

1 **DISCUSSION**

2 Pursuant to Title 28 of the United States Code section 1441(a), a defendant may remove
3 an action to federal court if the district court has original jurisdiction. 28 U.S.C. § 1441(a);
4 Hunter v. Phillip Morris USA, 582 F.3d 1039, 1042 (9th Cir. 2009) (quoting Ansley v.
5 Ameriquest Mortg. Co., 340 F.3d 858, 861 (9th Cir. 2003)). If at any time before final judgment
6 it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. 28
7 U.S.C. § 1447(c). Here, Defendant removed this action based on diversity under 28 U.S.C. §§
8 1332(a), 1441, 1446.

9 District courts have original jurisdiction of all civil actions between citizens of different
10 States in which “the matter in controversy exceeds the sum or value of \$75,000, exclusive of
11 interest and costs.” 28 U.S.C. § 1332(a). In 2005, the Class Action Fairness Act ("CAFA") was
12 enacted and section 1332 was amended to expand diversity jurisdiction over class actions.
13 Yeroushalmi v. Blockbuster, Inc., No. CV 05-225-AHM (RCX), 2005 WL 2083008, at *1 (C.D.
14 Cal. July 11, 2005). Under Section 1332, diversity jurisdiction exists for traditional class actions
15 where there is complete diversity of citizenship and the amount in controversy *for an individual*
16 *plaintiff* is at least \$75,000, and in mass class actions where the aggregated monetary relief claims
17 of 100 or more persons exceeds \$5,000,000 and the parties satisfy minimal diversity. Abrego
18 Abrego v. The Dow Chemical Co., 443 F.3d 676, 680-81 (9th Cir. 2006) (citations omitted).

19 In determining whether diversity of citizenship exists and removal is proper, the court
20 considers the pleadings filed at the time of removal. Provincial Gov’t of Marinduque v. Placer
21 Dome, Inc., 582 F.3d 1083, 1085 n.5 (9th Cir. 2009). The operative complaint in this case is
22 Plaintiff’s First Amended Complaint (“FAC”) which alleges the following state law claims : (1)
23 failure to pay wages under Labor Code §§ 510 and 1194; (2) failure to provide accurate itemized
24 wage statements under Labor Code § 226; (3) failure to timely pay wages under Labor Code §§
25 201-203; (4) failure to timely pay wages during the course of employment under Labor Code §
26 204; (5) failure to reimburse expenses under Labor Code § 2802; (6) unfair competition pursuant
27 to Business & Professions Code § 17200; and (7) Civil Penalties under the Private Attorneys
28 General Act (“PAGA”). The FAC does not allege an amount of damages.

1 In this circuit, where the amount of damages are not specified in the complaint, it is the
2 removing party's burden to show by a preponderance of the evidence that the amount in
3 controversy exceeds the jurisdictional amount. Lewis v. Verizon Communications, Inc., 627 F.3d
4 395, 397 (9th Cir. 2010); Abrego Abrego, 443 F.3d at 679; Guglielmino v. McKee Foods Corp.,
5 506 F.3d 696, 699 (9th Cir. 2007). The amount in controversy is merely an estimate of the total
6 amount in dispute; and the Ninth Circuit expressly contemplates that the district court will
7 consider some evidentiary record in determining the amount in controversy. Lewis, 627 F.3d at
8 400.

9 In this case, it is clear that that the case does not meet the jurisdictional requirements of
10 CAFA as the amount of the claims do not exceed \$5,000,000.¹ It also does not appear that
11 jurisdiction is proper under diversity for traditional class actions pursuant to 28 U.S.C. § 1332(a)
12 because the amount in controversy for any one plaintiff does not exceed the minimal
13 jurisdictional amount of \$75,000. The Motion for Preliminary Approval of the Class Action
14 Settlement indicates that the maximum settlement amount is \$235,000 and that there are
15 approximately 150 members in the class. Thus, no individual plaintiff meets the \$75,000 amount.
16 Even if this Court were to consider the potential amount of damages, a review of the causes of
17 action and the maximum amount of Plaintiff's projected damages suggest this criteria cannot be
18 met given the class size. (Doc. 11, at pg. 13 lines 11-27).

19 "The removal statute is strictly construed against removal jurisdiction." Provincial Gov't
20 of Marinduque, 582 F.3d at 1087. If the district court determines that it lacks jurisdiction, the
21 action should be remanded back to the state court. Martin v. Franklin Capital Corp., 546 U.S.
22 132, 134 (2005).

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28 ¹ The Court notes that Defendant has not alleged this section as a basis for this Court's jurisdiction in its Notice of Removal . (Doc. 1).

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CONCLUSION AND ORDER

Accordingly, within fifteen days (15) of the date of this order, Defendant shall file a written response to this Order to Show Cause outlining why jurisdiction is proper. In the alternative, the parties may file a stipulation to remand this action to the Fresno County Superior Court.

IT IS SO ORDERED.

Dated: July 22, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE