

JUL 18 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

REBECCA HOUPT, on behalf of herself  
and all others similarly situated,

Plaintiff - Appellee,

v.

VICTORIA FIRE & CASUALTY  
COMPANY, an Ohio corporation;  
NATIONWIDE MUTUAL LIFE  
INSURANCE COMPANY, an Ohio  
corporation; TITAN AUTO INSURANCE  
OF NEW MEXICO, INC., a New Mexico  
corporation,

Defendants - Appellants.

No. 11-55869

D.C. No. 2:10-cv-07726-R-JEM

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Manuel L. Real, District Judge, Presiding

Argued and Submitted July 14, 2011  
Pasadena, California

Before: RYMER, TALLMAN, and IKUTA, Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

Because Houpt’s parenthetical request for relief above CAFA’s \$5 million jurisdictional limit rendered her complaint ambiguous as to the total recovery sought, the district court erred in concluding that the defendant insurers needed to prove the amount in controversy to a legal certainty rather than by a preponderance of the evidence. *See Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007). Here the insurers have satisfied CAFA’s jurisdictional requirements: because Houpt alleged that the insurers improperly reduced the plaintiffs’ sales commissions, the full amount of those commissions, \$12,375,968, rather than the sum of all “improper” deductions, is properly included in the amount in controversy. *See* 28 U.S.C. § 1332(d)(2); *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 397–98 (9th Cir. 2010).

Finally, by alleging only that the plaintiffs are “California-based” sales agents, rather than California citizens, Houpt failed to plead or prove a necessary element of both the discretionary abstention and local controversy exceptions to CAFA jurisdiction. *See* 28 U.S.C. § 1332(d)(3), (4)(A)(i)(I); *Snell v. Cleveland, Inc.*, 316 F.3d 822, 824 (9th Cir. 2002) (per curiam). We therefore decline to affirm the decision of the district court on these alternative grounds.

The district court's order remanding this action to the state court is **REVERSED**, and the case is **REMANDED** to the district court for further proceedings consistent with this disposition.

**REVERSED and REMANDED.**