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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
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7 KASEY SLICK,  
8 Plaintiff,  
9 v.  
10 CABLECOM, LLC,  
11 Defendant.

Case No. [22-cv-03415-JSC](#)

**ORDER GRANTING MOTION TO  
DISMISS AND DENYING MOTION  
FOR SANCTIONS**

Re: Dkt. No. 13

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13 Kasey Slick (“Plaintiff”) brings this putative class action alleging that CableCom LLC  
14 (“Defendant”) violated California’s Unfair Competition Law (“UCL”). Cal. Bus. Code § 17200, et  
15 seq. (Dkt. No. 2.) Defendant moves to dismiss under Federal Rule of Civil Procedure 12(b)(6)  
16 and requests sanctions. (Dkt. No. 13.) After carefully considering the parties’ briefing, and  
17 having had the benefit of oral argument on August 4, 2022, the Court concludes that it has subject  
18 matter jurisdiction and GRANTS Defendant’s motion to dismiss without leave to amend and  
19 DENIES Defendant’s motion for sanctions. The UCL claim fails because Plaintiff has an  
20 adequate remedy at law and Defendant has not established that sanctions are warranted under the  
21 Court’s inherent authority.

22 **COMPLAINT ALLEGATIONS**

23 Plaintiff worked for Defendant in California from August 2015 to November 2018. (Dkt.  
24 No. 2 ¶ 19).<sup>1</sup> During that time, Defendant failed to adequately compensate him and similarly  
25 situated employees for their work, including missed meal periods and rest breaks. (*Id.* ¶ 20.)  
26 Defendant also failed to provide accurate wage statements and payroll records. (*Id.* ¶¶ 43–44.)

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28 <sup>1</sup> Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the  
ECF-generated page numbers at the top of the documents.

**PROCEDURAL HISTORY**

Plaintiff filed his complaint in the Superior Court of California on April 13, 2022, alleging a violation of the UCL. (Dkt. No. 2 ¶ 50.) The UCL violation is predicated on a number of alleged California Labor Code violations, including the failure to pay overtime (§§ 510, 1198), provide meal periods (§§ 226.7 and 512(a)), provide rest periods (§ 226.7), pay minimum wage (§§ 1194, 1197, 1197.1), pay wages upon termination (§§ 201, 202), pay wages during employment (§ 204), provide compliant wage statements (§ 226(a)), keep accurate payroll records (§ 1174(d)), and reimburse necessary business expenses (§§ 2800, 2802). (Dkt. No. 2 ¶¶ 52–60.) Plaintiff seeks injunctive relief, restitution of unpaid wages for himself and other members of the class, and reasonable attorney’s fees. (Dkt. No. 2-1 at 15.) Plaintiff also seeks class certification and asks the Court to appoint him as the class representative. (*Id.*) Defendant removed the case to federal court and then moved to dismiss and for sanctions. After oral argument, the parties provided briefing regarding this Court’s subject matter jurisdiction. (Dkt. Nos. 35, 37.)<sup>2</sup>

**DISCUSSION**

In his opposition to Defendant’s motion to dismiss, Plaintiff alluded to the Court lacking subject matter jurisdiction. As the Court cannot decide the motion to dismiss if it lacks subject matter jurisdiction, at oral argument it ordered the parties to submit briefing regarding the jurisdiction question. The Court thus first addresses its subject matter jurisdiction over this dispute. Because federal jurisdiction exists here under the Class Action Fairness Act (“CAFA”), the Court then turns to the merits of Defendant’s motion to dismiss.

**I. Subject Matter Jurisdiction**

Defendant removed this case to federal court under CAFA. (Dkt. No. 1.) Under CAFA, a federal court has subject matter jurisdiction of a putative class action if the number of potential class members exceeds 100, the parties are citizens of different states, and the amount in controversy exceeds the aggregate value of \$5,000,000. *See* 28 U.S.C. § 1332(d); *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1195 (9th Cir. 2015). Defendant’s notice of removal

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<sup>2</sup> Plaintiff filed a motion for leave to file a reply brief to address Defendant’s arguments. (Dkt. No. 43.) Plaintiff’s motion is GRANTED and the Court has considered Plaintiff’s brief.

1 establishes that those jurisdictional requirements are met. The size of the putative class is over  
2 800. (Dkt. No. 1 ¶ 8.) Plaintiff is a citizen of California and CableCom, LLC is wholly owned by a  
3 corporation that is headquartered in Delaware and has its principal place of business in Florida.  
4 (*Id.* ¶ 13.) Lastly, potential damages are estimated to be upwards of \$9.6 million. (*Id.* ¶ 43.)  
5 Thus, the Court has jurisdiction under CAFA.

6 **A. The Amount-in-Controversy Requirement is Satisfied**

7 Plaintiff's insistence that Defendant has not adequately met CAFA's amount-in-  
8 controversy requirement is unpersuasive. When a plaintiff contests the defendant's allegation  
9 regarding amount in controversy under CAFA, both sides submit proof and the court decides, by a  
10 preponderance of the evidence, whether the amount-in-controversy requirement has been satisfied.  
11 *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 88 (2014). The parties may  
12 submit evidence outside the complaint, including affidavits or declarations, or other "summary-  
13 judgment-type evidence relevant to the amount in controversy at the time of removal." *Singer v.*  
14 *State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997) (cleaned up). Here, Plaintiff  
15 does not provide any argument regarding Defendant's calculated amount. Rather, Plaintiff argues  
16 that Defendant's calculation is based on inadmissible evidence. Plaintiff is incorrect.

17 Defendant provides an expert witness calculation as to the amount in controversy. (Dkt.  
18 No. 3.) *See also* Fed. R. Evid. 702. An expert "may base an opinion on facts or data in the case  
19 that the expert has been made aware of." Fed. R. Evid. 703. If experts in that field would  
20 reasonably rely on those kinds of facts or data in forming an opinion, that opinion can be admitted  
21 even if the underlying data is not admissible. *Id.* Defendant provides a series of affidavits to  
22 explain the data and assumptions underlying the expert witness calculation. (Dkt. Nos. 3, 4, 38,  
23 39.) Here, Defendant's human resources manager provided the company's payroll, timekeeping,  
24 and termination data to Defendant's counsel. (Dkt. No. 4 ¶ 4.) Defendant's counsel hired an  
25 economist to analyze that data. (Dkt. No. 3 ¶ 4.) Based on a set of assumptions, Defendant's  
26 economist estimated an amount in controversy of at least \$7.7 million. (*Id.* ¶ 10.) That opinion  
27 testimony is admissible.

28 Plaintiff's contention that the best evidence rule requires Defendant to submit the

1 spreadsheets underlying the expert opinion is incorrect. The burden to establish the amount in  
2 controversy by a preponderance of the evidence does not require the defendant to “research, state,  
3 and prove the plaintiff’s claims for damages.” *De Vega v. Baxter Healthcare Corp.*, 507 F. Supp.  
4 3d 1214, 1217 (N.D. Cal. 2019). Rather, the Court can rely on “affidavits” or “declarations” to  
5 establish the amount in controversy. *See Ibarra*, 775 F.3d at 1197.

6 As discussed above, Defendant submitted affidavits that show this dispute meets amount-  
7 in-controversy requirement under CAFA. Those affidavits are persuasive and break down the  
8 various amounts in controversy with detail. (*See* Dkt. No. 3.) Plaintiff provides no persuasive  
9 argument to the contrary. *See Dart Cherokee*, 574 U.S. at 88 (holding that “both sides submit  
10 proof, and the court decides, by a preponderance of the evidence, whether the amount-in-  
11 controversy requirement has been satisfied”). Thus, Defendant has shown, by a preponderance of  
12 the evidence, that the amount-in-controversy requirement is met.

13 **B. The Local Controversy Exception Does not Apply**

14 Plaintiff’s reliance on CAFA’s local controversy exception is likewise misplaced. Under  
15 that exception:

16 [A] district court is required to decline jurisdiction over a class action  
17 when: (1) more than two-thirds of the proposed plaintiff class(es) are  
18 citizens of the state in which the action was originally filed, (2) there  
19 is at least one in-state defendant against whom “significant relief” is  
20 sought and “whose alleged conduct forms a significant basis for the  
21 claims asserted” by the proposed class, (3) the “principal injuries”  
resulting from the alleged conduct of each defendant were incurred in  
the state of filing, and (4) no other class action “asserting the same or  
similar factual allegations against any of the defendants” has been  
filed within three years prior to the present action.

22 *Kendrick v. Conduent State and Loc. Sols., Inc.*, 910 F.3d 1255, 1260 (9th Cir. 2018) (citing 28  
23 U.S.C. § 1332(d)(4)). The second factor does not apply here. Defendant is an LLC. An LLC is a  
24 citizen of every state of which its owner/members are citizens. *Johnson v. Columbia Properties*  
25 *Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Defendant’s lone member is a citizen of  
26 Delaware and Florida. (Dkt. No. 1 ¶ 13.) Thus, because there is no “in-state defendant” here, the  
27 local controversy exception does not apply.

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2 The Court has subject matter jurisdiction over this dispute under CAFA. Plaintiff's request  
3 for remand is denied.

4 **II. Motion to Dismiss**

5 Defendant moves to dismiss on three grounds: (1) Plaintiff fails to state a claim under the  
6 UCL because he cannot show he lacks an adequate remedy at law, (2) Plaintiff's complaint is  
7 insufficiently pled, and (3) a prior settlement precludes Plaintiff from bringing these claims. The  
8 first argument disposes of Plaintiff's complaint.

9 "[T]he UCL provides only for equitable remedies." *Sonner v. Premier Nutrition Corp.*,  
10 971 F.3d 834, 839 n.2 (9th Cir. 2020) (cleaned up). To recover equitable remedies under the UCL  
11 in federal court, Plaintiff must demonstrate that he lacks an adequate remedy at law. *Id.* at 844.  
12 Plaintiff's UCL claim is predicated on California Labor Code claims. These Labor Code claims  
13 provide Plaintiff with a remedy at law. *See Kim v. Reins Int'l California, Inc.*, 9 Cal. 5th 73, 80  
14 (2020) ("California's Labor Code contains a number of provisions designed to protect the health,  
15 safety, and compensation of workers. Employers who violate these statutes may be sued by  
16 employees for damages[.]") Accordingly, the UCL claim fails. *See Sonner*, 971 F.3d at 844  
17 (affirming dismissal of UCL claim because plaintiff failed to establish absence of legal remedy.)

18 Plaintiff nonetheless argues that because any claims he made directly under the Labor  
19 Code would be barred by the statute of limitations he lacks an adequate remedy at law. Plaintiff is  
20 incorrect. "Failure to comply with a remedy at law does not make it inadequate so as to require  
21 the district court to exercise its equitable jurisdiction." *United States v. Elias*, 921 F.2d 870, 874  
22 (9th Cir. 1990) (denying equitable relief where the plaintiff failed to timely follow the procedures  
23 to obtain a legal remedy in connection with his claim for a return of seized property); *see*  
24 *also Franckowiak v. Scenario Cockram United States, Inc.*, 2020 WL 9071697, at \*3 (C.D. Cal.  
25 Nov. 30, 2020) (finding the "failure to file a proper claim within the statute of limitations does not  
26 make the remedy at law inadequate; it simply means Plaintiffs missed their opportunity to seek  
27 legal redress under those statutes"). In *Sonner*, for example, the plaintiff was barred from bringing  
28 his claim at law because the district court denied the plaintiff leave to add the legal claim. The

1 Ninth Circuit nonetheless held that the plaintiff could not bring a UCL claim as he had an  
2 adequate remedy at law. *See Sonner*, 971 F.3d at 844. The same result is required here.

3 In sum, Plaintiff has not pled the absence of an adequate remedy at law; instead, he pleads  
4 only a failure to comply with that adequate remedy at law. As a result, Plaintiff’s UCL claim must  
5 be dismissed. *Id.*

6 **III. Leave to Amend**

7 Where a motion to dismiss is granted, a trial court must decide whether to grant leave to  
8 amend. Generally, the Ninth Circuit has a liberal policy favoring amendments and, thus, leave to  
9 amend should be freely granted. *See, e.g., DeSoto v. Yellow Freight System, Inc.*, 957 F.2d 655,  
10 658 (9th Cir. 1992). However, a court does not need to grant leave to amend in cases where  
11 permitting a plaintiff to amend would be an exercise in futility. *Rutman Wine Co. v. E. & J. Gallo*  
12 *Winery*, 829 F.2d 729, 738 (9th Cir. 1987). Because Plaintiff’s UCL claim fails as a matter of law,  
13 and Plaintiff concedes that his legal Labor Code claims are barred by the statute of limitations,  
14 granting leave to amend the complaint would be futile. Thus, the Court dismisses the UCL claim  
15 without leave to amend.

16 **III. Other Grounds for the Motion to Dismiss**

17 Because Plaintiff’s UCL claim fails under *Sonner*, and leave to amend would be futile, the  
18 Court need not and does not address Defendant’s other grounds for its motion to dismiss.

19 **IV. Defendant’s Request for Sanctions**

20 Defendant requests sanctions pursuant to the Court’s “inherent power” based on Plaintiff’s  
21 continued prosecution of this case notwithstanding his participation in the *Carr* settlement. The  
22 Court did not conclude that the *Carr* settlement bars Plaintiff’s claim and, indeed, in light of the  
23 record before the Court, such affirmative defense cannot be resolved on a 12(b)(6) motion. The  
24 request for sanctions is thus denied.

25 **CONCLUSION**

26 Plaintiff’s request to file the reply is GRANTED. (Dkt. No. 43.) That reply is deemed  
27 filed. Plaintiff’s request to remand this matter is DENIED. (Dkt. No. 34.) Defendant’s motion to  
28 dismiss Plaintiff’s UCL claim is GRANTED without leave to amend and Defendant’s request for

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sanctions is DENIED. (Dkt. No. 13.) The case management conference scheduled for September 16, 2022 is VACATED.

**IT IS SO ORDERED.**

This Order disposes of Dkt. No. 13, 43.

Dated: September 12, 2022

  
JACQUELINE SCOTT CORLEY  
United States District Judge