

1 **I. BACKGROUND**

2 Plaintiff Travis Swans alleges that Defendant Fieldworks, LLC has violated
3 California’s wage and hour laws. (ECF No. 1-1). On August 30, 2022, Plaintiff filed a
4 putative class action complaint in the Superior Court of California for the County of Los
5 Angeles (“LASC”). (*Id.*). Plaintiff asserts nine causes of action alleging a wide range of
6 wage and hour violations under the California Labor Code, including claims of unpaid
7 wages, unpaid overtime, statutory penalties, liquidated damages, and statutory attorneys’
8 fees and costs. (*Id.*). On October 5, 2022, Defendants timely removed this action from
9 LASC pursuant to 28 U.S.C. § 1332. (ECF No. 1 (“NOR”)). On October 25, 2022,
10 Plaintiff timely filed a motion to remand back to the LASC. (ECF No. 11 (“Mot.”)).
11 Defendants opposed on December 27, 2022, (ECF No. 35 (“Opp.”)),¹ and Plaintiff replied
12 on January 4, 2023. (ECF No. 36 (“Reply”)).

13 **II. LEGAL STANDARD**

14 To remove a case from a state court to a federal court, a defendant must file a notice
15 of removal “containing a short and plain statement of the grounds for removal.” 28 U.S.C.
16 § 1446(a). When removal is based on diversity of citizenship, the amount in controversy
17 must exceed \$75,000 and the parties must be diverse. 28 U.S.C. § 1332. In a class action
18 brought outside the Class Action Fairness Act (“CAFA”), at least one named plaintiff in
19 the class must satisfy the \$75,000 amount in controversy requirement. *See Exxon Mobil*
20 *Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005); *see also Lewis v. Verizon*
21 *Commc’ns, Inc.*, 627 F.3d 395, 398 (9th Cir. 2010) (“Prior to CAFA, a class action could
22 be heard in federal court under diversity jurisdiction only if there was complete diversity,
23 i.e., all class representatives were diverse from all defendants, and if at least one named
24 plaintiff satisfied the amount in controversy requirement of more than \$75,000.”); *Kanter*
25 *v. Warner-Lambert Co.*, 265 F.3d 853, 858 (9th Cir. 2001) (holding that “if a named
26

27 ¹ The Court grants Defendant’s unopposed request for judicial notice of Plaintiff’s
28 counsel’s court filings. *See* (ECF No. 16); *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442
F.3d 741, 746 n.6 (9th Cir. 2006).

1 plaintiff in a diversity class action has a claim with an amount in controversy in excess of
2 \$75,000, 28 U.S.C. § 1367 confers supplemental jurisdiction over claims of unnamed class
3 members irrespective of the amount in controversy in those claims”).

4 The party invoking the removal statute bears the burden of establishing that federal
5 subject-matter jurisdiction exists. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th
6 Cir. 1988). “The removal statute is strictly construed, and any doubt about the right of
7 removal requires resolution in favor of remand.” *Moore-Thomas v. Alaska Airlines, Inc.*,
8 553 F.3d 1241, 1244 (9th Cir. 2009). Moreover, if it is “unclear or ambiguous from the
9 face of a state-court complaint whether the requisite amount in controversy is pled, the
10 removing defendant bears the burden of establishing, by a preponderance of the evidence,
11 that the amount in controversy exceeds the jurisdictional threshold.” *Urbino v. Orkin*
12 *Servs. of Cal., Inc.*, 726 F.3d 1118, 1121-22 (9th Cir. 2013) (internal citations and quotation
13 marks omitted).

14 **III. DISCUSSION**

15 Plaintiff argues that Defendant has failed to establish that the amount in controversy²
16 exceeds \$75,000 for two reasons. First, Defendant’s calculation of attorneys’ fees
17 erroneously includes future fees rather than only those fees incurred at the time of removal.
18 And second, Defendant’s calculation of attorneys’ fees is speculative and unsupported.³

19 First, Plaintiff misstates the law—there is no split in authority as to whether
20 attorneys’ fees should be calculated at the time of removal. Controlling Ninth Circuit
21 precedent holds that “a court must include future attorneys’ fees recoverable by statute or

22
23 ² The parties agree that complete diversity exists between Plaintiff and Defendant. *See*
24 (NOR at 4 (Plaintiff is a resident of California. Defendant is a limited liability company
25 duly organized and existing under the laws of the State of District of Columbia, with its
26 principal place of business in Washington, D.C. Its two members are residents of the state
of Oregon and the state of Maryland.)).

27 ³ Plaintiff does not dispute the accuracy or reasonableness of Defendant’s calculation of
28 \$20,560 in California Labor Code violations. Having reviewed Defendant’s calculation in
its NOR, the Court agrees that \$20,560 is reasonable based on Plaintiff’s allegations in the
Complaint.

1 contract when assessing whether the amount-in-controversy requirement is met.” *Fritsch*
2 *v. Swift Transp. Co. of Arizona, LLC*, 899 F.3d 785, 794 (9th Cir. 2018). In his reply brief
3 Plaintiff acknowledged that *Fritsch* requires future attorneys’ fees to be included in the
4 amount in controversy where authorized by a fee-shifting statute like here. *See Fritsch*,
5 899 F.3d at 795.⁴

6 Second, Defendant has proved beyond a preponderance of evidence that the amount
7 in controversy exceeds \$75,000 based on approximately \$20,000 in damages and \$60,000
8 in attorneys’ fees. To determine whether Defendant has met its burden, the Court considers
9 the complaint, allegations in the NOR, and “summary-judgment-type evidence relevant to
10 the amount in controversy at the time of removal.” *Fritsch*, 899 F.3d at 794 (quoting
11 *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005)). Notably, the “amount in
12 controversy is simply an estimate of the total amount in dispute, not a prospective
13 assessment of defendant’s liability.” *Arias v. Residence Inn by Marriott*, 936 F.3d 920,
14 927 (9th Cir. 2019) (quoting *Lewis*, 627 F.3d at 400).

15 Here, Defendant’s estimate assumes that Plaintiff’s counsel will spend a minimum
16 of 100 hours of work prosecuting this putative class action while billing an hourly rate of
17 \$600. Plaintiff does not dispute the reasonableness of a \$600 hourly rate.⁵ Rather, Plaintiff
18 argues only that the parties likely will soon reach a settlement agreement and therefore it
19 is unreasonable to estimate that Plaintiff’s counsel will spend at least 100 hours litigating
20

21 ⁴ Plaintiff also appears to argue that including approximately 60% of the \$75,000 threshold
22 as attorneys’ fees is improper. (Mot. at 7). However, Plaintiff again is mistaken. The
23 Ninth Circuit has held that the amount in controversy ought to reflect “the *maximum*
24 *recovery* the plaintiff could reasonably recover.” *See Chavez v. JPMorgan Chase & Co.*,
25 888 F.3d 413, 417 (9th Cir. 2018) (explaining that when we assess the amount in
26 controversy at the time of removal, we must include all relief to which a plaintiff is entitled
27 if the action succeeds”); *Arias*, 936 F.3d at 927.

28 ⁵ The Court agrees that Defendant’s calculation using a \$600 rate is conservative based on
court filings from more than 15 years ago in which Plaintiff’s counsel reported his rate to
be \$425, plus \$175 due to his increases in professional experience and successes over the
years. (Torrey Decl. ¶¶ 6, 7).

1 this case. (Reply at 3). In *Fritsch*, the Ninth Circuit recognized that although an estimate
2 of future attorneys’ fees may at times be “too speculative because of the likelihood of a
3 prompt settlement,” such fees are not “inherently speculative” and should be included in
4 appropriate cases. 899 F.3d at 794-95.

5 The Court finds Defendant’s estimate to be entirely reasonable and not overly
6 speculative. In support of its opposition, Defendant submitted a declaration from its
7 counsel of record, Rebecca L. Torrey. (ECF No. 15-1 (“Torrey Decl.”)). According to
8 Torrey’s Declaration, Plaintiff’s counsel already has spent time preparing the Summons
9 and Complaint, meeting and conferring with defense counsel regarding the first set of
10 requests for production and interrogatories from Plaintiff to Defendant, researching and
11 preparing the Motion and a reply brief, meeting with opposing counsel on December 21,
12 2022, and discussing and preparing the parties’ proposed Rule 26 discovery plan. (Torrey
13 Decl. ¶ 8). Defendant also expects that Plaintiff’s counsel will participate in mediation,
14 will take and defend depositions, and will depose expert witnesses in the coming months.
15 (*Id.*). As Defendant aptly points out, “an attorney handling an individual wage-and-hour
16 case ‘typically spends far more than 100 hours on the case.’” *Hernandez v. Aramark Food*
17 *& Support Servs. Grp., Inc.*, No. 20-CV-03633-EJD, 2020 WL 5496172, at *5 (N.D. Cal.
18 Sept. 11, 2020) (quoting *Lippold v. Godiva Chocolatier, Inc.*, No. C 10-00421 SI, 2010
19 WL 1526441, at *4 (N.D. Cal. Apr. 15, 2010)); *see also Sasso v. Noble Utah Long Beach,*
20 *LLC*, No. CV 14-09154-AB (AJWx), 2015 WL 898468, at *6 (C.D. Cal. Mar. 3, 2015)
21 (“Recent estimates for the number of hours expended through trial for employment cases
22 in this district have ranged from 100 to 300 hours.”). Although the parties indicate that
23 settlement is likely, based on similar cases with similar factual allegations and causes of
24 actions, the Court agrees with Defendant that its estimate of \$60,000 in recoverable
25 attorneys’ fees is reasonable based on the evidence provided. As such, the Court finds the
26 total amount in controversy exceeds \$75,000, as is required by 28 U.S.C. § 1332.

27 //

28 //

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court **DENIES** Plaintiff's Motion to Remand.

3
4 **IT IS SO ORDERED.**

5
6 DATED: January 17, 2023

7 
8 HON. SHERILYN PEACE GARNETT
9 UNITED STATES DISTRICT JUDGE

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