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**United States District Court
Central District of California**

DEBRA L. MARSHALL, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

G2 SECURE STAFF, LLC; and DOES
1–100, inclusive

Defendants.

Case No. 2:14-cv-04322-ODW(MANx)

**ORDER GRANTING MOTION TO
REMAND [11]**

I. INTRODUCTION

This action was removed from Los Angeles County Superior Court based on diversity jurisdiction under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). Plaintiff Debra L. Marshall moves the Court to remand based on lack of minimal diversity and insufficiency of evidence in support of the amount in controversy. (ECF No. 11.) Marshall is a former employee of Defendant G2 Secure Staff, LLC (“G2”). Marshall is suing G2 for violations of California wage-and-hour laws on behalf of herself and a putative class of current and former employees. The Court finds that G2 has not met its evidentiary burden in establishing that the amount in controversy exceeds \$5 million, and accordingly **GRANTS** Marshall’s Motion to Remand. (ECF No. 11.)

1 **II. FACTUAL BACKGROUND**

2 On April 3, 2014, Marshall filed the class-action Complaint in Los Angeles
3 County Superior Court. Marshall alleges that G2 (1) failed to pay overtime wages;
4 (2) failed to pay minimum wages; (3) failed to provide meal periods; (4) failed to
5 provide rest periods; (5) failed to pay all wages upon termination; (6) failed to provide
6 accurate wage statements; and (7) engaged in unfair competition. (ECF No. 1, Ex. A
7 (“Compl.”).) Marshall raises only state-law claims. Marshall defines the putative
8 class members as “[Marshall] and all other current and former similarly situated
9 employees employed by or formerly employed by G2 Secure Staff, L.L.C. and any
10 subsidiaries or affiliated companies . . . within the State of California.” (Compl. ¶ 1.)

11 G2 removed this action on June 1, 2014, on the basis of diversity jurisdiction
12 under CAFA. (ECF No. 1. (“Not. of Removal”).) On June 23, 2014, Marshall filed
13 the present Motion to Remand, alleging that G2’s removal was based on speculation
14 and assumptions. (ECF No. 11.) G2 timely opposed. (ECF No. 12.) G2 supports its
15 Opposition with two declarations from Julia Gostic, the Vice-President of Human
16 Resources and Administration at G2. Marshall’s Motion is now before the Court for
17 decision.

18 **III. LEGAL STANDARD**

19 Federal courts are courts of limited jurisdiction, having subject-matter
20 jurisdiction only over matters authorized by the Constitution and Congress. U.S.
21 Const. art. III, § 2, cl. 1; *e.g.*, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.
22 375, 377 (1994). A suit filed in state court may be removed to federal court if the
23 federal court would have had original jurisdiction over the suit. 28 U.S.C. § 1441(a).
24 But courts strictly construe the removal statute against removal jurisdiction, and
25 “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal
26 in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The
27 party seeking removal bears the burden of establishing federal jurisdiction. *Durham v.*

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1 *Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006) (citing *Gaus*, 980 F.2d
2 at 566).

3 Subject-matter jurisdiction exists in civil cases involving a federal question or
4 diversity of citizenship. 28 U.S.C. §§ 1331, 1332. Under CAFA, federal district
5 courts have original jurisdiction to a hear a class action if the proposed class has
6 (1) more than 100 members, (2) the parties are minimally diverse, and (3) the amount
7 in controversy in the aggregate exceeds the sum or value of \$5 million. 28 U.S.C.
8 § 1332(d)(2), (d)(5)(B); *see also Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345,
9 1348–49 (2013). In removal cases, the removing party bears the burden of proving
10 subject-matter jurisdiction under CAFA by a preponderance of the evidence.
11 *Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d 975, 977 (9th Cir. 2013).

12 **IV. DISCUSSION**

13 G2 asserts that removal is proper here because there are more than 100 putative
14 class members, minimal diversity is satisfied, and the amount in controversy exceeds
15 \$5 million. G2 contends that the number of putative class members is 2,594
16 employees, which well exceeds the 100-member requirement under CAFA. G2
17 further argues that the parties are minimally diverse, because G2 is a limited liability
18 company and all of its members are citizens of Texas, while the at least one member
19 of the plaintiff class is a citizen of California. Lastly, G2 argues that the amount in
20 controversy has been satisfied, because according to its calculations, the amount in
21 controversy is \$7,409,799.20, exclusive of attorneys’ fees. (Not. of Removal ¶ 35.)
22 G2 reaches this calculation by adding together the estimates for unpaid meal and rest
23 period premiums, waiting-time penalties, and wage statement penalties. (*Id.*)

24 Marshall does not dispute the class size. However, Marshall disputes whether
25 the parties are minimally diverse and whether the amount in controversy has been
26 established. (Mot. 8–9.) Marshall argues that G2 relies on assumptions and
27 speculation in calculating the amount in controversy, and therefore has not met its
28 burden of showing by a preponderance of the evidence that the amount in controversy

1 is at least \$5 million. (*Id.*) For the reasons discussed below, the Court finds that G2
2 has not established the \$5 million CAFA amount in controversy requirement, and
3 therefore does not reach the question of whether the parties are minimally diverse.

4 In determining the amount in controversy for subject-matter jurisdiction, federal
5 district courts look to the complaint. *Singer v. State Farm Mut. Auto. Ins. Co.*, 116
6 F.3d 373, 376 (9th Cir. 1997). A court “must assume that the allegations of the
7 complaint are true and that a jury will return a verdict for the plaintiff on all claims
8 made in this complaint.” *Roth v. Comerica Bank*, 799 F. Supp. 2d 1107, 1117 (C.D.
9 Cal. 2010) (citations omitted) (quoting *Kenneth Rothschild Trust v. Morgan Stanley*
10 *Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002)). If the amount in
11 controversy is not facially apparent in the complaint, a court may consider the removal
12 petition and any “summary-judgment-type evidence relevant to the amount in
13 controversy at the time of removal,” similar to a review under Federal Rule of Civil
14 Procedure 56. *Singer*, 116 F.3d at 376; *accord*, *Korn v. Polo Ralph Lauren Corp.*,
15 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008). Summary-judgment-type evidence
16 includes “materials in the record, including . . . affidavits and declarations[.]” Fed. R.
17 Civ. P. 56(c)(1). However, the removing party is not required to provide extensive
18 business records in order to establish the amount in controversy. *Muniz v. Pilot*
19 *Travel Ctrs. LLC*, No. CIV.S-07-0325 FCB EFB, 2007 WL 1302504, at *5 (C.D. Cal.
20 May 1, 2007).

21 Similarly, courts sometimes allow the use of a 100-percent violation rate for
22 determining the amount in controversy. Courts have assumed a 100-percent violation
23 rate where the complaint does not allege facts specific enough to ““narrow the scope
24 of the putative class or the damages sought.”” *Coleman v. Estes Express Lines, Inc.*,
25 730 F. Supp. 2d 1141, 1150 (C.D. Cal. 2010) (quoting *Muniz*, 2007 WL 1302504,
26 at *4). But, parties may not rely on the assumption that the 100-percent violation rule
27 applies *without supporting the assumption with evidence*. *Garibay v. Archstone*
28 *Cmtys. LLC*, 539 Fed. App’x 763 (9th Cir. 2013) (emphasis added). Additionally,

1 courts have “rejected the *unsupported* use of 100% maximum violation rates.” *See*
2 *Emmons v. Quest Diagnostics Clinical Labs, Inc.*, No. 1:13-cv-0474 AWI-BAM,
3 2014 WL 584393, at *5 (E.D. Cal. Feb. 12, 2014) (emphasis added) (quoting *Weston*
4 *v. Helmerich & Payne Int’l Drilling Co.*, No. 1:13-cv-01092-LJO-JLT, 2013
5 WL 5274283, at *5–6 (E.D. Cal. Sept. 16, 2013).

6 Here, G2 includes meal and rest period violations, wage statement violations,
7 and late pay violations in its calculation of amount in controversy. (Not. of Removal
8 ¶¶ 19–32.) Marshall alleges that G2 “consistently” failed to provide employees with
9 meal and rest periods. (Compl. ¶¶ 14, 16.) But, nowhere in the Complaint does the
10 Court find any mention of the actual frequency of violations. The Court finds a
11 similar void in G2’s Notice of Removal, Opposition, and Declarations. G2 assumes a
12 once per week violation rate for meal and rest period violations, arguing that its
13 assumption is conservative and therefore justified. (Not. of Removal ¶ 24; Opp’n 8.)
14 However, without evidence supporting the conclusion that once per week is suitable
15 for calculation purposes, it is still an assumption, seemingly plucked from thin air.

16 Further, “consistently” does not necessarily amount to once per week. Some
17 regularity can be discerned, but without further support, there is no justification for
18 using a once-per-week rubric versus a twice-per-month rubric or a three-times-per-
19 year rubric. G2 simply does not provide any support for its assumption. Because the
20 calculation provided by G2 for meal and rest period violations is not supported by
21 sufficient summary-judgment-type evidence, the Court finds that G2’s calculations for
22 meal and rest period violations are insufficient to support the amount-in-controversy
23 requirement.

24 Additionally, the fines for wage-statement violations are derivative of the meal
25 and rest period claims. Marshall contends that employees received wage statements
26 that were inaccurate because they did not include the pay due to the employees for
27 missed meal and rest periods. (Compl. ¶ 67.) If the calculations for missed meal and
28 rest periods are faulty, then the wage statement violation calculations are also

1 inherently flawed. Accordingly, the calculations for wage statement violations fines
2 are insufficient for amount-in-controversy purposes as well.

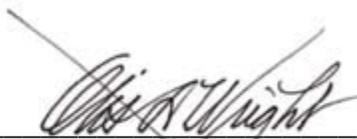
3 The remaining calculations are for waiting-time penalties, which G2 calculates
4 to be \$2,090,004.00 (Not. of Removal ¶ 28)—an amount insufficient to establish the
5 requisite \$5 million amount in controversy for CAFA claims. Even if attorneys' fees
6 were included, they could only amount to \$522,501.00 using a 25-percent benchmark.
7 *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (holding that where attorneys'
8 fees are permissibly used in calculating amount in controversy, a benchmark of 25
9 percent of the common fund was appropriate).¹ Thus, the addition of the 25 percent
10 benchmark here does not bring the amount in controversy even near the \$5 million
11 CAFA requirement. Accordingly, the Court finds that G2 has not met its evidentiary
12 burden of showing by a preponderance of the evidence that the amount in controversy
13 here is at least \$5 million.

14 **V. CONCLUSION**

15 For the reasons discussed above, the Court **GRANTS** Marshall's Motion to
16 Remand. (ECF No. 11.) This case is remanded to Los Angeles County Superior
17 Court, Case No. BC541579. The Clerk of the Court shall close this case.

18 **IT IS SO ORDERED.**

19
20 July 14, 2014

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23 _____
24 **OTIS D. WRIGHT, II**
UNITED STATES DISTRICT JUDGE

25 cc:order, docket, remand letter to
26 Los Angeles Superior Court, No. BC 541579
27

28 ¹ In order to determine the amount of the 25-percent benchmark here, the Court multiplied the waiting-time penalties (\$2,090,004.00) by 25 percent (.25).