

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
280 South 1st Street
San Jose, CA 95113

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Mark B. Busby
Clerk of Court

General Court Number
408-535-5363

December 14, 2021

Alameda County Superior Court
1225 Fallon Street
Oakland, CA 94612

RE: Aaron Aseltine v. Panera, LLC
21-cv-04284-JST

Your Case Number: RG21098794

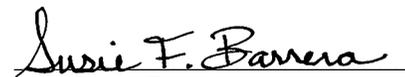
Dear Clerk,

Pursuant to an order remanding the above captioned case to your court, please find enclosed a certified copy of docket entries and the remand order.

Please send an acknowledgement of receipt of these documents to susie_barrera@cand.uscourts.gov.

Sincerely,

Mark B. Busby, Clerk



by: Susie Barrera
Case Systems Administrator

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AARON ASELTINE,
Plaintiff,
v.
PANERA, LLC,
Defendant.

Case No. 21-cv-04284-JST

**ORDER GRANTING MOTION TO
REMAND**

Re: ECF Nos. 10, 30

Before the Court is Plaintiff Aaron Aseltine’s motion to remand this action to the Alameda County Superior Court, ECF No. 30, and Panera’s motion to transfer, ECF No. 10. For the reasons below, the Court will grant the motion to remand and deny as moot Panera’s motion to transfer.

I. BACKGROUND

Plaintiff Aaron Aseltine alleges that Defendant Panera advertises a \$6 delivery fee on its website and delivery app, but then secretly marks up the delivery food prices between 5-10%. Aseltine contends that this practice violates California’s Unfair Competition Law (“UCL”), the Consumers Legal Remedies Act (“CLRA”), and False Advertising Law (“FAL”) and seeks to represent a class of California consumers.

This is not the first class-action lawsuit making these allegations. Earlier this year, Aseltine’s counsel filed a nearly identical lawsuit in Missouri state court: *Ahmad v. Panera Bread Co.*, No. 21SL-CC00593 (St. Louis Cnty. Cir. Ct. filed Feb. 8, 2021).¹ In February, Panera

¹ The Missouri action seeks to represent an identical class and brings virtually identical claims. The only difference is that, instead of a FAL claim, the Missouri action brings a claim under the Missouri Merchandising Practices Act – Missouri’s analog to California’s FAL.

1 removed the Missouri case to federal court under the Class Action Fairness Act (“CAFA”). *See*
2 *Ahmad v. Panera Bread Co.*, No. 4:21 CV 311 CDP, 2021 WL 2222707, at *1 (E.D. Mo. June 2,
3 2021). The plaintiff, Mahasin Ahmad, then moved to remand, arguing that Panera had not met the
4 \$5 million amount-in-controversy requirement that CAFA requires. The district court originally
5 denied the motion, reasoning that the 5-10% markup revenue, dating back four years (the
6 limitations period for the UCL claim), alone satisfied CAFA’s \$5 million amount-in-controversy
7 minimum. Ahmad filed a motion for reconsideration, arguing that the court miscalculated the
8 amount in controversy because Panera only began marking up the prices in September 2020.
9 *Ahmad v. Panera Bread Co.*, No. 4:21 CV 311 CDP, 2021 WL 5447000, at *4 (E.D. Mo. Nov. 16,
10 2021). The court recently granted the motion to reconsider and remanded the case to the Circuit
11 Court of St. Louis County, Missouri. *Id.* at *7.

12 Similarly, Aseltine initially filed this class action in California state court. Panera then
13 removed the case to the Northern District of California under CAFA. Aseltine now moves to
14 remand, arguing – as Ahmad did in the Missouri federal action – that the case does not satisfy
15 CAFA’s \$5 million amount-in-controversy requirement. Alternatively, Aseltine requests that the
16 Court grant jurisdictional discovery related to the amount in controversy. Panera separately moves
17 to transfer this case to Missouri or stay the case under the “first-to-file” rule.

18 **II. LEGAL STANDARD**

19 A defendant may remove an action brought in state court to a federal district court if the
20 district court has “original jurisdiction” over the matter. 28 U.S.C. § 1441(a). CAFA confers
21 original jurisdiction to federal district courts over class actions where “the class members number
22 at least 100, at least one plaintiff is diverse in citizenship from any defendant, and the aggregate
23 amount in controversy exceeds \$5 million, exclusive of interest and costs.” *Ibarra v. Manheim*
24 *Invs., Inc.*, 775 F.3d 1193, 1198 (9th Cir. 2015) (citing 28 U.S.C. § 1332(d)). The defendant’s
25 notice of removal need include “only a plausible allegation that the amount in controversy exceeds
26 the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89
27 (2014). The amount in controversy includes “all relief claimed at the time of removal to which
28 plaintiff would be entitled if [they] prevail.” *Fritsch v. Swift Transportation Co. of Arizona, LLC*,

1 899 F.3d 785, 793 (9th Cir. 2018). And courts must determine the appropriateness of removal “on
 2 the basis of the pleadings at the time of removal.” *Broadway Grill, Inc. v. Visa Inc.*, 856 F.3d
 3 1274, 1277 (9th Cir. 2017). If the plaintiff challenges removal, “both sides [must] submit proof
 4 and the court [then] decides, by a preponderance of the evidence, whether the amount-in-
 5 controversy requirement has been satisfied.” *Id.* at 88.

6 **III. DISCUSSION**

7 The parties agree that there are at least 100 members in the alleged putative class and
 8 minimal diversity. But the parties dispute whether the amount-in-controversy requirement under
 9 CAFA is satisfied. Panera alleges that the amount placed in controversy here exceeds \$5 million
 10 based on the value of (1) the class-wide compensatory damages; (2) injunctive relief; (3)
 11 attorney’s fees; and (4) punitive damages. Aseltine challenges Panera’s assertion, arguing that
 12 Panera has failed to establish the jurisdictional threshold by a preponderance of the evidence.

13 **A. Compensatory Damages**

14 The Ninth Circuit has held “that the amount in controversy” includes compensatory
 15 damages. *Fritsch*, 899 F.3d at 793 (simplified). Both parties agree that the amount-in-controversy
 16 calculation should include at least the 5-10% food markup revenue from September 30, 2020,
 17 through the date of removal on June 4, 2021.² The parties disagree, however, on what other
 18 compensatory damages the Court should include in its amount-in-controversy calculation.

19 Panera first contends that the Court should include future damages in the amount-in-
 20 controversy calculation because the complaint seeks damages “to the date of class certification.”
 21 ECF Nos. 1-1 ¶ 56, 34 at 9. Panera also argues that the Court’s damages calculation should
 22 include the \$6 delivery fee, not just the allegedly hidden markup.

23 The Court finds neither of Panera’s arguments persuasive. First, although the Ninth
 24 Circuit has recognized that “the mere futurity of certain classes of damages [does not] preclude[]
 25 them from being part of the amount in controversy,” such damages must be “*presently* in

26 _____
 27 ² Because the amount-in-controversy calculation represents the “maximum recovery,” it is the
 28 larger sum – the 10% markup, or \$904,631 – which should be used. *Arias v. Residence Inn by
 Marriott*, 936 F.3d 920, 927 (9th Cir. 2019) (emphasis omitted). The Court thus assumes
 \$904,631 in damages for the food markup.

1 controversy.” *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018) (emphasis in
2 original). But future damages that rely on the assumption that the defendant “will continue to
3 violate the [law] to the same degree even after the filing of the complaint” do not qualify. *Hughes*
4 *v. McDonald’s Corp.*, No. C 14-1700 PJH, 2014 WL 3797488, at *2 (N.D. Cal. July 31, 2014)
5 (internal quotations and citation omitted). Such future damages are speculative because they do
6 not stem from wrongdoing that has already occurred, but rather assume that wrongdoing *will be*
7 *done* in the future. *See id.* (declining to include two years of future damages in the amount-in-
8 controversy calculation when the defendants assumed the wrongdoing would continue and
9 estimated that two years was “the median time interval from the filing of a case through trial in
10 this district”); *see also Petkevicius v. NBTY, Inc.*, No. 3:14-cv-02616-CAB-(RBB), 2017 WL
11 1113295, at *7 (S.D. Cal. Mar. 24, 2017) (reasoning that the amount-in-controversy calculation
12 should not include future damages if the court had to “speculat[e] about possible future injuries
13 caused by future conduct of the defendant”).

14 Panera cites no cases, and the Court has found none, in which courts have estimated the
15 time to complete class certification, assumed continued wrongdoing, and included such future
16 damages in the amount-in-controversy calculation. To the contrary, the authorities of which the
17 Court is aware have declined to take this approach. The *Ahmad* court, for example, declined to
18 include future damages in its calculation, as such damages would be “contingent on defendant[]
19 engaging in the same alleged wrongful conduct and future consumers[] making online delivery
20 purchases at the same level as before removal.” *Ahmad*, 2021 WL 5447000, at *5. In line with
21 this reasoning, the Court declines to include future damages in the amount-in-controversy
22 calculation. The calculation thus remains at \$904,631.00.

23 Second, Panera contends that the damages for each class member should also include the
24 \$6 delivery fee. In response, Aseline argues that the complaint does not seek to recover the
25 delivery fee because Aseltine “made his decision to place his order with Panera *because* of the
26 advertised \$6 delivery fee.” ECF No. 33 at 3 (emphasis added).

27 The Court agrees with Aseline’s reasoning. The complaint seeks restitution of the amount
28 “wrongfully acquired” by Panera, which the complaint makes clear includes only the “*hidden* food

1 markup applied exclusively to delivery orders.” ECF No. 1-1 ¶¶ 34, 110 (emphasis added). The
 2 class members all agreed to pay the \$6 delivery fee and received “*some* benefit” from the delivery.
 3 *See Calagno v. Rite Aid Corp.*, No. 4:20-cv-05476-YGR, 2020 WL 6700451, at *3 (N.D. Cal.
 4 Nov. 13, 2020) (emphasis in original) (reasoning that because the class members “received *some*
 5 benefit of the use of the allegedly indifferent acetaminophen formulas,” the amount-in-controversy
 6 calculation should include only the “per-ounce price difference” between the two medications, not
 7 a full refund). And Panera cites no authority to support its argument that the amount-in-
 8 controversy calculation should include the delivery fee. Thus, the Court includes only the food
 9 markup revenue – \$904,631.00 – in the amount-in-controversy calculation.

10 **B. Injunctive Relief**

11 Courts must also consider the value of injunctive relief in the amount-in-
 12 controversy calculation. *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 347 (1977)
 13 (“In actions seeking declaratory or injunctive relief, it is well established that the amount in
 14 controversy is measured by the value of the object of the litigation.”). But courts will exclude
 15 injunctive relief from the amount in controversy when a defendant fails to provide estimates of the
 16 cost of complying with an injunction. *See Ronquillo v. BMW of N. Am., LLC*, No. 3:20-cv-1413-
 17 W-WVG, 2020 WL 6741317, at *5 (S.D. Cal. Nov. 17, 2020).

18 Aseltine seeks an order “enjoining Defendant from continuing to engage, use, or employ
 19 their practice of misrepresenting their delivery fees” and “requiring Defendant to disclose such
 20 misrepresentations.” ECF No. 1-1 ¶¶ 109-110. Panera argues that the cost of the injunction
 21 therefore includes both the cost of removing or modifying its advertising – which Panera argues is
 22 “impossible to estimate” – and the cost of ending its food markups – which Panera asserts equals
 23 the estimated lost revenue from the markups. ECF No. 34 at 11.

24 Neither of Panera’s arguments is viable. To begin, Panera does not even attempt to
 25 estimate the cost of removing or modifying its advertising. Under these circumstances, courts will
 26 decline to do the defendant’s work of estimating the costs of compliance with injunctive relief.
 27 *See Ronquillo*, 2020 WL 6741317, at *5 (excluding injunctive relief from the amount in
 28 controversy when the defendant stated that the injunction would create “additional costs” but

1 failed to estimate what those costs would be). As for any costs associated with ending its food
2 markups altogether, those costs would be separate from the injunction. The complaint does not to
3 enjoin Panera from marking up its delivery food; it seeks to enjoin Panera from continuing to
4 *misrepresent* their delivery fees. As the court in *Ahmad* put it, the complaint does not seek to
5 force Panera to stop its food markups, “only that it *disclose* that it is doing so.” *Ahmad*, 2021 WL
6 5447000, at *6 (emphasis added). In short, the Court cannot include in its amount-in-controversy
7 calculation costs that Panera has not estimated or which the injunction does not require Panera to
8 incur.

9 C. Attorney’s Fees

10 Attorney’s fees may be included in the amount-in-controversy calculation if proven by a
11 preponderance of the evidence. *Fritsch*, 899 F.3d at 795-96. While a percentage-based method
12 can be used to calculate attorney’s fees, the Ninth Circuit has declined to adopt a per se rule. *Id.* at
13 796 n.6. Still, 25% of the total recovery remains the “benchmark award” for attorney’s fees, and
14 courts in this district generally apply that benchmark absent special circumstances. *See Staton v.*
15 *Boeing Co.*, 327 F.3d 938, 968 (9th Cir. 2003); *Cortez v. United Nat. Foods, Inc.*, No. 18-cv-
16 04603-BLF, 2019 WL 955001, at *7 (N.D. Cal. Feb. 27, 2019) (noting that the 25% benchmark is
17 generally applied even if not automatic).

18 Aseltine argues that the Court should disregard the 25% benchmark, citing cases in which
19 courts have disregarded the 25% benchmark rate for attorney’s fees when a defendant offered no
20 evidence to support the request. *See* ECF No. 33 at 5-6 (citing cases). But these cases are
21 distinguishable because, unlike in those cases, Panera *has* provided evidence to support the
22 percentage award. ECF No. 34 at 13. And the Ninth Circuit has held that a defendant may look to
23 cases in which the plaintiff’s counsel sought similar attorney’s fees to prove the amount of
24 attorney’s fees at stake. *Greene v. Harley-Davidson, Inc.*, 965 F.3d 767, 774 n.4 (9th Cir. 2020)
25 (“Based on Harley-Davidson’s evidence that Greene’s attorney sought 35 percent in a similar case,
26 it is reasonable to assume that Greene’s attorney would seek fees equal to 25 percent of the
27 amount in controversy if he were to prevail.”). Against this backdrop, the court considers the
28 multiple cases cited by Panera in which Aseltine’s counsel “has sought and received 25-30%

1 attorneys' fees awards in settlements of class actions brought under the CLRA." ECF No. 34 at
 2 13; *see, e.g., Figueroa v. Cap. One, N.A.*, No. 18-cv-692 JM(BGS), 2021 WL 211551, at *9-10
 3 (S.D. Cal. Jan. 21, 2021) (awarding attorney's fees of 30% of the settlement fund to Aseltine's
 4 counsel); *Walters v. Target Corp.*, No. 3:16-cv-1678-L-MDD, 2020 WL 6277436, at *8 (S.D. Cal.
 5 Oct. 26, 2020) (awarding attorney's fees to Aseltine's counsel based on the 25% benchmark).

6 The Court finds that Panera has proven by a preponderance of the evidence that it is
 7 appropriate to include an estimated attorney's fee award of 25% in calculating the amount in
 8 controversy. Using the compensatory damages estimate set forth above, 25% of \$904,631.00
 9 equals \$226,157.75. This brings the total amount in controversy to \$1,130,788.75.

10 **D. Punitive Damages**

11 Aseltine also seeks punitive damages under the CLRA. ECF No. 1-1 at 22. Punitive
 12 damages may be included in the amount-in-controversy calculation "if it is reasonably possible
 13 that [the defendant] may be liable for the proffered punitive damages amount." *Greene*, 965 F.3d
 14 at 772. A defendant can meet this burden by "cit[ing] a case based on the same or a similar statute
 15 in which the jury or court awarded punitive damages based on the punitive-compensatory damages
 16 ratio relied upon by the defendant in its removal notice." *Id.*

17 In its removal notice, Panera invoked the prospect of punitive damages to argue that
 18 CAFA's amount-in-controversy requirement was satisfied, but never specified a ratio. Now
 19 Panera relies on a 2:1 ratio, citing two cases in which courts in the Ninth Circuit awarded a higher
 20 ratio for punitive damages for claims under the CLRA. *See, e.g., In re Volkswagen "Clean*
 21 *Diesel" Mktg., Sales Pracs., and Prods. Liab. Litig.*, 445 F. Supp. 3d 535, 557 (reducing punitive
 22 damages award to four times the compensatory damages); *Chiteishvili v. Vertifx LLC*, No. 2:17-
 23 cv-8711 JFW (RAOx), 2018 WL 6716690, at *5 (C.D. Cal. Dec. 21, 2018) (awarding punitive
 24 damages of five times the compensatory damages).³

25 _____
 26 ³ Although Panera's opposition emphasized that the Court should use a ratio greater than 1:1 and
 27 specifically invoked only a 2:1 ratio, Panera also left open the possibility the ratio could be higher
 28 by saying "2:1 or more." *See* ECF No. 34 at 14 (emphasis added). But the Court cannot speculate
 how much higher Panera believes punitive damages could reasonably go – the Court must
 consider Panera's "proffered punitive/compensatory damages ratio." *Greene*, 965 F.3d at 773. In
Greene, for example, the defendant cited four cases with ratios ranging from 2:1 to 11:1, but the

1 Aseltine protests that Panera cannot belatedly argue for a 2:1 ratio when it did not
2 specifically invoke that ratio in its removal notice. Aseltine also asserts that Panera cannot rely on
3 cases with punitive damages ratios without analogizing to the facts of those cases. And finally,
4 Aseltine stresses that his complaint never pleaded a specific damages amount and argues that
5 courts have declined to extend *Greene*'s holding about punitive damages in those circumstances,
6 citing *Calagano v. Rite Aid Corp.*, No. 4:20-cv-05476-YGR, 2020 WL 6700451, *4 (N.D. Cal.
7 Nov. 13, 2020)

8 The Court rejects Aseltine's arguments. To begin, "*Greene* does not hold, and CAFA does
9 not provide, that the standard for showing whether CAFA's amount in controversy requirement is
10 met varies depending on . . . the stage in litigation when the amount in controversy is challenged."
11 *Hawkins v. Kroger Co.*, No. 15CV2320 JM (AHG), 2020 WL 8225732 (S.D. Cal. Dec. 29, 2020).
12 Next, *Greene* expressly rejected the analogizing argument that Aseltine presses here: that a
13 defendant must "show similarities to the other cases [with the punitive-damages ratio they cited]."
14 965 F.3d at 773. The Ninth Circuit there explained that such a question improperly considers "the
15 likelihood of the plaintiff prevailing on the damages claim." *Id.* And finally, *Calagano* differs
16 from this case because the complaint there (unlike Aseltine's) did "not seek punitive damages" at
17 all. 2020 WL 6700451, *4. Aseltine's complaint, although not specifying an amount, plainly
18 seeks punitive damages in its prayer for relief.

19 The Court thus finds that a 2:1 ratio for punitive damages is appropriate here. This brings
20 the total amount in controversy to \$2,940,050.75 (\$1,130,788.75 + \$1,809,262), which still does
21 not satisfy the amount-in-controversy requirement.

22 In sum, the Court finds that Panera has failed to show by a preponderance of the evidence
23 that the amount in controversy exceeds the \$5 million threshold CAFA requires. Accordingly, the
24

25 Ninth Circuit only recognized the ratio the defendant specifically invoked – 1:1 – in its damages
26 calculation. *Compare* Appellants' Brief on the Merits at 31-32, *Greene v. Harley-Davidson, Inc.*,
27 965 F.3d 767 (9th Cir. 2020) (No. 20-55281) ("[The defendant] provided the amounts of those
28 verdicts, which produced ratios of punitive damages to compensatory damages ranging from as
low as 2:1 up to 11:1.") *with Greene*, 965 F.3d at 772 ("Harley-Davidson met that burden by
citing four cases where juries had awarded punitive damages at ratios higher than 1:1 for claims
based on the CLRA."). The Court will follow the same course here and use for its analysis only
the ratio Panera specifically invoked – 2:1.

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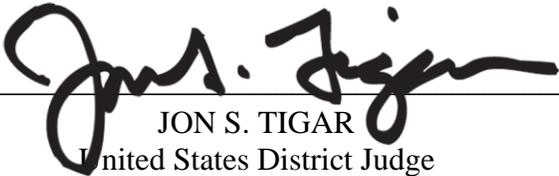
additional jurisdictional discovery Aseltine requests is unnecessary.

CONCLUSION

For the reasons given above, the Court GRANTS Aseltine’s motion to remand and DENIES AS MOOT Panera’s motion to transfer. The Clerk shall remand this case to the Superior Court of California, County of Alameda.

IT IS SO ORDERED.

Dated: December 13, 2021



JON S. TIGAR
United States District Judge

United States District Court
Northern District of California

ADRMOP,CLOSED

**U.S. District Court
California Northern District (Oakland)
CIVIL DOCKET FOR CASE #: 4:21-cv-04284-JST
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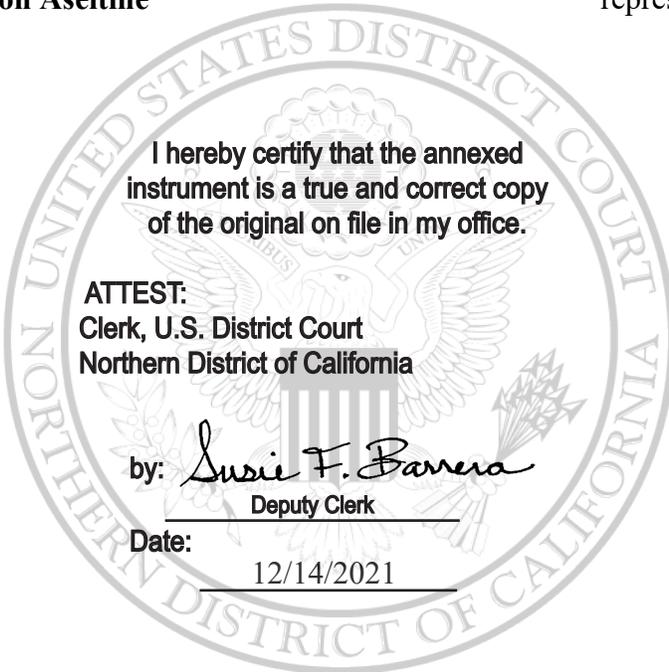
Aseltine v. Panera, LLC et al
Assigned to: Judge Jon S. Tigar
Case in other court: Alameda County Superior Court,
RG21098794
Cause: 28:1332 Diversity-Contract Dispute

Date Filed: 06/04/2021
Date Terminated: 12/13/2021
Jury Demand: Plaintiff
Nature of Suit: 370 Other Fraud
Jurisdiction: Diversity

Plaintiff

Aaron Aseltine

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V.

Defendant

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Email: lsosnicki@thompsoncoburn.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/04/2021	1	NOTICE OF REMOVAL from Alameda County Superior Court. Their case number is RG21098794. (Filing fee \$402 receipt number 0971-16044881). Filed by Panera, LLC. (Attachments: # 1 Exhibit State Court File, # 2 Civil Cover

		Sheet, # 3 Supplement Certificate of Entities or Interested Persons, # 4 Supplement Notice of Appearance)(Sosnicki, Lukas) (Filed on 6/4/2021) (Entered: 06/04/2021)
06/04/2021	2	<p>Case assigned to Magistrate Judge Thomas S. Hixson.</p> <p>Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening.</p> <p>Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges. Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 6/18/2021. (bwS, COURT STAFF) (Filed on 6/4/2021) (Entered: 06/07/2021)</p>
06/07/2021	3	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 9/2/2021. Initial Case Management Conference set for 9/9/2021 10:00 AM in San Francisco, Courtroom G, 15th Floor. (elyS, COURT STAFF) (Filed on 6/7/2021) (Entered: 06/07/2021)
06/11/2021	4	STIPULATION to Extend Defendant's Time to Respond to Complaint filed by Panera, LLC. (Sosnicki, Lukas) (Filed on 6/11/2021) (Entered: 06/11/2021)
06/21/2021	 5	*** PLEASE DISREGARD- SEE CORRECTED MOTION ITEM 7 *** Administrative Motion to File Under Seal <i>Motion to Remand</i> filed by Aaron Aseltine. (Attachments: # 1 Declaration, # 2 Proposed Order, # 3 Redacted Version of Motion to Remand, # 4 Unredacted Version of Exhibit A to Motion to Remand)(Kaliel, Jeffrey) (Filed on 6/21/2021) Modified on 6/21/2021 (elyS, COURT STAFF). (Entered: 06/21/2021)
06/21/2021	6	CLERK'S NOTICE Re: Consent or Declination: Plaintiffs/Defendants shall file a consent or declination to proceed before a magistrate judge by 7/2/2021. Note that any party is free to withhold consent to proceed before a magistrate judge without adverse substantive consequences. The forms are available at: http://cand.uscourts.gov/civilforms . (Party/parties were also notified via telephone or email.) <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cdnS, COURT STAFF) (Filed on 6/21/2021) (Entered: 06/21/2021)
06/21/2021	 7	Administrative Motion to File Under Seal <i>Motion to Remand</i> filed by Aaron Aseltine. (Attachments: # 1 Declaration, # 2 Proposed Order, # 3 Redacted Version of Motion to Remand, # 4 Unredacted Motion to Remand, # 5 Unredacted Exhibit A to Unredacted Motion for Remand)(Kaliel, Jeffrey) (Filed on 6/21/2021) (Entered: 06/21/2021)
06/21/2021		(Court only) ***Motions terminated: 5 Administrative Motion to File Under Seal <i>Motion to Remand</i> filed by Aaron Aseltine. See 7 for Corrected Motion (elyS, COURT STAFF) (Filed on 6/21/2021) (Entered: 06/21/2021)

06/21/2021	8	MOTION for Extension of Time to File Response/Reply as to 4 Stipulation to Extend Defendant's Time to Respond to Complaint filed by Panera, LLC. (Attachments: # 1 Declaration of Lukas Sosnicki in Support, # 2 Exhibit 1, # 3 Proposed Order)(Sosnicki, Lukas) (Filed on 6/21/2021) (Entered: 06/21/2021)
06/22/2021	9	CLERK'S NOTICE Setting Motion Hearing as to 7 Motion to Remand, 8 Motion for Extension of Time. Motion Hearing set for 7/29/2021 10:00 AM before Magistrate Judge Thomas S. Hixson by Zoom video conference. The webinar link and instructions are located at https://cand.uscourts.gov/judges/hixson-thomas-s-tsh/ <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cdnS, COURT STAFF) (Filed on 6/22/2021) (Entered: 06/22/2021)
06/25/2021	10	MOTION to Transfer Case Pursuant to 28 USC Section 1404(a) filed by Panera, LLC. Motion Hearing set for 8/12/2022 10:00 AM in San Francisco, Courtroom G, 15th Floor before Magistrate Judge Thomas S. Hixson. Responses due by 7/9/2021. Replies due by 7/16/2021. (Attachments: # 1 Exhibit Ahmad v. Panera Complaint, # 2 Exhibit Declaration of Whitney Hewitt, # 3 Proposed Order) (Sosnicki, Lukas) (Filed on 6/25/2021) (Entered: 06/25/2021)
06/25/2021	11	Declaration of Lukas Sosnicki in Support of 7 Administrative Motion to File Under Seal Motion to Remand filed by Panera, LLC. (Related document(s) 7) (Sosnicki, Lukas) (Filed on 6/25/2021) (Entered: 06/25/2021)
06/28/2021	12	NOTICE by Panera, LLC re 10 MOTION to Transfer Case Pursuant to 28 USC Section 1404(a) of Errata (Attachments: # 1 Declaration of Whitney Hewitt, # 2 Exhibit 1 to Decl of Whitney Hewitt)(Sosnicki, Lukas) (Filed on 6/28/2021) (Entered: 06/28/2021)
07/01/2021	13	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Panera, LLC.. (Sosnicki, Lukas) (Filed on 7/1/2021) (Entered: 07/01/2021)
07/01/2021	14	CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned. ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED. <i>This is a text only docket entry; there is no document associated with this notice.</i> (rmm2S, COURT STAFF) (Filed on 7/1/2021) (Entered: 07/01/2021)
07/01/2021	15	ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge Sandra Brown Armstrong for all further proceedings. Magistrate Judge Thomas S. Hixson no longer assigned to case,. Signed by The Clerk on

		7/1/21. (haS, COURT STAFF) (Filed on 7/1/2021) (Entered: 07/01/2021)
07/01/2021	16	ORDER OF RECUSAL. Signed by Judge Sandra Brown Armstrong on 7/1/2021. (amgS, COURT STAFF) (Filed on 7/1/2021) (Entered: 07/01/2021)
07/02/2021	17	ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge Jon S. Tigar for all further proceedings. Judge Sandra Brown Armstrong no longer assigned to case, Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras. Signed by the Clerk on 7/2/2021. (Attachments: # 1 Notice of Eligibility for Video Recording)(anjS, COURT STAFF) (Filed on 7/2/2021) (Entered: 07/02/2021)
07/02/2021	18	<p>CLERK'S NOTICE SETTING CASE MANAGEMENT CONFERENCE AND MOTIONS HEARING. Case Management Statement due by 9/28/2021. Initial Case Management Conference set for 10/5/2021 02:00 PM in Oakland, - Videoconference Only. Motion Hearing set for 8/26/2021 02:00 PM in Oakland, - Videoconference Only before Judge Jon S. Tigar. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jst</p> <p>Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. One list of names of all counsel appearing for all parties must be sent in one email to the CRD at JSTCRD@cand.uscourts.gov no later than August 25, 2021 by 2:00 p.m. for the Motion Hearing and October 4, 2021 by 2:00 p.m for the Case Management Conference.</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>, Set/Reset Deadline s as to 10 MOTION to Transfer Case Pursunt to 28 USC Section 1404(a), 8 MOTION for Extension of Time to File Response/Reply as to 4 Stipulation to Extend Defendant's Time to Respond to Complaint. Case Management Statement due by 9/28/2021. Initial Case Management Conference set for 10/5/2021 02:00 PM in Oakland, - Videoconference Only. Motion Hearing set for 8/26/2021 02:00 PM in Oakland, - Videoconference Only before Judge Jon S. Tigar. (mlsS, COURT STAFF) (Filed on 7/2/2021) (Entered: 07/02/2021)</p>
07/06/2021	 19	<p>***DISREGARD. ERROR IN FILING PER FILER. SEE DOCKET # 21 FOR CORRECTED FILING.***</p> <p>Administrative Motion to File Under Seal filed by Panera, LLC. (Attachments: # 1 Declaration of Lukas Sosnicki, # 2 Proposed Order, # 3 Redacted Version of Opposition to Plaintiff's Motion to Remand, # 4 Unredacted Version of</p>

		Opposition to Plaintiff's Motion to Remand, # 5 Exhibit A to Unredacted Version of Opposition to Plaintiff's Motion to Remand)(Sosnicki, Lukas) (Filed on 7/6/2021) Modified on 7/7/2021 (jmls, COURT STAFF). (Entered: 07/06/2021)
07/07/2021	20	Order by Judge Jon S. Tigar granting 7 Administrative Motion to File Under Seal. (mlls, COURT STAFF) (Filed on 7/7/2021) (Entered: 07/07/2021)
07/07/2021	 21	Administrative Motion to File Under Seal filed by Panera, LLC. (Attachments: # 1 Declaration of Lukas Sosnicki, # 2 Proposed Order, # 3 Redacted Version of Opposition to Plaintiff's Motion to Remand, # 4 Unredacted Version of Opposition to Plaintiff's Motion to Remand, # 5 Unredacted Version of Exhibit A)(Sosnicki, Lukas) (Filed on 7/7/2021) (Entered: 07/07/2021)
07/07/2021		(Court only) ***Motions terminated: 19 Administrative Motion to File Under Seal filed by Panera, LLC., ***Deadlines terminated. (jmls, COURT STAFF) (Filed on 7/7/2021) (Entered: 07/07/2021)
07/09/2021	22	OPPOSITION/RESPONSE (re 10 MOTION to Transfer Case <i>Pursuant to 28 USC Section 1404(a)</i>) filed by Aaron Aseltine. (Kaliel, Jeffrey) (Filed on 7/9/2021) (Entered: 07/09/2021)
07/15/2021	23	<p>CLERKS NOTICE SETTING ZOOM HEARING. Initial Case Management Conference set for 7/19/2021 08:30 AM in Oakland, - Videoconference Only. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jst</p> <p>Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. One list of names of all counsel appearing for all parties must be sent in one email to the CRD at JSTCRD@cand.uscourts.gov no later than July 16, 2021 by Noon.</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>Initial Case Management Conference set for 7/19/2021 1 08:30 AM in Oakland, - Videoconference Only. (This is a text-only entry generated by the court. There is no document associated with this entry.) (mlls, COURT STAFF) (Filed on 7/15/2021) (Entered: 07/15/2021)</p>
07/15/2021	 24	Administrative Motion to File Under Seal <i>Reply ISO Motion to Remand</i> filed by Aaron Aseltine. (Attachments: # 1 Declaration of Sophia G. Gold ISO Administrative Motion to File Under Seal, # 2 Proposed Order, # 3 Exhibit Redacted Version of Reply ISO Motion to Remand, # 4 Exhibit Unredacted Version of Reply ISO to Motion to Remand)(Gold, Sophia) (Filed on 7/15/2021) (Entered: 07/15/2021)

07/15/2021	25	REPLY (re 24 Administrative Motion to File Under Seal <i>Reply ISO Motion to Remand</i>) (<i>redacted</i>) <i>ISO Motion to Remand</i> filed by Aaron Aseltine. (Gold, Sophia) (Filed on 7/15/2021) (Entered: 07/15/2021)
07/15/2021		Electronic filing error . REMINDER TO COUNSEL: In the future, please be sure that the case number is correctly reflected on your documents as 4:21-cv-04284-JST.Re: 25 Reply to Opposition/Response filed by Aaron Aseltine, 24 Administrative Motion to File Under Seal <i>Reply ISO Motion to Remand</i> filed by Aaron Aseltine (jmlS, COURT STAFF) (Filed on 7/15/2021) (Entered: 07/16/2021)
07/16/2021	26	REPLY (re 10 MOTION to Transfer Case <i>Pursunt to 28 USC Section 1404(a)</i>) <i>Defendant Panera, LLC's Reply in Support of Its Motion to Transfer</i> filed by Panera, LLC. (Sosnicki, Lukas) (Filed on 7/16/2021) (Entered: 07/16/2021)
07/19/2021	27	Minute Entry for proceedings held before Judge Jon S. Tigar: Initial Case Management Conference held on 7/19/2021. Hearing held via Zoom videoconference. Parties are addressed regarding the deficiencies in their administrative motions to seal and are directed to read the Court's Standing Orders. Written order to issue.Total Time in Court: 8 minutes. Court Reporter: Not Reported. Plaintiff Attorney: Jeffrey Kaliel, Sophia Gold. Defendant Attorney: Lukas Sosnicki. (This is a text-only entry generated by the court. There is no document associated with this entry.) (mllS, COURT STAFF) (Date Filed: 7/19/2021) (Entered: 07/19/2021)
07/19/2021	28	ORDER REGARDING MOTION TO REMAND by Judge Jon S. Tigar granting 21 Administrative Motion to File Under Seal; granting 24 Administrative Motion to File Under Seal. (mllS, COURT STAFF) (Filed on 7/19/2021) (Entered: 07/19/2021)

07/19/2021	29	<p>CLERK'S NOTICE Continuing Motion Hearing. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i>, Set/Reset Deadlines as to 8 MOTION for Extension of Time to File Response/Reply as to 4 Stipulation to Extend Defendant's Time to Respond to Complaint, 10 MOTION to Transfer Case Pursuant to 28 USC Section 1404(a).. Motion Hearing set for 9/2/2021 02:00 PM in Oakland, - Videoconference Only before Judge Jon S. Tigar. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jst</p> <p>Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. One list of names of all counsel appearing for all parties must be sent in one email to the CRD at JSTCRD@cand.uscourts.gov no later than September 1, 2021 by 2:00 p.m.</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>Motion Hearing set for 9/2/2021 02:00 PM in Oakland, - Videoconference Only before Judge Jon S. Tigar. (Related documents(s) 8 , 10)(mlls, COURT STAFF) (Filed on 7/19/2021) (Entered: 07/19/2021)</p>
07/19/2021		<p>(Court only) ***Motions terminated: 8 MOTION for Extension of Time to File Response/Reply as to 4 Stipulation to Extend Defendant's Time to Respond to Complaint filed by Panera, LLC. (mlls, COURT STAFF) (Filed on 7/19/2021) (Entered: 07/19/2021)</p>
07/20/2021	30	<p>First MOTION to Remand (<i>Redacted</i>) filed by Aaron Aseltine. Responses due by 8/3/2021. Replies due by 8/10/2021. (Gold, Sophia) (Filed on 7/20/2021) (Entered: 07/20/2021)</p>
07/20/2021	31	<p>REPLY (re 30 First MOTION to Remand (<i>Redacted</i>)) (<i>Redacted</i>) filed by Aaron Aseltine. (Gold, Sophia) (Filed on 7/20/2021) (Entered: 07/20/2021)</p>
07/20/2021	32	<p>CLERK'S NOTICE SETTING BRIEFING SCHEDULE. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i>, Set/Reset Deadlines as to 30 First MOTION to Remand (<i>Redacted</i>).. Responses due by 7/5/2021. Replies due by 7/12/2021. Motion Hearing set for 9/2/2021 02:00 PM in Oakland, - Videoconference Only before Judge Jon S. Tigar. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jst</p> <p>Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. One list of names of all counsel</p>

		<p>appearing for all parties must be sent in one email to the CRD at JSTCRD@cand.uscourts.gov no later than September 1, 2021 by 2:00 p.m.</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>Responses due by 7/5/2021. Rep lies due by 7/12/2021. Motion Hearing set for 9/2/2021 02:00 PM in Oakland, - Videoconference Only before Judge Jon S. Tigar. (mlls, COURT STAFF) (Filed on 7/20/2021) (Entered: 07/20/2021)</p>
07/20/2021		<p>Electronic filing error. Case division and judge information are incorrect. The correct case information is Oakland Division and the case number should be 4:21-cv-4284 JST. Please re-file in its entirety. Re: 31 Reply to Opposition/Response filed by Aaron Aseltine (jmls, COURT STAFF) (Filed on 7/20/2021) (Entered: 07/21/2021)</p>
07/21/2021	33	<p>REPLY (re 30 First MOTION to Remand (<i>Redacted</i>)) filed by Aaron Aseltine. (Gold, Sophia) (Filed on 7/21/2021) (Entered: 07/21/2021)</p>
08/03/2021	34	<p>OPPOSITION/RESPONSE (re 30 First MOTION to Remand (<i>Redacted</i>)) filed by Panera, LLC. (Sosnicki, Lukas) (Filed on 8/3/2021) (Entered: 08/03/2021)</p>
08/20/2021	35	<p>ORDER VACATING HEARING re 30 First MOTION to Remand (<i>Redacted</i>) filed by Aaron Aseltine, 10 MOTION to Transfer Case Pursuant to 28 USC Section 1404(a) filed by Panera, LLC. Signed by Judge Jon S. Tigar on August 20, 2021. (mlls, COURT STAFF) (Filed on 8/20/2021) (Entered: 08/20/2021)</p>
09/28/2021	36	<p>CASE MANAGEMENT STATEMENT <i>JOINT AND PROPOSED ORDER</i> filed by Aaron Aseltine. (Kaliel, Jeffrey) (Filed on 9/28/2021) (Entered: 09/28/2021)</p>
10/01/2021	37	<p>ORDER CONTINUING CASE MANAGEMENT CONFERENCE The case management conference currently scheduled for October 5, 2021 is continued to December 7, 2021 at 2:00 p.m. An updated case management statement is due November 30, 2021. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (Entered by Judge Jon S. Tigar) (Filed on 10/1/2021) (Entered: 10/01/2021)</p>
10/01/2021	38	<p>CLERK'S NOTICE SETTING ZOOM HEARING. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i>. Case Management Statement due by 11/30/2021. Initial Case Management Conference set for 12/7/2021 02:00 PM in Oakland, - Videoconference Only. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jst</p> <p>Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. One list of names of all counsel</p>

		<p>appearing for all parties must be sent in one email to the CRDat JSTCRD@cand.uscourts.gov no later than December 6, 2021 by 2:00 p.m.</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>Case Management Statement due by 11/30/2021. Initial Case Management Conference set for 12/7/2021 02:00 PM in Oakland, - Videoconference Only. (mlls, COURT STAFF) (Filed on 10/1/2021) (Entered: 10/01/2021)</p>
11/16/2021	39	Supplemental Brief re 30 First MOTION to Remand (<i>Redacted</i>) filed by Aaron Aseltine. (Related document(s) 30) (Kaliel, Jeffrey) (Filed on 11/16/2021) (Entered: 11/16/2021)
11/30/2021	40	JOINT CASE MANAGEMENT STATEMENT <i>Amended</i> filed by Panera, LLC. (Sosnicki, Lukas) (Filed on 11/30/2021) (Entered: 11/30/2021)
12/07/2021	41	<p>ORDER CONTINUING CASE MANAGEMENT CONFERENCE</p> <p>The case management conference scheduled for today is continued to January 11, 2022 at 2:00 p.m. An updated joint case management statement is not required. The Court acknowledges that the motion to transfer is no longer at issue. <i>See</i> ECF No. 39. The Court will rule on the pending motion to remand shortly. (<i>This is a text-only entry generated by the court. There is no document associated with this entry.</i>) (Tigar, Jon) (Filed on 12/7/2021) (Entered: 12/07/2021)</p>
12/07/2021	42	<p>CLERKS NOTICE SETTING ZOOM HEARING. Initial Case Management Conference set for 1/11/2022 02:00 PM in Oakland, - Videoconference Only. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jst</p> <p>Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. One list of names of all counsel appearing for all parties must be sent in one email to the CRD at JSTCRD@cand.uscourts.gov no later than January 10, 2022 by 2:00 p.m.</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>Initial Case Management Conference set for 1 /11/2022 02:00 PM in Oakland, - Videoconference Only. (<i>This is a text-only entry generated by the court. There is no document associated with this entry.</i>) (mll, COURT STAFF) (Filed on 12/7/2021) (Entered: 12/07/2021)</p>

12/13/2021	43	ORDER by Judge Jon S. Tigar granting 30 Motion to Remand; finding as moot 10 Motion to Transfer Case. (mll, COURT STAFF) (Filed on 12/13/2021) (Entered: 12/13/2021)
12/13/2021		(Court only) ***Civil Case Terminated and Remanded. (sfb, COURT STAFF) (Filed on 12/13/2021) (Entered: 12/14/2021)