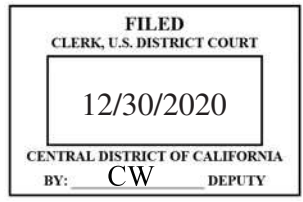


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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

**BRENT HESSELINK,**

**Plaintiff,**

**v.**

**AMERICAN FAMILY LIFE  
ASSURANCE COMPANY OF  
COLUMBUS and DOES 1-100**

**Defendants.**

**Case No.: SACV 20-02051-CJC(DFMx)**

**ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND [Dkt. 11]**

**I. INTRODUCTION & BACKGROUND**

Plaintiff Brent Hesselink brings this employment action against Defendant American Family Life Assurance Company of Columbus and unnamed Does. (Dkt. 1-1 [Complaint, hereinafter "Compl."].) He filed his complaint in California state court under the California Labor Code's Private Attorneys General Act ("PAGA"). (*Id.* ¶ 1.) He alleges several violations of the California Labor Code, including (1) failure to pay all

1 meal period wages and rest break wages, (2) failure to properly calculate and pay all  
2 minimum and overtime wages, (3) failure to provide accurate wage statements, (4) failure  
3 to pay all wages due and owed during employment and upon termination of employment,  
4 (5) failure to reimburse all necessary business expenses, and (6) misclassification as an  
5 independent contractor. (*Id.* ¶¶ 1, 3.) Plaintiff seeks statutory penalties under PAGA as  
6 well as attorney’s fees. (*Id.* at 8.)

7  
8 On October 24, 2020, Defendant filed a notice of removal asserting that this Court  
9 has diversity jurisdiction over Plaintiff’s claims. (Dkt. 1 [hereinafter “NOR”].) Now  
10 before the Court is Plaintiff’s motion to remand. (Dkt. 11 [hereinafter “Mot.”].) For the  
11 following reasons, Plaintiff’s motion is **GRANTED**.<sup>1</sup>

## 12 13 **II. LEGAL STANDARD**

14  
15 A defendant may remove a civil action filed in state court to a federal district court  
16 when the federal court would have had original jurisdiction over the action. 28 U.S.C.  
17 § 1441. Federal courts have diversity jurisdiction over cases where the amount in  
18 controversy exceeds \$75,000 and there is complete diversity of citizenship between the  
19 parties. 28 U.S.C. § 1332. The removal statute is strictly construed “against removal  
20 jurisdiction” and “[f]ederal jurisdiction must be rejected if there is any doubt as to the  
21 right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.  
22 1992). “The strong presumption against removal jurisdiction means that the defendant  
23 always has the burden of establishing that removal is proper.” *Id.* (quotations omitted).

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<sup>1</sup> Having read and considered the papers presented by the parties, the Court finds this matter appropriate  
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set  
for January 11, 2021, at 1:30 p.m. is hereby vacated and off calendar.

1 **III. DISCUSSION**

2  
3 Plaintiff argues that the Court lacks jurisdiction because Defendant has failed to  
4 establish both diversity of citizenship and an amount in controversy over \$75,000. The  
5 Court considers each argument in turn and concludes that remand is required.  
6

7 **A. Diversity of Citizenship**

8  
9 Plaintiff does not dispute that his citizenship is diverse from Defendant's as he is a  
10 citizen of California while Defendant is a citizen of both Nebraska and Georgia. Rather,  
11 Plaintiff argues that the Court should not focus its jurisdictional analysis on Plaintiff's  
12 individual citizenship because the real party in interest in PAGA cases is the State of  
13 California. Because a state is not a "citizen" for purposes of diversity jurisdiction under  
14 28 U.S.C. § 1332, Plaintiff contends that there is no basis for diversity jurisdiction. *See*  
15 *Postal Tel. Cable Co. v. State of Alabama*, 155 U.S. 482, 487 (1894) ("[A] suit between a  
16 state and a citizen . . . of another state is not between citizens of different states, and [the  
17 lower federal courts have] no jurisdiction of it [unless a federal question exists.]"). The  
18 Court disagrees.  
19

20 District courts in the Ninth Circuit "have considered the named plaintiff's  
21 citizenship, and not the state's, to be determinative of diversity jurisdiction in PAGA  
22 cases." *Prestwood v. Marriott Ownership Resorts, Inc.*, 2019 WL 2522674, at \*2 (C.D.  
23 Cal. June 18, 2019); *Solis v. Dunbar Armored, Inc.*, 2018 WL 259200, at \*2 (S.D. Cal.  
24 Jan. 2, 2018); *Chavez v. Time Warner Cable LLC*, 2016 WL 1588096, at \*2 (C.D. Cal.  
25 Apr. 20, 2016). While Plaintiff cites two Ninth Circuit opinions as support for his  
26 position, other district Courts have found these opinions inapposite. *E.g.*, *Solis*, 2018 WL  
27 259200, at \*2. First, in *Urbino v. Orkin Servs. of California, Inc.*, the plaintiff filed a  
28 representative PAGA claim, and the Ninth Circuit considered whether the claims of all

1 aggrieved employees represented by the plaintiff's PAGA claim could be aggregated to  
2 meet the amount-in-controversy requirement for diversity jurisdiction. 726 F.3d 1118,  
3 1123 (9th Cir. 2013). In holding that the claims could not be aggregated, the *Urbino*  
4 court declared that "[t]he state, as the real party in interest, is not a 'citizen' for diversity  
5 purposes." *Id.* But the court did not hold that the state is an actual party to the suit that  
6 must be considered when determining whether diversity of citizenship exists. *Prestwood*,  
7 2019 WL 2522674, at \*2 (noting that "Plaintiff takes that statement from *Urbino* out of  
8 context"). Indeed, the Ninth Circuit has held that "although California may be a real  
9 party in interest to a PAGA action, this does not convert California into an actual party to  
10 all PAGA litigation." *Archila v. KFC U.S. Properties, Inc.*, 420 F. App'x 667, 668 (9th  
11 Cir. 2011) (citations omitted) (unpublished) (citing *U.S. ex rel. Eisenstein v. City of New*  
12 *York, New York*, 556 U.S. 928, 934 (2009) ("[T]he United States' status as a 'real party in  
13 interest' in a *qui tam* action does not automatically convert it into a 'party'" when it "has  
14 declined to bring the action or intervene.")).

15  
16 Second, Plaintiff relies on *Baumann v. Chase Inv. Servs. Corp.*, where the Ninth  
17 Circuit addressed whether the district court had jurisdiction over a PAGA claim under the  
18 Class Action Fairness Act ("CAFA"). 747 F.3d 1117, 1124 (9th Cir. 2014). In holding  
19 that the district court could not exercise jurisdiction, the court noted that "[b]ecause an  
20 identical suit brought by the state agency itself would plainly not qualify as a CAFA class  
21 action, no different result should obtain when a private attorney general is the nominal  
22 plaintiff." *Id.* Like *Urbino*, however, *Baumann* does not hold "that in PAGA actions the  
23 state is always an actual party or that a representative plaintiff is always a nominal party,  
24 thereby precluding diversity jurisdiction." *Solis*, 2018 WL 259200, at \*2. Accordingly,  
25 the Court is unconvinced by Plaintiff's argument that in PAGA actions, courts must  
26 consider the citizenship of the state and not the named plaintiff when determining  
27 whether diversity jurisdiction exists.

1           **B.     Amount in Controversy**

2  
3           Plaintiff also contends that remand is appropriate because Defendant has not  
4 shown that the amount in controversy exceeds \$75,000. Specifically, Plaintiff argues that  
5 the Court may consider only Plaintiff’s share of PAGA penalties, and not the state’s  
6 share. The Court agrees.

7  
8           Under PAGA, civil penalties recovered by aggrieved employees are distributed as  
9 follows: “75 percent to the Labor and Workforce Development Agency [“LWDA”] and  
10 25 percent to the aggrieved employees.” Cal. Lab. Code § 2699(i). District courts in  
11 California disagree about whether the LWDA’s portion of potential PAGA penalties can  
12 be aggregated with an individual plaintiff’s portion of the penalties to determine the  
13 amount in controversy. *Compare, e.g., Lopez v. Ace Cash Express, Inc.*, 2015 WL  
14 1383535 (C.D. Cal. Mar. 24, 2015) (holding that the state’s 75% share is not aggregated);  
15 *Steenhuysen v. UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1069 (N.D. Cal. 2018) (same);  
16 *Adame v. Comtrak Logistics, Inc.*, 2016 WL 1389754, at \*5–6 (C.D. Cal. Apr. 7, 2016)  
17 (same); *Willis v. Xerox Bus. Servs., LLC*, 2013 WL 6053831, at \*9 (E.D. Cal. Nov. 15,  
18 2013) (same), *with, e.g., Patel v. Nike Retail Servs., Inc.*, 58 F. Supp. 3d 1032 (N.D. Cal.  
19 2014) (holding that the state’s 75% share can be aggregated with an individual plaintiff  
20 for purposes of satisfying the amount in controversy); *Mitchell v. Grubhub Inc.*, 2015 WL  
21 5096420, at \*5–6 (C.D. Cal. Aug. 28, 2015) (same). In arriving at opposing conclusions,  
22 these courts have differed in their interpretation of the Ninth Circuit’s decision in *Urbino*,  
23 726 F.3d at 1123.

24  
25           The Court agrees with the growing number of courts that have held the LWDA’s  
26 share cannot be aggregated with the aggrieved employee’s share for purposes of  
27 determining the amount in controversy. *See, e.g., Garcia v. Commonwealth Fin.*  
28 *Network*, 2020 WL 6886267, at \*4 (S.D. Cal. Nov. 24, 2020). The Ninth Circuit’s

1 opinion in *Urbino* explicitly rejected the argument that an aggrieved employee asserts  
2 “not his individual interest but rather the state’s collective interest in enforcing its labor  
3 laws.” *Id.* at 1122–23. “This language implies that, whether the state is deemed a  
4 nominal party or a real party in interest, its interest is not to be considered.” *Lopez*, 2015  
5 WL 1383535 at \*5. Moreover, the *Urbino* Court explained that when determining the  
6 amount in controversy, aggregation of claims is appropriate “when neither [party] can  
7 enforce [the claim] in the absence of the other.” *Urbino*, 726 F.3d at 1122. But PAGA  
8 “permits either the LWDA or the aggrieved employees to act independently to enforce  
9 the Labor Code.” *See Patel*, 58 F. Supp. at 1048 (N.D. Cal. 2014). Thus, *Urbino*’s  
10 language combined with the general presumption against diversity jurisdiction, lead the  
11 Court to conclude that the LWDA’s penalties should not be aggregated with Plaintiff’s  
12 penalties to determine the amount in controversy. As the court stated in *Urbino*, this is a  
13 “quintessential California dispute.” *Urbino*, 726 F.3d at 1123.

14  
15         Considering only 25 percent of the PAGA penalties sought by Plaintiff, the amount  
16 in controversy does not exceed \$75,000. For purposes of this analysis, the Court accepts  
17 Defendant’s calculations regarding the potential PAGA penalties that Plaintiff may  
18 recover, which at most amount to \$148,870. NOR at 8.<sup>2</sup> Twenty-five percent of this  
19 amount equals \$37,217.50, which is well below the \$75,000 amount-in-controversy  
20 requirement. Because Plaintiff also seeks attorney’s fees, Defendant suggests that the  
21 Court add 25 percent of Plaintiff’s possible recovery to the amount in controversy as an  
22 estimate of attorney’s fees that will arise during the course of litigation. (*See* NOR at 9;  
23 Dkt. 13 [Opposition] at 16.) But even if the Court were to consider these additional fees,  
24 Plaintiff’s claims would still fall short of satisfying the amount-in-controversy  
25 requirement. The Court therefore lacks jurisdiction over Plaintiff’s claims.

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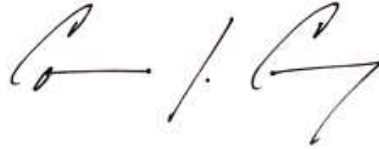
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<sup>2</sup> Plaintiff contests various aspects of Defendant’s calculations. (Mot. at 15–18.) However, because the Court concludes that the amount in controversy is below \$75,000 using Defendant’s calculations, it is unnecessary for the Court to consider Plaintiff’s arguments regarding the individual calculations.

1 **IV. CONCLUSION**

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3 For the foregoing reasons, Plaintiff's motion to remand is **GRANTED**.

4  
5 DATED: December 30, 2020



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6  
7 HON. CORMAC J. CARNEY

8  
9 UNITED STATES DISTRICT JUDGE