

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Vongdara v. Tech Digital Corporation

Vongdara · No. 3:25-CV-01168-H-AHG · Decided September 29, 2025

SUMMARY

The United States District Court for the Southern District of California denied Delee Vongdara’s motion to remand a California wage-and-hour class action to state court. The court held that the defendants established federal subject-matter jurisdiction under the Class Action Fairness Act, including an amount in controversy exceeding \$5 million. The court also denied plaintiff’s request for attorney’s fees and costs under 28 U.S.C. § 1447(c).

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Marilyn L. Huff
JURISDICTION	United States District Court for the Southern District of California
DECIDED	September 29, 2025
DOCKET	3:25-CV-01168-H-AHG
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved to remand a removed California wage-and-hour class action for lack of subject matter jurisdiction and requested attorney's fees and costs under 28 U.S.C. § 1447(c).
STANDARD OF REVIEW	For a factual challenge to removal jurisdiction, the court determines by a preponderance of the evidence whether the amount-in-controversy requirement is satisfied. The court exercises discretion in deciding whether to award attorney's fees and costs under 28 U.S.C. § 1447(c).
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

- subject matter jurisdiction
- class actions
- civil procedure
- wage and hour
- attorney fees

PRACTICE AREAS

- civil procedure
- employment law
- remedies

QUESTIONS PRESENTED

1. Whether the proposed class action satisfied CAFA's subject matter jurisdiction requirements, including the amount-in-controversy threshold exceeding \$5 million.
2. Whether defendants could rely on a declaration based on personnel and payroll data, together with reasonable assumptions drawn from the complaint, to establish the amount in controversy.
3. Whether plaintiff was entitled to attorney's fees and costs under 28 U.S.C. § 1447(c).

HOLDINGS

1. The action satisfied CAFA's jurisdictional requirements because defendants demonstrated by a preponderance of the evidence that more than \$5 million was in controversy.
2. Defendants could rely on the declaration of an individual who reviewed relevant employee payroll and wage data, and the assumed violation rates were reasonable in light of the complaint's allegations.
3. Plaintiff was not entitled to attorney's fees and costs under 28 U.S.C. § 1447(c) because defendants had an objectively reasonable basis for removal.

KEY QUOTATIONS

“Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.” (at 3)

“Defendants have carried their burden of demonstrating that at least \$5 million is in controversy and thus satisfies the requirements to establish subject matter jurisdiction under CAFA.” (at 10)

FACTUAL BACKGROUND

Plaintiff brought a putative California wage-and-hour class action alleging unpaid minimum wages and overtime, meal and rest period violations, inaccurate wage statements, untimely payment of wages, and unfair business practices. Defendants removed the action under CAFA and submitted a declaration based on employment and payroll records showing at least 572 nonexempt California employees and approximately 60,195 workweeks. Defendants used reasonable violation-rate assumptions to calculate more than \$5 million in controversy.

PROCEDURAL HISTORY

Plaintiff filed the action in the Superior Court of California, County of San Diego. Defendants removed it to the Southern District of California under 28 U.S.C. § 1441 based on the Class Action Fairness Act. After the plaintiff moved to remand, the court submitted the matter on the papers, vacated the hearing, denied remand, and declined to award fees and costs.

DISPOSITION

other

CASES CITED

- United States v. Mark, 530 F.3d 799, 810 (9th Cir. 2008)
- Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94 (1998)
- Chicago v. International College of Surgeons, 522 U.S. 156, 163 (1997)
- Serrano v. 180 Connect, Inc., 478 F.3d 1018, 1020 (9th Cir. 2007)
- Dart Cherokee Basin Operating Co. v. Owens, 574 U.S. 81, 89 (2014)
- Abrego Abrego v. The Dow Chemical Co., 443 F.3d 676, 685 (9th Cir. 2006)
- Leite v. Crane Co., 749 F.3d 1117, 1121-22 (9th Cir. 2014)
- Salter v. Quality Carriers, 974 F.3d 959, 963-64 (9th Cir. 2020)
- Harris v. KM Industries, Inc., 980 F.3d 694, 700 (9th Cir. 2020)
- Ibarra v. Manheim Investments, Inc., 775 F.3d 1193, 1197-99 & n.3 (9th Cir. 2015)
- Long v. Destination Maternity Corp., 2016 WL 1604968, at *6 (S.D. Cal. Apr. 21, 2016)
- Enomoto v. Siemens Industry, Inc., 2023 WL 8908799, at *2 (9th Cir. 2023)
- Jauregui v. Roadrunner Transportation Services, Inc., 28 F.4th 989, 991 (9th Cir. 2022)
- Coleman v. Estes Express Lines, Inc., 730 F. Supp. 2d 1141, 1148 (C.D. Cal. 2010)
- Perez v. Rose Hills Co., 131 F.4th 804, 808 (9th Cir. 2025)
- Serrieh v. Jill Acquisition LLC, 707 F. Supp. 3d 968, 974-75 (E.D. Cal. 2023)
- Kincaid v. Education Credit Management Corp., 2022 WL 597158, at *3 (E.D. Cal. Feb. 28, 2022)
- Kastler v. Oh My Green, Inc., 2019 WL 5536198, at *4 (N.D. Cal. Oct. 25, 2019)
- Avila v. Rue 21, Inc., 432 F. Supp. 3d 1175, 1189 (E.D. Cal. 2020)
- Andrade v. Beacon Sales Acquisition, Inc., 2019 WL 4855997 (C.D. Cal. Oct. 1, 2019)
- Rivera v. Agreserves, Inc., 2023 WL 5202575 (E.D. Cal. Aug. 14, 2023)
- Herrera v. Signature Flight Support LLC, 2022 WL 4225376, at *2 (C.D. Cal. Sept. 13, 2022)
- Wheatley v. MasterBrand Cabinets, LLC, 2019 WL 688209, at *6
- Gonzalez v. H&M Hennes & Mauritz L.P., 2022 WL 179292 (C.D. Cal. Jan. 20, 2022)
- Campbell v. Vitran Express, Inc., 471 Fed. Appx. 646, 649 (9th Cir. 2012)
- Sanchez v. Abbott Laboratories, 2021 WL 2679057, at *4-5 (E.D. Cal. June 30, 2021)
- Grancare, LLC v. Thrower by and through Mills, 889 F.3d 543, 552 (9th Cir. 2018)
- Martin v. Franklin Capital Corp., 546 U.S. 132, 140-41 (2005)
- Moore v. Permanente Medical Group, Inc., 981 F.2d 443, 446 (9th Cir. 1992)

OPINION

Vongdara v. Tech Digital Corporation

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 DELEE VONGDARA, on behalf of Case No.: 3:25-CV-01168-H-AHG himself and others
similarly situated, 12

ORDER DENYING PLAINTIFF'S

Plaintiff,

13 MOTION TO REMAND AND

v. REQUEST FOR ATTORNEY'S FEES

14 TECH DIGITAL CORPORATION; 15 [Doc. No. 24.]

BECTON DICKINSON AND

16 COMPANY; and DOES 1 to 100, inclusive, 17 Defendants. 18 19 On August 15, 2025,
Plaintiff Delee Vongdara filed a motion to remand the action 20 back to state court for lack of
subject matter jurisdiction. (Doc. No. 18.) On September 21 15, 2025, Defendant Becton,
Dickinson and Company ("BD") filed a response in 22 opposition to Plaintiff's motion. (Doc. No.
24.) On the same day, Defendant TechDigital 23 Corporation filed a notice of joinder to Defendant
BD's opposition to Plaintiff's motion. 24 (Doc. No. 25.) On September 18, 2025, Plaintiff filed a
reply in support of their motion to 25 remand. (Doc. No. 26.) 26 A hearing on Plaintiff's motion to
remand is currently scheduled for Monday,

27 September 29, 2025 at 10:30 a.m. The Court, pursuant to its discretion under Civil Local

28 Rule 7.1(d)(1), determines the matter is appropriate for resolution without oral argument,

1 submits the motion on the parties' papers, and vacates the hearing. For the reasons below, 2 the
Court denies Plaintiff's motion to remand. 3 Background 4 The following factual background is
taken from the allegations in Plaintiff's 5 complaint and the Declaration of Jaime Serrano attached
to Defendant's Notice of 6 Removal. (Doc. No. 1-6, Serrano Decl.) 7 Defendants are temporary
service employers within the meaning of California Code 8 of Regulations, title 8 § 11040. (Doc.
No. 1-3, Compl. ¶ 13.) Defendants employed 9 Plaintiff and other employees on an hourly basis as
non-exempt workers to perform work 10 in California for various customers. (Id. ¶ 14.) 11 On
February 26, 2025, Plaintiff filed a complaint in the Superior Court of California, 12 County of
San Diego against Defendants, alleging causes of action for: (1) failure to pay 13 wages for all
hours worked at minimum wage in violation of California Labor Code §§ 14 1194, 1197; (2)
failure to pay overtime wages in violation of California Labor Code §§ 15 510, 1194; (3) failure to
authorize or permit meal periods in violation of California Labor 16 Code §§ 512, 226.7; (4)
failure to authorize or permit rest periods in violation of California 17 Labor Code § 226.7; (5)
failure to provide accurate wage statements in violation of 18 California Labor Code § 226; (6)
failure to timely pay all wages earned in violation of 19 California Labor Code §§ 201-203l; and
(7) unfair business practices in violation of 20 Business and Professions Code § 17200, et seq. (Id.
¶¶ 1, 13-42.) Plaintiff is bringing the 21 action as a class action on behalf of himself and the
"California Class," comprising of "all 22 current and former hourly non-exempt employees
employed by Defendants" of multiple 23 subclasses, including: 1) a minimum wage class, 2) an
overtime class, 3) a regular rate 24 class, 4) a meal period class, 5) a meal period premium wages

class, 6) a rest period class, 25 7) a rest period premium wages class, 8) a wage statement class, and 6) a waiting time 26 class. (Id. ¶ 43(A)-(J).) 27 From February 26, 2021 until the present, Defendant BD employed at least 572 non- 28 exempt employees in California. (Serrano Decl. ¶ 4.) These employees worked 1 approximately 60,195 work weeks at an average hourly rate of \$29.18. (Id.) 2 From February 26, 2024 until the present, Defendant BD issued approximately 9,230 3 pay statements to approximately 355 non-exempt employees in California. (Id. ¶ 5.) 4 From February 26, 2022 until the present, approximately 182 non-exempt employees 5 terminated their employment with Defendant BD. (Id. ¶ 6.) These employees were paid 6 at an average hourly rate of \$28.92. (Id.) 7 On May 7, 2025, Defendants removed the action to United States District Court for 8 the Southern District of California pursuant to 28 U.S.C. § 1441 on the basis of the Class 9 Action Fairness Act (“CAFA”) under 28 U.S.C. § 1332(d). (Doc. No. 1, Notice of 10 Removal.) On May 14, 2025, Defendant BD filed an answer to Plaintiff’s complaint. (Doc.

11 No. 4, Answer.)

12 By the present motion, Plaintiff moves to remand the action back to the Superior 13 Court of California, County of San Diego for lack of subject matter jurisdiction. (Doc.

14 No. 18-1 at 10.)

15 Discussion 16

I. Legal Standard 17 Federal courts are courts of limited jurisdiction. *United States v. Mark*, 530 F.3d 18 799, 810 (9th Cir. 2008). “Without jurisdiction the court cannot proceed at all in any cause. 19 Jurisdiction is power to declare the law, and when it ceases to exist, the only function 20 remaining to the court is that of announcing the fact and dismissing the cause.” *Steel Co. 21 v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998). A case is removable only if 22 it could have been originally filed in federal court. *Chicago v. Int’l Coll. Of Surgeons*, 522 23 U.S. 156, 163 (1997) (quoting 28 U.S.C. § 1441(a)). 24 Federal subject matter jurisdiction may be premised on CAFA. See generally 28 25 U.S.C. § 1332(d). “As a threshold matter, CAFA applies to ‘class action’ lawsuits where 26 the aggregate number of members of all proposed plaintiff classes is 100 or more persons 27 and where the primary defendants are not ‘States, State officials, or other governmental 28 1 entities against whom the district court may be foreclosed from ordering relief.’” *Serrano 2 v. 180 Connect, Inc.*, 478 F.3d 1018, 1020 (9th Cir. 2007) (quoting 28 U.S.C. 3 § 1332(d)(5)). If these prerequisites are met, CAFA provides federal courts original 4 jurisdiction over class actions where there is minimal diversity between parties and the 5 amount in controversy exceeds \$5 million, exclusive of interest and costs. 28 U.S.C. § 6 1332(d)(2). While “no antiremoval presumption attends cases invoking CAFA,” *Dart 7 Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014), “the burden of 8 establishing removal jurisdiction remains, as before, on the proponent of federal 9 jurisdiction.” *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 685 (9th Cir. 2006). 10 “A plaintiff who contests the existence of removal jurisdiction may file a motion to 11 remand.”¹ *Leite v. Crane Co.*, 749 F.3d 1117, 1122 (9th Cir. 2014) (citing 28 U.S.C. 12 § 1447(c)). In its motion to remand, a plaintiff may raise either a facial or factual

attack 13 on the defendant's jurisdictional allegations. *Id.*; *Salter v. Quality Carriers*, 974 F.3d 959, 14 964 (9th Cir. 2020). "A 'facial' attack accepts the truth of the [defendant]'s allegations but 15 asserts that they 'are insufficient on their face to invoke federal jurisdiction.'" *Id.* 16 (quoting *Leite*, 749 F.3d at 1121). A factual attack contests the "truth of the ... allegations 17 by making reasoned arguments as to why any assumptions on which they are based are not 18 supported by evidence." *Harris v. KM Indus., Inc.*, 980 F.3d 694 700 (9th Cir. 2020). 19 When a plaintiff mounts a factual attack, both parties "submit proof and the court decides, 20 by a preponderance of the evidence, whether the amount-in-controversy requirement has 21 been satisfied." *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1199 (9th Cir. 2015). 22 // 23 // 24 25 26 1 Defendants argue in its Opposition to Plaintiff's Motion to Remand that Plaintiff's motion was untimely. (Doc. No. 24 at 3.) A motion to remand challenging the court's subject matter jurisdiction 27 may be brought any time before final judgment. 28 U.S.C. §1447(c). Here, Plaintiff's motion to 28 remand challenges the Court's subject matter jurisdiction under CAFA, specifically the amount in 1 II. Analysis 2 Plaintiff does not dispute that the proposed class consists of 100 or more persons or 3 that minimal diversity exists. Rather, Plaintiff asserts that jurisdiction is lacking in this 4 case because the amount in controversy is below the \$5 million requirement. (Doc. No. 5 18-1 at 6-9.) CAFA requires that the amount in controversy exceed \$5 million, exclusive 6 of interest and costs. 28 U.S.C. § 1332(d)(2). "In determining the amount in controversy, 7 courts first look to the complaint." *Ibarra*, 775 F.3d at 1197. When "damages are unstated 8 in a complaint" or the allegation is disputed, "[t]he parties may submit evidence outside 9 the complaint, including affidavits or declarations, or other summary-judgment-type 10 evidence." *Id.* (internal quotation marks omitted). Parties invoking CAFA jurisdiction 11 may also bear their burden by relying on a chain of reasoning and reasonable assumptions. 12 *Arias v. Residence Inn*, 936 F.3d 920, 925 (9th Cir. 2019). Assumptions are reasonable if 13 they are "founded on the allegations of the complaint. *Id.* (citing *Ibarra*, 775 F.3d at 1198- 14 99). While "a defendant cannot establish removal jurisdiction by mere speculation and 15 conjecture, with unreasonable assumptions," *Ibarra*, 775 F.3d at 1197, the defendant need 16 not "research, state, and prove the plaintiff's claims for damages," *Coleman v. Estes Express Lines, Inc.*, 730 F. Supp. 2d 1141, 1148 (C.D. Cal. 2010) (internal quotation marks 18 omitted). When the defendant's assertion of the amount in controversy is challenged by 19 plaintiffs, as it is here, the court decides where the preponderance of evidence lies. See 20 *Ibarra*, 775 F.3d at 1198. 21 A. Defendants' Use of Declaration 22 Plaintiff challenges Defendants' use of Mr. Serrano's declaration in calculating the 23 amount in controversy. (Doc. No. 18-1 at 7; Doc. No. 26 at 5-6.) Plaintiff argues 24 Defendants cannot rely on Mr. Serrano's declaration without producing evidence upon 25 which Mr. Serrano bases his declaration. (*Id.*) Contrary to Plaintiff's argument, defendants 26 need not "produce business records setting forth the precise number of employees in [the] 27 putative class ... and the precise calculation of damages alleged to meet its burden regarding 28 the amount in controversy." *Long v. Destination Maternity Corp.*, 2016 WL 1604968, at 1 *6 (S.D. Cal. Apr. 21, 2016) (internal

quotation marks omitted). A defendant is permitted to rely on a declaration from an individual who has reviewed relevant employee payroll and wage data to support its amount in controversy allegations. *Enomoto v. Siemens Industry, Inc.*, 2023 WL 8908799, at *2 (9th Cir. 2023) (citing *Salter*, 974 F.3d at 963-564 (rejecting the plaintiff's argument that the defendant must provide business records to support its declaration) and *Jauregui v. Roadrunner Transp. Servs., Inc.*, 28 F.4th 989, 991-7 (9th Cir. 2022) (accepting a declaration as sufficient "summary judgment style evidence" to support amount in controversy calculations)). Mr. Serrano established a sufficient foundation for his testimony, particularly at this early stage of the litigation, by declaring knowledge of the employment data provided in his declaration was based on his normal business responsibilities and personal review of Defendants' personnel records. (Serrano Decl. ¶2.) Accordingly, Defendants' use of Mr. Serrano's declaration in calculating the amount of controversy is appropriate.

B. Amount in Controversy of Plaintiff's Wage and Hour Claims

Defendants' estimation for Plaintiff's four wage and hour claims, not including Plaintiff's claims for wage statement penalties, waiting time penalties, and unfair business practices, is \$7,140,469.45, with an additional \$2,216,298.76 proposed for attorney's fees. (Doc. No. 24 at 7-8.) The Court focuses on these four claims below, because if established, these claims would exceed the \$5 million threshold.

1. Minimum Wage Violations

Plaintiff alleges that Defendants failed to pay wages at the applicable minimum wage for all hours worked due to Defendants' "policies, practices, and/or procedures" requiring employees to "routinely work[] beyond their scheduled hours" and to "record timed meal breaks despite often missing or working through" them. (Compl. ¶¶ 16-18.) Plaintiff does not provide specific allegations or allege an approximate amount of unpaid minimum wages at issue, even on behalf of himself. (Doc. No. 26 at 3.) Defendants submitted evidence that at least 572 non-exempt employees worked in California for Defendants during Plaintiff's proposed class period. (Serrano Decl. ¶ 4.) In total, these employees worked approximately 60,195 work weeks at an average hourly rate of \$29.18 according to business and personnel records. (*Id.*) For purposes of the alleged 3 minimum wage violation, Defendants assume one hour of unpaid minimum wage per week per employee at California's minimum wage of \$16.50. (Doc. No. 1, Notice of Removal ¶ 21; Doc. No. 24 at 7.) Defendants base these assumptions on Plaintiff's Complaint and estimates "accepted by the federal courts as a reasonable and conservative figure." (Doc. No. 1, Notice of Removal ¶ 22.) Plaintiff argues that Defendants' minimum wage valuation lacks "reasonable support" because "the figures for the putative class and the number of work weeks are estimated" and the "100% violation rate for one hour each week for each and every employee" is "baseless[]." (Doc. No. 18-1 at 4-8; Doc. No. 24 at 3.) Defendants are not required to "introduce evidence of the violation rate . . . because the defendant[s] likely believe[] that the real rate is zero and thus that the evidence does not exist." *Perez v. Rose Hills Co.*, 131 F.4th 804, 808 (9th Cir. 2025); see also *Serrieh v. Jill Acquisition LLC*, 707 F. Supp. 3d 968, 974-74 (E.D. Cal. 2023) (finding that defendant is not required to comb through its

records to identify and calculate the exact frequency of 16 violations). Neither are Defendants required to “prove it actually violated the law at the 17 assumed rate.” *Arias*, 936 F.3d at 927. Rather, Defendants need only provide an estimate 18 of the amount in controversy that is plausible. *Id.* Defendants can “most readily ascertain 19 the violation rate by looking at the plaintiff’s complaint.” *Rose Hills Co.*, 131 F.4th at 808. 20 “[A]ssumptions made [as] part of the defendant’s chain of reasoning need not be proven; 21 they instead must only have ‘some reasonable ground underlying them.’” *Arias*, 936 F.3d 22 at 927 (quoting *Ibarra*, 775 F.3d at 1199). 23 In *Arias*, the court found defendant’s calculations reasonable as based on “personnel 24 and payroll data” and assumptions of “the frequency of violations of the sort alleged in the 25 complaint.” *Id.* at 926. Here, Defendants used personnel and employment records for the 26 putative class, as cited in the *Serrano Declaration*, and made assumptions regarding the 27 frequency of violations based on the allegations in Plaintiff’s Complaint. Plaintiff alleges 28 that he and similarly situated employees “worked more minutes per shift than Defendants 1 credited them with having worked,” “routinely” worked beyond scheduled hours, and 2 “often” worked through their meal breaks. (Compl. ¶¶ 16-18, 49.) Plaintiff further alleges 3 that the failure to pay was “due to Defendants’ policies, practices, and/or procedures.” (*Id.*) 4 It reasonably follows from Plaintiff’s allegations that this policy affected all hourly, non- 5 exempt employees. Defendants estimate of one hour of unpaid wages for every work week 6 is also reasonable and well-supported by the findings of other district courts, especially 7 given the lack of specific allegations to the contrary and where an improper employment 8 policy has been alleged. See *Kincaid v. Educ. Credit Mgmt. Corp.*, 2022 WL 597158, at 9 *3 (E.D. Cal. Feb. 28, 2022); *Kastler v. Oh My Green, Inc.*, 2019 WL 5536198, at *4 (N.D. 10 Cal. Oct. 25, 2019). Defendants’ assumption, combined with the numbers of employees 11 and approximate weeks worked in the declaration submitted by Defendant, reasonably 12 demonstrates that \$933,217.50 is in controversy with respect to Plaintiff’s minimum wage 13 violations claim. 14

2. Unpaid Overtime Violations 15

As above, Plaintiff alleges that Defendants failed to pay overtime wages for all hours 16 worked despite Defendants “routinely” requiring employees to “work[] beyond their 17 scheduled hours” and “requiring Plaintiff and the Overtime Class to record timed meal 18 breaks despite often missing or working through” them. (Compl. ¶¶ 21-22.) Plaintiff also 19 alleges that Defendants failed to pay overtime wages at the proper overtime rate of pay and 20 “maintained a policy, practice, and/or procedure of failing to include all remuneration” 21 when calculating overtime. (*Id.*) Plaintiff does not allege an approximate amount of 22 unpaid overtime at issue in his Complaint, Motion to Remand, or Reply. Neither does 23 Plaintiff provide any indication of how much overtime he or members of the Overtime 24 Class worked per shift. 25 Defendants assume 1.5 hours of unpaid overtime per week per employee based on 26 Plaintiff’s Complaint and a figure courts find “reasonable . . . based on allegations like 27 those present in Plaintiff’s Complaint.” (Doc. No. 1 ¶ 25; Doc. No. 24 at 18-19.) Using 28 this assumption, together with its evidence that at least 572 employees are at issue with an 1 average hourly pay rate of \$29.18, Defendants

estimate that Plaintiff's claim for overtime wages puts \$2,634,735.15 into controversy in this action.² (Id.) Plaintiff argues that Defendants offer no support to show how many shifts qualified for overtime wages and unreasonably assume 1.5 hours of unpaid overtime per week per employee, citing *Ibarra* and cases from other district courts. (Doc. No. 18-1 at 4, 8; Doc. No. 26 at 6-7.) We agree with Plaintiff and the Ninth Circuit that "a 'pattern and practice' of doing something does not necessarily mean always doing something," but the Ninth Circuit found this where defendants assumed violations occurred "in every identified shift for each class member, without giving any evidentiary explanation." *Ibarra*, 775 F.3d at 1199, n.3. Defendant's assumptions need only have "some reasonable ground underlying them," and an assumption is reasonable when it is supported by the allegations in the complaint. *Arias*, 936 F.3d at 927. It is reasonable to assume violation rates of 25% to 60% for regular and overtime wage claims as a matter of law based on "pattern and practice" or "policy and practice" allegations. *Avila v. Rue 21, Inc.*, 432 F. Supp. 3d 1175, 1189 (E.D. Cal. 2020) (collecting cases). An assumption of 1.5 hours of unpaid overtime per week per employee is particularly reasonable where violations are alleged to occur "as a matter of policy and/or practice." *Andrade v. Beacon Sales Acquisition, Inc.*, 2019 WL 4855997 (C.D. Cal. Oct. 18, 2019); see also *Rivera v. Agreserves, Inc.*, 2023 WL 5202575 (E.D. Cal. Aug. 14, 2023). Further, an assumption that class members worked 8-hour shifts is reasonable when a plaintiff fails to suggest alternatively "what proportion of Class Members did work eight-hour shifts and what number should be used instead." *Herrera v. Signature Flight Support LLC*, 2022 WL 4225376, at *2 (C.D. Cal. Sept. 13, 2022); see also *Wheatley v. MasterBrand Cabinets, LLC*, 2019 WL 688209, at *6 ("[B]ecause Plaintiff does not allege Defendants' calculation does not consider that California Labor Code § 510 requires employers to pay employees that work in excess of 8 hours in a day or 40 hours in a week at a rate of no less than one and a half times an employee's regular rate of pay. See Cal. Lab. Code § 510(a). It also ensures a compensation rate of no less than twice the regular rate of pay when an employee works more than 1 or offer evidence that some class members worked part time, it is reasonable for Defendant to assume eight-hour shifts."). Here, given Plaintiff's allegations that employees "routinely worked beyond their scheduled hours" and were required "to record timed meal breaks despite often missing or working through their meal breaks," it is reasonable for Defendants to assume a 30% violation rate of 1.5 hours per week per employee. (Compl. ¶¶ 21, 49, 59-60.) Defendants do not assume a 100% violation rate like the defendants in *Ibarra*, nor do Defendants rely on a complaint that only alleges violations "at times." Cf. *Gonzalez v. H&M Hennes & Mauritz L.P.*, 2022 WL 179292 (C.D. Cal. January 20, 2022) (finding no basis for suggesting that a violation rate of once per week is reasonable based on complaint language referencing violations "at times"). Finally, because Plaintiff does not allege any class members worked part-time, it is reasonable for Defendants to assume that each class member worked eight-hour shifts. See *Wheatley*, 2019 WL 688209, at *6. Defendants thus reasonably demonstrate that \$2,634,735.15 is in controversy with respect to Plaintiff's claim

for unpaid overtime. 16 3. Rest and Meal Break Violations 17 As above, Plaintiff alleges that Defendants employed “policies, practices, and/or 18 procedures” that resulted in Defendants’ failure to authorize or permit timely rest and meal 19 periods to Plaintiff and Plaintiff’s proposed Rest Period Class, Rest Period Premium Wages 20 Class, Meal Period Class, and Meal Period Premium Wages Class. (Compl. ¶¶ 69-71, 78- 21 80.) California Labor Code § 226.7 provides that if an employee does not receive a 22 required meal or rest period that “the employer shall pay the employee one additional hour 23 of pay at the employee’s regular rate of compensation for each workday that the meal or 24 rest period is not provided.” 25 Assuming a violation rate of 20%, or one missed meal period per week, and 10%, or 26 one missed rest period per week, Defendants estimate that Plaintiff’s rest and meal break 27 violation claims puts \$3,512,516.80 into controversy in this action. (Doc. No. 24 at 7.) 28 Defendants rely upon Plaintiff’s broad allegations in the Complaint and the Declaration of 1 Jaime Serrano, providing an average hourly rate of \$29.18 per putative class member. 2 (Serrano Decl. ¶ 4.) Plaintiff argues that Defendants’ assumption of a “uniform rate of one 3 violation per week” is unreasonable, as Defendant has not provided evidence or cited any 4 “internal audit, policy manual, or employee declarations.” (Doc. No. 26 at 6.) Plaintiff 5 also argues that Defendants unreasonably assume a 100% violation rate because Plaintiff’s 6 complaint alleges discrete practices, not pervasive violations. (Id. at 3.) 7 Here, the Complaint offers no guidance as to the frequency of the alleged violations, 8 only that Plaintiff and the alleged class “often miss[ed] or work[ed] through their meal 9 breaks without being paid for that time” and “regularly worked shifts of more than three- 10 and-a-half (3.5) hours.” (Compl. ¶¶ 49, 69.) Plaintiff also alleges that Defendants 11 “employed policies, practices, and/or procedures that resulted in” meal and rest period 12 violations. (Id. ¶ 78.) Consequently, in its notice of removal, Defendants conservatively 13 assume putative class members were not provided one of five legally required meal periods 14 and one of ten legally required rest periods they were entitled to receive each work 15 week. See, e.g., *Campbell v. Vitran Exp., Inc.*, 471 Fed. Appx. 646, 649 (9th Cir. 2012); 16 *Sanchez v. Abbott Laboratories*, 2021 WL 2679057, at *4–5 (E.D. Cal. June 30, 2021) 17 (collecting cases). Defendants’ use of a 10% and 20% violation rate is reasonable, and the 18 \$3,512,516.80 amount will be included in the amount in controversy. 19 In sum, Defendants’ calculations reasonably and appropriately yield an amount in 20 controversy of \$7,140,469.45 for Plaintiff’s minimum wage, unpaid overtime, and rest and 21 meal break violation claims. This calculated amount in controversy does not account for 22 wage statement penalties, waiting time penalties, unfair business practices, or attorney’s 23 fees—amounts that, if included, would bring the amount in controversy in greater excess 24 of \$5 million. Defendants have carried their burden of demonstrating that at least \$5 25 million is in controversy and thus satisfies the requirements to establish subject matter 26 jurisdiction under CAFA. 27 // 28 // 1 C. Plaintiff’s Request for Costs 2 As part of his motion to remand, Plaintiff requests an award of the costs and expenses 3 incurred in bringing his motion to remand pursuant to 28 U.S.C. § 1447(c). (Doc. No. 18 4 at 9-10.) Section 1447(c) provides: “An order remanding the case may require

payment of 5 just costs and any actual expenses, including attorney fees, incurred as a result of the 6 removal.” 28 U.S.C. § 1447(c). Absent unusual circumstances, a court may award costs 7 and attorney’s fees under § 1447(c) only where the removing party lacked an objectively 8 reasonable basis for seeking removal. *Grancare, LLC v. Thrower by & through Mills*, 889 9 F.3d 543, 552 (9th Cir. 2018) (citing *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 10 (2005)). “Removal is not objectively unreasonable ‘solely because the removing party’s 11 arguments lack merit, or else attorney’s fees would always be awarded whenever remand 12 is granted.’” Id. 13 “The appropriate test for awarding fees under § 1447(c) should recognize the desire 14 to deter removals sought for the purpose of prolonging litigation and imposing costs on the 15 opposing party, while not undermining Congress’ basic decision to afford defendants a 16 right to remove as a general matter, when the statutory criteria are satisfied.” *Martin*, 546 17 U.S. at 140. The decision to award attorneys’ fees under § 1447(c) is left to the district 18 court’s discretion. *Moore v. Permanente Med. Grp., Inc.*, 981 F.2d 443, 446 (9th Cir. 19 1992). 20 Based on the record currently before the Court, the Court cannot conclude that 21 Defendant lacked an objectively reasonable basis for removing the case to federal court. 22 As such, the Court, exercising its sound discretion, declines to award Plaintiff fees and 23 costs under § 1447(c). 24 // 25 // 26 // 27 // 28 //

1 Conclusion 2 For the reasons above, the Defendant has satisfied its burden of establishing that 3 // the Court has subject matter jurisdiction over the present action under CAFA. 4) Accordingly, the Court denies Plaintiff’s motion to remand. > IT IS SO ORDERED. © | DATED: September 29, 2025 | | | lual |. | 7 g MARILYN ¥. HUFF, Distri ge

UNITED STATES DISTRICT COURT

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