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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ROBIN MURDOCK,
Plaintiff,
v.
MCLANE/SUNEAST, INC., a Texas
corporation, and
DOES 1 through 100
Defendants.

Case No. 5:21-cv-00657-JWH (SPx)
**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND [ECF
No. 14]**

1 Before the Court is the motion of Plaintiff Robin Murdock to remand this
2 case to San Bernardino County Superior Court.¹ The Court finds this matter
3 appropriate for resolution without a hearing. *See* Fed. R. Civ. P. 78; L.R. 7-15.
4 After considering the papers filed in support and in opposition,² the Court
5 orders that the Motion is **DENIED**, for the reasons set forth herein.

6 **I. BACKGROUND**

7 Murdock was employed by Defendant McLane/Sunset East, Inc.
8 (“MSE”) as a non-exempt hourly employee in California.³ Murdock filed this
9 labor dispute against MSE in San Bernardino County Superior Court on
10 December 10, 2020.⁴ On February 25, 2021, Murdock filed and served her First
11 Amended Complaint.⁵

12 Murdock asserts eight claims for relief: (1) unfair business practices
13 under California’s Unfair Competition Law; (2) “unpaid wages” based on a
14 failure to pay overtime and meal and rest period payments at “the regular rate”;
15 (3) wage statement penalties; (4) failure to authorize and permit rest periods;
16 (5) waiting time penalties; (6) unpaid wages for work allegedly performed “off
17 the clock” while being subjected to bag checks; (7) unreimbursed business
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22 ¹ Mot. to Remand Case to San Bernardino Superior Court (the “Motion”) [ECF No. 14].

23 ² The Court considered the following papers: (1) the Notice of Removal
24 (the “Removal Notice”) [ECF No. 1]; (2) the Compl. (the “Complaint”) [ECF
25 No. 1-1]; (3) the First Am. Compl. (the “Amended Complaint”) [ECF No. 1-3];
26 (4) the Motion (including its attachments); (5) Def.’s Opp’n to the Motion and
Request for Attorneys’ Fees and Costs of \$3,500 (the “Opposition”) [ECF
No. 16]; and (6) Pl.’s Reply to Def.’s Opp’n to the Motion (the “Reply”) [ECF
No. 17].

27 ³ Amended Complaint ¶ 13.

28 ⁴ *See generally* Complaint.

⁵ *See generally* Amended Complaint.

1 expenses; and (8) civil penalties under Cal. Lab. Code §§ 2698, *et seq.*⁶ Murdock
2 seeks to prosecute this action on behalf of a proposed class and six subclasses.⁷

3 MSE removed this action to federal court on April 13, 2021.⁸ In its
4 Removal Notice, MSE asserts that this Court has jurisdiction over this action
5 under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d),
6 because minimal diversity exists, the controversy exceeds \$5 million exclusive of
7 interest and costs, and the number of members of all proposed Murdock classes
8 in the aggregate is at least 100 class members.⁹ MSE made its own calculations
9 regarding the potential liability for several claims for relief and alleged that those
10 claims alone amount to over \$18 million.¹⁰ Murdock now moves to remand,
11 arguing that removal was not timely and that MSE failed to introduce any
12 evidence to support its allegation that this court has jurisdiction.¹¹

13 **II. LEGAL STANDARD**

14 A defendant may remove an action from state court to federal court if the
15 plaintiff could have originally filed the action in federal court. *See* 28 U.S.C.
16 § 1441(a). CAFA provides federal subject matter jurisdiction if (1) the proposed
17 plaintiff class is not less than 100 members; (2) the parties are minimally
18 diverse; and (3) the aggregate amount in controversy exceeds \$5 million. 28
19 U.S.C. § 1332(d)(2) & (5)(B). “Congress intended CAFA to be interpreted
20 expansively.” *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015).

21 The party seeking removal bears the burden of establishing federal subject
22 matter jurisdiction under CAFA. *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676,
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24 ⁶ *Id.* at ¶¶ 20-88.

25 ⁷ *Id.* at ¶ 15.

26 ⁸ *See generally* Removal Notice.

27 ⁹ *Id.* at ¶ 2.

28 ¹⁰ *Id.* at ¶ 36.

¹¹ *See generally* Motion.

1 683 (9th Cir. 2006). When the amount in controversy is not apparent from the
2 face of the complaint, the removing party “must prove by a preponderance of
3 the evidence that the amount in controversy requirement [under CAFA] has
4 been met.” *Id.* Generally, “a defendant’s notice of removal need include only a
5 plausible allegation that the amount in controversy exceeds the jurisdictional
6 threshold.” However, when a plaintiff contests the amount in controversy put
7 forth by the defendant, “[e]vidence establishing the amount is required. . . .”
8 *Dart Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014). The parties, thus,
9 “may submit evidence outside the complaint, including affidavits or
10 declarations, or other ‘summary-judgment-type evidence relevant to the amount
11 in controversy at the time of removal.’” *Ibarra*, 775 F.3d at 1197 (quoting *Singer*
12 *v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997)). “Under this
13 system, a defendant cannot establish removal jurisdiction by mere speculation
14 and conjecture, with unreasonable assumptions.” *Id.*

15 Removal under CAFA must also be timely. A defendant must remove the
16 case to federal court “(1) during the first thirty days after the defendant receives
17 the initial pleading, or (2) during the first thirty days after the defendant receives
18 ‘an amended pleading, motion, order or other paper from which it may be first
19 ascertained that the case is one which is or has become removable.’” *Reyes v.*
20 *Dollar Tree Stores, Inc.*, 781 F.3d 1185, 1189 (9th Cir. 2015) (quoting 28 U.S.C.
21 § 1446(b)(1) & (b)(3)) (italics omitted). The first time period under 28 U.S.C.
22 § 1446(b)(1) is “triggered if the case stated by the initial pleading is removable
23 on its face,” and the second time period under 28 U.S.C. § 1446(b)(3) is
24 “triggered if the initial pleading does not indicate that the case is removable, and
25 the defendant receives a copy of an amended pleading, motion, order or other
26 paper from which removability may first be ascertained.” *Carvalho v. Equifax*
27 *Info. Servs., LLC*, 629 F. 3d 876, 885 (9th Cir. 2010) (internal quotation marks
28 and citations omitted).

1 **III. DISCUSSION**

2 **A. Timeliness**

3 Murdock argues that removal was not timely because MSE did not
4 remove this action within 30 days of receiving either the originally filed
5 Complaint or Amended Complaint.¹² Thus, the Court should remand this case
6 to San Bernardino County Superior Court.¹³ MSE responds that the 30-day
7 removal period was not triggered because the pleadings did not affirmatively
8 reveal the facts necessary for federal court jurisdiction.¹⁴

9 If the face of the Complaint does not reveal that the case is removable,
10 then MSE would not have an affirmative obligation to calculate the amount in
11 controversy to determine whether CAFA jurisdiction is proper under 28 U.S.C.
12 § 1446(b)(1). *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir.
13 2005) (“removability under [28 U.S.C.] § 1446(b) is determined through
14 examination of the four corners of the applicable pleadings, not through
15 subjective knowledge or a duty to make further inquiry”). If CAFA was
16 interpreted otherwise—to require a defendant to investigate the necessary
17 jurisdictional facts—then “defendants would be faced with an unreasonable and
18 unrealistic burden to determine removability within thirty days after receiving
19 the initial pleading.” *Id.* Thus, “the ground for removal must be revealed
20 **affirmatively** in the initial pleading in order for the . . . thirty-day clock under
21 [the removal statute] to begin.” *Id.* at 695 (emphasis added); *see also Kuxhausen*
22 *v. BMW Fin. Servs. NA LLC*, 707 F.3d 1136, 1140 (9th Cir. 2013) (even where it
23 would be a fair assumption from the named plaintiff’s alleged damages to
24 conclude that the amount in controversy is met, defendant is not charged with
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¹² Motion 6:15-10:9.

27 ¹³ *Id.* at 4:23-24.

28 ¹⁴ Opposition 5:6-7:9.

1 notice of removability absent the receipt of a paper indicating the amount
2 demanded by the putative class as a whole).

3 From a review of the Complaint filed on December 10, 2020, and the
4 Amended Complaint filed on February 25, 2021, it does not appear that either
5 document affirmatively reveals that the amount in controversy in this action
6 exceeds \$5 million. Murdock does not estimate damages within her pleadings,
7 and MSE did not have a duty to consult its records to estimate them. *Harris*,
8 425 F.3d at 694. Nor does Murdock allege any financial figures that, after
9 simple multiplication, would have made clear that this Court has jurisdiction
10 under CAFA. Thus, a 30-day removal period was never triggered, and MSE’s
11 removal on April 13, 2021, after its own investigation, was proper.

12 **B. Merits of Removal**

13 Next, Murdock challenges MSE’s removal by arguing that MSE does not
14 offer evidence to support its claims that the amount-in-controversy exceeds
15 \$5 million.¹⁵ Murdock also contends that MSE improperly aggregated putative
16 class member claims and speculated about the class size, about average wage
17 rates of putative class members, and about the magnitude of attorneys’ fees.¹⁶

18 First, MSE need not have submitted evidence regarding the amount in
19 controversy at the time of removal. *See Arias v. Residence Inn by Marriott*, 936
20 F.3d 920, 922 (9th Cir. 2019) (noting a “removing defendant’s notice of
21 removal need not contain evidentiary submissions but only plausible allegations
22 of the jurisdictional elements”) (internal quotations and citation omitted). In
23 opposition to Murdock’s Motion to Remand, MSE also submits the declaration
24 of Stephanie McAtee, Director of Payroll, attesting to the data underlying
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26 ¹⁵ Motion at 10:11-19. The Court observes, though, that Murdock does not
27 challenge that the other requirements of CAFA jurisdiction are met here; *i.e.*,
28 that there is minimal diversity, and the class size exceeds 100 members. *See*
generally id.

¹⁶ *Id.* at 12:16-13:8.

1 MSE's amount-in-controversy requirements.¹⁷ Thus, Murdock's challenge to
2 the sufficiency of MSE's evidence in support of the court's subject matter
3 jurisdiction is unfounded.

4 Second, a review of MSE's Removal Notice and its Opposition causes the
5 Court to conclude that MSE has shown by a preponderance of the evidence that
6 the amount-in-controversy exceeds \$5 million. Murdock alleges nine claims for
7 relief on behalf of six proposed subclasses.¹⁸ MSE estimates that Murdock's
8 claim for rest break violations alone amounts to a potential liability exceeding
9 \$5 million,¹⁹ relying on reasonable assumptions such as a 20% violation rate and a
10 \$18.96 effective hourly rate.²⁰ Moreover, Murdock has failed to submit any
11 evidence that the amount in controversy amounts to less than \$5 million. *See,*
12 *e.g., Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 401 (9th Cir. 2010) (vacating
13 remand order because "[t]he Plaintiff is seeking recovery from a pot that
14 Defendant has shown could exceed \$5 million and the Plaintiff has neither
15 acknowledged nor sought to establish that the class recovery is potentially any
16 less").

17 **IV. CONCLUSION**

18 For the foregoing reasons, the Court hereby **ORDERS** as follows:

- 19 1. The Court **DENIES** the Murdock's Motion to Remand.

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21 ¹⁷ Decl. of Stephanie McAtee in Supp. of the Opposition [ECF No. 16-1].
22 Murdock raises evidentiary objections to the McAtee declaration. *See* Pl.'s
23 Objections to Decl. of Stephanie McAtee [ECF No. 17-1]. Many of Murdock's
objections, however, are unfounded, and the declaration sufficiently supports
the court's exercise of jurisdiction. Accordingly, Murdock's evidentiary
objections are **OVERRULED**.

24 ¹⁸ Amended Complaint at ¶ 15.

25 ¹⁹ Opposition at 18:12-15.

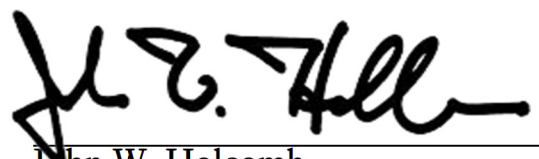
26 ²⁰ *Id.* at 17:7-8 & 18:12-15. Citing *Urbino v. Orkin Servs. of Cal.*, 726 F.3d
27 1118, 1122 (9th Cir. 2013), Murdock argues MSE improperly attempts to
28 aggregate putative class claims. *See* Motion at 12:21-22. But *Urbino* is
inapposite, as it involved aggregation for purposes of meeting the \$75,000
amount-in-controversy for purposes of diversity jurisdiction, rather than
jurisdiction under CAFA.

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2. The Court likewise **DENIES** the Murdock's request for an award of \$3,500 in attorneys' fees.

IT IS SO ORDERED.

Dated: December 17, 2021



John W. Holcomb
UNITED STATES DISTRICT JUDGE