

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

John Thornhill v. McLane Foodservice, Inc.

Thornhill · No. 25-cv-07475-EKL · Decided January 16, 2026

SUMMARY

The United States District Court for the Northern District of California denied Plaintiff John Thornhill’s motion to remand a putative California wage-and-hour class action removed under the Class Action Fairness Act. The court held that Defendant McLane Foodservice, Inc. established by a preponderance of the evidence that the amount in controversy exceeded \$5 million, relying on payroll data and reasonable assumptions regarding violation rates and attorneys’ fees. The court also denied Plaintiff’s request for judicial notice and granted Defendant’s request for judicial notice of California minimum wage rates.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Eumi K. Lee
JURISDICTION	United States District Court for the Northern District of California
DECIDED	January 16, 2026
DOCKET	25-cv-07475-EKL
DISPOSITION	denied
PROCEDURAL POSTURE	Plaintiff moved to remand a putative California wage-and-hour class action that Defendant removed from state court under the Class Action Fairness Act.
STANDARD OF REVIEW	The removing defendant bears the burden of establishing federal jurisdiction by a preponderance of the evidence when the amount-in-controversy allegations are challenged. The court may consider affidavits, declarations, other summary-judgment-type evidence, and reasonable assumptions based on the complaint.
PRECEDENTIAL VALUE	Unknown
PARTIES	John Thornhill v. McLane Foodservice, Inc.

TOPICS

class actions

subject matter jurisdiction

civil procedure

wage and hour

damages

PRACTICE AREAS

civil procedure

employment law

class actions

removal jurisdiction

QUESTIONS PRESENTED

1. Whether Defendant established by a preponderance of the evidence that the amount in controversy exceeded CAFA's \$5 million jurisdictional threshold.
2. Whether Defendant could rely on a payroll and human-resources declaration without corroborating documents to support portions of its amount-in-controversy calculation.
3. Whether Defendant's assumed violation rates and assumptions concerning waiting-time penalties were reasonably grounded in the complaint.
4. Whether the court needed to determine a specific amount of attorneys' fees when the damages in controversy alone exceeded \$5 million.

HOLDINGS

1. Defendant met its burden to establish that more than \$5 million was in controversy, and the court therefore had subject matter jurisdiction under CAFA.
2. An otherwise admissible declaration satisfying Rule 56 requirements may satisfy a defendant's evidentiary burden concerning the amount in controversy even without additional corroborating documentary evidence.
3. Defendant's assumptions that certain Labor Code violations affected 20% of eligible shifts, that unreimbursed expenses averaged \$20 per month subject to the same violation rate, and that terminated employees incurred the maximum 30-day waiting-time penalty were reasonable on the allegations presented.
4. The court did not need to determine the amount of attorneys' fees in controversy because the damages estimate alone exceeded \$5 million.

KEY QUOTATIONS

"Because Defendant has met its burden to show that more than \$5 million is at stake in this case, the motion to remand is DENIED." (at 1)

"Based on these authorities, an affidavit or declaration that meets the requirements of Rule 56 may satisfy a defendant's burden of proof, regardless whether the defendant produces other documentary evidence." (at 4)

"Rather, the defendant can meet its burden if its assumptions are reasonable, meaning that they have 'some reasonable ground underlying them.'" (at 10)

"Given that Defendant has met its amount-in-controversy burden even without including attorneys' fees, the Court need not guess." (at 12)

FACTUAL BACKGROUND

John Thornhill worked for McLane Foodservice in California as an hourly-paid, nonexempt employee from approximately November 2021 through July 2023. He alleged that McLane failed to pay minimum, straight-time, and overtime wages; provide meal and rest periods; timely pay final wages; furnish accurate wage statements; and reimburse business expenses. Thornhill brought the claims on behalf of a putative class of California hourly or nonexempt employees, and the complaint used general allegations that violations occurred "at times" with respect to "some of, but not necessarily all" class members. McLane relied on payroll, employment, and operational data and reasonable assumptions to estimate that more than \$5 million was at stake.

PROCEDURAL HISTORY

The action was filed in Santa Clara County Superior Court. Defendant removed it to federal court on September 4, 2025, invoking CAFA jurisdiction. Plaintiff moved to remand, arguing that Defendant had not shown by a preponderance of the evidence that more than \$5 million was in controversy. The district court denied the motion.

DISPOSITION

denied

CASES CITED

- Rhodes v. Robinson, 399 F. App'x 160, 165 (9th Cir. 2010)
- Valdivia v. Schwarzenegger, 599 F.3d 984, 994 (9th Cir. 2010)
- Holder v. Holder, 305 F.3d 854, 866 (9th Cir. 2002)
- Jones v. Curry, No. C 07-1013 RMW (PR), 2008 WL 3550866, at *2 (N.D. Cal. Aug. 13, 2008)
- Perez v. Rose Hills Co., 131 F.4th 804, 806-10 (9th Cir. 2025)
- Dart Cherokee Basin Operating Co. v. Owens, 574 U.S. 81, 84, 88-89 (2014)
- Ibarra v. Manheim Investments, Inc., 775 F.3d 1193, 1197, 1199 (9th Cir. 2015)
- Holcomb v. Bingham Toyota, 871 F.2d 109, 110 (9th Cir. 1989)
- Singer v. State Farm Mutual Automobile Insurance Co., 116 F.3d 373, 377 (9th Cir. 1997)
- Arias v. Residence Inn by Marriott, 936 F.3d 920, 922, 925, 927-28 & n.5 (9th Cir. 2019)
- Fritsch v. Swift Transportation Co. of Arizona, LLC, 899 F.3d 785, 793-96 (9th Cir. 2018)
- Gonzales v. CarMax Auto Superstores, LLC, 840 F.3d 644, 648 (9th Cir. 2016)
- Jauregui v. Roadrunner Transportation Services, Inc., 28 F.4th 989, 994 (9th Cir. 2022)
- Lewis v. Verizon Communications, Inc., 627 F.3d 395, 397 (9th Cir. 2010)
- Garibay v. Archstone Communities, LLC, 539 F. App'x 763, 764 (9th Cir. 2013)
- Nigro v. Sears, Roebuck & Co., 784 F.3d 495, 497 (9th Cir. 2015)
- SEC v. Phan, 500 F.3d 895, 909 (9th Cir. 2007)
- Duran v. U.S. Bank National Association, 59 Cal. 4th 1, 28-29 (2014)

- Harris v. KM Industrial, Inc., 980 F.3d 694, 700-01 (9th Cir. 2020)
- Ryan v. Mission Treatment Services, Inc., No. 22-cv-04013-ODW (MARx), 2022 WL 4331093, at *3 (C.D. Cal. Sept. 19, 2022)
- Lopez v. Advanced Drainage Systems, Inc., 777 F. Supp. 3d 1100, 1106-07 (N.D. Cal. 2025)
- Toribio v. ITT Aerospace Controls LLC, No. CV 19-5430-GW-JPRx, 2019 WL 4254935, at *3 (C.D. Cal. Sept. 5, 2019)
- Hanlon v. Chrysler Corp., 150 F.3d 1011, 1029 (9th Cir. 1998)
- Ketchum v. Moses, 24 Cal. 4th 1122, 1132-34 (2001)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
JOHN THORNHILL, Case No. 25-cv-07475-EKL 8 Plaintiff, ORDER DENYING MOTION TO
9 v. REMAND 10 MCLANE FOODSERVICE, INC., Re: Dkt. No. 15 Defendant. 11 12 13 This
putative class action alleging California wage-and-hour violations was removed to 14 federal court
pursuant to the Class Action Fairness Act (“CAFA”).

See Notice of Removal, ECF 15 No. 1 (“Notice”). Plaintiff now moves to remand the case to state court, arguing that Defendant 16 has not met its burden to establish the requisite amount in controversy. Mot. to Remand, ECF 17 No. 15 (“Motion”).

Having carefully reviewed the parties’ submissions and relevant authority, the 18 Court finds this matter suitable for disposition without oral argument. See Civil L.R. 7-1(b). 19 Because Defendant has met its burden to show that more than \$5 million is at stake in this case, 20 the motion to remand is DENIED. 21 I. BACKGROUND 22 Plaintiff John Thornhill worked for Defendant McLane Foodservice, Inc. in California “as 23 an hourly-paid, non-exempt employee from approximately November 2021 to approximately July 24 2023.” Compl. ¶¶ 7, 13, ECF No. 1-1.

According to the complaint, Defendant “repeatedly and 25 frequently scheduled Plaintiff to work at least five days in a workweek and at least eight hours per 26 day, but Plaintiff also worked more than eight hours in a workday and more than forty (40) hours 27 in a workweek.” Id. ¶ 13. Plaintiff alleges that, throughout his employment, Defendant “at times, 1 wages), failed to provide Plaintiff with legally compliant meal periods, failed to authorize and 2 permit Plaintiff to take rest periods, failed to timely pay all final wages to Plaintiff when 3 Defendant[] terminated Plaintiff’s employment, failed to furnish accurate wage statements to 4 Plaintiff, and failed to indemnify Plaintiff for expenditures.” Id. ¶ 14.

Beyond this, the complaint 5 does not allege any facts regarding Plaintiff’s job title, the nature of his work, the tasks that he 6 performed, or the circumstances under which Defendant allegedly failed to compensate him. 7 Plaintiff brings this case on behalf of a putative class consisting of all persons who worked 8 for Defendant in California “as an hourly-paid or non-exempt employee at

any time during the 9 period beginning four years before the filing of the initial complaint in this action and ending 10 when notice to the Class is sent.” Id. ¶ 24.

The complaint is equally nondescript about the nature 11 of the work performed by putative class members, or the circumstances under which Defendant 12 allegedly failed to compensate them. The complaint alleges in general terms that, “[t]hroughout 13 the statutory period, Defendant[], at times, failed to pay Plaintiff and some of, but not necessarily 14 all of, the Class for all hours worked, including minimum, straight time, and overtime wages.” Id. 15 ¶ 15.

Plaintiff recites this formula – that Defendant “at times” violated the California Labor Code 16 with respect to “some of, but not necessarily all of, the Class” – throughout the complaint. See, 17 e.g., id. ¶¶ 15-20. 18 Plaintiff asserts eight causes of action: (1) failure to pay minimum and straight-time wages 19 (Cal. Lab. Code §§ 204, 1194, 1194.2, 1197, 1197.1); (2) failure to pay overtime wages (Cal.

Lab. 20 Code §§ 1194, 1198); (3) failure to provide meal periods (Cal. Lab. Code §§ 226.7, 512); 21 (4) failure to authorize and permit rest periods (Cal. Lab. Code § 226.7); (5) failure to timely pay 22 final wages at termination (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized 23 wage statements (Cal. Lab. Code § 226); (7) failure to indemnify employees for expenditures (Cal.

24 Lab. Code § 2802); and (8) violations of the Unfair Competition Law (Cal. Bus. & Prof. Code 25 § 17200 et seq.). 26 The complaint does not allege any specific damages figure. Instead, Plaintiff seeks 27 “damages in amounts which are presently unknown to Plaintiff and the Class, and which will be 1 Defendant’s purported violations “have made it difficult to calculate the full extent” of 2 compensation due.

Id. ¶ 37; see also id. ¶¶ 46-47, 70 (“Calculation of the true wage entitlement 3 for Plaintiff and some of, but not necessarily all of, the Class is difficult and time consuming.”). 4 The complaint demands attorneys’ fees and costs. See, e.g., id. ¶¶ 40, 48, 64, 77. 5 This case was originally filed in Santa Clara County Superior Court. See ECF No. 1-1. 6 On September 4, 2025, Defendant removed the case pursuant to CAFA.

See Notice. The notice 7 of removal plausibly alleged the requirements for CAFA jurisdiction: The case is a class action 8 involving at least 100 class members, minimum diversity of citizenship exists, and the amount in 9 controversy exceeds \$5 million. Notice ¶¶ 14-43. With respect to the amount in controversy, 10 Defendant estimated that \$5,990,558.25 is at stake in the litigation based solely on Plaintiff’s fifth 11 and sixth causes of action – for waiting time penalties and wage statement violations, respectively 12 – and related attorneys’ fees.

Id. ¶ 43 (summarizing estimates). The estimate was based on 13 “voluminous payroll, employment, and operational data” for the putative class members. Id. ¶ 30. 14 This data revealed

the size of the putative class, average hourly pay and shift length, and the 15 number of wage statements Defendant issued during the relevant period. Id. 16 On October 31, 2025, Plaintiff filed a motion to remand challenging Defendant's amount- 17 in-controversy allegations.

See Mot. In response to the motion, Defendant added estimates of the 18 amount in controversy with respect to Plaintiff's other causes of action. See Opp., ECF No. 19. 19 With these additions, and a corresponding increase in estimated attorneys' fees, Defendant now 20 estimates the total amount in controversy to be \$11,092,852.86. Defendant also submitted the 21 declaration of Samantha Watson, Defendant's director of payroll and human resources information 22 systems, who "oversee[s] all day-to-day payroll operations, systems, and functions" for 23 Defendant.

Watson Decl. ¶ 2, ECF No. 19-1. Defendant's updated estimate of the amount in 24 controversy is summarized in the following chart, see Opp. at 10: 25 26 27 2 Overtime Wages Violations \$931,670.83 3 Off-The-Clock Minimum Wage Violations \$114,797.76 Meal Break Violations \$1,426,053 4 Rest Break Violations \$1,549,540.69 Waiting Time Penalties \$2,497,746.60 5 Wage Statement Penalties \$2,294 □□□□□□ 6 Expense Reimbursement \$59,773.13 SUBTOTAL \$8,874,282.29 7 Attorneys' Fees @ 25% Benchmark \$2,218,570.57 g Total AIC \$11,092,852.86 9 10 || TI.

REQUESTS FOR JUDICIAL NOTICE 11 Courts may take judicial notice of adjudicative facts that are "not subject to reasonable 12 || dispute" because they "can be accurately and readily determined from sources whose accuracy 13 cannot reasonably be questioned." Fed. R. Evid. 201(b). Plaintiff and Defendant each request Y 14 || judicial notice of certain materials.

See Pl.'s Req. for Judicial Notice, ECF No. 15-1 ("PL.'s 15 || RIN"); Def.'s Req. for Judicial Notice, ECF No. 20 ("Def.'s RIN"). Plaintiff's request is A 16 DENIED, and Defendant's request is GRANTED. 17 Plaintiff requests judicial notice of remand orders issued by other federal district courts — Zz 18 and the complaints in those cases — to demonstrate that courts have remanded cases like this one.

19 || See Pl.'s RIN. Plaintiffs request is denied because a "court may not (and need not) take judicial 20 || notice of judicial precedent." Rhodes v. Robinson, 399 F. App'x 160, 165 (9th Cir. 2010). 21 Judicial notice applies only to "adjudicative" facts, which are "the facts of the particular case."! 22 Valdivia v. Schwarzenegger, 599 F.3d 984, 994 (9th Cir.

2010) (quoting Fed. R. Evid. 201 23 ||); ———_ ' By contrast, it may be appropriate to take judicial notice of court documents when they relate to 25 || the parties and the facts of the case before the court. For example, Plaintiff cites Holder v. Holder, 305 F.3d 854 (9th Cir. 2002).

In Holder, the Ninth Circuit took judicial notice of a trial court 26 || opinion and the parties' briefs to determine whether an issue was "actually litigated and necessarily decided" for purposes of issue preclusion. /d. at 866.

In that context, the court 27 || documents were adjudicative facts because they related to the parties' conduct in earlier proceedings. Holder does not support Plaintiff's request for judicial notice of opinions and court 28 documents in unrelated cases for the purpose of supporting a legal argument. 1 advisory committee's note). Of course, courts may consider judicial precedent without taking 2 judicial notice.

See *Jones v. Curry*, No. C 07-1013 RMW (PR), 2008 WL 3550866, at *2 (N.D. 3 Cal. Aug. 13, 2008) ("If a party wants the court to consider a published decision, it is sufficient to 4 cite the decision in his brief."). The Court considered Plaintiff's legal authority in ruling on the 5 motion to remand. 6 Defendant seeks judicial notice of the "California minimum wage rates from 2021 through 7 2025, which is published on the California Division of Labor Standards Enforcement's ('DLSE') 8 internet website." Def.'s RJN at 1.

The Court will consider this information because it is a proper 9 subject of judicial notice. Plaintiff did not oppose the request or dispute the accuracy of the rates. 10 III. LEGAL STANDARD 11 A defendant may remove to federal court "any civil action brought in a State court of 12 which the district courts of the United States have original jurisdiction." 28 U.S.C. § 1441(a).

13 Relevant here, CAFA permits removal "if there is minimal diversity between the parties (that is, at 14 least one plaintiff is a citizen of a different State from at least one defendant), if the class contains 15 at least 100 members, and... if the amount in controversy exceeds \$5 million." *Perez v. Rose 16 Hills Co.*, 131 F.4th 804, 807 (9th Cir. 2025) (citing 28 U.S.C. §§ 1332(d), 1453(b)).

Unlike in 17 other contexts, "no antiremoval presumption attends cases invoking CAFA, which Congress 18 enacted to facilitate adjudication of certain class actions in federal court." *Dart Cherokee Basin 19 Operating Co. v. Owens*, 574 U.S. 81, 89 (2014) (citations omitted). Courts should interpret 20 CAFA "expansively." *Ibarra v. Manheim Inv., Inc.*, 775 F.3d 1193, 1197 (9th Cir.

2015). 21 The removing party has the burden of establishing federal jurisdiction. *Holcomb v. 22 Bingham Toyota*, 871 F.2d 109, 110 (9th Cir. 1989); see also *Perez*, 131 F.4th at 808. The 23 defendant may initially satisfy this burden by filing a notice of removal that contains "a short and 24 plain statement of the grounds for removal." 28 U.S.C. § 1446(a).

The notice of removal "need 25 not contain evidentiary submissions" to support the amount in controversy: A "plausible 26 allegation that the amount in controversy exceeds the jurisdictional threshold" is sufficient. *Dart 27 Cherokee*, 574 U.S. at 84, 89.

However, when "a defendant's assertion of the amount in 1 the evidence, whether the amount-in-controversy requirement has been satisfied." *Id.* at 88. The 2 parties may submit evidence including affidavits or declarations or other "summary-judgment-type 3 evidence[.]" *Singer v. State Farm Mut. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997).

The 4 defendant may also rely on “reasonable assumptions based on the plaintiff’s complaint.” Perez, 5 131 F.4th at 806; see also *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 922, 925 (9th Cir. 6 2019) (“An assumption may be reasonable if it is founded on the allegations of the complaint.”). 7 The amount in controversy is the “amount at stake in the underlying litigation.” Fritsch v. 8 Swift Transp.

Co. of Arizona, LLC, 899 F.3d 785, 793 (9th Cir. 2018) (quoting *Gonzales v. 9 CarMax Auto Superstores, LLC*, 840 F.3d 644, 648 (9th Cir. 2016)). It includes “damages 10 (compensatory, punitive, or otherwise), the costs of complying with an injunction, and attorneys’ 11 fees awarded under fee-shifting statutes or contract.” Id. The amount in controversy should not 12 be confused with the defendant’s “likely or probable liability.” *Jauregui v. Roadrunner Transp.*

13 *Servs., Inc.*, 28 F.4th 989, 994 (9th Cir. 2022) (quotation omitted). Instead, it “reflects the 14 maximum recovery the plaintiff could reasonably recover.” *Arias*, 936 F.3d at 927; see also 15 *Jauregui*, 28 F.4th at 994; *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 414-15 (9th Cir. 16 2018) (The amount in controversy “encompasses all relief a court may grant on that complaint if 17 the plaintiff is victorious.”).

18 IV. DISCUSSION 19 The sole issue for the Court to decide is whether Defendant has met its burden to show, by 20 a preponderance of the evidence, that the amount in controversy exceeds \$5 million.² Plaintiff 21 argues that Defendant has failed to meet its burden for three reasons.

First, Defendant relied on an 22 inadequate declaration from its company representative. Second, Defendant made unreasonable 23 assumptions about the violation rates – i.e., the frequency with which Defendant violated the 24 California Labor Code.

Third, Defendant unreasonably assumed a 25% attorneys’ fee award. The 25 Court addresses these arguments in turn. 26 2 The Court finds that Defendant has met its burden as to the other requirements for CAFA 27 removal. See Notice ¶¶ 14-43 (establishing minimal diversity and a class size exceeding 100). 1 A. The Sufficiency of Defendant’s Declaration 2 Plaintiff faults Defendant for relying solely on a declaration from Samantha Watson, 3 Defendant’s director of payroll and human resources information systems, to support aspects of its 4 amount-in-controversy estimate.

The Watson Declaration provides detailed information 5 regarding: (1) the number of potential class members; (2) their average base rate of pay; (3) the 6 number of shifts they worked during the relevant period that were eligible for breaks; (4) the 7 number of shifts eligible for overtime pay; and (5) the number of employees who were terminated 8 within the relevant period.

Watson Decl. ¶ 5. Plaintiff advances three criticisms: that the 9 declaration lacks “corroborating documents,” that it is “self-serving,” and that it does not support 10 Defendant’s assumed violation rates. See Mot. at 6-7; Reply at 7-8, ECF No. 21. These 11 arguments are unpersuasive. 12 First,

Plaintiff cites no precedential authority holding or implying that an otherwise- 13 admissible declaration must be accompanied by corroborating documents to satisfy a defendant's 14 evidentiary burden.

An amount-in-controversy estimate must be supported by "summary- 15 judgment-type evidence," Singer, 116 F.3d at 377, and a declaration "made on personal 16 knowledge" by someone who "is competent to testify on the matters stated" is summary- 17 judgment-type evidence, Fed. R. Civ. P. 56(c).

Moreover, the Ninth Circuit's published decisions 18 have consistently approved the use of affidavits and declarations to establish or contest the amount 19 in controversy for purposes of CAFA removal. See, e.g., Ibarra, 775 F.3d at 1197; Lewis v. 20 Verizon Commc'ns, Inc., 627 F.3d 395, 397 (9th Cir. 2010).³ Based on these authorities, an 21 affidavit or declaration that meets the requirements of Rule 56 may satisfy a defendant's burden of 22 proof, regardless whether the defendant produces other documentary evidence.

23 24 3 Plaintiff cites Garibay v. Archstone Communities, LLC, for the proposition that a court may 25 reject an amount-in-controversy estimate that is supported only by a declaration from the defendant's director of payroll. 539 F. App'x 763, 764 (9th Cir. 2013). But Garibay's reasoning 26 focused on the defendant's speculation about "key unknown variables" – the Ninth Circuit did not hold that declarations are categorically insufficient.

See id. In any event, "Garibay is an 27 unpublished non-binding opinion that other courts in this district have declined to follow in view 1 Second, it is immaterial that a declaration is "self-serving" absent some other deficiency 2 that undermines its evidentiary value. A district court may "disregard a self-serving declaration 3 that states only conclusions and not facts that would be admissible evidence," but the court "may 4 not disregard a piece of evidence... solely based on its self-serving nature." Nigro v. Sears, 5 Roebuck & Co., 784 F.3d 495, 497 (9th Cir.

2015); see also SEC v. Phan, 500 F.3d 895, 909 (9th 6 Cir. 2007) (same). Here, Plaintiff does not argue that Watson lacks personal knowledge to testify 7 to the facts in her declaration based on her role as Defendant's director of payroll. Watson Decl. 8 ¶¶ 2-3. Watson offers detailed facts, not mere conclusions. These facts are based on Watson's 9 review of Defendant's "voluminous timekeeping records, payroll data, wage records, personnel 10 records, and employment data." Id. ¶¶ 4-5.

Thus, the Court may not disregard the Watson 11 Declaration solely because it supports Defendant's position – which is unsurprising. Nigro, 12 784 F.3d at 497 (acknowledging that "declarations are often self-serving, and this is properly so 13 because the party submitting it would use the declaration to support his or her position"). 14 Finally, Plaintiff argues that the

Watson Declaration does not evidence “(1) the alleged 15 violation rates; or (2) the percentage of class members purportedly affected by Defendant’s 16 violations.” Mot. at 7.

However, Defendant does not rely on the Watson Declaration for these 17 elements of the amount-in-controversy estimate. Instead, Defendant makes assumptions based on 18 the allegations in the complaint. The Court now turns to address these assumptions. 19 B. The Reasonableness of Defendant’s Violation Rate Assumptions 20 In estimating the amount in controversy, Defendant applies several assumptions regarding 21 the alleged violation rates.

Plaintiff views these assumptions as unreasonable and unsupported. 22 Although the defendant bears the burden to show that the amount in controversy exceeds 23 \$5 million, this burden does not always require the defendant to produce evidence supporting 24 every element of its amount-in-controversy estimate. “Because ‘[t]he amount in controversy is 25 simply an estimate of the total amount in dispute, not a prospective assessment of defendant’s 26 liability,’ a removing defendant need not present evidence of what its ultimate liability will be – in 27 many cases, the defendant presumably expects that figure to be zero.” Perez, 131 F.4th at 808 1 includes reasonable assumptions.

Id. (quoting Arias, 936 F.3d at 925); see also Ibarra, 775 F.3d 2 at 1199. “What makes an assumption reasonable may depend on which element of the amount-in- 3 controversy calculation is at issue.” Perez, 131 F.4th at 808.

For example, in a wage-and-hour 4 case like this one, it “may make sense to expect a defendant to introduce evidence” of “the number 5 of employees in the class” if such information can be determined from the defendant’s records. Id. 6 “By contrast, it makes little sense to require a CAFA defendant to introduce evidence of the 7 violation rate... because the defendant likely believes that the real rate is zero and thus that the 8 evidence does not exist.” Id. Therefore, a defendant “can most readily ascertain the violation rate 9 by looking at the plaintiff’s complaint.” Id. However, “if a violation rate cannot be justified by 10 the allegations in the compliant, it must be justified by something else.” Id. at 809.

11 Here, the Court finds that Defendant’s violation rate assumptions are reasonably based on 12 the allegations in the complaint, as applied to the undisputed facts about the putative class that are 13 supplied by the Watson Declaration. 14 First, Defendant assumes that certain Labor Code violations affected 20% of the shifts for 15 which a violation may have occurred.

For example, Defendant assumes that the class will claim 16 non-payment of overtime wages for 20% of overtime-eligible shifts. Opp. at 7. Likewise, 17 Defendant assumes that the class will claim unpaid minimum wages for work performed during 18 meal breaks for 20% of eligible shifts. Id. at 7-9. Defendant also assumes that rest breaks were 19 denied for 20% of eligible shifts.

Id. at 9. Defendant bases the 20% violation rate on the 20 complaint's nondescript allegations that the violations affected "some of, but not necessarily all" 21 class members, and that the violations occurred "at times" "[t]hroughout the statutory period." 22 See, e.g., Compl. ¶¶ 15-17.

The assumption of a 20% violation rate is reasonable: Alleging that a 23 violation occurred "at times" and "[t]hroughout the statutory period" suggests that the conduct 24 occurred with some regularity and frequency, but not always or even more-often-than-not.

The 25 complaint does not foreclose Defendant's assumption, nor does it provide any principled basis for 26 assuming a different violation rate. (Indeed, Plaintiff offers no alternative rate.) Instead, the 27 complaint is barebones – it offers no details about the nature of putative class members' work or 1 Second, Defendant assumes that class members who incurred unreimbursed business 2 expenses did so at a rate of \$20 per month.

Opp. at 9. This estimate translates into an average 3 per-workday expense of 92 cents, which is then further reduced by applying the same 20% 4 violation rate as above. Id. This estimate implies that Defendant failed to reimburse expenses 5 incurred one in every five workdays. This is a reasonable and modest estimate based on the 6 complaint's allegation that unreimbursed expenses were "substantial." See id. ¶ 74.

Again, the 7 complaint offers no reason to reject this assumption. Nor does the complaint provide any details – 8 such as the types of expenses that class members purportedly incurred – that may permit a more 9 fact-specific approach to estimating the amount in controversy. 10 Third, Defendant assumes that 100% of employees who were terminated during the 11 statutory period will claim that Defendant failed to timely pay their final wages upon termination.

12 Notice ¶¶ 31-33. Defendant further assumes that every terminated employee will seek to recover 13 the maximum 30-day waiting time penalty, which implies that no terminated employee was fully 14 paid within 30 days after their termination. Id. ¶¶ 34-35. These assumptions are reasonable 15 because if a terminated employee experienced any violation alleged in the complaint, that 16 employee was underpaid and thus did not receive all wages due at the time of their termination.

17 See id. ¶ 33 (collecting cases). It is reasonable to assume that every terminated class member 18 experienced at least one of the alleged violations at least once, otherwise the terminated employee 19 would not have a claim in the first place.⁴ It is also reasonable to apply the full 30-day penalty 20 based on the assumption that all or most of the violations "would have happened more than 30 21 days before the suit was filed, which would entitle the employees to the 30-day penalty." 22 23 4 It would be unreasonable to assume that more than a de minimis number of terminated employees were completely unaffected by the alleged Labor Code violations.

Such an assumption 24 would contradict Plaintiff’s allegation that there “are common questions of law and fact as to the Class... that predominate over questions affecting only individual members.” Id. ¶¶ 28-29; see 25 also id. ¶¶ 11, 29(g) (alleging that Defendant acted “on grounds generally applicable to the Class”). Indeed, assuming that there are a significant number of unaffected class members may be 26 inconsistent with maintaining this case as a class action generally.

See *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1, 28-29 (2014); Order at 7 & n.2, *Banuelos v. Dominos Pizza, LLC*, No. 24-cv- 27 07085-BLF (N.D. Cal. Mar. 12, 2025) (Plaintiff’s allegations that defendant “at times” failed to provide mandated compensation and benefits to “some, but not necessarily all employees” “may 1 Jauregui, 28 F.4th at 994.5 2 Collectively, these violations alone put \$6,579,582.29 at stake.6 Defendant supported its 3 estimates with uncontroverted evidence from the Watson Declaration, and the only gaps – the 4 assumed violation rates – are filled by reasonable assumptions tied to the allegations in the 5 complaint.

Therefore, Defendant has met its burden to show that the amount in controversy 6 exceeds \$5 million. 7 Plaintiff argues that Defendant’s assumptions are arbitrary because it is equally possible 8 that the alleged violations occurred less frequently, based on the nondescript allegations in the 9 complaint. See Reply at 6. This argument misunderstands the defendant’s burden.

Although the 10 defendant must show that the amount in controversy more likely than not exceeds \$5 million, it 11 does not follow that the defendant must show that its assumed violation rate is “more reasonable” 12 than any other possible violation rate. Such a requirement conflates reasonableness with factual 13 accuracy, and it would make the defendant’s burden exceedingly difficult in practice when faced 14 with boilerplate complaints like the one in this case.

Rather, the defendant can meet its burden if 15 its assumptions are reasonable, meaning that they have “some reasonable ground underlying 16 them.” *Ibarra*, 775 F.3d at 1199; see also *Arias*, 936 F.3d at 927; *Perez*, 131 F.4th at 809 (“[A]n 17 assumption is not unreasonable simply because another equally valid assumption may exist.”). Of 18 course, a plaintiff is “free to use some more specific phrase than ‘at times’ when drafting the 19 complaint... [in order to] constrain[] the range of assumptions that [defendant] could reasonably 20 adopt.” *Perez*, 131 F.4th at 810.

But where the complaint makes nondescript allegations that 21 permit a range of reasonable inferences, a defendant should not be faulted for making one 22 23 5 The complaint seeks damages “for each day [wages] were not paid... up to thirty (30) days.” Compl. ¶ 63. Plaintiff cryptically argues that it would be unreasonable to assume the maximum 24 30-day penalty because the complaint uses the phrase “each day” instead of “every day.” Reply at 5.

It is not clear how these phrases convey different meanings in context, and Plaintiff offers no 25 explanation. Regardless, it makes no difference because the complaint expressly seeks damages up to the maximum, and the amount in controversy is the “maximum recovery the plaintiff could 26

reasonably recover.” *Arias*, 936 F.3d at 927. 6 Accordingly, the Court does not need to reach Defendant’s estimated amount in controversy for 27 the alleged wage statement violations.

See Notice ¶¶ 36-39. Defendant also assumes that the class 1 reasonable inference over another – absent some reason to conclude that the selection is 2 unreasonable.⁷ 3 Plaintiff also cites inapposite authority. For example, in *Harris v. KM Industrial, Inc.*, the 4 Ninth Circuit concluded that it was unreasonable to assume a 100% violation rate where the 5 plaintiff alleged a series of Labor Code violations on behalf of separate “meal period” and “rest 6 period” subclasses.

980 F.3d 694, 700-01 (9th Cir. 2020). The defendant had no basis to assume 7 that “the two subclasses were the same and that they all worked shifts long enough to qualify for 8 meal and rest periods.” *Id.* at 701. This reasoning does not apply here because the complaint 9 alleges one class, and Defendant assumes only that each terminated employee experienced at least 10 one violation (not every violation).

Plaintiff cites *Ryan v. Mission Treatment Services, Inc.*, for 11 the proposition that “the number of unpaid hours per week is highly dependent on the facts and 12 circumstances of each individual case.” No. 22-cv-04013-ODW (MARx), 2022 WL 4331093, at 13 *3 (C.D. Cal. Sep. 19, 2022). But this principle does not provide any meaningful guidance when 14 the complaint offers no detail about the “facts and circumstances” of Plaintiff’s work, the alleged 15 Labor Code violations, or the circumstances under which the violations allegedly occurred.

16 Plaintiff also cites *Lopez v. Advanced Drainage Systems, Inc.*, but a primary issue in that case – 17 not relevant here – was the defendant’s “duplicative and unjustified” assumptions that double- 18 counted certain categories of damages. 777 F. Supp. 3d 1100, 1106-07 (N.D. Cal. 2025).

In sum, 19 none of the cases cited by Plaintiff support his position that Defendant’s assumption are 20 unwarranted given the allegations in the complaint. 21 C. The Reasonableness of Defendant’s Attorneys’ Fees Assumption 22 Finally, Plaintiff argues that Defendant failed to support its estimate that \$2,218,570.57 in 23 attorneys’ fees are at stake in this case. “[A] court must include future attorneys’ fee recoverable 24 by statute or contract when assessing whether the amount-in-controversy requirement is met.” 25 7 Some district courts “[f]aced with a vague pleading” have favored remand, so that defendants 26 may “try to pin Plaintiff down[] in state court... with respect to what the Complaint’s allegations actually mean with respect to violation rates.” *Toribio v. ITT Aerospace Controls LLC*, No. CV 27 19-5430-GW-JPRx, 2019 WL 4254935, at *3 (C.D.

Cal. Sep. 5, 2019). This approach seems 1 *Fritsch*, 899 F.3d at 794. As with other aspects of the amount in controversy, Defendant bears the 2 burden of supporting the estimate of attorneys’ fees “by a preponderance of the evidence” based 3 on “summary-judgment-type evidence.” *Id.* at 795. There is no doubt that attorneys’ fees are at 4 stake in this case. See Compl. ¶¶ 40, 48, 64, 77.

The only issue is whether Defendant's estimate 5 is sufficiently supported. 6 Defendant reached its estimate by applying a 25% benchmark for attorneys' fees to the 7 damages estimates discussed above. Defendant argues that the Ninth Circuit has used the 25% 8 benchmark to assess the reasonableness of fee awards in common fund class action settlements. 9 See Notice ¶ 42 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir.

1998) ("This 10 circuit has established 25% of the common fund as a benchmark award for attorney fees."); see 11 also Opp. at 10. Plaintiff argues that the Ninth Circuit has "rejected" this approach for purposes of 12 establishing the amount in controversy for CAFA removal. Mot. at 8-9. 13 The Ninth Circuit has left open the possibility of using "a percentage-based" method of 14 estimating fees as part of the amount-in-controversy inquiry.

Fritsch, 899 F.3d at 796 n.6. 15 However, the Ninth Circuit has rejected a "per se rule" that, "as a matter of law, the amount of 16 attorneys' fees in controversy in class actions is 25 percent of all other alleged recovery." Id. at 17 796. Such a rule would improperly "relieve the defendant of its evidentiary burden." Id. 18 Moreover, the fee calculation is "limited by the applicable contractual or statutory requirements 19 that allow fee-shifting in the first place." Id. Thus, a percentage-based fee estimate may be 20 inappropriate if the fee-shifting statute employs the "lodestar method for determining reasonable 21 attorneys' fees under certain statutes." Id. The lodestar method fixes a fee award "at the fair 22 market value for the particular action" based on the "number of hours reasonably expended 23 multiplied by the reasonable hourly rate." *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132-34 (2001).

24 The lodestar figure may be adjusted based on several factors including "(1) the novelty and 25 difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to 26 which the nature of the litigation precluded other employment by the attorneys, (4) the contingent 27 nature of the fee award." Id. at 1132.] Here, Defendant offers no specific reason why the 25% benchmark is appropriate in this 2 || case.

Nor does Defendant offer an alternative basis for estimating the attorneys' fees at stake — for 3 example, by relying on the lodestar approach or citing to fee awards in comparable cases. Thus, 4 || although some fee award must be included in the amount in controversy, the Court has no 5 || principled basis for selecting an appropriate estimate. Given that Defendant has met its amount- 6 || in-controversy burden even without including attorneys' fees, the Court need not guess.

Arias, 7 || 936 F.3d at 928 n.5 (recognizing that there is "no need to calculate attorneys' fees" where the 8 "damages in controversy [alone] exceed the jurisdictional threshold"). 9 || V. CONCLUSION 10 For the foregoing reasons, Defendant has met its burden to establish that this Court has 11 subject matter jurisdiction pursuant to CAFA.

Therefore, Plaintiff's motion to remand is %L DENIED. 13 IT IS SO ORDERED. 14 || Dated:
January 16, 2026 16 GaK ☐☐ Eumi K. Lee 17 United States District Judge 18 19 20 21 22 23 24
25 26 27 28

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/united-states-district-court-for-the-northern-district-of-ca/2026/john-thornhill-v-mclane-foodservice-inc-rntyilm0>