. Order, doc. 30, p. 8. The principal injuries requirement is an indispensable element of the local controversy exception. 28 U.S.C. § 1332(d)(4)(A)(III). Accordingly, the CAFA-related issue presented by this petition is consequential.

C. The District Court's Ruling Will Otherwise Evade Review And Is Final.

The Court should also consider the likelihood that the question will evade effective review if left for consideration only after final judgment. *Coleman*, 627 F.3d at 1100. If this Court does not permit this appeal, the case will proceed to

final resolution in California Superior Court. The dispute over application of the local controversy exception to this matter will never be reviewed.

Further, this case presents a suitable and convenient opportunity for reviewing the principal injuries issue. The district court's remand order is final. *Coleman*, 627 F.3d at 1100 (“whether the record is sufficiently developed and the order sufficiently final to permit intelligent review”) (internal quotation omitted). After full briefing in the district court, the record is sufficiently developed to permit intelligent review, but it is also concise. The single article of evidence pertinent to the principal injuries requirement is the sworn declaration of Rebecca Couturier describing the nationwide scope of the Google AdWords telemarketing campaign. Couturier decl., doc. 21 (exhibit 3).

D. The Balance of Harms Is Lopsided In Favor of Permitting This Appeal.

Finally, the balance of harms tips decisively toward review of the district court's remand order. *Coleman*, 627 F.3d at 1100 (courts should perform the “familiar inquiry into the balance of harms”).

If the Court accepts this appeal, the parties will know fairly soon whether this class action rightfully belongs in federal court. That is because CAFA incorporates expedited appellate procedures. Under 28 U.S.C. section 1453(c)(2), this appeal will be taken to judgment within 60 days of the Court's decision to

review the remand order. Plaintiff would suffer no meaningful harm and would lose no substantive rights in the meantime.

On the other hand, without appellate review, TeleTech will be deprived of a significant right -- its right to defend this matter in federal court. TeleTech is a Colorado corporation in jeopardy of a multi-million dollar exposure in California state court based on allegations surrounding conduct that was national in scope and potentially actionable in multiple other states. This is precisely the kind of case that Congress intended to be heard in a federal forum.

In all, Plaintiff faces no articulable harm in having to participate in an expedited appeal of the district court's remand order. By contrast, TeleTech would forever lose its right to defend this matter in federal court unless this Court grants review.

VI. CONCLUSION

TeleTech respectfully requests that this Court grant permission for TeleTech to perfect an appeal of the district court's remand order.

Dated: July 22, 2013

GORDON & REES, L.L.P.

By: /s/ M.D. Scully
M.D. Scully
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Attorneys for defendant and
petitioner
TELETECH SERVICES
CORPORATION

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID F. CALKINS,
Plaintiff,
v.
GOOGLE, INC., et al.,
Defendants.

Case No. [13-cv-00760-JST](#)

**ORDER GRANTING MOTION FOR
REMAND**

Re: ECF No. 18

In this putative class action for state-law claims arising out of the unauthorized recording of telemarketing calls, Plaintiff Calkins moves to remand the action to the Superior Court of Santa Clara County. As the motion is suitable for determination without oral argument, the hearing scheduled for June 27, 2013, is VACATED. For the reasons set forth below, the motion is GRANTED.

I. BACKGROUND

Plaintiff David Calkins brings this action against Defendants Google and TeleTech Services on his own behalf and on behalf of “[a]ll persons in California” whose telephone conversations with persons calling on behalf of Google were recorded without their authorization. First Am. Compl. (“FAC”) ¶ 11, ECF No. 1, Ex. B. Google hired TeleTech to make the calls on its behalf regarding its AdWords service. *Id.* ¶ 8.

Calkins alleges that three days after he registered for Google’s AdWords service, he received two separate phone calls from TeleTech customer service representatives to discuss the service. *Id.* ¶ 6. Calkins had no reason to believe the calls were being recorded and never consented to the recording of the calls. *Id.* Yet, at the end of the second call, a customer service representative told Calkins that all telephone conversations with representatives “who call on

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Northern District of California

1 behalf of Google are recorded.” Id.

2 Calkins claims that Google and Teletech violated California Penal Code Section 632 by
3 recording the telephone calls that Teletech made on Google’s behalf with respect to the AdWords
4 service.¹ Id. ¶¶ 14-20. In the complaint, Calkins alleges that the class has at least 500 members
5 and that every person who had a conversation recorded in violation of Section 632 is entitled to
6 statutory damages in the amount of \$5,000 per call. Calkins, however, does not allege the total
7 amount of damages he seeks on behalf of the putative class.

8 TeleTech removed the action from the Superior Court of Santa Clara County on February
9 20, 2013, under the Class Action Fairness Act (“CAFA”). ECF No. 1.

10 Calkins moves to remand the action on the grounds that TeleTech has not met its burden to
11 show that removal under CAFA was proper. In the alternative, Calkins argues that, even if
12 removal under CAFA was proper, the Court must remand the action under CAFA’s local
13 controversy exception. ECF No. 18.

14 **II. STANDARD OF REVIEW**

15 “A civil action in state court may be removed to federal district court if the district court
16 had ‘original jurisdiction’ over the matter.” Lowdermilk v. United States Bank Nat’l Ass’n, 479
17 F.3d 994, 997 (9th Cir. 2007) (citing 28 U.S.C. § 1441(a)). “[R]emoval statutes are strictly
18 construed against removal.” Luther v. Countrywide Homes Loans Serv., LP, 533 F.3d 1031, 1034
19 (9th Cir. 2008). “Federal jurisdiction must be rejected if there is any doubt as to the right of
20 removal in the first instance.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). The burden
21 of establishing that federal jurisdiction exists is on the party seeking removal. Id. at 566-67.

22 **III. DISCUSSION**

23 As amended by CAFA, “28 U.S.C. § 1332(d) vests district courts with original jurisdiction
24 of any civil action in which, inter alia, the amount in controversy exceeds the sum or value of
25 \$5,000,000, exclusive of interest and costs, and in which the aggregate number of proposed
26

27 _____
28 ¹ California Penal Code Section 632 makes it a crime for a party to a telephone call to record the
conversation without disclosing the recording to the other party if the other party has an
objectively reasonable expectation that the conversation will not be recorded and is confidential.

United States District Court
Northern District of California

1 plaintiffs is 100 or greater, and any member of the plaintiff class is a citizen of a state different
2 from any defendant.” Lowdermilk, 479 F.3d at 997 (citing 28 U.S.C. § 1332(d)) (internal
3 quotation marks omitted). “[U]nder CAFA the burden of establishing removal jurisdiction
4 remains . . . on the proponent of federal jurisdiction.” Abrego Abrego v. The Dow Chemical Co.,
5 443 F.3d 676, 685 (9th Cir. 2006).

6 Calkins moves to remand this action on the basis that TeleTech failed to meet its burden to
7 establish that removal under CAFA was proper. Specifically, Calkins argues that TeleTech has
8 failed to show that (1) the amount in controversy exceeds \$5 million; and (2) the notice of removal
9 was timely. The Court addresses each of these arguments in turn.

10 **A. Amount in Controversy**

11 In the context of removal jurisdiction under CAFA, “[w]here the complaint does not
12 specify the amount of damages sought, the removing defendant must prove by a preponderance of
13 the evidence that the amount in controversy requirement has been met.” Id. at 683 (citation
14 omitted).

15 Here, the complaint does not specify the amount of damages that Calkins seeks on behalf
16 of the putative class. Instead, the complaint alleges merely that “every person who had one or
17 more of their confidential telephone conversations with Defendants recorded without their consent
18 is entitled to statutory damages in the amount of \$5,000” and that the putative class contains “not
19 less” than 500 individuals. FAC ¶¶ 3, 12. Accordingly, TeleTech, the party seeking removal
20 under CAFA, must establish by a preponderance of the evidence that the amount in controversy is
21 at least \$5 million.

22 In the notice of removal, Teletech states that it recorded at least 1,000 phone calls on
23 behalf of Google in California during the class period, which ranges from February 24, 2009, to
24 February 20, 2013. Not. of Removal at 2; see also Kirchgessner Decl. ¶ 4. Teletech contends that
25 this action satisfies CAFA’s amount-in-controversy requirement because there are more than
26 1,000 calls in controversy and each of those calls could result in damages of \$5,000, for a total that
27 exceeds \$5 million.

28 Calkins argues that Teletech’s showing does not satisfy its burden of proof with respect to

1 the amount in controversy, because Teletech's showing pertains to each of the calls that it
2 recorded, whereas only a subset of those calls are at issue in this action, namely the calls that it
3 recorded without authorization. In other words, Calkins argues that TeleTech cannot satisfy its
4 burden of proof unless it submits evidence showing that it recorded 1,000 or more phone
5 conversations *without authorization*.

6 A recent decision of the Ninth Circuit is helpful in evaluating whether TeleTech's
7 allegations are sufficient to meet the amount-in-controversy requirement under CAFA. In Lewis
8 v. Verizon Communications, Inc., 627 F.3d 395 (9th Cir. 2010), the plaintiffs claimed that Verizon
9 billed them for a premium service they never ordered. Id. at 399. Verizon removed the action to
10 federal court. In support of its notice of removal, Verizon filed a declaration stating that its total
11 billings for the premium service at issue was greater than \$5 million in California. Id. at 400. The
12 district court remanded the case, holding that a showing of Verizon's total billings could not
13 establish CAFA's amount-in-controversy requirement because the plaintiffs were seeking
14 compensation only for unauthorized billings, and not for all billings. Id. The Ninth Circuit
15 reversed the district court, holding that Verizon's showing established by a preponderance of the
16 evidence that the amount in controversy exceeded \$5 million dollars:

17 The amount in controversy is simply an estimate of the total amount
18 in dispute, not a prospective assessment of defendant's liability. To
19 establish the jurisdictional amount, Verizon need not concede
20 liability for the entire amount, which is what the district court was in
essence demanding by effectively asking Verizon to admit that at
least \$5 million of the billings were 'unauthorized' within the
meaning of the complaint.

21 Id. at 400 (internal citation omitted).

22 In light of Lewis, the Court concludes that Teletech has satisfied its burden to show by a
23 preponderance of the evidence that the amount in controversy in this case exceeds \$5 million.
24 TeleTech need not concede that it recorded at least 1,000 confidential phone calls without
25 authorization. It is sufficient that it has admitted to recording over 1,000 phone calls in California,
26 as this establishes that its potential liability exceeds \$5 million. Accordingly, Calkins' motion to
27 remand for failure to satisfy CAFA's amount-in-controversy requirement must be denied.
28

1 **B. Timeliness**

2 A party seeking removal must file a notice of removal within 30 days after receiving the
3 initial pleading. See 28 U.S.C § 1446(b)(1). Alternatively, if the ground for removal is not
4 apparent in the initial complaint, a party seeking removal must file a notice of removal within 30
5 days of receiving “an amended pleading, motion, order or other paper from which it may first be
6 ascertained that the case is one which is or has become removable.” See 28 U.S.C § 1446(b)(3).

7 Calkins argues that TeleTech’s notice of removal was not timely for two reasons, neither
8 of which is persuasive.

9 First, Calkins argues that the 30-day period for removal under Section 1446(b)(1) began to
10 run when Teletech was served with the FAC even though that pleading did not state the amount in
11 controversy. Calkins argues that the notice of removal was therefore untimely, because Teletech
12 did not remove within this 30-day window. For the 30-day period under Section 1446(b)(1) to
13 begin, “the ground for removal must be revealed affirmatively in the initial pleading.” Harris v.
14 Bankers Life and Cas. Co., 425 F.3d 689, 695 (9th Cir. 2005). Here, the FAC is devoid of any
15 allegation showing that the amount in controversy exceeds CAFA’s \$5 million threshold or that
16 the number of purported violations of Section 632 is greater than 1,000. Because the ground for
17 removal under CAFA was not revealed affirmatively in the FAC, the 30-day window under
18 Section 1446(b)(1) never began to run. Accordingly, the notice of removal was not untimely on
19 this basis.

20 Second, Calkins argues that the 30-day period for removal under Section 1446(b)(3) began
21 to run “as soon as Teletech became aware of this lawsuit” because, at that time, it had “possession
22 of reports that indicated the number of . . . disputed calls.” Mot. at 7 (internal citations omitted).
23 Calkins contends that these reports are “other paper” under Section 1446(b)(3) that would have
24 allowed TeleTech to determine that it had recorded more than 1,000 calls and, therefore, that this
25 case was removable.

26 Though the Ninth Circuit has not defined the scope of the term “other paper” within the
27 meaning of Section 1446(b)(3) or addressed the question of whether a defendant can receive
28 “other paper” from itself, the plain language of the statute is clear that “other paper” refers to a

United States District Court
Northern District of California

1 document received from another person or party in connection with the litigation. 28 U.S.C.
2 § 1446(b)(3) (statute begins to run only “after receipt by the defendant, through service or
3 otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first
4 be ascertained that the case is one which is or has become removable”). Here, TeleTech never
5 “received” the reports at issue, because they were within TeleTech’s possession at all times, and
6 would have been so regardless of this litigation. TeleTech’s possession does not constitute the
7 type of “receipt” contemplated by Section 1446(b)(3).

8 Extending the meaning of “receipt” to cover documents that were never transferred to
9 TeleTech would also require the Court to inquire into TeleTech’s subjective knowledge to
10 determine the time at which it first became aware of such documents and the grounds for
11 removability; such an inquiry is disfavored by the Ninth Circuit:

[W]e will not require courts to inquire into the subjective knowledge of the defendant, an inquiry that could degenerate into a mini-trial regarding who knew what and when. Rather, we will allow the court to rely on the face of the initial pleading and on the documents exchanged in the case by the parties to determine when the defendant had notice of the grounds for removal, requiring that those grounds be apparent within the four corners of the initial pleading or subsequent paper.

12 Harris, 425 F.3d at 695 (citation omitted) (emphasis added).

13 Because the reports at issue are not “other papers” and thus never triggered the 30-day
14 period under Section 1446(b)(3), Teletech’s notice of removal was not untimely under Section
15 1446(b)(3).
16

17 Accordingly, Calkins’ motion to remand on the basis that removal was untimely must be
18 denied.
19

20 **C. Local Controversy**

21 Calkins argues that, even if removal under CAFA was proper, the Court must nevertheless
22 remand this action because it falls within CAFA’s “local controversy” exception.
23

24 Under 28 U.S.C. § 1332(d)(4)(A), a court “shall decline” jurisdiction of a class action
25 properly removed to federal court under CAFA if:
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- (I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;
- (II) at least 1 defendant is a defendant—
 - (a) from whom significant relief is sought by members of the plaintiff class;
 - (b) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and
 - (c) who is a citizen of the State in which the action was originally filed; and
- (III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed.

The party seeking to remand under CAFA’s local controversy exception bears the burden of proving the applicability of the exception. Serrano v. 180 Connect, Inc., 478 F.3d 1018, 1024 (9th Cir. 2007) (holding that “although the removing party bears the initial burden of establishing federal jurisdiction under § 1332(d)(2), once federal jurisdiction has been established under that provision, the objecting party bears the burden of proof as to the applicability of any express statutory exception under §§ 1332(d)(4)(A) and (B)”).

Here, Calkins has met his burden to show that this action falls within CAFA’s “local controversy” exception. Accordingly, Calkins’ motion to remand on this basis is GRANTED.

First, Calkins has shown that more than two-thirds of the proposed class members likely are California citizens. The class definition in the complaint includes “[a]ll persons in California . . . who . . . spoke on the telephone with a customer service representative who called on behalf of Google and were not advised . . . that it was being or might be recorded.” FAC ¶ 11. While it is possible that not every person who TeleTech called in California actually is domiciled in California, it is at least probable that more than two-thirds of the individuals who were called in California are domiciled there.

Second, Calkins has shown that at least one defendant whose conduct forms a significant basis for the claims asserted, and from whom significant relief is sought, is a citizen of California. No party disputes that Google is a citizen of California. Though TeleTech argues that Google’s conduct was not sufficiently significant to form the basis of Calkins’ claims, the Court disagrees. Calkins alleges that Google hired TeleTech to make the calls at issue on its behalf. See FAC ¶¶ 1, 8. But for Google, the calls at issue would not have been made. The allegations in the complaint

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1 raise the inference that Google exerted control over TeleTech with respect to the calls at issue,
2 which is sufficient to establish that Google’s conduct was sufficiently significant to form the basis
3 of Calkins’ claims. Moreover, Calkins alleges that TeleTech acted merely as Google’s agent.
4 This is enough to show that Calkins seeks significant relief from Google.

5 Third, Calkins has shown that the principal injuries at issue occurred in California, as the
6 class definition includes only individuals who received calls “in California.” FAC ¶ 11.

7 TeleTech argues that this action is not “local” because it made the calls at issue as part of a
8 nationwide marketing campaign, and thus, TeleTech could face liability in other states. The
9 Court is not persuaded by this argument.

10 “CAFA was enacted, in part, to restore the intent of the framers of the United States
11 Constitution by providing for Federal court consideration of interstate cases of national
12 importance under diversity jurisdiction.” Luther v. Countrywide Home Loans Servicing LP, 533
13 F.3d 1031, 1034 (9th Cir. 2008) (citation and internal quotation marks omitted). Cases of national
14 importance are ones in which the plaintiff alleges conduct that could have created actionable
15 controversies in many states under the same legal theory; in these cases, courts retain jurisdiction
16 under CAFA on the ground that the cases do not present controversies that are truly local. See,
17 e.g., Phillips v. Kaiser Foundation Health Plan, Inc., C 11-cv-02326 CRB, 2011 WL 3047475, at
18 *5 (N.D. Cal., July 25, 2011) (holding that a case involving claims arising out of California’s
19 consumer protection laws is not “local” because “the same [legal] theory would support liability
20 under other states’ consumer protection laws as well”).

21 This action does not present questions of national importance. While claims brought under
22 one state’s consumer protection laws, like the ones in Phillips, may be actionable under the
23 consumer protection laws of other states, claims for the unlawful recordation of telephone calls
24 under California Penal Code Section 632, like the ones here, are not similarly actionable
25 nationwide. That is because only a “handful” of states have statues similar to Section 632. Reply
26 at 5. For this reason, even if TeleTech made nationwide calls on Google’s behalf, the Court
27 concludes that the principal injuries in this case were suffered in California.

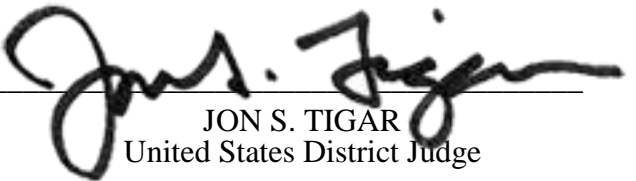
28 //

IV. CONCLUSION

Calkins’ motion to remand on the basis that this action falls within CAFA’s “local controversy” exception is GRANTED. The Clerk shall mail a copy of this order to the Superior Court of Santa Clara County and terminate this action.

IT IS SO ORDERED.

Dated: July 12, 2013



JON S. TIGAR
United States District Judge

United States District Court
Northern District of California

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**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:13-cv-00760-JST**

Calkins v. Google, Inc. et al.
Assigned to: Hon. Jon S. Tigar
Cause: 28:1441 Petition for Removal

Date Filed: 02/20/2013
Date Terminated: 07/12/2013
Jury Demand: Defendant
Nature of Suit: 450 Commerce ICC
Rates, Etc.
Jurisdiction: Federal Question

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V.

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Defendant

TeleTech Services Corporation
a Colorado corporation

represented by **Justin Daniel Lewis**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Allison Feldman Borts
(See above for address)
ATTORNEY TO BE NOTICED

Miles D. Scully
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/20/2013	<u>1</u>	NOTICE OF REMOVAL from Superior Court of California, County of Santa Clara. Their case number is 112-CV218874. (Filing fee \$350.00 receipt number 54611013234). Filed by Teletch Services Corporation. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Civil Cover Sheet)(gmS,) (Filed on 2/20/2013) (Entered: 02/21/2013)
02/20/2013	<u>2</u>	Certificate of Interested Entities by Teletch Services Corporation (gmS,) (Filed on 2/20/2013) (Entered: 02/21/2013)
02/20/2013	<u>3</u>	Disclosure Statement by Teletch Services Corporation. (gmS,) (Filed on 2/20/2013) (Entered: 02/21/2013)
02/20/2013	<u>4</u>	ADR SCHEDULING ORDER: Case Management Statement due by 5/21/2013. Case Management Conference set for 5/28/2013 02:00 PM in Courtroom 5, 4th Floor, San Jose. (Attachments: # <u>1</u> Standing Order)(gmS,) (Filed on 2/20/2013) (Entered: 02/21/2013)
02/20/2013		CASE DESIGNATED for Electronic Filing. (gmS,) (Filed on 2/20/2013) (Entered: 02/21/2013)
02/22/2013	<u>5</u>	CLERK'S NOTICE RESETTING CASE MANAGEMENT CONFERENCE AND RE COURT DEADLINE FOR PARTIES TO EITHER CONSENT OR DECLINE TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE: 5/28/2013 Case Management Conference reset to 3/19/2013 at 2:00 PM in Courtroom 5, 4th Floor, San Jose. Joint Case Management Statement due by 3/12/2013. Each party who has not already done so shall file either a Consent or Declination to proceed before a United States Magistrate Judge no later than 3/12/2013. (ofr, COURT STAFF) (Filed on 2/22/2013) (Entered: 02/22/2013)
02/27/2013	<u>6</u>	STIPULATION WITH PROPOSED ORDER filed by Teletch Services Corporation. (Attachments: # <u>1</u> Proposed Order Granting Stipulation)(Lewis, Justin) (Filed on 2/27/2013) (Entered: 02/27/2013)
02/27/2013	<u>7</u>	CERTIFICATE OF SERVICE by Teletch Services Corporation re <u>6</u> STIPULATION WITH PROPOSED ORDER (Lewis, Justin) (Filed on 2/27/2013) (Entered: 02/27/2013)
02/28/2013	<u>8</u>	ORDER GRANTING STIPULATION CONCERNING TIME TO RESPOND TO FIRST AMENDED COMPLAINT by Judge Paul S. Grewal, granting <u>6</u> . (ofr, COURT STAFF) (Filed on 2/28/2013) (Entered: 03/01/2013)
03/07/2013	9	CLERK'S NOTICE ADVANCING TIME ON 3/19/2013 CASE MANAGEMENT CONFERENCE: 3/19/2013 2:00 PM Case Management Conference advanced to 10:00 AM in Courtroom 5, 4th Floor, San Jose before Magistrate Judge Paul S. Grewal. ***This is a text only docket entry, there is no document associated with this notice.*** (ofr, COURT STAFF) (Filed on 3/7/2013) (Entered: 03/07/2013)

03/12/2013	<u>10</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by David F. Calkins. (Attachments: # <u>1</u> Request to Make Telephonic Appearance , # <u>2</u> (Proposed) Order)(Karasik, Gregory) (Filed on 3/12/2013) Modified on 3/12/2013 (tsh, COURT STAFF). (Entered: 03/12/2013)
03/12/2013	<u>11</u>	CASE MANAGEMENT STATEMENT filed by David F. Calkins. (Karasik, Gregory) (Filed on 3/12/2013) (Entered: 03/12/2013)
03/12/2013	<u>12</u>	Certificate of Interested Entities by Google, Inc. <i>Defendant Google Inc.s Federal Rule of Civil Procedure 7.1 Disclosure Statement and Civil Local Rule 3-16 Certification of Interested Entities or Persons</i> (Somvichian, Whitty) (Filed on 3/12/2013) (Entered: 03/12/2013)
03/12/2013	<u>13</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Google, Inc... (Somvichian, Whitty) (Filed on 3/12/2013) (Entered: 03/12/2013)
03/12/2013	<u>14</u>	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge: All matters presently set before Magistrate Judge Paul S. Grewal are hereby vacated. Clerk to reassign case. (ofr, COURT STAFF) (Filed on 3/12/2013) (Entered: 03/12/2013)
03/12/2013	<u>15</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Teletech Services Corporation.. (Lewis, Justin) (Filed on 3/12/2013) (Entered: 03/12/2013)
03/13/2013	<u>16</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Jon S. Tigar for all further proceedings. Magistrate Judge Paul Singh Grewal no longer assigned to the case.Signed by The Executive Committee on 3/13/2013. (tsh, COURT STAFF) (Filed on 3/13/2013) (Entered: 03/13/2013)
03/14/2013	<u>17</u>	CLERKS NOTICE SETTING CASE MANAGEMENT CONFERENCE. Case Management Statement due by 5/29/2013. Initial Case Management Conference set for 6/5/2013 at 2:00 PM in Courtroom 9, 19th Floor, San Francisco. (Attachments: # <u>1</u> Standing Order, # <u>2</u> Standing Order for All Judges of the Northern District) (wsn, COURT STAFF) (Filed on 3/14/2013) (Entered: 03/14/2013)
03/15/2013	<u>18</u>	NOTICE OF MOTION & MOTION for Remand; Memorandum of Points & Authorities filed by David F. Calkins. Motion Hearing set for 5/2/2013 02:00 PM in Courtroom 9, 19th Floor, San Francisco before Hon. Jon S. Tigar. Responses due by 4/4/2013. Replies due by 4/11/2013. (Attachments: #(1) Declaration Declaration of Gregory N. Karasik, #(2) Supplement Notice of Manual Filing Of Document Under Seal)(Karasik, Gregory) (Filed on 3/15/2013) (Entered: 03/15/2013)
03/15/2013		<i>Correction to deadlines</i> as to <u>18</u> MOTION to Remand. Responses due by 3/29/2013. Replies due by 4/5/2013. (wsn, COURT STAFF) (Filed on 3/15/2013) (Entered: 03/15/2013)
03/27/2013	<u>19</u>	STIPULATION WITH [PROPOSED] ORDER <i>Concerning Briefing Schedule on Motion to Remand</i> filed by Teletech Services Corporation & David F. Calkins. (Attachments: #(1) [Proposed] Order)(Lewis, Justin) (Filed on

		3/27/2013) (Entered: 03/27/2013)
03/31/2013	20	ORDER GRANTING STIPULATED BRIEFING SCHEDULE re <u>19</u> : Oppositions to re <u>18</u> may be filed no later than 4/5/13, and a reply may be filed no later than 4/12/13. Signed by District Judge Jon S. Tigar. (This is a text-only docket entry) (jstlc3, COURT STAFF) (Filed on 3/31/2013) (Entered: 03/31/2013)
04/05/2013	<u>21</u>	Memorandum of Points & Authorities in RESPONSE to (re <u>18</u> MOTION to Remand) filed by Teletech Services Corporation. (Attachments: #(1) Declaration, #(2) Declaration, #(3) Declaration)(Lewis, Justin) (Filed on 4/5/2013) (Entered: 04/05/2013)
04/11/2013	<u>22</u>	ORDER REGARDING "NOTICE OF MANUAL FILING" OF DOCUMENTS UNDER SEAL re <u>18</u> MOTION to Remand filed by David F. Calkins. Signed by Judge Jon S. Tigar on April 11, 2013. (wsn, COURT STAFF) (Filed on 4/11/2013) (Entered: 04/11/2013)
04/11/2013	23	CLERK'S NOTICE Continuing Motion Hearing as to re <u>18</u> MOTION to Remand. Motion Hearing previously set for 5/2/2013 is continued to 6/27/2013 at 2:00 PM in Courtroom 9, 19th Floor, San Francisco before Hon. Jon S. Tigar. <i>This is a text only entry. There is no document associated with this notice.</i> (wsn, COURT STAFF) (Filed on 4/11/2013) (Entered: 04/11/2013)
04/12/2013	<u>24</u>	REPLY Memorandum of Points & Authorities in Support of (re <u>18</u> MOTION to Remand) filed by David F. Calkins. (Karasik, Gregory) (Filed on 4/12/2013) (Entered: 04/12/2013)
05/16/2013	<u>25</u>	NOTICE of Appearance by Allison Feldman Borts <i>M. D. Scully and Justin D. Lewis for Google, Inc. and Teletech Services Corporation</i> (Borts, Allison) (Filed on 5/16/2013) (Entered: 05/16/2013)
05/24/2013	<u>26</u>	STIPULATION WITH [PROPOSED] ORDER <i>RE CONTINUANCE OF CASE MANAGEMENT CONFERENCE PENDING MOTION FOR REMAND</i> filed by David F. Calkins, Google Inc., Teletech Services Corporation. (Karasik, Gregory) (Filed on 5/24/2013) (Entered: 05/24/2013)
05/28/2013	<u>27</u>	STIPULATION AND ORDER re <u>26</u> STIPULATION WITH PROPOSED ORDER RE CONTINUANCE OF CASE MANAGEMENT CONFERENCE PENDING MOTION FOR REMAND filed by David F. Calkins. Case Management Statement due by 7/24/2013. Initial Case Management Conference set for 7/31/2013 at 2:00 PM in Courtroom 9, 19th Floor, San Francisco. Signed by Judge Jon S. Tigar on May 28, 2013. (wsn, COURT STAFF) (Filed on 5/28/2013) (Entered: 05/28/2013)
06/18/2013	<u>28</u>	STIPULATION WITH [PROPOSED] ORDER to Continue Hearing of re <u>18</u> MOTION to Remand filed by Google, Inc., Teletech Services Corporation. (Attachments: # <u>1</u> Proposed Order)(Lewis, Justin) (Filed on 6/18/2013) (Entered: 06/18/2013)
06/18/2013	<u>29</u>	ORDER VACATING HEARING AND DENYING STIPULATED REQUEST AS MOOT re <u>18</u> MOTION to Remand filed by David F. Calkins; denying as moot re <u>28</u> STIPULATION WITH PROPOSED

		ORDER. Signed by Judge Jon S. Tigar on June 18, 2013. (wsn, COURT STAFF) (Filed on 6/18/2013) (Entered: 06/18/2013)
07/12/2013	<u>30</u>	ORDER GRANTING MOTION FOR REMAND by Judge Jon S. Tigar; granting re <u>18</u> Motion to Remand. (wsn, COURT STAFF) (Filed on 7/12/2013) (Entered: 07/12/2013)
07/15/2013	<u>31</u>	Certified copy of remand order and Certified copy of docket entries mailed to the Superior Court of the State of California for the County of Santa Clara. (tn, COURT STAFF) (Filed on 7/15/2013) (Entered: 07/15/2013)

PACER Service Center			
Transaction Receipt			
07/21/2013 17:16:21			
PACER Login:	gr0253	Client Code:	aigdo-1084811
Description:	Docket Report	Search Criteria:	3:13-cv-00760-JST
Billable Pages:	4	Cost:	0.40

PROOF OF SERVICE

I am an employee of Gordon & Rees, L.L.P., counsel for defendant and petitioner TeleTech Services Corporation in this matter. I hereby certify that on July 22, 2013, I made service of the accompanying petition and related papers by arranging for delivery by a third-party commercial carrier for delivery within three days to plaintiff and respondent David F. Calkins at the office of his attorney, as set forth below:

Gregory N. Karasik, Esq.
Karasik Law Firm
11835 W. Olympic Blvd., suite 1275
Los Angeles, California 90064

Additionally, on July 22, 2013, I sent an electronic copy of the petition and related papers to Mr. Karasik at greg@karasiklawfirm.com.

Defendant Google, Inc., is represented in this matter by this office, and, as such, no service on Google, Inc., is required.

Dated: July 22, 2013

/s/ Justin D. Lewis
Justin D. Lewis

UNITED STATES COURT OF APPEALS for the NINTH CIRCUIT**Office of the Clerk****After Opening a Case – Counseled Cases***(revised March 2013)***Court Address – San Francisco Headquarters**

<i>Mailing Address for U.S. Postal Service</i>	<i>Mailing Address for Overnight Delivery (FedEx, UPS, etc.)</i>	<i>Street Address</i>
Office of the Clerk James R. Browning Courthouse U.S. Court of Appeals P.O. Box 193939 San Francisco, CA 94119-3939	Office of the Clerk James R. Browning Courthouse U.S. Court of Appeals 95 Seventh Street San Francisco, CA 94103-1526	95 Seventh Street San Francisco, CA 94103

Court Addresses – Divisional Courthouses

<i>Pasadena</i>	<i>Portland</i>	<i>Seattle</i>
Richard H. Chambers Courthouse 125 South Grand Avenue Pasadena, CA 91105	Pioneer Courthouse 700 SW 6th Ave, Ste 110 Portland, OR 97204	William K. Nakamura Courthouse 1010 Fifth Avenue Seattle, WA 98104

Court Website – www.ca9.uscourts.gov

The Court's website contains the Court's Rules and General Orders, information about electronic filing of documents, answers to frequently asked questions, directions to the courthouses, forms necessary to gain admission to the bar of the Court, opinions and memoranda, recordings of oral arguments, links to practice manuals, and an invitation to join our Pro Bono Program.

Court Phone List

Main Phone Number	(415) 355-8000
Attorney Admissions.....	(415) 355-7800
Calendar Unit.....	(415) 355-8190
CJA Matters (Operations Unit).....	(415) 355-7920
Docketing.....	(415) 355-7840
Death Penalty.....	(415) 355-8197
Electronic Filing – Appellate ECF.....	Send email to cmecf_ca9help@ca9.uscourts.gov
Library.....	(415) 355-8650
Mediation Unit.....	(415) 355-7900
Motions Attorney Unit.....	(415) 355-8020
Procedural Motions Unit.....	(415) 355-7860
Records Unit.....	(415) 355-7820
Divisional Court Offices:	
Pasadena.....	(626) 229-7250
Portland.....	(503) 833-5300
Seattle.....	(206) 224-2200

Electronic Case Filing

The Ninth Circuit’s Appellate ECF (Electronic Case Files) system is mandatory for all attorneys filing in the Court, unless they are granted an exemption. All non-exempted attorneys who appear in an ongoing case are required to register for and to use the Appellate ECF system. [Registration](#) and information about ECF is available on the Court’s website at www.ca9.uscourts.gov under *Electronic Filing–ECF*. Read the [Circuit Rules](#), especially Ninth Circuit Rule 25-5, for guidance on Appellate ECF, including which documents can and cannot be filed electronically.

Rules of Practice

The Federal Rules of Appellate Procedure (Fed. R. App. P.), the Ninth Circuit Rules (9th Cir. R.) and the General Orders govern practice before this Court. The rules are available on the Court's website at www.ca9.uscourts.gov under *Rules*.

Practice Resources

The Court has prepared a practice guide video entitled *Perfecting Your Appeal*. The video may be viewed for free on the Court's website at www.ca9.uscourts.gov under *FAQs, Forms and Instructions -> Guides and Legal Outlines*, and may be purchased through the Clerk's office in San Francisco for \$15.00. Continuing legal education credit for viewing this videotape is available in most jurisdictions.

Admission to the Bar of the Ninth Circuit

All attorneys practicing before the Court must be admitted to the Bar of the Ninth Circuit. Fed. R. App. P. 46(a); 9th Cir. R. 46-1.1 & 46-1.2.

To apply for admission, obtain an application on the Court's website at www.ca9.uscourts.gov under *Forms* or by calling (415) 355-7800. If you are registered for the 9th Circuit's Appellate ECF system, upload your application and pay the \$230.00 fee with a credit card by logging into Appellate ECF and clicking on Utilities > Attorney Admission. Otherwise, mail the application to the Clerk's Office in San Francisco with the admission fee of \$230.00. Your check or money order must be included with the application.

Notice of Change of Address

Counsel who are registered for Appellate ECF must update their personal information, including street addresses and/or email addresses, online at: <https://pacer.psc.uscourts.gov/psco/cgi-bin/cmecf/ea-login.pl> 9th Cir. R. 46-3.

Counsel who have been granted an exemption from using Appellate ECF must file a written change of address with the Court. 9th Cir. R. 46-3.

Motions Practice

Following are some of the basic points of motion practice, governed by Fed. R. App. P. 27 and 9th Cir. R. 27-1 through 27-13.

- Neither a notice of motion nor a proposed order is required. Fed. R. App. P. 27(a)(2)(C)(ii), (iii).
- Motions may be supported by an affidavit or declaration. 28 U.S.C. § 1746.
- Each motion should provide the position of the opposing party. Circuit Advisory Committee Note to Rule 27-1(5); 9th Cir. R. 31-2.2(b)(6).
- A response to a motion is due 10 days from the service of the motion. Fed. R. App. P. 27(a)(3)(A). The reply is due 7 days from service of the response. Fed. R. App. P. 27(a)(4); Fed. R. App. P. 26(c).
- A response requesting affirmative relief and/or relief by a date certain must include that request in the caption. Fed. R. App. P. 27(a)(3)(B).
- A motion filed after a case has been scheduled for oral argument, has been argued, is under submission or has been decided by a panel, must include on the initial page and/or cover the date of argument, submission or decision and, if known, the names of the judges on the panel. 9th Cir. R. 25-4.

Emergency or Urgent Motions

All emergency and urgent motions must conform with the provisions of 9th Cir. R. 27-3. Note that a motion requesting procedural relief (e.g., an extension of time to file a brief) is *not* the type of matter contemplated by 9th Cir. R. 27-3. Circuit Advisory Committee Note to 27-3(3).

Prior to filing an emergency motion, the moving party *must* contact an attorney in the Motions Unit in San Francisco at (415) 355-8020.

When it is absolutely necessary to notify the Court of an emergency outside of standard office hours, the moving party shall call (415) 355-8000. Keep in mind that this line is for true emergencies that cannot wait until the next business day (e.g., an imminent execution or removal from the United States).

Briefing Schedule

The Court issues the briefing schedule at the time the appeal is docketed.

Certain motions (e.g., a motion for dismissal) automatically stay the briefing schedule. 9th Cir. R. 27-11.

The opening and answering brief due dates (and any other deadline set for a date certain by the Court) are not subject to the additional time described in Fed. R. App. P. 26(c). The early filing of appellant's opening brief does not advance the due date for appellee's answering brief. 9th Cir. R. 31-2.1.

Extensions of Time to file a Brief

Streamlined Request

If you have not yet asked for any extension of time to file the brief, you may request one streamlined extension of up to 30 days from the brief's existing due date. Submit your request via the Appellate ECF system using the "File a Streamlined Request to Extend Time to File Brief" event on or before your brief's existing due date. No form or written motion is required.

Written Extension

Requests for extensions of more than 30 days will be granted only upon a written motion supported by a showing of diligence and substantial need. This motion shall be filed at least 7 days before the due date for the brief. The motion shall be accompanied by an affidavit or declaration that includes all of the information listed at 9th Cir. R. 31-2.2(b).

The Court will ordinarily adjust the schedule in response to an initial motion. Circuit Advisory Committee Note to Rule 31-2.2. The Court expects that the brief will be filed within the requested period of time. *Id.*

Contents of Briefs

The required components of a brief are set out at Fed. R. App. P. 28 and 32, and 9th Cir. R. 28-2, 32-1 and 32-2.

Excerpts of Record

The Court requires Excerpts of Record rather than an Appendix. 9th Cir. R. 30-1.1(a). Please review 9th Cir. R. 30-1.3 through 30-1.6 to see a list of the specific contents and format. For Excerpts that exceed 75 pages, the first volume must

comply with 9th Cir. R. 30-1.6(a). Excerpts exceeding 300 pages must be filed in multiple volumes. 9th Cir. R. 30-1.6(b).

Appellee may file supplemental Excerpts and appellant may file further Excerpts. 9th Cir. R. 30-1.7 and 30-1.8. If you are an appellee responding to a pro se brief that did not come with Excerpts, then your Excerpts need only include the contents set out at 9th Cir. R. 30-1.7.

Excerpts must be submitted in PDF format on Appellate ECF on the same day the filer submits the brief, unless the Excerpts contain sealed materials. If the Excerpts contain sealed materials, please electronically submit only the unsealed volumes. The filer shall serve a paper copy of the Excerpts on any party not registered for Appellate ECF.

After electronic submission, the Court will direct the filer to file 4 separately-bound excerpts of record with white covers in paper copy.

Mediation Program

Mediation Questionnaires are required in all civil cases except cases in which the appellant is proceeding pro se, habeas cases (28 U.S.C. §§ 2241, 2254 and 2255) and petitions for writs (28 U.S.C. § 1651). 9th Cir. R. 3-4. They are not required in criminal cases.

The Mediation Questionnaire is available on the Court's website at www.ca9.uscourts.gov under *Forms*. The Mediation Questionnaire should be filed within 7 days of the docketing of a civil appeal. The Mediation Questionnaire is used only to assess settlement potential.

If you are interested in requesting a conference with a mediator, you may call the Mediation Unit at (415) 355-7900, email ca09_mediation@ca9.uscourts.gov or make a written request to the Chief Circuit Mediator. You may request conferences confidentially. More information about the Court's mediation program is available at <http://www.ca9.uscourts.gov/mediation>.

Oral Hearings

Notices of the oral hearing calendars are distributed approximately 4 to 5 weeks before the hearing date.

The Court will change the date or location of an oral hearing only for good cause, and requests to continue a hearing filed within 14 days of the hearing will be granted only upon a showing of exceptional circumstances. 9th Cir. R. 34-2.

Oral hearing will be conducted in all cases unless all members of the panel agree that the decisional process would not be significantly aided by oral argument. Fed. R. App. P. 34.

**Ninth Circuit Appellate Lawyer Representatives
APPELLATE MENTORING PROGRAM**

1. Purpose

The Appellate Mentoring Program is intended to provide mentoring on a voluntary basis to attorneys who are new to federal appellate practice or would benefit from guidance at the appellate level. In addition to general assistance regarding federal appellate practice, the project will provide special focus on two substantive areas of practice - immigration law and habeas corpus petitions. Mentors will be volunteers who have experience in immigration, habeas corpus, and/or appellate practice in general. The project is limited to counseled cases.

2. Coordination, recruitment of volunteer attorneys, disseminating information about the program, and requests for mentoring

Current or former Appellate Lawyer Representatives (ALRs) will serve as coordinators for the Appellate Mentoring Program. The coordinators will recruit volunteer attorneys with appellate expertise, particularly in the project's areas of focus, and will maintain a list of those volunteers. The coordinators will ask the volunteer attorneys to describe their particular strengths in terms of mentoring experience, substantive expertise, and appellate experience, and will maintain a record of this information as well.

The Court will include information about the Appellate Mentoring Program in the case opening materials sent to counsel and will post information about it on the Court's website. Where appropriate in specific cases, the Court may also suggest that counsel seek mentoring on a voluntary basis.

Counsel who desire mentoring should contact the court at mentoring@ca9.uscourts.gov, and staff will notify the program coordinators. The coordinators will match the counsel seeking mentoring with a mentor, taking into account the mentor's particular strengths.

3. The mentoring process

The extent of the mentor's guidance may vary depending on the nature of the case, the mentee's needs, and the mentor's availability. In general, the mentee should initiate contact with the mentor, and the mentee and mentor should determine

together how best to proceed. For example, the areas of guidance may range from basic questions about the mechanics of perfecting an appeal to more sophisticated matters such as effective research, how to access available resources, identification of issues, strategy, appellate motion practice, and feedback on writing.

4. Responsibility/liability statement

The mentee is solely responsible for handling the appeal and any other aspects of the client's case, including all decisions on whether to present an issue, how to present it in briefing and at oral argument, and how to counsel the client. By participating in the program, the mentee agrees that the mentor shall not be liable for any suggestions made. In all events, the mentee is deemed to waive and is estopped from asserting any claim for legal malpractice against the mentor.

The mentor's role is to provide guidance and feedback to the mentee. The mentor will not enter an appearance in the case and is not responsible for handling the case, including determining which issues to raise and how to present them and ensuring that the client is notified of proceedings in the case and receives appropriate counsel. The mentor accepts no professional liability for any advice given.

5. Confidentiality statement

The mentee alone will have contact with the client, and the mentee must maintain client confidences, as appropriate, with respect to non-public information.