

Appeals of Sua Sponte Remand Orders in
Class Action Fairness Act (CAFA) Removals,
2014–2023

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Executive Summary

The Class Action Fairness Act of 2005 (CAFA) expanded federal diversity jurisdiction over class actions and provided that an order remanding to state court a case removed pursuant to CAFA is reviewable on appeal. In 2022, a circuit split emerged between the Eleventh Circuit, holding that appellate review is not authorized for a sua sponte remand order, and the Ninth Circuit, holding earlier that such review is authorized. At the request of the Judicial Conference Committee on Federal-State Jurisdiction, Federal Judicial Center (Center) researchers examined how often sua sponte remands were ordered in putative class actions removed to federal court on CAFA grounds and how often appellate review of sua sponte remand orders was sought.

Center researchers identified 1,109 putative class actions removed to federal court based, at least in part, on CAFA grounds and subsequently remanded to state court in calendar years 2014–2023. About a third of these cases involved state wage-and-hour issues (36%). Slightly over half (56%) were remanded because the claim did not satisfy the CAFA \$5 million amount in controversy. Three-fourths of the remands were initiated by plaintiff motion, often opposed by the defendant. Sua sponte orders accounted for 11% of CAFA remands.

Appeals of sua sponte remand orders were relatively uncommon. Center researchers identified twelve remands in the 2014–2023 period in which a party, pursuant to the CAFA provision authorizing discretionary appeals, sought appellate review of a sua sponte remand order. The court of appeals granted permission to appeal in eight of the twelve cases, denying permission in the remaining four cases. The court of appeals vacated or reversed in seven of the eight appeals.

Background

In general, “[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise.”¹ With some exceptions, it is well established that an order remanding a case removed to state court for lack of subject-matter jurisdiction is not appealable.² In 2005, Congress enacted the Class Action Fairness Act (CAFA)³, which provides for a discretionary appeal of remand orders: “a court of appeals *may accept* an appeal from an order . . . granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not more than 10 days after entry of the order.”⁴

CAFA also “loosened the requirements for diversity jurisdiction,”⁵ authorizing federal district jurisdiction over a class action if the putative class has 100 or more members, the parties are minimally diverse, and the aggregated matter in controversy exceeds \$5,000,000.⁶ The removing defendant must demonstrate a “reasonable probability” that these jurisdictional requirements are satisfied.⁷ The party opposing remand must establish that an action should not be remanded, as “no antiremoval presumption attends cases invoking CAFA.”⁸ CAFA also provides a number of statutory exceptions to CAFA jurisdiction, including for local

¹ 28 U.S.C. § 1447(d).

² *See Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 127–28 (1995) (“As long as a district court’s remand is based on a timely raised defect in removal procedure or on lack of subject-matter jurisdiction—the grounds for remand recognized by § 1447(c)—a court of appeals lacks jurisdiction to entertain an appeal of the remand order under § 1447(d).”).

³ 28 U.S.C. §§ 1332(d), 1453, 1711–15.

⁴ 28 U.S.C. § 1453(c) (emphasis added); see also Emery G. Lee III & Thomas E. Willging, *The Impact of the Class Action Fairness Act of 2005 on the Federal Courts: Fourth Interim Report to the Judicial Conference Advisory Committee on Civil Rules*, Federal Judicial Center (2008).

⁵ *Mississippi ex rel. Hood v. AU Optronics Corp.*, 134 S. Ct. 736, 739 (2014).

⁶ 28 U.S.C. § 1332(d).

⁷ *Blockbuster, Inc. v. Galeno*, 472 F.3d 53, 58 (2d Cir. 2006).

⁸ *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

controversies, home state controversies, securities as defined by the 1933 Securities Act, and in the interests of justice, among other exceptions.⁹

As stated in CAFA’s legislative history, “[t]he purpose of this [appeals] provision is to develop a body of appellate law interpreting the legislation without unduly delaying the litigation of class actions”¹⁰ and “to strongly favor the exercise of federal diversity jurisdiction over class actions with interstate ramifications”¹¹ in order “to curb perceived abuses of the class action device.”¹² Although 28 U.S.C. § 1453(c)(1) does not provide criteria for accepting or denying review of a CAFA petition for appeal, courts find that a key factor is “the presence of an important CAFA-related question”¹³ such as “an unsettled question of CAFA law or an incorrectly decided CAFA issue.”¹⁴ To prevent undue delay, after a court of appeals accepts the appeal, it is considered denied if the appeal is not concluded within sixty days unless there is an extension.¹⁵

In 2022, the Eleventh Circuit held that appellate review of a sua sponte remand, as opposed to an order granting a defendant’s remand motion, is not authorized by the plain text of the statute.¹⁶ The Eleventh Circuit noted that Congress could amend CAFA to provide more

⁹ Local controversy and home state: 28 U.S.C. § 1332(d)(4)(A),(B) (These exceptions require the party seeking remand to prove, among other requirements, that “two-thirds or more of the members of all proposed plaintiff classes in the aggregate and the primary defendants, are citizens of the State in which the action was originally filed.”); securities exception: 28 U.S.C. § 1332(d)(9)(A); interests of justice exception: 28 U.S.C. § 1332(d)(3).

¹⁰ S. Rep. 109-14, 49, 2005 U.S.C.C.A.N. 3, 46. The legislative history states that the general rule against appeals of remand orders is justified because “the federal diversity jurisdictional statutes and the related removal statutes had been subject to appellate review for many years and were the subject of considerable appellate level interpretive law.” *Id.* CAFA created new federal subject-matter jurisdiction, and the intent of Congress in facilitating appeals in CAFA remands was development of new “appellate level interpretive law” relating to that jurisdiction.

¹¹ S. Rep. No. 109-14, at 35 (2005)

¹² *Adams v. W. Marine Products, Inc.*, 958 F.3d 1216, 1220 (9th Cir. 2020).

¹³ *See Roberts v. Mars Petcare US, Inc.*, No. 17-6122 (6th Cir. 2017) (citing *Coll. of Dental Surgeons of P.R. v. Conn. Gen. Life Ins. Co.*, 585 F.3d 33, 38 (1st Cir. 2009)).

¹⁴ *Id.*

¹⁵ 28 U.S.C. § 1453(c)(4).

¹⁶ *See Ruhlen v. Holiday Haven Homeowners, Inc.*, 28 F.4th 226, 229–30 (11th Cir. 2022).

specific guidance, if necessary.¹⁷ This created a circuit split, as the Ninth Circuit previously held that appellate review of sua sponte remands is authorized by CAFA.¹⁸

At the request of the Judicial Conference Committee on Federal-State Jurisdiction (Committee), Federal Judicial Center (Center) researchers examined how often sua sponte remands were ordered in putative class actions removed to federal court on CAFA grounds and, more specifically, how often appeals of sua sponte remand orders were sought.

Center researchers used the Civil Integrated Data Base (IDB)¹⁹ to identify putative class actions remanded to state court in calendar years 2014–2023. They then examined the IDB records and corresponding dockets and underlying documents to determine whether the remanded putative class actions had been removed to federal court based on CAFA jurisdiction; whether the remand order was sua sponte; and whether any party sought an appeal of the remand order, as well as other relevant information (e.g., nature of suit, stated reason for remand). The method used to obtain this information is detailed in Appendix A. Expanded results beyond those in the Findings section below are provided in Appendix B.

Findings

Center researchers identified 1,109 putative class actions removed to federal court based, at least in part, on CAFA grounds *and* subsequently remanded to state court in calendar years 2014–2023. The most common legal basis for the class claims among the CAFA removals was a state wage-and-hour law (Other Labor Litigation). Two-thirds of the CAFA remands (67%) were removed from state court to a district in the Ninth Circuit (740 cases), most often the Central District of California (39%, 427 cases) or the Northern District of California (39%, 167 cases).

¹⁷ *Id.* at 230.

¹⁸ *See* *Watkins v. Vital Pharmaceuticals, Inc.*, 720 F.3d 1179, 1181 (9th Cir. 2013).

¹⁹ The Civil IDB includes information on civil actions filed from 1970 to present. *See* <https://www.fjc.gov/research/idb>.

The most common reason provided for remand (56%) was that the claim did not satisfy the CAFA amount in controversy.

Most CAFA remands in the study period (73%) were initiated by a plaintiff's motion to remand (809 cases out of 1,109). The motion to remand (or court's order to show cause as to why the case should not be remanded) was often opposed (70%). Sua sponte orders²⁰ accounted for only 11% of CAFA remands (121 cases in the study period). In about half of sua sponte remands (57 cases), the court issued a show cause order prior to remand. Stipulated remand to state court without prior motion or order (accounting for 15% of CAFA remands) was more common than sua sponte remand (171 cases compared to 121).

In 22% of CAFA removals (248), a party initiated an appeal of the remand order. In 14 cases (6%), defendants appealed the remand order as of right²¹ rather than pursuant to 28 U.S.C. § 1453(c). The median number of days between removal to federal court and remand to state court was 129 days (4.2 months); the CAFA removals remanded based on CAFA took less time (median = 120 days) than CAFA removals remanded for non-CAFA reasons (median = 166 days).

As shown in Figure 1, appeals of sua sponte remand orders were relatively uncommon. The appeal rate was lower for sua sponte remands (13%) than for remands on a defendant's motion (24%) ($p < .01$). A party initiated an appeal of a sua sponte remand order in thirteen cases, which represent only 1.2% of all CAFA remands and 11% of sua sponte CAFA remands.

²⁰ For purposes of this discussion, "sua sponte" is defined broadly to include cases with additional motions activity (e.g., a plaintiff's motion to remand followed by a sua sponte remand; a sua sponte order to show cause followed by a stipulation to remand).

²¹ See 28 U.S.C. § 1291.

Of these thirteen, one was an appeal as of right, not an appeal filed pursuant to the CAFA provision authorizing discretionary appeals.²²

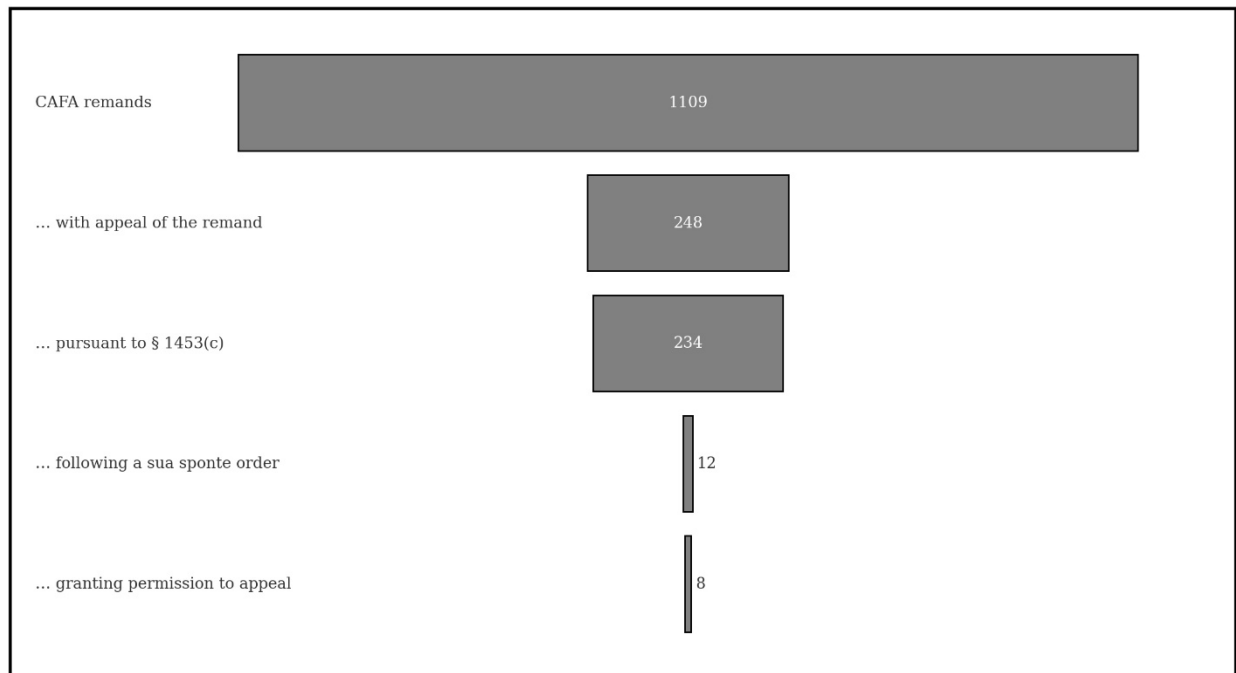


Figure 1. CAFA cases removed to federal court and remanded.

In the twelve petitions to appeal based on CAFA, the court of appeals granted permission to appeal in eight instances (67%) and denied permission in four (33%). The court of appeals vacated or reversed in seven of the eight (88%) merits appeals. The median number of days between the remand order and appellate order was 237 days. Seven of these eight appeals (88%) were in the Ninth Circuit, all from the Central District of California; the eighth was in the Eleventh Circuit, from the Middle District of Alabama.²³

²² In this Fourth Circuit case, the remand was based on a forum-selection clause. The court of appeals determined that it had jurisdiction over appeals of remand orders based on forum-selection clauses. *See Bartels et al v. Saber Healthcare Group, LLC* (E.D. N. Car. 5:16cv00283, filed May 23, 2016), ECF No. 63, Jan. 23, 2018, <https://ecf.nced.uscourts.gov/doc1/13115780714>.

²³ The Eleventh Circuit petition to appeal was granted in *Hunter v. City of Montgomery* (M.D. Ala. 2:15cv00653, filed Sept. 11, 2015), ECF No. 43, Nov. 14, 2016, <https://ecf.almd.uscourts.gov/doc1/01712779737>. The order docketed there stated,

we construe § 1453(c)(1) as allowing review of sua sponte remand orders, in addition to orders issued pursuant to a party's motion. The alternate reading urged by the Respondents would abrogate CAFA's

Center researchers also identified 805 putative class actions that were removed, but not on the basis of CAFA. Compared to the CAFA removal cases, these cases were more likely to involve consumer credit issues; the remand was less likely to originate with a plaintiff motion (57% vs. 73%) and more likely to stem from the court declining to exercise supplemental jurisdiction²⁴ (7% vs. 2%) or a defendant's motion (4% vs. 0%). There was also less party opposition to remand (59% vs. 70%), and the time from filing to remand was shorter (98 days vs. 129 days for CAFA removal cases overall; 120 days for CAFA removals remanded for CAFA reasons; 166 days for CAFA removals remanded for non-CAFA reasons). The appeal rate was also lower for the non-CAFA removal cases (8% vs. 22%). Table 2 in Appendix B provides further data comparing CAFA and non-CAFA removals.

stated intention to increase access to the federal courts for class action litigants. See *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1193 (11th Cir. 2007). In any event, a sua sponte order is one issued on the court's own motion, and nothing in CAFA or our precedent suggests that such orders are intended to be unreviewable simply because they are issued sua sponte. Accordingly, the motion to dismiss the petition on jurisdictional grounds is denied.

American Traffic Solutions, Inc. v. Hunter (11th Cir., 16-90016, filed Jan. 28, 2015), ECF No. 18, Nov. 14, 2016, <https://ecf.ca11.uscourts.gov/docs1/01109255287>, at 2. The Eleventh Circuit later determined (in 2022) that no appeal would lie in considering a sua sponte appeal in *Holiday Haven Homeowners, Inc. v. Taranto* (M.D. Fla. 6:21cv00174, filed Jan. 25, 2022) (under the caption *Ruhlen v. Holiday Haven Homeowners, Inc.*). Because, however, the *Taranto/Ruhlen* action does not appear as a class action in the court records, it is not included in this number. This is a limitation of the search method described in the appendix.

²⁴ Data collection was completed prior to the Supreme Court's holding in *Royal Canin U.S.A. Inc., v. Wullschlegel*, No. 23-677 (U.S. Jan. 15, 2025) ("When a plaintiff amends her complaint to delete the federal-law claims that enabled removal to federal court, leaving only state-law claims behind, the federal court loses supplemental jurisdiction over the state claims, and the case must be remanded to state court.")

Appendix A. Research Method

Center researchers used the Civil IDB²⁵ to identify class actions removed to federal court between January 1, 2014, and January 1, 2024, and subsequently remanded to state court. This initial search yielded 1,995 records.

Civil IDB records²⁶ include such information as circuit, district, docket number, parties, filing date, origin (e.g., removal, remanded for further action), jurisdiction (e.g., diversity of citizenship, federal question),²⁷ nature of suit code, disposition, and termination date for each action. Only records with a disposition code indicating the action was remanded to state court were included in the initial search results.

Civil IDB records also include information on whether the plaintiffs make class allegations in the complaint. Only cases coded as putative class actions were included in the initial IDB search results.

Two Center researchers independently collected information from each court record on the following:

- Did the action include class claims? (Yes or no)
- Was the action removed based, at least in part, on CAFA? (Yes or no)
- Which party, if either, initiated the remand? (e.g., plaintiff, sua sponte)

²⁵ The Civil IDB includes information on civil actions filed from 1970 to the present. *See* <https://www.fjc.gov/research/>.

²⁶ The IDB, based on the courts' data, may contain more than one record for a single case or action. The initial search yielded fifteen case IDs with more than one record, typically because the case was terminated in the district court and then reopened in response to an appellate decision. For example, the judge might grant a plaintiff's motion to remand, and the defendant filed a notice of appeal. Then, either after an appellate decision or the expiration of a stay, the case was reopened with the same case ID and a new motion to remand was filed. In this report, these records (and motions to remand) were examined separately.

²⁷ The initial search was not limited to actions removed based on diversity of citizenship jurisdiction, according to the IDB, because some CAFA removals have another jurisdiction code in the IDB. After manual coding by Center researchers, 86% of the records classified as CAFA removal cases were coded as diversity jurisdiction in the IDB (958 of 1,109 CAFA removals), 13% as federal question jurisdiction (147), and less than 1%, U.S. government defendant (4).

- Was the remand based, at least in part, on CAFA? (Yes or no)²⁸
- Remand order date
- Was there party opposition to remand? (Yes or no)
- District court order (e.g., the case was remanded; the case was dismissed)
- Was an appeal initiated by a party? (Yes or no)

For records in which an appeal was initiated:

- Was the petition to appeal granted? (Yes or no)
- Was CAFA referenced in the petition to appeal or order? (Yes or no)
- Did the appellate court note a sua sponte remand? (Yes or no)
- If there was a decision on the merits, the grounds for that decision (e.g., timeliness of removal, local controversy exception)
- Date of appellate order
- Appellate court order (e.g., affirmed)

The IDB search results included 81 records (4.1%) that did not, in fact, meet the selection criteria based on errors in the courts' data. Specifically, sixty-two records were not class actions (did not involve class allegations) (0.3%), sixteen were not removed to federal court (0.8%), ten were removals but not remanded back to state court (0.5%), and one record was incorrectly filed. Removed actions that were not remanded back to state court were generally terminated in the

²⁸ The coders also provided the reason for remand, which was coded into discrete categories described further in Appendix B.

removal court by multidistrict litigation (MDL) transfer order. If the district court denied the motion to remand, but the action was remanded after appellate review, it remained in the study.

After this data cleaning, 1,914 cases satisfied the selection criteria. As shown in Table 1, most of these cases (62%) were filed in the Ninth Circuit, largely in the Central District of California (628, or 33%), the Northern District of California (328, or 17%), and the Southern District of California (136, or 7%). No other district accounted for more than 5% of the cases used in the analysis.

Table 1. Search Results, by Circuit

Circuit	Records Initially Identified (% of total)	Records Used in Analysis (% of total)
D.C.	1 (<1%)	1 (<1%)
First	46 (2%)	46 (2%)
Second	75 (4%)	63 (3%)
Third	120 (6%)	117 (6%)
Fourth	51 (3%)	50 (3%)
Fifth	148 (7%)	137 (7%)
Sixth	50 (3%)	47 (3%)
Seventh	40 (2%)	39 (2%)
Eighth	132 (7%)	129 (7%)
Ninth	1,233 (62%)	1,187 (62%)
Tenth	35 (2%)	35 (2%)
Eleventh	64 (3%)	63 (3%)
Total	1,995 (100%)	1,914 (100%)

Appendix B. Expanded Findings

Using the method described in Appendix A, Center researchers identified 1,109 (putative) class actions removed to federal court based, at least in part, on CAFA grounds *and* subsequently remanded to state court in calendar years 2014–2023. This appendix provides detailed information on these cases (CAFA removals), as well as the CAFA removals that included appellate activity. It also provides limited information on class actions removed to federal court on bases other than CAFA.

I. CAFA Removal Cases

Case Type and Origin

The most common nature of suit code for the CAFA removals was “Other Labor Litigation,” which in this context covers wage and hour disputes based on state law. These cases accounted for more than a third (36%) of the 1,109 CAFA removals. The most common nature of suit codes²⁹ were:

- Other Labor Litigation (395, 36%)
- Civil Rights Employment (161, 15%)
- Other Personal Injury (130, 12%)
- Other Contract Actions (114, 10%)
- Other Fraud (82, 7%)
- Other Statutory Actions (48, 4%)
- Insurance (42, 4%)

Two-thirds of the CAFA remands (67%) were removed from state court to a district in the Ninth Circuit (740 cases), most often the Central District of California (39%, 427 cases), the

²⁹ No other nature of suit code was attached to more than twenty cases.

Northern District of California (15%, 167 cases), or the Southern District of California (9%, 98 cases). No other district accounted for more than 4% of the CAFA remand cases in the sample.

Initiation of Remand

The plaintiff filed a motion to remand in 73% of CAFA removals (809 of 1,109), with 107 of these plaintiff motions followed by a stipulation or indication from the defendant that the motion was uncontested.³⁰ The initial remand request was a stipulation in 15% of CAFA removals (171).³¹

Eleven percent of CAFA removals (121) were remanded sua sponte. In almost half of these cases (48%, 57), the judge ordered a defendant to show cause why the case should not be remanded. In the remainder of the sua sponte cases, the judge remanded the case sua sponte without entering a show cause order. As a reminder, to assist in our understanding of cases with sua sponte remand activity and how often sua sponte remand orders were appealed, we included in our sua sponte category cases that included only a sua sponte remand order as well as cases with additional remand activity (e.g., a plaintiff's motion to remand followed by a sua sponte remand; an order to show cause followed by the parties' stipulation).

In 2% of CAFA removals (18), the district court judge declined to exercise supplemental jurisdiction and remanded remaining state-law claims pursuant to U.S.C. §1367. These records were not included in the sua sponte total.

In 2% of CAFA removals (17), the remand originated in a different manner (e.g., initiated by defendant; after appellate remand).

³⁰ Nine plaintiff motions were followed by a sua sponte remand or order to show cause as to why the matter should not be remanded that then led to a sua sponte remand.

³¹ This does not include the eleven cases where an order to show cause as to why the matter should not be remanded was uncontested.

Party Opposition

A party (always the defendant) opposed remand in 70% of the CAFA removals that were subsequently remanded (781). In the remaining 29% of CAFA removals (326), opposition was not evident on the docket; this includes non-opposition to sua sponte remands and remands pursuant to U.S.C. §1367.

Basis for Remand

In 80% of CAFA removals (882), the remand order stated that remand was based on CAFA grounds such as lack of minimal diversity, inadequate class size (fewer than 100 members), and the amount in controversy (less than \$5 million), as well as CAFA exceptions (e.g., the local controversy and home-state exceptions). Among the 882 remands based on CAFA grounds, there was a clear reason for remand on the docket for 767 cases. Cases could be included in multiple categories.³² Most commonly, the reason for remand, at least in part, was failure to satisfy the amount in controversy requirement, in 56% (428) of these cases. This included four cases where there was a clear intent to administer a class settlement for less than the CAFA aggregate amount.

The most common reasons were:

- CAFA amount in controversy (428, 56%)
- Local controversy exception (70, 9%)
- Lack of minimal diversity (67, 9%)
- No federal claim, or federal or class claims dismissed or dropped (37, 5%)

³² This is why the below list does not add to 767. The percentages still are based on 767 to show how often cases included each reason.

- No class certification or not meeting CAFA requirement of 100 members (38, 5%)
- Home state exception (38, 5%)
- Timeliness or procedural defect (34, 4%)
- No CAFA jurisdiction found, including for cases under the California Private Attorneys General Act (28, 4%)
- Securities exception (12, 2%)
- Interests of justice exception (7, 1%)
- Remand following an appellate decision (5, 1%)
- Settlement-related remand (including for settlement for less than CAFA jurisdictional amount) (4, 8%)

Additionally, 36 cases fell into a variety of reasoning categories that were combined as “Other” (e.g., well-pleaded complaint rule, mass action).

In 20% of CAFA removals (225), the order to remand was based on non-CAFA grounds. The most common reason was lack of Article III standing, in 40 cases (18%).

Overall, 57 CAFA removals were remanded for purposes of settlement (17 that referenced CAFA and 40 that did not). These originated in the California Central (26), California Northern (24), and California Southern (7) districts.

District Court Decision and Timing

All CAFA removal cases (100%) were remanded, per our inclusion criteria; 24 of the 1,109 (2%) were remanded after a plaintiff motion to remand was denied earlier in the case. The median number of days between removal to federal court and remand to state court was 129 days

(4.2 months), with a range of 1 day to 2,587 days (85.1 months).³³ Eighteen CAFA removals (2%) were remanded more than 1,000 days (32.9 months) after filing.

CAFA removals with remands based on CAFA took less time from removal to remand (*median* = 120 days, range: 1 day to 2,587 days) than CAFA removals remanded for non-CAFA reasons (*median* = 166 days, range: 1 day to 1,887 days).

Appeals

In 22% of CAFA removals (248), a party initiated an appeal of the remand order. Not every appeal was initiated pursuant to 28 U.S.C. § 1453(c), however. In 14 cases (6%), defendants appealed the remand order as of right.³⁴

For the 234 appeals of remand orders in CAFA removals initiated pursuant to 28 U.S.C. § 1453(c), permission to appeal was denied 152 times (65%) and granted 75 times (32%). In the remaining seven cases (3%), the petition was withdrawn or terminated on other grounds.

The appellate court issued a decision for 76 of the cases with 28 U.S.C. § 1453(c) appeals.³⁵ The appellate court most often reversed (41%, 31), followed by affirmed (28%, 21) and vacated and remanded (20%, 15). Eight appeals were dismissed, including voluntarily, and one was withdrawn. One appeal was still pending at the time of analysis.

When the appellate opinion provided the underlying reasoning, it most often included discussion of the CAFA amount in controversy (26%, 20), followed by the local controversy

³³ Center researchers calculated the number of days between the case's filing (removal) and termination (remand) dates, using dates provided in the IDB. In one case, the IDB filing date corresponded with the reopening of the case for the purposes of remanding the case to state court per appellate remand. In one case, both dates were not available in the IDB. To convert between days and months, Center researchers used 30.4 days for a month. See: <https://www.inchcalculator.com/convert/day-to-month/>.

³⁴ For example, in *Echevarra v. Aerotek, Inc.*, 5:16-cv-4041 (N.D. Cal.), the defendant appealed after the court declined to exercise its discretion to retain supplemental jurisdiction under the Private Attorneys General Act, citing *Harmston v. City and County of San Francisco*, 627 F.3d 1273, 1277 (9th Cir. 2010) (holding that "if a district court remands a case to state court for any reason other than lack of subject matter jurisdiction, its remand order is appealable under 28 U.S.C. § 1291").

³⁵ To examine appellate decisions, coders reviewed both the district court and appellate court dockets.

exception (20%, 15). Additional bases for the appellate decision included timeliness of removal, the home state exception, and minimal diversity. Sua sponte CAFA removal cases are discussed further below.

Appellate timing

Appellate timing information from removal to appellate decision was available via IDB data for 79 of the 235 CAFA removal cases appealed pursuant to 28 U.S.C. § 1453(c). The median number of days between removal to federal court and appellate decision was 326 days (10.7 months), with a range from 119 days (3.9 months) to 1,177 days (38.7 months). Eight cases (11%) had an appellate order issued more than 730 days (two years) after the filing/removal date.

To examine the time from the remand order to the issuance of the appellate decision, Center researchers recorded the date of the remand order when available. For the 78 CAFA removal cases appealed pursuant to 28 U.S.C. § 1453(c) with this information, the median number of days between the remand order and appellate order was 196 days (6.4 months), with a range from -60 days (-2 months) to 955 days (31.4 months). Three cases (4%) had negative time values; in these cases, the appellate order came before the remand order, as the district court's remand decision was based on an appellate decision for the district court to order a remand to state court.

U.S.C. § 1453(c)(2) provides time limits such that, "If the court of appeals accepts an appeal under paragraph (1), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under paragraph (3)." We did not record the date the court of appeals accepted the appeal. However, for 91% (71) of CAFA removal appeals, the time from the remand order to appellate decision was more than 60 days.

II. CAFA removal cases with sua sponte remand orders

As the Committee was especially interested in appeals of sua sponte remand orders in CAFA removals, this section specifically examines those 121 cases (11% of the 1,109 CAFA removals).

Case Type and Filing Location

For these 121 cases, the most common nature of suit codes were Other Labor Litigation (36%, 44), Civil Rights Employment (14%, 17), Other Contract Actions (12%, 14), and Other Fraud (10%, 12). No other nature of suit code was attached to more than seven cases.

The cases most often originated in the Ninth Circuit (82%, 99). No other circuit had more than five CAFA removals with sua sponte remand orders.³⁶ The cases originated in twenty-three different district courts. However, 77% originated in California (the Central District of California (60%, 72); the Northern District of California (9%, 11) and the Southern District of California (8%, 10)); no other district court provided more than 3% of the cases.

Initiation of Remand

To be included in this subset of cases, some sua sponte activity was required, as described above. In about half (47%, 57) of the cases, the judge issued an order to show cause. In 15 cases (12%), the plaintiff filed a motion to remand either before a sua sponte decision or in response to the order to show cause.

Party Opposition

In 56 cases (46%), a party either filed a memorandum opposing a party's motion to remand or responded in opposition to the judge's order to show cause as to why the case should

³⁶ Eighth Circuit: 6, 5%; Second Circuit: 4, 3%; Tenth Circuit: 3, 3%; Third, Fourth, Seventh, and Eleventh Circuits: 2, 2% each; Sixth Circuit: 1, 1%; none from the D.C., First, or Fifth Circuits.

not be remanded. There was no opposition visible on the docket or in documents for the remaining 75 (54%) cases.

Basis for Remand

In 100 of the 121 cases (83%), the sua sponte remand was based on CAFA reasoning. There was clear reasoning provided in the court opinion for 96 of these 100 cases. Most commonly, 55% of these cases (53) were remanded, at least in part, because of failing to satisfy the amount in controversy requirement. Additional reasons included the local controversy exception (8%, 8), lack of minimal diversity (7%, 7), and the California Private Attorneys General Act (6%, 6).

In 19 cases (16%), there was a non-CAFA reason for remand. For these cases, the most common reason was lack of Article III standing (58%, 11). No other reason was expressed in more than one remand opinion.

Two cases (2%), both from the Central District of California, were remanded for purposes of effectuating settlement in state court.

District Court Decision and Timing

The median number of days between removal to federal court and remand to state court was 109 days (3.6 months), with a range from 1 day to 1,887 days (62.1 months). Six CAFA sua sponte cases (5%) were remanded more than 1,000 days (32.9 months) after filing.

CAFA removals with sua sponte remands based on CAFA took less time from removal to remand (*median* = 80 days, range: 1 day to 1,232 days) than CAFA removals remanded for non-CAFA reasons (*median* = 253 days, range: 9 days to 1,887 days). Again, when cases were re-opened and then remanded following an appellate order, the number of days between filing

(here, a reopening after the remand in the IDB) is usually quite small; this accounts for many of the cases with short pending times.

Appeals

In 11% (13) of the CAFA removal sua sponte remands, a party initiated an appeal of the remand order. Twelve of these were initiated pursuant to 28 U.S.C. § 1453(c). In one case, defendants appealed the remand order as of right.³⁷ The remainder of this section focuses on the 12 cases.

Permission to appeal was granted for eight cases (67%) and denied for four cases (33%).

The appellate court issued a decision for all eight of these cases, vacating and remanding 50% (4), reversing 38% (3), and affirming 13% (1). When the appellate opinion provided the underlying reasoning, it most often included discussion of the CAFA amount in controversy requirement (38%, 3); other opinions discussed the home-state and local controversy exception, that the defendant should have had an opportunity to prove that jurisdictional requirements were met, or that subsequent dismissal of class claims does not defeat the court's CAFA jurisdiction over remaining individual claims. In one case, the appellate court stated that district courts may not remand sua sponte for procedural defects.³⁸

Appellate timing

For these eight cases, the median number of days between removal to federal court and appellate decision was 337 days (11.1 months), with a range from 219 days (7.2 months) to 642 days (21.1 months).

³⁷ For example, in *Echevarra v. Aerotek, Inc.*, 5:16-cv-4041 (N.D. Cal.), the defendant appealed after the Court declined to exercise its discretion to retain supplemental jurisdiction under the Private Attorneys General Act, citing *Harmston v. City and County of San Francisco*, 627 F.3d 1273, 1277 (9th Cir. 2010) (holding that “if a district court remands a case to state court for any reason other than lack of subject matter jurisdiction, its remand order is appealable under 28 U.S.C. § 1291”).

³⁸ See *Rascon v. Benchmark Electronics Inc.*, 2:20-CV-6632 (C.D. Cal.), 21-55210 (C.A.9).

The median number of days between the remand order and appellate order was 237 days (23.0 months), with a range of 202 days (6.6 months) to 307 days (10.1 months).

As noted above, U.S.C. § 1453(c)(2) requires the court to complete all action on an appeal within 60 days of the appeal being filed unless there is an extension. While the date of the remand order is not analogous to the date the appeal is filed, no appellate decision was provided within 60 days, and none earlier than 202 days (6.6 months) in this subset of eight cases.

III. Non-CAFA Cases

This section details the 805 putative class actions that coders identified as removed to federal court not on CAFA grounds—including removals based on federal question or diversity of citizenship jurisdiction. This section also provides a table differentiating the CAFA and non-CAFA case data.

Case Type

The most common nature of suit codes for the non-CAFA removals were “Consumer Credit” and “Other Labor Litigation” (state wage-and-hour law issues). These cases each accounted for 17% of the 805 non-CAFA removals. Of note, Consumer Credit cases were not among the seven most common nature of suit codes for the CAFA removals. The most common nature of suit codes were:

- Consumer Credit (17%, 137)
- Other Labor Litigation (17%, 136)
- Other Statutory Actions (10%, 78)
- Civil Rights Employment (8%, 65)
- Labor Management Relations Act (8%, 65)
- Securities, Commodities, Exchange (7%, 59)

- Fair Labor Standards Act (5%, 40)
- Other Contract Actions (5%, 38)

Initiation of Remand

The plaintiff filed a motion to remand in 61% of non-CAFA removals (491 of 805), with 71 of these plaintiff motions followed by a stipulation or indication from the defendant that the motion was uncontested.

The remand was initiated by stipulation to remand in 16% of non-CAFA removals (126).³⁹ In about one-third of these cases (33%, 41), the judge entered on the docket an order to show cause as to why the case should not be remanded. In the remainder of the sua sponte cases, the judge remanded the case sua sponte without issuing a show cause order. In 7% of non-CAFA removals (59), the judge declined to exercise supplemental jurisdiction and remanded remaining state-law claims pursuant to U.S.C. §1367. These records were not included within the sua sponte total. In 4% of non-CAFA removals (30), the defendant moved to remand. In ten of these cases, the defendant's motion was submitted in a related case. In less than 1% of non-CAFA removals (7), the remand originated in a different manner (e.g., after appellate remand).

Party Opposition

A party opposed remand in 59% of the non-CAFA remands (475). In the remaining 41% of CAFA removals (330), opposition was not evident on the docket; this includes non-opposition to sua sponte remands and remands pursuant to U.S.C. §1367.

³⁹ Not including cases in which a show cause order was uncontested.

Basis for Remand

None of these cases were remanded on the basis of CAFA. Most commonly, they were remanded due to lack of a federal question. The most common reasons for remand identified on the docket were:

- Lack of a federal question (25%, 204)
- Article III standing (13%, 106)
- Diversity jurisdiction / citizenship issue (11%, 88)
- No reason clearly provided on docket (11%, 86)
- Amount in controversy (9%, 77)
- Preemption (e.g., ERISA) (8%, 70)

There were also ten cases (1%) remanded for purposes of settlement.

District Court Decision and Timing

All non-CAFA removal cases (100%) were remanded, per our inclusion criteria; 23 of the 805 (3%) were remanded after a plaintiff motion to remand was denied earlier in the case.

The median number of days between removal to federal court and remand to state court was 98 days (3.2 months), with a range of 0 days to 1,710 days (56.3 months). Ten non-CAFA removals (1%) were remanded more than 1,000 days (32.9 months) after filing.

Appeals

In 8% of the non-CAFA removals (64), a party initiated an appeal of the remand order. In 67% of these cases (48), defendants appealed the remand order as of right. A writ of mandamus was issued in one case that was consolidated with multidistrict litigation; the remainder were withdrawn by a party.

No appellate decisions were issued, and no further data analyses were performed.

Table 2. Summary of findings for CAFA removal and non-CAFA removal cases

	CAFA Removals	Non-CAFA Removals
Overall number	1,109 (58%)	805 (42%)
Nature of suit (most common)	<ul style="list-style-type: none"> • Other Labor Litigation (395, 36%) • Civil Rights Employment (161, 15%) • Other Personal Injury (130, 12%) • Other Contract Actions (114, 10%) • Other Fraud (82, 7%) • Other Statutory Actions (48, 4%) • Insurance (42, 4%) 	<ul style="list-style-type: none"> • Consumer Credit (17%, 137) • Other Labor Litigation (17%, 136) • Other Statutory Actions (10%, 78) • Civil Rights Employment (8%, 65) • Labor Management Relations Act (8%, 65) • Securities, Commodities, Exchange (7%, 59) • Fair Labor Standards Act (5%, 40) • Other Contract Actions (5%, 38)
Who sought remand	<ul style="list-style-type: none"> • Plaintiff: 809 (73%) • Uncontested stipulation: 171 (15%) • Sua sponte: 121 (11%) • Denied supplemental jurisdiction: 18 (2%) • Other: 17 (2%) 	<ul style="list-style-type: none"> • Plaintiff: 461 (57%) • Uncontested stipulation: 126 (16%) • Sua sponte: 122 (15%) • Denied supplemental jurisdiction: 59 (7%) • Defendant: 30 (4%) • Other: 7 (< 1%)
Party Opposition	<ul style="list-style-type: none"> • Yes: 781 (70%) • No: 326 (29%) 	<ul style="list-style-type: none"> • Yes: 475 (59%) • No: 330 (41%)
Time from filing to remand (median)	129 days <ul style="list-style-type: none"> • Remanded for CAFA reasons: 120 days • Remanded for non-CAFA reasons: 166 days 	98 days
Appeal filed	Yes: 248 (22%)	Yes: 64 (8%)