

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

Peter Leverman v. Honeywell International Inc.

Leverman v. Honeywell · No. 2:25-cv-04768-WLH-RAO · Decided September 9, 2025

OPINION

Peter Leverman v. Honeywell International Inc

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 PETER LEVERMAN, on behalf of all Case No. 2:25-cv-04768-WLH-RAO 11 similarly-
situated employees of Defendants,, ORDER RE MOTION TO REMAND 12 [13] Plaintiff(s), 13
14 v.

15 HONEYWELL INTERNATIONAL

INC. and DOES 1 through 50, 16 inclusive, 17 Defendant(s). 18 19 The Court is in receipt of
Plaintiff's Motion to Remand (the "Motion") (Mot. to 20 Remand ("Mot."), Docket No. 13),
Defendant's Opposition (Opp'n, Docket No. 16), 21 Plaintiff's Reply (Pltf. Reply, Docket No.
17), Defendant's Supplement to Motion to 22 Remand ("Defendant's Supplement") (Def.
Supplement, Docket No. 26) and 23 Plaintiff's Supplement to Motion to Remand ("Plaintiff's Sur-
Reply") (Pltf. Sur- 24 Reply, Docket No. 27). On July 24, 2025, the Court continued the Motion's
hearing 25 to September 5, 2025. On July 25, 2025, the Court ordered Defendant to file 26
abbreviated supplemental briefing and permitted Plaintiff to file further evidence 27 and/or
briefing by August 22, 2025. (MTR Order, Docket No. 24 at 12). The Court 28 1 heard oral
arguments from the parties on September 5, 2025. Plaintiff's Motion is 2 DENIED for the reasons
stated herein.

3 I. BACKGROUND

4 To resolve the instant motion, the Court must determine whether the case's 5 removal from state
court complied with the Class Action Fairness Act ("CAFA"). 6 The only issue in dispute is
whether Defendant has met its burden to establish that the 7 amount in controversy exceeds \$5
million. 8 On April 22, 2025, Plaintiff Peter Leverman ("Plaintiff") filed a class action 9
complaint in the Superior Court of California. (Ex. 1 to Notice of Removal 10 ("Complaint"),
Docket No. 1-1). Plaintiff is a former employee of Defendant 11 Honeywell International Inc.
("Defendant") and worked for Defendant for nearly 12 thirty years. (Complaint ¶ 9). Plaintiff
brings the suit on behalf of himself and a 13 putative class of "[a]ll current and former non-
exempt employees who worked for 14 Defendants in California at any time from four years (plus

the additional 178-day 15 statutory tolling period under Emergency Rule 9) prior to the filing of this action 16 through date of class certification.” (Id. ¶ 15). 17 As relevant to the instant motion, Plaintiff alleges that he was required to 18 provide 24/7 on-call support coverage to clients. (Id. ¶ 2). This on-call requirement, 19 Plaintiff alleges, prohibited him from engaging in personal activities given that he was 20 required to respond to calls within 2 hours. (Id. ¶ 21). Four specific paragraphs 21 provide color to this allegation, so the Court reproduces them in full below. 22 1. “Specifically, Plaintiff was required to travel more than 8 hours from his 23 home to provide 24/7 on-call support coverage prohibiting engagement in 24 personal activities due to a 2 hour response time restriction by the 25 customer. However, despite maintaining a 24/7 on-call policy for 26 Plaintiff and the class members, Defendants only paid an additional hour 27 for on-call pay.” (Id.). 28 1 2. “Plaintiff asked that he be compensated for at least eight hours on 2 weekend days for remaining on-call, after which Defendants began 3 paying the one hour a day rate and additionally paid Plaintiff for four 4 hours of overtime on Saturdays and Sundays.” (Id. ¶ 22). “Despite this 5 arrangement, Defendants regularly underpaid Plaintiff and the class 6 members for all on-call hours worked.” (Id. ¶ 23). 7 3. “Due to Defendants’ failure to compensate for on-call pay, any employee 8 whose on call hours totaled more than 8 hours in a workday, or 40 hours 9 in a workweek was not compensated for all hours worked, including 10 overtime hours, as required under the California law.” (Id. ¶ 25). 11 Based on these, and similar, factual allegations, Plaintiff alleges that Defendant 12 failed to pay plaintiff and class members minimum wages for all wages owed, failed 13 to pay overtime wages and failed to provide accurate wage statements. (See generally 14 id.). Plaintiff seeks recovery for the unpaid wages, statutory penalties for failure to 15 provide accurate wage statements and attorney’s fees. (See generally id.).1 16 On May 27, 2025, Defendant removed the case to this Court. (Notice of 17 Removal, Docket No. 1). Defendant removed the case pursuant to the Class Action 18 Fairness Act (“CAFA”). (See generally id.). Defendant’s Notice of Removal alleged 19 that Plaintiff’s complaint put into controversy over \$5,000,000. (Notice of 20 Removal ¶ 15 (citing to 28 U.S.C. § 1332(d) for amount in controversy requirement)). 21 In support of Defendant’s Notice of Removal, Defendant submitted a 22 declaration of Anita Swift, Defendant’s Senior Paralegal, who declared the following 23 based on a review of business records. (Swift Decl., Docket No. 4-1). First, from 24 October 16, 2020, to the date of the declaration on May 23, 2025, Defendant 25 1 Plaintiff’s Complaint additionally alleges untimely payment of wages, paid sick 26 leave violations, waiting time penalties and unfair competition. (See generally 27 Complaint). Because Defendant’s notice for removal is constrained to damages for failure to pay minimum wages, failure to pay overtime and wage statement penalties, 28 the Court need not detail the remaining causes of action. 1 employed over 553 non-exempt employees in California. (Id. ¶ 3). Second, this class 2 of employees “worked approximately 131,772 workweeks,” were paid an “average 3 minimum wage of \$15 per hour” and received over 22,637 wage statements in the 4 same period. (Id. ¶¶ 3, 4). 5 Based on these declarations, Defendant outlined several assumptions and 6

estimates. (See generally Notice of Removal). As to Plaintiff and the putative class's 7 claim for failure to pay all wages owed, Defendant noted that while Plaintiff "alleges 8 that he and putative class members provided '24/7 on call support coverage' 9 throughout the entire workweek," Defendant "conservatively assumes that each 10 putative class member incurred two hours of unpaid wages for on-call hours each 11 workweek." (Id. ¶ 21). Defendant therefore multiplied two by Defendant's estimated 12 number of workweeks (131,772) and Defendant's estimated average minimum wage 13 (\$15.00) to estimate the claim for failure to pay wages owed as \$3,953,160. (Id.). 14 As to Plaintiff and the putative class's claim for failure to pay overtime wages, 15 Defendant "conservatively assume[d] that each putative class member incurred one 16 hour of unpaid overtime wages each workweek, even though Plaintiff alleges that 17 Defendant maintained a 24/7 on-call policy for the putative class for the entire 18 workweek." (Id. ¶ 24). Defendant thus estimated that Plaintiff and the putative 19 class's claim for unpaid overtime as \$2,964,870 (\$15.00 x 1.5 rate x 1 hours per week 20 x 131,772 workweeks.) (Id.). 21 As to Plaintiff and the putative class's claim for wage statement violations, 22 Defendant noted that the Labor Code provides for a penalty of \$50 for each initial pay 23 period where a defendant fails to provide accurate written wage statements and \$100 24 for each subsequent pay period, up to a maximum penalty of \$4,000 per class 25 member. (Id. ¶ 27). Based on its estimate that the class received 22,673 wage 26 statements, Defendant assumed a maximum penalty for each class member and 27 calculated Plaintiff and the class's claim for wage statement penalties as \$2,212,000. 28 (Id. ¶ 29). Finally, Defendant estimated that attorney's fees would be 25% of the total 1 recovery. (Id. ¶ 31). Defendant therefore calculated Plaintiff's claim for attorney's 2 fees as \$2,282,507.50, which is 25% of the sum of Defendant's estimates of Plaintiff's 3 claims for unpaid wages, overtime wages and wage statement penalties. (Id.) 4 Defendant did not provide estimates for any of Plaintiff's additional claims for 5 untimely payment of wages, paid sick leave violations, waiting time penalties and 6 unfair competition. (See generally id.). 7 On June 26, 2025, Plaintiff filed the instant Motion. (Mot.) Plaintiff 8 accompanied the Motion with objections to the initial Swift Declaration. (Objections 9 to the Declaration of Anita Swift, Docket No. 13-3). Plaintiff specifically raised an 10 issue with the fact that Defendant "does not establish how . . . the total number of 11 workweeks within the relevant period were calculated." (Id. at 1). 12 Defendant filed a timely opposition brief ("Opp'n," Docket No. 16) and an 13 accompanying second declaration by Anita Swift detailing how Swift arrived at her 14 total number of workweeks figure. (Second Swift Decl. Docket No. 16-1). Swift 15 explained that "[t]he total number of workweeks was calculated by determining the 16 number of calendar days between October 26, 2020, and May 23, 2025 (1,668 days), 17 dividing by seven to arrive at an approximate number of workweeks per employee, 18 and multiplying by 553 employees." (Id. ¶ 4). Defendant submitted no other 19 evidence justifying its estimates and assumptions. Plaintiff timely replied to 20 Defendant's opposition. (Reply, Docket No. 17). 21 Pursuant to the Court's July 25, 2025 Order (Docket No. 24), both parties 22 submitted supplemental briefing to support

their arguments related to the instant 23 Motion. (See generally Docket Nos. 26, 27). Defendant's Supplement attached a 24 declaration by Quoneisha Stephenson, a paralegal for Defendant whose regular duties 25 including accessing and summarizing information from Honeywell's Human Resource 26 Information System ("HRIS") database. (Declaration of Quoneisha Stephenson 27 ("Stephenson Declaration") ¶ 2). The Stephenson Declaration calculated "the total 28 number of workweeks between an employee's hire date and termination date that fall 1 within the period between October 16, 2020, and August 7, 2025" for the 553 putative 2 class members. (Id. ¶ 5). That calculation yielded 108,373 workweeks. (Id.). The 3 Declaration additionally identified 519 employees subject to the alleged on-call 4 policy² and that group's corresponding aggregate number of workweeks (102,343) 5 using the same method of hire/termination dates. (Id. ¶ 6). Defendant amended their 6 estimates to reflect \$1,625,595 in alleged straight-time unpaid on-call wages, 7 \$11,513,578.50 in alleged unpaid overtime, \$2,212,000 in alleged wage statement 8 penalties, and \$3,837,793.38 in attorney's fees for a total estimated amount-in- 9 controversy of \$19,188,966.88. (Def. Supplement at 7). Defendant's estimates rely 10 on an hourly rate at the minimum wage of \$15.00 an hour and an overtime rate of 11 \$22.50 (1.5 times the minimum wage). (see Def. Supplement at 6). Plaintiff filed a 12 Sur-Reply disputing the reliability of Defendant's assumptions and calculations. (Pltf. 13 Sur-Reply, Docket No. 27).

14 II. LEGAL STANDARD

15 CAFA evinces "a strong preference that interstate class actions should be heard in 16 a federal court if properly removed by any defendant." *Jauregui v. Roadrunner 17 Transportation Servs., Inc.*, 28 F.4th 989, 993 (9th Cir. 2022) (citing *Dart Cherokee 18 Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014)). As such "no 19 antiremoval presumption attends cases invoking CAFA[.]" *Dart Cherokee*, 574 U.S. 20 at 89. Still, a case may only be removed pursuant to CAFA when certain 21 jurisdictional requirements are met. 28 U.S.C. § 1332(d). As relevant to the pending 22 Motion, a defendant may only remove a Class Action to federal court when the 23 amount in controversy exceeds \$5,000,000. 28 U.S.C. § 1332(d)(2).³ The amount in 24 2 The Stephenson declaration triangulates this universe by identifying employees 25 "whose job qualifications are associated with on-call duties" during the relevant class period. (Stephenson Decl. ¶ 6). These roles include those in positions involving 26 "engineering, operations, and field service responsibilities." *Id.* 27 3 While CAFA imposes requirements beyond the greater than \$5,000,000 amount in controversy, the only issue in the instant Motion is whether Defendant met its burden 28 as to the amount in controversy. (See generally Motion). 1 controversy is "an estimate of the entire potential amount at stake in litigation," rather 2 than the likely or probable liability of a given defendant. *Jauregui*, 28 F.4th at 994 3 (emphasis in the original). 4 A defendant's notice of removal "need include only a plausible allegation that the 5 amount in controversy exceeds the jurisdictional threshold." *Dart Cherokee*, 574 U.S. 6 at 89. When a plaintiff disputes the allegation, both sides may submit proof and "the 7 court decides, by a preponderance of the evidence, whether the amount-in-controversy 8 requirement has been

satisfied.” *Id.* at 88.4 A defendant “must be able to rely ‘on a 9 chain of reasoning that includes assumptions to satisfy its burden to prove by a 10 preponderance of the evidence that the amount in controversy exceeds \$5 million,’ as 11 long as the reasoning and underlying assumptions are reasonable.” *Jauregui*, 28 F.4th 12 at 993 (quoting *LaCross v. Knight Transp. Inc.*, 775 F.3d 1200, 1201 (9th Cir. 2015)). 13 A defendant’s assumptions, however, “cannot be pulled from thin air but need some 14 reasonable ground underlying them.” *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 15 1199 (9th Cir. 2015).

16 III. DISCUSSION

17 The disposition of Plaintiff’s Motion hinges on whether the action meets 18 CAFA’s \$5,000,000 amount in controversy requirement. The Court therefore must 19 determine whether four of Defendant’s assumptions justifying their amount in 20 controversy estimates are reasonable—namely, the calculations of (1) the total number 21 of workweeks at issue, (2) the amount of unpaid on-call wages allegedly owed to the 22 putative class, (3) the amount of unpaid overtime wages allegedly owed to the putative 23 class, and (4) the amount of wage statement penalties allegedly incurred by 24 Defendant. 25 4 When a plaintiff, as here, makes a factual attack on a motion to remand, Plaintiff is 26 not required to submit evidence and “need only challenge the truth of the defendant’s 27 jurisdictional allegations by making a reasoned argument as to why any assumptions on which they are based are not supported by evidence.” *Harris v. KM Indus., Inc.*, 28 980 F.3d 694, 700 (9th Cir. 2020). 1 Plaintiff first argues that Defendant’s assumption regarding the number of 2 workweeks the putative class worked is not reasonable. Plaintiff further argues that 3 Defendant’s assumptions regarding the number of unpaid wages and unpaid overtime 4 wages per week for which Defendant may be liable are unreasonable. Lastly, Plaintiff 5 disputes Defendants’ wage statement penalty calculations for their alleged California 6 Labor Code violations. The Court addresses each in turn. 7 A. Number of workweeks and scope of employees subject to on-call 8 policy 9 Defendant’s calculations of the value of each claim rely on Defendant’s 10 estimate of the number of workweeks the class worked. (Notice of Removal ¶ 21 11 (incorporating number of workweeks into calculation of failure to pay all wages 12 calculation); *id.* ¶ 24 (same as to unpaid overtime calculation); *id.* ¶ 29 (same as to 13 wage statements violation calculation); *id.* ¶ 31 (calculating attorney’s fees based on 14 preceding three claims)). 15 Plaintiff initially raised an issue with Defendant’s estimated number of 16 workweeks in an objection filed with Plaintiff’s Motion. (Objections to the 17 Declaration of Anita Swift at 1 (noting that Defendant “does not establish how . . . the 18 total number of workweeks within the relevant period were calculated.”)). In 19 response, Defendant submitted a second Swift Declaration. (Second Swift Decl.). 20 Anita Swift’s second declaration notes “[t]he total number of workweeks was 21 calculated by determining the number of calendar days between October 26, 2020, and 22 May 23, 2025 (1,668 days), dividing by seven to arrive at an approximate number of 23 workweeks per employee, and multiplying by 553 employees.” (Second Swift Decl. ¶ 24 4).

The Court, however, was skeptical of the assumptions underlying this calculation²⁵ and declined to “supply its own reasonable calculation of the number of workweeks in²⁶ controversy.” (MTR Order, Docket No. 24 at 8). Defendant was given another²⁷ opportunity to provide further evidence.²⁸ 1 As part of its Supplement, Defendant submitted the Stephenson Declaration that² included a records-based approach to calculating the relevant number of workweeks³ for the period of October 16, 2020, through August 7, 2025.⁵ (Stephenson Decl. ¶¶ 4– 4 5). Stephenson’s analysis of the hire and, if applicable, termination dates of the 553⁵ putative class members via payroll records produced an updated workweek calculation⁶ of 108,373. (Id.) That statistic, however, does not exclude those employees subject⁷ to the alleged on-call policy. The Stephenson Declaration ascertains this universe by⁸ identifying “519 employees whose job classifications are associated with on-call⁹ duties during the relevant class period” such as “those in positions involving¹⁰ engineering, operations, and field service responsibilities.” (Id. at ¶ 6). The aggregate¹¹ number of workweeks for this smaller group of putative class members was calculated¹² to be approximately 102,343 using the same hire-termination date analysis previously¹³ discussed. (Id.).¹⁴ The calculation methods employed by the Stephenson Declaration appear to¹⁵ adequately capture the unique periods of employment of each putative class member.¹⁶ Moreover, they assuage the Court’s previous concern with the imprecise workweeks¹⁷ calculation in Defendant’s initial briefing.⁶ (See MTR Order at 7; Reply at 3–5). The¹⁸ Court finds that Defendant’s reliance on employment records to more accurately¹⁹ calculate the number of workweeks at issue is well-founded and reasonable. See²⁰ ²¹ 5 In its Sur-Reply, Plaintiff takes issue with Defendant expanding the workweek calculation period by approximately two and half months (from May 23, 2025, in²² Defendant’s Notice of Removal to August 7, 2025, in Defendant’s Supplement). The²³ Court views this extended period as reasonable in light of the allegations of the Complaint, namely that the putative class is defined as including “all current and²⁴ former non-exempt employees who worked for Defendants in California at any time from four years . . . prior to the filing of this action through date of class certification.”²⁵ (Complaint ¶ 15); see also *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 925 (9th Cir. 2019). Defendant sets forth a reasonable assumption that the applicable class²⁶ period will naturally expand as the litigation progresses—and calculates the relevant²⁷ workweeks accordingly.⁶ That calculation unreasonably assumed all 553 putative class members worked in all²⁸ weeks from October 26, 2020, to May 23, 2025. 1 *Perez v. Rose Hills Co.*, 131 F.4th 804, 808 (9th Cir. 2025) (“[I]n a wage-and-hour² case, the number of employees in the class may be most easily determined by³ examining the defendant’s employment records.”). Although Plaintiff asserts that⁴ Defendant failed to articulate the basis for claiming these employees fall within the⁵ class definition (see Pltf. Sur-Reply at 3), that argument disregards the Swift⁶ Declaration attached to Defendant’s Notice of Removal. Anita Swift declared that as⁷ of May 23, 2025, Defendant employed over 553 non-exempt employees in California.⁸ (Swift Decl. ¶ 2). The Court understands Defendant’s updated estimate of employees⁹ subject to the on-call policy to

have come from this universe. Accordingly, the Court 10 finds Defendant’s chain of reasoning sufficient. 11 B. Unpaid on-call and overtime hours 12 The Ninth Circuit “distinguishes between complaints of ‘uniform’ violations 13 and those alleging a ‘pattern and practice’ of labor law violations.” *Dobbs v. Wood 14 Grp. PSN, Inc.*, 201 F. Supp. 3d 1184, 1188 (E.D. Cal. 2016) (quoting *LaCross v. 15 Knight Transp. Inc.*, 775 F.3d 1200, 1202 (9th Cir. 2015)). Here, Plaintiff alleges a 16 “pattern and practice” violation—or in their words, that Defendant “engaged in a 17 policy and practice of failing to pay Plaintiff and the class members for all on-call 18 hours, resulting in unpaid wages.” (Complaint ¶ 21). A pattern and practice theory 19 “does not necessarily mean always” violating the Labor Code, so the “defendant 20 seeking removal bears the burden to show a preponderance of the evidence” of the 21 CAFA-required amount in controversy. *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 22 1197 (9th Cir. 2015). But the Ninth Circuit this year clarified that, as it relates to 23 assumed Labor Code violation rates, “it makes little sense to require a CAFA 24 defendant to introduce evidence of the violation rate—really, the alleged violation 25 rate—because the defendant likely believes that the real rate is zero and thus that the 26 evidence does not exist.” *Perez v. Rose Hills Co.*, 131 F.4th 804, 808 (9th Cir. 2025). 27 For those reasons, this Circuit permits CAFA defendants to assume a violation rate in 28 light of the plaintiff’s complaint. Considering Plaintiff’s allegations in the instant 1 action, Defendant’s estimates of alleged unpaid on-call and overtime wages—albeit 2 requiring some reductions by the Court as explained herein—are reasonable. 3 1. Unpaid on-call (“straight-time”) wages 4 Defendant interprets Plaintiff’s unpaid on-call hour (“straight-time”) allegations 5 to “mean at least one 24-hour on-call period per workweek per employee who was on- 6 call went unpaid in violation of the policy’s contemplated one hour payment.” (Def.

7 Supplement at 4). Plaintiff lambasts this violation rate assumption as unreasonable 8 but mistakenly cites to Defendant’s previous estimate of “two hours of unpaid wages 9 per workweek.” (Pltf. Sur-Reply at 3). Defendant’s Supplement amends this original 10 calculation to reflect only a “one-hour shortfall of straight-time pay for each 11 workweek in which the policy applied” in light of Plaintiff’s Complaint. (Def.

12 Supplement at 3). The Court views this assumption as eminently reasonable given 13 that Plaintiff alleges a “pattern and practice” of Labor Code violations in their 14 Complaint where “Defendants regularly underpaid Plaintiff and the class members for 15 all on-call hours worked.” (Complaint ¶¶ 20, 23). Further, because “Plaintiffs include 16 separate claims for both failure to pay regular wages and failure to pay overtime, 17 [Defendant] properly assumes at least one of each type of violation per week.” *Oda v. 18 Gucci Am., Inc.*, 2015 WL 93335 at *5 (C.D. Cal. Jan. 7, 2015).⁷ Such chain of 19 20 7 At oral argument, Plaintiff’s counsel sought to distinguish *Oda* from the instant case, as the defendant there submitted a declaration attesting to the fact that the employees 21 at issue were “predominantly full time employees, who are typically scheduled to work 8 hour shifts, five days per week.” See *Oda*, 2015 WL 93335, at *3. The Court 22 is unpersuaded by that argument as the lodestar of Defendant’s assumptions remains

23 one of reasonableness. See *id.* at *5. In Plaintiff’s Complaint, he alleges that he “asked that he be compensated for at least eight hours on weekend days for remaining 24 on-call, after which Defendants began paying the one-hour-a-day rate and additionally paid Plaintiff for four hours of overtime on Saturdays and Sundays. Despite this 25 arrangement, Defendants regularly underpaid Plaintiff and the class members for all on-call hours worked.” (Compl. ¶ 24). Defendant correctly points out that the 26 Complaint is devoid of any reference to class members working schedules different 27 from his own. (Opp’n, Docket No. 16 at 9). As such, Defendant reasonably assumes, for purposes of amount in controversy calculations, that each member of the putative 28 class was deprived of one hour of overtime pay per week. 1 reasoning and its underlying assumptions are properly “founded on the allegations of 2 the complaint.” *Perez*, 131 F. 4th at 808. “[A]ssumptions made part of the 3 defendant’s chain of reasoning need not be proven.” *Id.* Holding otherwise would 4 require defendants to “prove [they] actually violated the law at the assumed rate” 5 while simultaneously maintaining they did not commit the alleged violations. *Id.*; see 6 also *Franklin v. Home Depot U.S.A., Inc.*, No. 5:25-CV-03657-BLF, 2025 WL 7 1983036, at *5 (N.D. Cal. July 17, 2025) (noting that “with regard to assumed 8 violation rates, since the violations are merely alleged and the defendant presumably 9 believes that evidence of the violation rate ‘does not exist.’”). 10 Defendant, in line with his Court’s order, ascertained their straight-time 11 calculations by (1) excluding employees not subject to the policy, and (2) reasonably 12 assuming that at least one 24-hour on call period per workweek per employee went 13 unpaid. Plaintiff may dispute the meaning of “regularly underpaid” in their 14 Complaint, but this Court is bound by the language of the complaint upon removal 15 and the logical inferences that flow from it. Plaintiff was “free to use some more 16 specific phrase . . . when drafting the complaint.” *Perez*, 131 F.4th at 810; see also 17 *Eleazar Santos v. The Pictsweet Co., et al.*, No. 2:25-CV-03181-AB-SSC, 2025 WL 18 2424357, at *5 (C.D. Cal. Aug. 20, 2025). Accordingly, the Court accepts 19 Defendant’s \$1,625,595 estimate of unpaid on-call wages.⁸ 20 2. Unpaid overtime allegations 21 What does give the Court pause is Defendant’s amended estimate relating to 22 unpaid overtime wages. In their Notice of Removal, Defendant “conservatively 23 assume[d] that each putative class member incurred one hour of unpaid overtime 24 wages each workweek” for a total of \$2,964,870 in unpaid overtime. (Notice of 25 Removal at 8) (emphasis added). In its Supplement, Defendant inflates this figure to 26 27 8 Defendant’s counsel asserted at oral argument that many of the employees subject to on-call duties are highly-skilled laborers, with an average wage of around \$42 an 28 hour. 1 \$11,513,578.50 to account for five hours of unpaid overtime wages each workweek 2 for each class member. (Def. Supplement at 6). This radical disparity in estimates of 3 unpaid overtime wages goes mostly unexplained, other than Defendant’s citation to 4 Plaintiff’s allegation that “any employee whose on-call hours totaled more than 8 5 hours in a workday, or 40 hours in a workweek was not compensated for all hours 6 worked, including overtime hours as required under California law.” (*Id.* at 5; Compl. 7 ¶ 25). Plaintiff does allege in the Complaint that

“Defendants began paying the one 8 hour a day rate and additionally paid [him] for four hours of overtime on Saturdays 9 and Sundays” upon his request for proper compensation. (Compl. ¶ 25). That 10 allegation, however, is with respect to Plaintiff and not the class as a whole. Although 11 the burden of proving the actual violation rate does not fall on Defendant, see *Perez*, 12 131 F. 4th at 808, the Court must still find this calculation to be supported by a 13 preponderance of evidence. Defendant’s amended estimate is not. As the Court has 14 stated in its previous Order, “[w]ithout grounding in the Complaint, these numbers are 15 essentially ‘pulled from thin air,’ Ibarra, 775 F.3d at 1199, and cannot support 16 Defendant’s calculations.” (MTR Order, Docket No. 24 at 11). Defendant’s 17 \$11,513,578.50 estimate is therefore disregarded for purposes of calculating the 18 amount in controversy. 19 The Court will rely instead on defendant’s previous estimate of one hour in 20 unpaid overtime per week per putative class member in calculating the amount in 21 controversy, adjusted to account for Defendant’s amended workweeks calculation. 22 (\$15.00 x 1.5 rate x 1 hour per week x 108,373 workweeks⁹ = \$2,438,392.50) (See 23 Def. Supplement at 5; Notice of Removal at 8). It is wholly reasonable for Defendant 24 to derive such an estimate from the imprecise “pattern and practice” allegation “that 25 9 For the avoidance of doubt, the Court relies on the 108,373 workweeks calculation 26 here as Plaintiff seeks to represent a putative class of all non-exempt employees. (See 27 Complaint ¶ 15). Accordingly, the appropriate universe of employees is 553 for purposes of calculating unpaid overtime, as opposed to the universe of 519 employees 28 for calculating unpaid “straight-time” on-call wages. 1 Defendants regularly underpaid Plaintiff and the class members for all on-call hours 2 worked.” (Complaint ¶¶ 20, 23); see also *Ray v. Wells Fargo Bank, N.A.*, 2011 WL 3 1790123, *67 (C.D. Cal. May 9, 2011) (finding that defendant’s estimates based on 4 one hour of unpaid overtime per class member were reasonable given allegation of 5 regular failure to pay overtime); *Stevenson v. Dollar Tree Stores, Inc.*, 2011 WL 6 4928753, *4 (E.D. Cal. 2011) (finding that because the complaint did not “lend itself 7 to precise calculations,” defendants’ conservative calculations were reasonable). 8 Plaintiff’s citations to orders from this Court¹⁰ that rejected similar one-hour-per-week 9 overtime violation estimates are well-taken, but the Court must square its reasoning 10 with Court orders finding the opposite (see, e.g., *Oda v. Gucci Am., Inc.*, No. 2:14- 11 CV-07469-SVW, 2015 WL 93335 (C.D. Cal. Jan. 7, 2015), and the Ninth Circuit’s 12 recent decision in *Perez*. 131 F.4th 804 at 808. That opinion admonishes lower 13 courts against requiring Defendants to introduce evidence of an alleged violation 14 rate—which is in effect, a concession of liability. *Id.* A court, however, can require a 15 defendant to “provide information derived from [their employment] records” as to the 16 number of employees in a putative class. *Id.* That is precisely what Defendant has 17 provided here to support their calculations. 18 Combining these unpaid straight-time and overtime calculations, the Court 19 estimates the amount in controversy to stand at \$4,063,987.50 without factoring in 20 associated attorney’s fees, wage statement penalties, and alleged damages stemming 21 from Plaintiff’s other causes of action (waiting time penalties, failure to pay paid sick 22 leave, etc.). 23 24 25 10 *Smith v. Diamond Resorts Mgmt.*,

Inc., No. EDCV 15-2477-VAP, 2016 WL 26 356020, at *5 (C.D. Cal. Jan. 28, 2016); *Arias v. Shyft Grp. GTB, LLC*, No. CV 23- 27 1582-JFW, 2023 WL 3559311, at *2–3 (C.D. Cal. May 17, 2023); *Peters v. TA Operating, LLC*, No. EDCV 22-1831 JGB, 2023 WL 1070350, at *5 (C.D. Cal. Jan. 28 26, 2023). 1 C. Wage Statement Penalties 2 Plaintiff additionally alleges that Defendant committed recurring violations of 3 California Labor Code § 226 by providing inaccurate itemized wage statements. 4 (Compl. ¶¶ 56–60). “Specifically, the wage statements issued to Plaintiff and class 5 members did not accurately state each pay period all of the information required by 6 [the] Labor Code.” (Id. ¶ 58). Relying on that allegation, Defendant assumes that the 7 553 putative class members received inaccurate wage statements for the duration of 8 the class period. The Swift Declaration specifically attests to the 22,673 wage 9 statements issued to the 553 putative class members. (Swift Decl. ¶ 4). Plaintiff takes 10 issue with this calculation, asserting that Defendant “fails to explain why every 11 employee would be entitled to the subsequent or maximum penalties under § 226.” 12 (Mot. at 10). 13 The Court is inclined to agree with Plaintiff on this point, as Defendant has 14 made no showing that each putative class member received over 40 defective wage 15 statements, enabling them to recover the \$4,000 maximum statutory penalty. The 16 total number of pay statements issued to the putative class distracts from the critical 17 question: How many pay statements did each putative class member receive during 18 the class period? Only that data can shed light on the universe of employees 19 potentially eligible to receive the maximum statutory penalty of \$4,000. Without it, 20 the Court cannot find Defendants’ underlying assumptions reasonable. See *Garibay v. 21 Archstone Communities LLC*, 539 F. App’x 763, 764 (9th Cir. 2013) (affirming the 22 lower court’s finding that defendant failed to meet their burden of proof with their 23 assumption that “every single member of the class would be entitled to recover 24 penalties for every single pay period”). On the other hand, it is beyond dispute that 25 this claim involves some significant amount in controversy. Nevertheless, the Court 26 need not address the proper estimate of these wage statement penalties as the total of 27 unpaid on-call, unpaid overtime hours, and estimated attorney’s fees meets CAFA’s 28 amount in controversy requirement. 1 D. Attorney’s Fees 2 Attorney’s fees are “properly included in calculations of the amount in 3 controversy. *Garibay*, 539 F. App’x at 764. In this Circuit, 25% of the total recovery 4 is the “benchmark” level for reasonable attorney’s fees. Id. The Court accepts 5 Defendant’s proposed 25% recovery for attorney’s fees. That proportion of the 6 estimated \$4,063,987.50 in unpaid on-call and overtime hours—deemed reasonable by 7 the Court for the foregoing reasons—is \$1,015,996.88 in attorney’s fees. 8 E. Total Amount in Controversy Estimate 9 The Court’s accepted amount in controversy estimates are as follows: 10 11 Alleged Straight-Time Unpaid On-Call \$1,625,595 12 Alleged Unpaid Overtime \$2,438,392.50 13 Alleged Wage Statement Penalties Undetermined 14 Attorney’s Fees \$1,015,996.88 15 Other Causes of Action (Failure to Pay Undetermined Sick Leave, Waiting Time Penalties, 16 etc.) 17 TOTAL At least \$5,079,984.38 18 /// 19 /// 20 /// 21 22 23 24 25 11 The Court need not evaluate the reasonableness of Defendants’ estimates related to 26

alleged wage statement penalties. As discussed in this Order, Defendant's reasonable 27 assumptions as to the other components of the amount in controversy are sufficient to overcome the CAFA amount in controversy requirement, and it is reasonable to 28 assume that some amount can be attributed to the alleged wage statement penalties.

1 | IV. CONCLUSION

2 For the foregoing reasons, the Court DENIES Plaintiff's Motion to Remand. 3 | Defendant is ordered to file a responsive pleading within 14 days of this Order. 4 5 IT IS SO ORDERED. 6 |

Dated: 9/9/2025 4a

HON. WESLEY L. HSU

8 UNITED STATES DISTRICT JUDGE

9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 17