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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RYAN COFFEY,  
Plaintiff,  
v.  
RIPPLE LABS INC., et al.,  
Defendants.

Case No. 18-cv-03286-PJH

**ORDER DENYING MOTION TO  
REMAND**

Re: Dkt. No. 16

United States District Court  
Northern District of California

This is a putative securities class action brought by plaintiff Ryan Coffey against defendants Ripple Labs, Inc. (“Ripple”), XRP II, LLC, a subsidiary of Ripple, and Bradley Garlinghouse, CEO of Ripple. Compl. at 1, ¶ 13. Plaintiff filed this action in the San Francisco Superior Court on May 3, 2018. On June 1, 2018, defendants removed this action pursuant to the Class Action Fairness Act (“CAFA”), under 28 U.S.C. § 1453 (“Removal of Class Actions”). See Dkt. 1.

Plaintiff’s motion to remand came on for hearing before this court on August 1, 2018. Plaintiff appeared through his counsel, James Taylor-Copeland. Defendants appeared through their counsel, Peter Morrison. Having read the papers filed by the parties and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby DENIES plaintiff’s motion, for the following reasons.

**BACKGROUND**

In 2013, Ripple created a digital currency called XRP. Compl. ¶ 20. According to the complaint, unlike other cryptocurrencies, such as Bitcoin and Ethereum, Ripple fully generated 100 billion XRP prior to its distribution. Compl. ¶¶ 2, 20. As of June 30, 2015,

1 Ripple held approximately 67.51 billion XRP and all individuals—including Ripple’s  
2 founders—held 32.49 billion XRP. Compl. ¶ 24.

3 Plaintiff alleges that in 2013, defendants began selling XRP to the general public  
4 and wholesale to larger investors in a “never ending ICO”—initial coin offering. Compl.  
5 ¶¶ 22, 26. In an ICO, digital assets are sold to consumers in exchange for legal tender or  
6 other cryptocurrencies. Compl. ¶ 3. Plaintiff alleges that “the XRP offered and sold by  
7 defendants have all the traditional hallmarks of a security” and in fact is a security within  
8 the meaning of Securities Act of 1933 (the “Securities Act”) and/or the California  
9 Corporations Code. Compl. ¶¶ 100-111, 133, 136, 139, 143. Accordingly, plaintiff  
10 contends that defendants “never ending ICO” constituted an unregistered sale of  
11 securities in violation of the Securities Act and the California Corporations Code.

12 On behalf of “all persons or entities who purchased XRP from January 1, 2013  
13 through the present,” Compl. ¶ 122, plaintiff asserts four causes of action for: (1)  
14 violation of §§ 5 & 12(a)(1) of the Securities Act for the unregistered offer and sale of  
15 securities; (2) violation of Cal. Corp. Code §§ 25110 & 25503 for the unregistered offer  
16 and sale of securities; (3) violation of § 15 of the Securities Act (control person liability);  
17 and (4) violation of Cal. Corp. Code § 25504 (control person liability). Plaintiff seeks, inter  
18 alia, rescission of all XRP purchases, damages, and a constructive trust over the  
19 proceeds of defendants’ alleged sales of XRP. Compl. at 29-30.

## 20 **DISCUSSION**

21 That said, the present motion and this order address a narrow issue: Whether the  
22 presence of Securities Act claims bars a defendant from removing an action pursuant to  
23 § 1453 based on state law claims that independently satisfy CAFA’s jurisdictional  
24 requirements. The court believes that this is an issue of first impression. The parties  
25 candidly admit that their research failed to turn up any case directly addressing this  
26 question and the court’s own research fared no better.

1 The parties agree that absent plaintiff's Securities Act claims, defendants could  
 2 properly remove this action under CAFA based on plaintiff's state law claims.<sup>1</sup> Plaintiff,  
 3 however, argues that § 22(a) of the Securities Act operates as a complete bar on  
 4 removing any action that includes a Securities Act claim. See 15 U.S.C. § 77v(a)  
 5 ("§ 22"). Defendant responds that plaintiff's state law claims satisfy CAFA and therefore  
 6 the entire action may be removed pursuant to § 1453, regardless of § 22(a)'s removal  
 7 bar.

## 8 **A. Legal Standard**

### 9 **1. Removal, Remand, and the Class Action Fairness Act**

10 The right to remove a case to federal court is entirely a creature of statute. See  
 11 Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir. 1979). In general, the  
 12 Ninth Circuit "strictly construe[s] the removal statute against removal jurisdiction," and  
 13 "[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in  
 14 the first instance." Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (discussing 28  
 15 U.S.C. § 1441). "The 'strong presumption' against removal jurisdiction means that the  
 16 defendant always has the burden of establishing that removal is proper." Id. If a  
 17 defendant fails to meet this burden, the action must be remanded.

18 Under § 1441(a), sometimes referred to the general removal statute, "a defendant  
 19 generally may invoke federal removal jurisdiction if the case could have been filed in  
 20 federal court." 16 James Wm. Moore et al., *Moore's Federal Practice - Civil* § 107.03  
 21 (2018). Such removal is usually grounded in either federal question jurisdiction or  
 22 diversity jurisdiction—an action between citizens of different states that involves an  
 23 amount in controversy that exceeds \$75,000. See id.; see also 28 U.S.C. §§ 1331  
 24 (defining federal question jurisdiction), 1332(a) (defining one type of diversity),  
 25 1441 ("Removal of Civil Actions"). Section 1441(a) states:

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26  
 27 <sup>1</sup> The court also finds the plaintiff's state law claims meet CAFA's requirements. Plaintiff  
 28 seeks over \$342.8 million in damages on behalf of a worldwide class consisting of  
 "thousands" of members. Compl. ¶¶ 26, 122, 124; Compl. at 29.

United States District Court  
Northern District of California

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**Generally.**--Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a) (underlining added, “§ 1441(a)’s except clause”); see also 28 U.S.C. § 1441(b) (“Removal based on diversity jurisdiction.”).

CAFA “relaxed” the diversity requirements for putative class actions. See Dart Cherokee Basin Operating Co., LLC v. Owens, 135 S. Ct. 547, 551 (2014). Contrary to the Ninth Circuit’s general rule for removal, “[n]o antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court.” Id. at 554. Pursuant to CAFA, a defendant may remove an action under § 1453 if the amount in controversy exceeds \$5 million, the putative class has more than 100 members, and the parties are minimally diverse. Id. at 552; 28 U.S.C. §§ 1332(d), 1453. Section 1453(b) states:

**In general.** -- A class action may be removed to a district court of the United States in accordance with section 1446 (except that the 1-year limitation under section 1446(c)(1) shall not apply), without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed by any defendant without the consent of all defendants.

28 U.S.C. § 1453(b). In addition, as discussed below, § 1453(d) sets forth three exceptions to removal under § 1453.

**2. The Securities Act of 1933**

The Securities Act’s “jurisdictional provision” is codified at Section 22(a). See Cyan, Inc. v. Beaver County Employees Retirement Fund, 138 S. Ct. 1061, 1068 (2018).

As relevant here, that section states:

(a) The district courts of the United States and United States courts of any Territory shall have jurisdiction of offenses and violations under this title and under the rules and regulations promulgated by the Commission in respect thereto, and, concurrent with State and Territorial courts, except as provided in 77p [§ 16] of this title with respect to covered class actions, of all suits in equity and actions at law brought to enforce any liability or duty created by this subchapter. . . .

1 Except as provided in 77p(c) [§ 16(c)], no case arising under  
 2 this subchapter and brought in any State court of competent  
 jurisdiction shall be removed to any court of the United States.

3 15 U.S.C. § 77v(a). The first clause states that both state and federal courts have  
 4 concurrent jurisdiction over non-§ 16 Securities Act claims. See Cyan, 138 S. Ct. at  
 5 1068-70. The second clause, § 22(a)'s "removal bar," generally prohibits the removal—at  
 6 least under the Securities Act—of cases arising under the Securities Act, except as  
 7 allowed by § 16(c). See id. at 1066, 1068

8 Though the § 16 exceptions factor into the analysis below, the parties agree that  
 9 § 16 does not apply to this section. Rightly so. Section 16(b) "completely disallows (in  
 10 both state and federal courts) sizable class actions that are founded on state law and  
 11 allege dishonest practices respecting" the purchase or sale of a nationally traded security  
 12 listed on a national stock exchange. Cyan, 138 S. Ct. at 1067. Section 16(c) provides for  
 13 the removal of those actions, so that state law claims precluded by § 16(b) can be  
 14 dismissed. Id. at 1067-68; see also Kircher v. Putnam Funds Trust, 547 U.S. 633, 644  
 15 (2006). Regardless of whether XRP is a "security," the parties agree that none of  
 16 plaintiff's claims meet the other requirements of § 16(b). That agreement places the  
 17 action outside of § 16(c)'s purview and outside of § 22(a)'s removal bar's lone exception.  
 18 Thus, as relevant here, § 22(a)'s removal bar remains in play.

19 **B. Analysis**

20 **1. Cyan, Kircher, and Luther Do Not Require Remand**

21 Though plaintiff concedes that he could find no case on all fours with the present  
 22 situation, plaintiff argues that two Supreme Court cases and the Ninth Circuit's decision in  
 23 Luther v. Countrywide Home Loans Servicing LP, 533 F.3d 1031 (9th Cir. 2008), require  
 24 this court to remand the action to state court. The court disagrees.

25 As an initial matter, the two Supreme Court cases, Kircher v. Putnam Funds Trust,  
 26 547 U.S. 633, 644 (2006), and Cyan, Inc. v. Beaver County Employees Retirement Fund,

1 138 S. Ct. 1061 (2018), have nothing to do with CAFA.<sup>2</sup> The former addressed the single  
 2 question of “whether an order remanding a case removed under Securities Litigation  
 3 Uniform Standards Act [“SLUSA”] is appealable notwithstanding [28 U.S.C.] § 1447(d).”  
 4 Kircher, 547 U.S. at 636. The latter addressed two questions: (i) “did SLUSA strip state  
 5 courts of jurisdiction over class actions alleging violations of only the Securities Act” and  
 6 (ii) “did SLUSA empower defendants to remove such actions from state court to federal  
 7 court.” Cyan, 138 S. Ct. at 1066. Those three issues have no bearing on removability  
 8 under CAFA.

9 Luther, on the other hand, addressed both CAFA and § 22(a), and is a closer  
 10 question. In Luther, the Ninth Circuit considered whether an action that solely alleged  
 11 Securities Act claims could be removed under CAFA. Luther, 533 F.3d at 1032, 1034.  
 12 Luther reasoned that because § 22(a) dealt “with a narrow, precise, and specific subject”  
 13 that “applie[d] only to claims arising under the Securities Act” it was “not submerged by  
 14 [CAFA,] a later enacted statute covering a more generalized spectrum of class actions.”  
 15 Id. at 1034. Thus, Luther held that, “by virtue of § 22(a) of the Securities Act of 1933,  
 16 [plaintiff’s] state court class action alleging only violations of the Securities Act of 1933  
 17 was not removable.” Id. (emphasis added); but see Katz v. Gerardi, 552 F.3d 558, 561-  
 18 62 (7th Cir. 2009) (discussing Luther and holding the opposite); New Jersey Carpenters  
 19 Vacation Fund v. HarborView Mortg. Loan Tr. 2006-4, 581 F. Supp. 2d 581, 585-88  
 20 (S.D.N.Y. 2008) (same).

21 The present situation is dissimilar. Here, plaintiff alleges claims under both  
 22 California law and the Securities Act. More importantly, defendants did not remove this  
 23 action based on the Securities Act claim satisfying CAFA’s requirements—likely a losing  
 24 proposition under Luther. Instead, defendants removed this action based on plaintiff’s  
 25

26 <sup>2</sup> Plaintiff also points to Baker v. Dynamic Ledger Solutions, 17-cv-06850-RS, ECF No. 34  
 27 (N.D. Cal. April 19, 2018), where the court remanded an action involving both state law  
 28 and Securities Act claims. That decision does not help plaintiff or assist the court  
 because the Baker defendant removed the action pursuant to § 1441(a), rather than §  
 1453. As discussed below, two removal statutes treat antiremoval provisions differently.

1 California claims, which independently satisfy CAFA's requirements. Luther says nothing  
2 about that situation.

3 In addition, part of Luther's reasoning has been undermined by the Supreme  
4 Court's decision in Dart Cherokee. The Luther court relied on the Ninth Circuit's general  
5 rule that "removal statutes are strictly construed against removal," and that "any doubt is  
6 resolved against removability." Luther, 533 F.3d at 1034. The Supreme Court has  
7 subsequently rejected that premise. Noting that the district court's remand order relied  
8 on the same faulty premise, the Court determined "that no antiremoval presumption  
9 attends cases invoking CAFA, which Congress enacted to facilitate adjudication of  
10 certain class actions in federal court." Dart Cherokee, 135 S. Ct. at 554 (vacating 10th  
11 Circuit's decision denying review of district court's remand order). One year later, the  
12 Ninth Circuit recognized that Dart Cherokee undermines Luther's reasoning on that point.  
13 See Jordan v. Nationstar Mortg. LLC, 781 F.3d 1178, 1183 n.2 (9th Cir. 2015) (citing  
14 Luther and stating "We are not bound by our court's prior rulings" because "Dart  
15 Cherokee undercut[s] the theory or reasoning underlying the prior circuit precedent in  
16 such a way that the cases are clearly irreconcilable." (quotation marks omitted)). And  
17 one authority has suggested that Dart Cherokee's "assertion that no antiremoval  
18 presumption applies to cases removed under CAFA," calls into question Luther's holding  
19 regarding § 22(a) and § 1453. See Moore et al., 16 Moore's Federal Practice - Scope of  
20 Removal, § 107.91[1][b] (2018).

## 21 2. The Role of Removal Provisions

22 With no directly applicable authority, the court first turns to reviewing how removal  
23 provisions operate generally, outside the context of the disputed statutes. As noted,  
24 "[t]he right to remove a case from state to federal court is purely statutory, being  
25 dependent on the will of Congress." Wright and Miller, 20 Fed. Prac. & Proc. Deskbook §  
26 40, Scope of the Removal Jurisdiction (2018). That is, a defendant must point to some  
27 statute that allows the defendant to deprive the plaintiff of her choice of forum. See id.  
28



1 (“[I]n addition to the general removal statute,” § 1441(a), “there are certain other statutes  
2 authorizing removal . . .”).

3 If a defendant is, for example, faced with a claim under the federal Fair Labor  
4 Standards Act, the defendant may remove the action under § 1441(a). That is because  
5 § 1441(a), subject to its except clause, allows for removal of “any civil action” that the  
6 U.S. district courts have original jurisdiction over—such as a claim asserting a violation of  
7 a federal statute. See 28 U.S.C. § 1331. Similarly, if § 1332(a)’s general diversity  
8 jurisdiction requirements are met, then a defendant may remove the action under §  
9 1441(a), so long as the removal also complies with § 1441(b). See 28 U.S.C. § 1332(a);  
10 28 U.S.C. § 1441(b) (providing additional guidance for removal based on jurisdiction  
11 under § 1332(a)). That is uncontroversial.

12 It is also uncontroversial that the defendants in the above situations may  
13 successfully remove the action without satisfying the requirements of other inapplicable  
14 removal provisions. That is, a defendant removing an action under § 1441(a) based on  
15 federal question jurisdiction, defined by § 1331, need not show that diversity jurisdiction,  
16 defined by § 1332, also exists. Or, put another way, the federal question plaintiff cannot  
17 defeat removal by arguing that the defendant has not complied with § 1441(b) or met  
18 § 1332’s diversity jurisdiction requirements. Those two sections are inapplicable when  
19 removing based on federal question jurisdiction. The converse, of course, is also true. A  
20 defendant may remove an action based on diversity jurisdiction even if the action does  
21 not present a federal question. Indeed, that is the very purpose of diversity jurisdiction.

22 The same is true for a foreign state defendant removing a civil action under  
23 § 1441(d).<sup>3</sup> That defendant may remove the action if it meets the requirements of  
24 subsection (d), regardless of whether the removal complies with subsections (a) or (b).

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27 <sup>3</sup> Section 1441(d) states: “Any civil action brought in a State court against a foreign state  
28 as defined in section 1603(a) of this title may be removed by the foreign state to the  
district court of the United States for the district and division embracing the place where  
such action is pending. . . .”



1 And the plaintiff in that case could not defeat removal by pointing to §§ 1331, 1332,  
2 1441(a), or (b). Teledyne, Inc. v. Kone Corp., 892 F.2d 1404, 1407, 1409 (9th Cir. 1989)  
3 (action not removable under federal question jurisdiction or § 1332 but removable under  
4 § 1441(d); “Congress explicitly drafted subsection 1441(d) as a provision to which the  
5 generally-applicable rules of removal do not apply.”).

6 Section 1441 is hardly unique in that regard. The other statutes authorizing  
7 removal also operate independently. For example, § 1442(a) and (b) authorize removal  
8 of actions against certain federal officers or agencies. Nothing in § 1442 directs a  
9 removing defendant to comply with any part of § 1441 and, accordingly, a defendant may  
10 remove the action without meeting the diversity, federal question, or foreign state  
11 jurisdictional requirements. See, e.g., Leite v. Crane Co., 749 F.3d 1117, 1120, 1122,  
12 1124 (9th Cir. 2014) (removal of action alleging only state law tort claims proper under  
13 § 1442, recognizing that “defendants enjoy much broader removal rights under” § 1442  
14 “than they do under” § 1441). The same goes for removal under § 1442a (actions  
15 against members of the armed forces), § 1443 (certain civil rights actions), § 1452  
16 (claims related to bankruptcy cases), and § 1454 (patent & copyright cases)—a  
17 defendant may remove claims or actions under these sections regardless of the  
18 requirements set forth in any other removal provision. See, e.g., Mir v. Fosburg, 646  
19 F.2d 342, 344 (9th Cir. 1980) (“Our holding can be stated simply: unlike removal pursuant  
20 to [§ 1441], a district court has jurisdiction to hear an action removed pursuant to [§  
21 1442a] even if the initial action could not have been commenced by the plaintiff in a  
22 federal forum.”); Sec. Farms v. Int’l Bhd. of Teamsters, Chauffers, Warehousemen &  
23 Helpers, 124 F.3d 999, 1010 (9th Cir. 1997) (“The purpose of section 1452 is to enlarge a  
24 trial court’s power to remove or remand a claim related to a bankruptcy case.”); Carrabus  
25 v. Schneider, 111 F. Supp. 2d 204, 207 (E.D.N.Y. 2000) (action removed pursuant to one  
26 jurisdictional statute made “consideration of the alternative bases for removal  
27 superfluous.”).

1 It is also worth noting that statutes authorizing removal also appear outside of Title  
 2 28. See also, e.g., 12 U.S.C. § 1819(b)(2)(B) (removal provision for actions involving the  
 3 FDIC). Section 16(c) of the Securities Act is one such provision. See, e.g., Kircher, 547  
 4 U.S. at 643-44 (“[R]emoval jurisdiction under subsection (c) is understood to be restricted  
 5 to precluded actions defined by subsection (b).”); Cyan, 138 S. Ct. at 1076 (same). Just  
 6 like the above-discussed removal provisions, § 16(c) provides an independent basis for  
 7 removal. If a defendant wishes to remove state law claims precluded by § 16(b) of the  
 8 Securities Act, the defendant need only comply with § 16(c). The defendant does not  
 9 need to comply with, for example, § 1441, or any other provision authorizing removal.<sup>4</sup>  
 10 The converse also works. A defendant cannot remove a non-§ 16 Securities Act action  
 11 under § 1441(a) because that subsection states “Except as otherwise expressly provided  
 12 by Act of Congress.” As such, § 22(a)—barring removal of non-§ 16 Securities Act  
 13 actions—prevents defendant from fully complying with § 1441(a).

14 The point being, a defendant may successfully remove an action from state to  
 15 federal court by pointing to and complying with a statutory basis for removal, not every  
 16 statutory basis for removal. See, e.g., Mir, 646 F.2d at 344; Leite, 749 F.3d at 1122; see  
 17 also Lanier v. Norfolk S. Corp., No. 1:05-3476-MBS, 2006 WL 1878984, at \*1 (D.S.C.  
 18 July 6, 2006), aff'd, 256 F. App'x 629 (4th Cir. 2007) (denying motion to remand, though  
 19 defendant failed to show removal was proper under § 1331, § 1332, or § 1442(a)(1),  
 20 removal was proper under § 1453). Implicitly applying that rule, numerous cases have  
 21 held antiremoval provisions do not prohibit removal under non-§ 1441(a) removal  
 22 provisions. See, e.g., Emrich v. Touche Ross & Co., 846 F.2d 1190, 1197-98 (9th Cir.  
 23 1988) (explaining that § 22(a) prohibited removal of Securities Act claim under § 1441(a),  
 24 but did not prohibit removal under prior version of subsection (c), though that  
 25 subsection’s other requirements were not met); Escobar v. Celebration Cruise Operator,

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 27  
 28 <sup>4</sup> In fact, contrary to federal question removal under §§ 1331 & 1441(a), § 16(c) specifically contemplates the removal of state law claims.

1 Inc., 805 F.3d 1279, 1293 (11th Cir. 2015) (Jones Act antiremoval provision did not bar  
2 removal under 9 U.S.C. § 205, which provided for removal of certain actions involving  
3 arbitration agreements); California Pub. Employees' Ret. Sys. v. WorldCom, Inc., 368  
4 F.3d 86, 106 (2d Cir. 2004) (comparing § 1452 to § 1441(a) and concluding that § 22(a)  
5 did not bar removal pursuant to § 1452); Pac. Life Ins. Co. v. J.P. Morgan Chase & Co.,  
6 2003 WL 22025158, at \*2 (C.D. Cal. June 30, 2003) (same, "Section 22(a) proscribes  
7 removal based on federal question jurisdiction under [§ 1441(a)], but does not prevent  
8 removal based on other grounds."); Henry v. Kansas City S. Ry. Co., No. CIV.A. 10-  
9 00469, 2010 WL 2740016, at \*5-6 (W.D. La. July 9, 2010) (removal under § 1452(a)  
10 proper despite § 1445(a)'s antiremoval provision); FDIC v. Countrywide Financial Corp.,  
11 2012 WL 12897152, at \*1-2 (C.D. Cal. Mar. 20, 2012) (§ 22(a) did not bar removal  
12 pursuant to pre-2011 § 1441(b), which provides an independent basis for removal and  
13 "does not echo § 1441(a)'s deference to removal bars").

### 14 3. Section 1453's Text

15 With that background, the court turns to § 1453. "As with any question of statutory  
16 interpretation, [a court's] analysis begins with the plain language of the statute. [W]hen  
17 deciding whether the language is plain, [courts] must read the words in their context and  
18 with a view to their place in the overall statutory scheme. If the statutory language is  
19 plain, we must enforce the statute according to its terms." Rainero v. Archon Corp., 844  
20 F.3d 832, 837 (9th Cir. 2016) (additions in original, internal citations and quotation marks  
21 omitted). "If the plain meaning of the statute is unambiguous, that meaning is controlling  
22 and [the court] need not examine legislative history as an aid to interpretation unless the  
23 legislative history clearly indicates that Congress meant something other than what it  
24 said." Yocupicio v. PAE Grp., LLC, 795 F.3d 1057, 1060 (9th Cir. 2015) (interpreting  
25 CAFA).

26 It bears repeating, CAFA's removal provision, § 1453(b), states:

27 **In general.**--A class action may be removed to a district court  
28 of the United States in accordance with section 1446 (except  
that the 1-year limitation under section 1446(c)(1) shall not

1 apply), without regard to whether any defendant is a citizen of  
 2 the State in which the action is brought, except that such  
 action may be removed by any defendant without the consent  
 of all defendants.

3 Put simply, a CAFA-qualifying class action may be removed by any defendant.<sup>5</sup>

4 Section 1453(d) specifically excepts certain actions from removal under § 1453:

5 **Exception.**—This section shall not apply to any class action  
 6 that solely involves—

7 (1) a claim concerning a covered security as defined  
 8 under section 16(f)(3) of the Securities Act of 1933 (15  
 U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the  
 9 Securities Exchange Act of 1934 (15 U.S.C.  
 78bb(f)(5)(E));

10 (2) a claim that relates to the internal affairs or  
 11 governance of a corporation or other form of business  
 enterprise and arises under or by virtue of the laws of  
 the State in which such corporation or business  
 12 enterprise is incorporated or organized; or

13 (3) a claim that relates to the rights, duties (including  
 14 fiduciary duties), and obligations relating to or created  
 by or pursuant to any security (as defined under  
 section 2(a)(1) of the Securities Act of 1933 (15 U.S.C.  
 15 77b(a)(1)) and the regulations issued thereunder).

16 That is, if an action “solely” alleges a claim falling into one of the three exceptions,  
 17 then the action may not be removed under CAFA. Such an action, however, might be  
 18 removable under some other removal statute. For example, a defendant could remove a  
 19 state law class action involving a covered security, as defined under § 16(f)(3), pursuant  
 20 to § 16(c) of the Securities Act, notwithstanding § 1453(d)(1)’s prohibition.

21 Thus, read as a whole, CAFA’s plain language “creates original jurisdiction for and  
 22 removability of all class actions that meet the minimal requirements and do not fall under  
 23 one of the limited exceptions.”<sup>6</sup> HarborView, 581 F. Supp. 2d at 584 (emphasis in  
 24 \_\_\_\_\_

25 <sup>5</sup> Though not relevant here, CAFA’s definitional provision, § 1332(d), also directs or  
 allows courts to decline jurisdiction when certain conditions are present.

26 <sup>6</sup> Though neither party engages on the topic, “district courts [ ] have original jurisdiction of  
 27 any civil action” qualifying under CAFA. 28 U.S.C. § 1332(d)(2) (emphasis added).  
 Thus, if one part of the action qualifies under CAFA, the entire action may be removed.  
 28 See Exxon Mobil Corp. v. Allapattah Servs., 545 U.S. 546, 559 (2005) (In general for  
 diversity jurisdiction, “[i]f the court has original jurisdiction over a single claim in the

1 original). Accordingly, § 1453's plain language suggests that defendant properly  
 2 removed this action based on plaintiff's state law claims that independently satisfy  
 3 CAFA's requirements.

4 Because § 1453's plain language is unambiguous, the court need not address  
 5 CAFA's purpose or legislative history. Those considerations, however, also support the  
 6 conclusion that defendants properly removed this action. The Supreme Court has  
 7 explained that CAFA's " 'provisions should be read broadly, with a strong preference that  
 8 interstate class actions should be heard in a federal court if properly removed by any  
 9 defendant.' " Dart Cherokee, 135 S. Ct. at 554 (discussing legislative history and quoting  
 10 S. Rep. No. 109–14 at 43 (2005)); Standard Fire Ins. Co. v. Knowles, 568 U.S. 588, 595  
 11 (2013) ("CAFA's primary objective" is to "ensur[e] Federal court consideration of interstate  
 12 cases of national importance." (internal quotation marks omitted)). "The Senate Report  
 13 on CAFA explains that '[b]ecause interstate class actions typically involve more people,  
 14 more money, and more interstate commerce ramifications than any other type of lawsuit,  
 15 the Committee firmly believes that such cases properly belong in federal court.' " Jordan,  
 16 781 F.3d at 1182 (quoting S. Rep. No. 109-14 at 5). There can be little doubt that the  
 17 present action—involving a proposed international class and issues of first impression  
 18 regarding the federal securities laws applicability to a nascent technology—falls into that  
 19 category of class actions.

20 In addition, "Congressional sponsors of the bill repeatedly emphasized the breadth  
 21 of CAFA, while insisting that each exception must be construed narrowly." HarborView,  
 22 581 F. Supp. 2d at 585 (citing S.Rep. 109-14 at 45 and discussing legislative history);  
 23 see also Westerfeld v. Indep. Processing, LLC, 621 F.3d 819, 822 (8th Cir. 2010) ("CAFA  
 24 grants broad federal jurisdiction over class actions and establishes narrow exceptions to  
 25 such jurisdiction." (citing S. Rep. No. 109-14 at 43)). That accords with the narrow

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 27 complaint, it has original jurisdiction over a 'civil action . . . '); Watson v. City of Allen, Tx.,  
 28 821 F.3d 634, 638 (5th Cir. 2016) ("If CAFA applies, the district court has original  
 jurisdiction over the entire action and there is no 'supplemental' jurisdiction at all.").

1 exceptions enumerated in subsection (d) and the corresponding absence of any  
2 indication of deference to other acts of Congress—a deference that would significantly  
3 expand the types of class actions exempt from removal under § 1453.

4 Despite that notable absence of any reference to antiremoval statutes, plaintiff  
5 argues that removal is barred because the above analysis fails to take into account  
6 § 22(a)'s removal bar. However, the court declines plaintiff's invitation to essentially read  
7 § 1441(a)'s except clause into § 1453 because doing so would contradict the general  
8 independence of removal provisions, CAFA's purpose, and render numerous statutory  
9 provisions superfluous.

#### 10 **4. Section 1441(a)'s Except Clause Compared to § 1453(d)**

11 Unlike § 1453, § 1441(a) does not enumerate three specific exceptions to its  
12 removal purview, but instead broadly states: "Except as otherwise expressly provided by  
13 Act of Congress, any civil action [for which original jurisdiction would exist]. . . may be  
14 removed." That is, unless some other federal statute says otherwise, the action may be  
15 removed under § 1441(a) if the district court would have had original jurisdiction. The  
16 underlying premise of plaintiff's argument is that a similarly broad exception applies to  
17 § 1453. That reading does not comport with the plain language of either statute or the  
18 overall statutory scheme.

19 Both prior to and after CAFA's enactment in 2005, courts have interpreted  
20 § 1441(a)'s broad except clause as a reference to antiremoval provisions in other federal  
21 statutes. See above at Part B.2. (compiling cases); see also, e.g., Cacioppe v. Superior  
22 Holsteins III, Ltd., 650 F. Supp. 607, 608 (S.D. Tex. 1986) (§ 1441(a)'s except clause  
23 "provides for recognition of statutory anti-removal provisions," such as § 22(a)); Farmers  
24 & Merchants Bank v. Hamilton Hotel Partners of Jacksonville Ltd. P'ship, 702 F. Supp.  
25 1417, 1419 (W.D. Ark. 1988) (§ 1441(a) except clause "is clearly a reference to statutes  
26 such as the one involved here," § 22(a), and listing other antiremoval statutes); Perez v.  
27 Hornbeck Offshore Transp., LLC, No. 10 CV 1402 SJ MDG, 2011 WL 1636244, at \*2  
28 (E.D.N.Y. Apr. 28, 2011) (remanding because § 1445(a)'s removal bar prohibited removal



1 under § 1441(a) because of the except clause). Thus, both pre and post-CAFA decisions  
2 hold that actions alleging Securities Act claims cannot be removed under § 1441(a)  
3 because of § 22(a)'s removal bar. See, e.g., U.S. Indus. v. Gregg, 348 F. Supp. 1004,  
4 1015-16 (D. Del. 1972), rev'd on other grounds, 540 F.2d 142 (3d Cir. 1976) (concluding  
5 that action arising under the Securities Act could not be removed under subsection (a));  
6 Liu v. Xoom Corp., No. 15-CV-00602-LHK, 2015 WL 3920074, at \*1-5 (N.D. Cal. June  
7 25, 2015) (remanding Securities Act class action removed under § 1441(a) because of  
8 § 22(a)).

9 Despite knowing exactly how to make a removal provision subordinate to  
10 antiremoval statutes, Congress chose not to do so for § 1453. Instead, Congress chose  
11 to enumerate only three specific exceptions to removal under § 1453. The absence of  
12 § 1441(a)'s except clause, or anything even resembling it, weighs heavily against reading  
13 such a broad exception into § 1453. See United States v. Providence J. Co., 485 U.S.  
14 693, 704-05, 705 n.9 (1988) (observing that when two statutes included "[e]xcept as  
15 otherwise authorized by law," but that "by way of vivid contrast," the third did not, the third  
16 statute provided for no exception); see also WorldCom, 368 F.3d at 105-06 (applying  
17 same reasoning and holding that § 22(a) did not prohibit removal under § 1452(a));  
18 Cobalt Partners, LP v. Sunedison, Inc., 2016 WL 4488181, at \*6 (N.D. Cal. Aug. 26,  
19 2016) (same).

20 Moreover, "[t]he general rule of statutory construction is that the enumeration of  
21 specific exclusions from the operation of a statute is an indication that the statute should  
22 apply to all cases not specifically excluded." Blausey v. United States Tr., 552 F.3d 1124,  
23 1133 (9th Cir. 2009). That rule applies with even more force here because, along with  
24 excepting certain state law claims that no party argues are relevant here, CAFA explicitly  
25 excepts certain Securities Act-related claims from § 1453. 28 U.S.C. § 1453(d)  
26 (excepting certain claims related to § 16(f)(3) & § 2(a)(1) of the Securities Act). That  
27 Congress considered and excepted one part of the Securities Act but did not reference  
28 § 22(a), strongly suggests that the court should not read additional Securities Act



1 exceptions into CAFA. See HarborView, 581 F. Supp. 2d at 587 (“These circumscribed  
 2 exceptions coupled with the overriding purpose of CAFA to provide for federal court  
 3 jurisdiction in cases of national importance illustrate the intent of Congress to include  
 4 within the reach of CAFA all securities class actions except” those specifically excepted.).

5 Relatedly, § 1453 directly addresses what should occur if plaintiff alleges claims  
 6 removable under 1453(b) and a claim excepted under § 1453(d)—a possibly more  
 7 difficult situation than that presented here. In that situation, § 1453 unambiguously allows  
 8 removal. 28 U.S.C. § 1453(d) (“This section shall not apply to any class action that solely  
 9 involves” an excepted claim.); Tuttle v. Sky Bell Asset Mgmt., LLC, No. C 10-03588  
 10 WHA, 2011 WL 208060, at \*5 (N.D. Cal. Jan. 21, 2011) (“If a complaint contains a claim  
 11 implicating one of CAFA's exceptions, but also involves other non-excepted claims, the  
 12 case should remain in federal court.” (emphasis omitted)). It would be incongruent to  
 13 hold that an action alleging both a specifically excepted claim and a CAFA-removable  
 14 claim may be removed, while simultaneously holding that a non-referenced, non-  
 15 excepted claim prohibits removal of the same action.

16 The Supreme Court’s analysis of § 1441(a)’s except clause provides further  
 17 support that the clause should not be read into all removal provisions. In Breuer v. Jim's  
 18 Concrete of Brevard, Inc., 538 U.S. 691, 693, 697 (2003), the Court considered whether  
 19 § 216(b) of the Fair Labor Standards Act operated as an antiremoval provision barring  
 20 removal under § 1441(a). The Court held that it did not because “[w]hile § 216(b)  
 21 provides that an action ‘may be maintained . . . in any . . . State court of competent  
 22 jurisdiction,’ the word ‘maintain’ enjoys a breadth of meaning that leaves its bearing on  
 23 removal ambiguous at best.” Breuer v. Jim's Concrete of Brevard, Inc., 538 U.S. 691,  
 24 694–95 (2003) (ellipses in original). The court emphasized that “the need to take the  
 25 express exception requirement [of § 1441(a)] seriously, is underscored by examples of  
 26 indisputable prohibitions of removal in a number of other statutes. . . . When Congress  
 27 has wished to give plaintiffs an absolute choice of forum, it has shown itself capable of  
 28

1 doing so in unmistakable terms.” Id. at 696-97 (collecting antiremoval statutes, such as §  
2 22(a), subject to § 1441(a)’s except clause).

3 Those conclusions also bear on the present issue. First, if § 1441(a)’s except  
4 clause is to be taken seriously, then it should not be read into every removal statute. But  
5 that is just what plaintiff would have the court do. Though § 1453 is entirely silent about  
6 § 22(a)—or any other antiremoval provision—plaintiff argues that the court must ensure  
7 removal under § 1453 does not violate § 22(a). Far from taking § 1441(a)’s “express  
8 exception requirement seriously,” that reading renders the except clause entirely  
9 superfluous. That is because if antiremoval provisions automatically applied to all  
10 removal statutes, regardless of the text of those statutes, § 1441(a) would operate the  
11 same way with or without the except clause. See Duncan v. Walker, 533 U.S. 167, 174  
12 (2001) (“It is our duty to give effect, if possible, to every clause and word of a statute” and  
13 noting rule of statutory interpretation against treating “statutory terms as surplusage”).  
14 Second, given that Congress provides plaintiff an absolute choice of forum via the  
15 combination of § 1441(a)’s broad except clause and antiremoval statutes, it makes little  
16 sense to render the former unnecessary. See also WorldCom, 368 F.3d at 106 (“[T]here  
17 is no benefit whatever to interpreting the introductory clause of Section 1441(a) as  
18 surplusage . . . In these circumstances, [the court] should avoid an interpretation of  
19 Section 1452(a) that renders a key clause of Section 1441(a) unnecessary.”). “By  
20 contrast, if [the court] give[s] effect to every clause in Section 1441(a), the statutory  
21 conflict between [§ 1453(b)] and Section 22(a) dissolves.” Id. (originally discussing  
22 § 1452(a) and § 22(a)).

23 Lastly, § 1453(b) itself becomes largely superfluous if it is read to include  
24 § 1441(a)’s exception. Section 1332(d)(2), states “district courts have original jurisdiction  
25 of any civil action” satisfying the CAFA requirements. 28 U.S.C. § 1332(d)(2) (emphasis  
26 added). Accordingly, an action satisfying CAFA’s diversity requirements could be  
27 removed pursuant to § 1441(a)—allowing for removal of “any civil action . . . of which the  
28 district courts of the United States have original jurisdiction.” Doing so, however, would

1 subject the removal to § 1441(a)'s except clause and the entire array of federal  
 2 antiremoval statutes. Plaintiff contends that § 1453(b) should operate the same way and  
 3 defer to § 22(a)'s removal bar. That makes no sense. If Congress wanted that result, it  
 4 could have omitted § 1453(b) entirely. Instead, Congress enacted an entirely different  
 5 removal provision that does not include anything resembling § 1441(a)'s broad except  
 6 clause.

#### 7 **5. Section 1441(c) Compared to § 1453**

8 Both parties argue that this court's decision should be informed by how courts  
 9 treated § 1441(c) vis-à-vis § 1441(a) before the former's amendment in 1990.<sup>7</sup>

10 Defendants argue that similar to how § 1453(b) should operate, courts concluded  
 11 that cases otherwise barred from removal by § 1441(a)'s except clause could  
 12 nevertheless be removed under pre-1990 § 1441(c). This court agrees. Pre-1990 courts  
 13 reasoned that subsections (a) and pre-amendment subsection (c) "refer to two  
 14 completely different situations" with the latter "grant[ing] additional removal jurisdiction in  
 15 a class of cases which would not otherwise be removable" under the former. Gregg, 348  
 16 F. Supp. at 1015 (§ 22(a) did not bar removal under subsection (c)); Emrich, 846 F.2d at  
 17 1197. As discussed at length above, the same reasoning applies to § 1453 because, like  
 18 pre-1990 subsection (c), § 1453 provides a separate basis for removal and does not  
 19 include anything resembling § 1441(a)'s except clause.

20 Despite that parallel, plaintiff argues that in fact pre-1990 subsection (c) shows  
 21 that when Congress resolves conflicts between diversity jurisdiction and antiremoval  
 22 statutes it does so explicitly. That argument, however, begs the question because it  
 23 assumes antiremoval statutes automatically apply to all removal provisions—an  
 24 assumption that the above discussion shows lacks merit. And plaintiff has provided no  
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26  
 27 <sup>7</sup> At the time subsection (c) provided that "an entire case 'may' be removed . . .  
 28 '[w]henever a separate and independent claim or cause of action, which would be  
 removable if sued upon alone, is joined with one or more otherwise nonremovable claims  
 or causes of action.'" Emrich, 846 F.2d at 1197 (quoting 28 U.S.C. § 1441(c) (1982)).

1 reason to suspect that § 22(a) operates differently than other run-of-the-mill antiremoval  
 2 provisions.<sup>8</sup> At most, plaintiff's argument shows that Congress knows how to create  
 3 removal provisions that are not subject to § 1441(a)'s except clause—by enacting an  
 4 independent removal provision, such as § 1453(b).<sup>9</sup>

### 5 CONCLUSION

6 In sum:

7 [W]hen an anti-removal provision such as Section 22(a) is  
 8 invoked, the threshold question is whether removal is being  
 9 effectuated by way of the general removal statute, 28 U.S.C. §  
 10 1441(a), or by way of a separate removal provision that  
 11 “grants additional removal jurisdiction in a class of cases  
 12 which would not otherwise be removable under the prior grant  
 of authority.” If removal is being effectuated through a  
 provision[, like § 1453,] that confers additional removal  
 jurisdiction, and that provision contains no exception for  
 nonremovable federal claims, the provision should be given  
 full effect.

13 WorldCom, 368 F.3d at 107 (holding that § 22(a) does not bar removal under § 1452).

14 Section 1453 grants defendant an additional, independent basis for removing an  
 15 action from state to federal court. The parties do not dispute and the court finds that  
 16 plaintiff's California claims satisfy CAFA's removal requirements. Because § 1453 says  
 17 nothing about incorporating § 1441(a)'s except clause, or otherwise deferring to  
 18 antiremoval provisions, § 22(a) does not bar removal of this action. In addition, plaintiff's  
 19 application of § 22(a) to all removal provisions unnecessarily renders numerous statutory  
 20 clauses superfluous. Lastly, removal in this situation accords with Congress' “overall  
 21 intent . . . to strongly favor the exercise of federal diversity jurisdiction over class actions  
 22 with interstate ramifications.” Jordan, 781 F.3d at 1183–84 ((ellipses in original)  
 23 discussing Dart Cherokee; quoting congressional record).

24 \_\_\_\_\_  
 25 <sup>8</sup> See also Passarella v. Ginn Co., 637 F. Supp. 2d 353, 355 (D.S.C. 2009) (antiremoval  
 provision sharing its language with § 22(a) did not prohibit removal under § 1453).

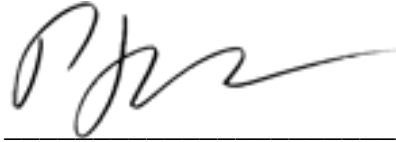
26 <sup>9</sup> The court also notes that reading § 1441(a)'s except clause into the current version of  
 27 § 1441(c)—a natural extension of plaintiff's overarching argument—renders subsection  
 (c) nonsensical. Under that reading, subsection (c) would provide for the removal of an  
 28 action with nonremovable claims—e.g., a Securities Act claim—while simultaneously  
 prohibiting removal of that same action.

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Based on the foregoing, plaintiff's motion to remand is DENIED.<sup>10</sup>

**IT IS SO ORDERED.**

Dated: August 10, 2018



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PHYLLIS J. HAMILTON  
United States District Judge

United States District Court  
Northern District of California

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<sup>10</sup> Because the court denies plaintiff's motion to remand, the court also denies plaintiff's request for attorneys' fees.