

1 **BACKGROUND**

2 Plaintiff’s complaint asserts nine causes of action for violations of various provisions of
3 the California Labor Code, including failure to pay or timely pay overtime, rest and meal period
4 premiums, and final wages; to comply with wage statements; to keep requisite payroll records;
5 and to reimburse for business expenses. (Doc. No. 2-1, Compl.) Plaintiff’s tenth and final cause
6 of action is for violation of the California Business and Professions Code § 17200, *et seq.* (*Id.*
7 ¶ 26.) According to plaintiff, defendants engaged in a “pattern and practice” of violating
8 California wage-and-hour laws. (*Id.*) From May 2013 to May 2018, defendants allegedly
9 employed plaintiff as an hourly-paid or non-exempt employee in California and plaintiff now
10 seeks to be a class representative of other similarly-situated California employees who worked or
11 have been working for defendants at any time between October 2015 to the entry of final
12 judgment in this case. (*Id.* ¶¶ 13–14, 18–19.) Plaintiff does not know the membership of the
13 entire class but estimates there are over 50 class members. (*Id.* ¶ 16a.) Defendants claim in their
14 removal papers, however, that 256 full-time employees fit within plaintiff’s class definition in
15 2016; 297 full-time employees in 2017; 271 full-time employees in 2018; and 292 full-time
16 employees in 2019. (Doc. No. 2-2 ¶¶ 4–8.)

17 Plaintiff’s complaint does not specify the amount in controversy, either personally with
18 respect to plaintiff or in aggregate as to the putative class.¹ (*See* Doc. No. 2-1, Compl.) In the
19 absence of an allegation regarding the amount in controversy, defendants assert in their notice of
20 removal that they may be liable for up to \$6,605,324.34 in damages, including attorneys’ fees.
21 (Doc. Nos. 1 ¶ 11; 6-2 ¶ 14). This estimate of defendants’ potential liability is based on the
22 personal knowledge of Caroline Flood, an employee in defendants’ human resources department,
23 who has reviewed defendants’ employment records and plaintiff’s complaint. (Doc. Nos. 2-2
24 ¶¶ 1, 3–12; 6-2 ¶¶ 1, 4, 6–12.) In sum, defendants’ estimation of the amount in controversy is

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26 ¹ Nonetheless, plaintiff classified his complaint in the Kern County Superior Court as an
27 *unlimited* action. (*See* Doc. No. 2-1 at 1.) In California, such classification implies that the
28 amount in controversy exceeds \$25,000, or the case “otherwise violate[s] the necessary
conditions for classification as a limited civil case.” *Stratton v. Beck*, 9 Cal. App. 5th 483, 493
(2017) (alteration in original) (citation omitted).

1 calculated as follows:

2 Plaintiff's Claims	Estimated Class Damages 2016 to 2019
3 Claim for Unpaid Overtime	\$1,771,020.39
4 Claim for Meal Period Premiums	\$1,172,619.54
5 Claim for Rest Break Premiums	\$1,172,619.54
6 Claim for Wage Statement Penalties	\$1,168,000.00 (2019 only)
7 Subtotal	\$5,284,259.47
8 Attorneys' Fees Calculated at 25% Rate	\$1,321,064.87
9 Total	\$6,605,324.34 ²

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11 (Doc. Nos. 2-2 at 5; 6-2 ¶ 14.)

12 **LEGAL STANDARD**

13 A suit brought in state court may be removed to federal court if the federal court would
14 have had original jurisdiction over the suit. 28 U.S.C. § 1441(a); *see also Libhart v. Santa*
15 *Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979) (“The removal jurisdiction of the federal
16 courts is derived entirely from the statutory authorization of Congress.”). Under CAFA, federal
17 courts have original jurisdiction “over certain class actions, defined in [28 U.S.C.] § 1332(d)(1), if
18 the class has more than 100 members, the parties are minimally diverse, and the amount in
19 controversy exceeds \$5 million.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S.
20 81, 84–85 (2014) (citing *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013)).
21 “Congress enacted CAFA to ‘curb perceived abuses of the class action device which, in the view
22 of CAFA’s proponents, had often been used to litigate multi-state or even national class actions in
23 state courts.’” *Singh v. Am. Honda Fin. Corp.*, 925 F.3d 1053, 1067 (9th Cir. 2019) (quoting
24 *United Steel v. Shell Oil Co.*, 602 F.3d 1087, 1090 (9th Cir. 2010)). The Supreme Court has held
25 that there is “no presumption against removal jurisdiction [under CAFA] and that CAFA should
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27 ² This estimation excludes plaintiff’s other claims, such as “failure to reimburse expenses, failure
28 to timely pay wages at the time of termination, failure to timely pay wages during employment,
unpaid minimum wages, and failure to keep requisite payroll records.” (Doc. No. 6-2 ¶ 15.)

1 be read ‘with a strong preference that interstate class actions should be heard in a federal court if
2 properly removed by any defendant.’” *Allen v. Boeing Co.*, 784 F.3d 625, 633 (9th Cir. 2015)
3 (alteration in original) (quoting *Dart Cherokee*, 574 U.S. at 89).

4 “The burden of establishing removal jurisdiction, even in CAFA cases, lies with the
5 defendant seeking removal.” *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 847 (9th Cir.
6 2011) (citation omitted); *see also Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th
7 Cir. 2007) (“[T]he plaintiff is ‘master of her complaint’ and can plead to avoid federal
8 jurisdiction.”). “A defendant seeking removal must file in the district court a notice of removal
9 ‘containing a short and plain statement of the grounds for removal’” *Ibarra v. Manheim*
10 *Investments, Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015) (quoting 28 U.S.C. § 1446(a)). “[W]hen
11 a defendant seeks federal-court adjudication, the defendant’s amount-in-controversy allegation
12 should be *accepted* when *not contested* by the plaintiff or questioned by the court.’ “[A]
13 defendant’s notice of removal need include only a *plausible* allegation that the amount in
14 controversy exceeds the jurisdictional threshold,” and “need not contain evidentiary
15 submissions.” *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 922, 927 (9th Cir. 2019)
16 (emphasis added) (quoting *Dart Cherokee*, 574 U.S. at 87–89; *Ibarra*, 775 F. 3d at 1197); *see*
17 *also* 28 U.S.C.A. § 1446(c)(2) (With certain exceptions, “the sum demanded in good faith in the
18 initial pleading shall be deemed to be the amount in controversy”).

19 “Evidence establishing the amount is required by § 1446(c)(2)(B) only when the plaintiff
20 contests, or the court questions, the defendant’s allegation.” *Dart Cherokee*, 574 U.S. at 89. If
21 evidence is required, “[b]oth parties may submit evidence supporting the amount in controversy
22 before the district court rules.” *Harris v. KM Indus., Inc.*, 980 F.3d 694, 699 (9th Cir. 2020).
23 Nonetheless, the defendant seeking removal bears the ultimate burden of showing “by a
24 preponderance of the evidence that the aggregate amount in controversy exceeds \$5 million when
25 federal jurisdiction is challenged.” *Ibarra*, 775 F. 3d at 1197; *see also Sanchez v. Monumental*
26 *Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996) (observing that a preponderance of the evidence
27 means “it is ‘more likely than not’ that the amount in controversy exceeds” the jurisdictional
28 threshold.). This burden may be satisfied by submitting “affidavits or declarations, or other

1 ‘summary-judgment-type evidence relevant to the amount in controversy at the time of
2 removal,’” *Ibarra*, 775 F. 3d at 1197, or by relying on a chain of reasoning that includes
3 reasonable assumptions. *LaCross v. Knight Transp. Inc.*, 775 F.3d 1200, 1202 (9th Cir. 2015);
4 *see also Arias*, 936 F.3d at 925 (holding that “[a]n assumption may be reasonable if it is founded
5 on the allegations of the complaint.”). Removal is proper “if the district court finds, by a
6 preponderance of the evidence, that the amount in controversy exceeds” the jurisdictional
7 threshold. *Dart Cherokee*, 574 U.S. at 88 (citations omitted).

8 The amount in controversy is *not* the amount of damages that plaintiff will likely recover,
9 *see Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018), nor is it “a prospective
10 assessment of defendant’s liability,” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 401 (9th
11 Cir. 2010). Rather, it “is simply an estimate of the total amount in dispute.” *Id.* Thus, the
12 amount in controversy merely “reflects the maximum recovery the plaintiff *could reasonably*
13 *recover.*” *Arias*, 936 F.3d at 927 (emphasis added).

14 ANALYSIS

15 Defendants claim that the court has CAFA jurisdiction over this action because there is
16 minimal diversity between the parties, at least 101 class members,³ and over \$5 million is in
17 controversy (exclusive of interest and costs). (Doc. Nos. 1 ¶¶ 4–5, 10–11; 2-2 ¶¶ 4–8.) The only
18 issue before the court in resolving the pending motion is the amount in controversy. More
19 precisely, plaintiff argues that “all of Defendants’ calculations [as to the amount in controversy]
20 should be disregarded” because they are based on speculations and assumptions. (Doc. No. 3 at
21 5–6, 8.) For reasons explained below, the court concludes that defendants have failed to meet
22 their burden of establishing, by a preponderance of the evidence, the amount in controversy as to
23 plaintiff’s wage statement claim and attorneys’ fees in connection with that claim.⁴

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25 ³ Flood states that “Defendant Avantor does not have any employees who fall within” plaintiff’s
26 putative class definition. (Doc. Nos. 2-2 ¶ 8; 6-2 ¶ 4e.) It appears, therefore, that all members of
27 plaintiff’s proposed class are current or were former employees of defendant NuSil only. (*See*
28 Doc. Nos. 2-2 ¶¶ 4–7; 6-2 ¶¶ 4a–d.)

⁴ The court need not and does not address the other aspects of defendants’ estimated amount in
controversy based on other claims.

1 **A. Claim for Wage Statement Penalties (7th Cause of Action)**

2 Plaintiff's seventh claim is based on defendants' alleged intentional and willful failure to
3 provide plaintiff and the putative class members with "complete and accurate wage statements" of
4 the total number of work hours. (Doc. No. 2-1, Compl. ¶ 97.) In California, employers must
5 furnish their employees with "an accurate itemized statement in writing" showing, among other
6 things, gross wages earned, hourly rates, and the corresponding number of hours worked at each
7 hourly rate. Cal. Lab. Code § 226(a). If an employer knowingly and intentionally fails to do so,
8 the employee suffering injury "is entitled to recover the greater of all actual damages or fifty
9 dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100)
10 per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of
11 four thousand dollars (\$4,000)." Cal. Lab. Code § 226(e).

12 Defendants argue that \$1,168,000 is the maximum amount in dispute which plaintiff could
13 reasonably recover were plaintiff to prevail on the seventh claim, which is calculated as follows:
14 \$4,000 in maximum statutory penalty x 292 full-time employees in 2019 = \$1,168,000.⁵ (Doc.
15 Nos. 2-2 ¶ 7; 6 at 10; 6-2 ¶ 13; *see also* Doc. No. 2-1, Compl. ¶¶ 95–101.) There are three
16 assumptions underlying this estimate advanced by defendants: (1) a \$4,000 maximum statutory
17 penalty; (2) the number of full-time employees defendants had in 2019; (3) and a 100% violation
18 rate of § 226(a) as to all of defendants' full-time employees in 2019.

19 In support of the second assumption, defendants' employee Flood declares, based on her
20 experience working in defendants' human resources departments and review of the relevant
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22 ⁵ Defendants argue that this calculation is "conservative" because it includes only "those
23 employees at NuSil" in 2019, and *not* those from 2016 to 2018. (Doc. No. 6 at 10.) It is
24 questionable whether the penalties under California Labor Code § 226(e) is recoverable for events
25 preceding 2019 since a claim for such penalties would be subject to California Code of Civil
26 Procedure § 340's one-year time limitations, and plaintiff filed the complaint in the Kern County
27 Superior Court in January 2020 (Doc. No. 2-1 at 3). *See Soto v. Tech Packaging, Inc.*, No. ED
28 CV 19-1766-MWF, 2019 WL 6492245, at *6 (C.D. Cal. Dec. 3, 2019) ("Claims for penalties
under section 226 are subject to a one-year statute of limitations."); *Falk v. Children's Hosp. Los
Angeles*, 237 Cal. App. 4th 1454, 1469 (2015) (applying California Code of Civil Procedure §
340 to determine whether a claim for penalties under California Labor Code § 226(e) is time-
barred). The court need not reach this issue, however, since defendants have neither argued nor
demonstrated that § 226(e) penalties preceding 2019 should be included in their calculation of the
amount in controversy. (*See* Doc. Nos. 2-2 at 5; 6 at 10.)

1 employment records, that there were 292 employees in 2019 who fit plaintiff’s definition of the
2 putative class. (Doc. No. 6–2 ¶ 4d.) The court finds this assumption reasonable and supported by
3 the evidence presented.

4 As for the first and third assumptions upon which defendants’ calculation relies, plaintiff
5 contends that defendants have not established the factual basis for those assumptions by a
6 preponderance of the evidence. (Doc. Nos. 3 at 8–9; 7 at 5–6.) The court agrees in part.
7 Defendants have failed to establish the assumption on the \$4,000 in maximum statutory penalty
8 by a preponderance of the evidence.⁶ (See Doc. Nos. 6 at 10; 6–2 ¶ 13.) There is neither
9 evidence nor allegations in plaintiff’s complaint to support that assumption, and defendants point
10 to none in their opposition to the pending motion. (See Doc. Nos. 2-1, Compl.; 2-2, 6-2.) Thus,
11 defendants’ assumption of a maximum statutory penalty is unreasonable and must be disregarded.
12 See, e.g., *Garcia v. Shasta Beverages Inc.*, No. CV 19-10222 PA (AFMx), 2020 WL 598508, at
13 *4–5 (C.D. Cal. Feb. 5, 2020) (holding that the defendants have failed to establish \$4,000 in
14 maximum statutory penalty by a preponderance of the evidence in calculating the amount in
15 controversy under CAFA); *Zamarripa v. Superior Talent Res., Inc.*, No. SA CV 19-0982-DOC
16 (MAAx), 2019 WL 3246502, at *5 (C.D. Cal. July 19, 2019) (holding that “it is unreasonable to
17 assume \$4,000 in statutory damages is in dispute for each Class Member.”); *Marshall v. Faneuil*,

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19 ⁶ As to the third assumption, district courts in this circuit have found a 100% violation rate to be
20 reasonable in calculating the amount in dispute of a wage statement claim under certain
21 circumstances. For example, if an employer is alleged to have failed to consistently and
22 accurately itemize the unpaid meal or rest periods of its employees’ wage statements, since a
23 wage statement claim is a “derivative” of the allegations of meal or rest period violations.
24 *Gipson*, 2020 WL 4048503, at *8; see, e.g., *Hender v. Am. Directions Workforce LLC*, No. 2:19-
25 cv-01951-KJM-DMC, 2020 WL 5959908, at *7 (E.D. Cal. Oct. 8, 2020) (holding that one meal
26 or one rest period violation per week “serve[s] as the basis for a calculation of wage statement
27 penalties based on a 100 percent violation rate.”); *Cavada v. Inter-Cont’l Hotels Grp., Inc.*, No.
28 19CV1675-GPC(BLM), 2019 WL 5677846, at *8 (S.D. Cal. Nov. 1, 2019) (“[S]ince one missed
meal and rest period was reasonable, that would mean that every wage statement was inaccurate
and subject to the penalties.”); *Archuleta v. Avcorp Composite Fabrication, Inc.*, No. CV 18-8106
PSG (FFMx), 2018 WL 6382049, at *6 (C.D. Cal. Dec. 6, 2018) (“To accept the assumption that
employees’ wage statements were inaccurate during each pay period, one needs only assume that
each employee worked at least one day per pay period.”). Although the 100% violation rate
presumed by defendants here *may* be reasonable in light of the foregoing, the court need not reach
that issue in light of the conclusions reached above.

1 *Inc.*, No. 2:17-cv-01975-KJM-CKD, 2018 WL 3738372, at *3 (E.D. Cal. Aug. 7, 2018) (holding
2 the “assumption that plaintiff will recover the statutory maximum penalty for each pay period . . .
3 is not supported by the evidence defendant presents” and, as a result, the defendants have failed to
4 meet their burden).

5 More significantly, the evidence submitted by defendants demonstrates that they could *not*
6 have incurred \$4,000 in maximum statutory penalty per employee in a year. For instance, their
7 employee Flood attests that there are “26 pay periods in each year,” suggesting that defendants
8 could have only provided a maximum of 26 *inaccurate* wage statements each year per employee.
9 (Doc. No. 6-2 ¶ 5.) It follows that the maximum penalty plaintiff could recover under § 226(e) on
10 behalf of each proposed class member in a year is \$2,550 (1st violation x \$50 + 25 remaining
11 violations x \$100). However, it would not be appropriate for the court to assume an alternative
12 penalty of \$2,550 to be reasonable. As the Ninth Circuit has instructed, district courts “should
13 weigh the reasonableness of the removing party’s assumptions, *not* supply further assumptions of
14 its own.” *Harris*, 980 F.3d at 701 (emphasis added). Therefore the court will exclude the
15 \$1,168,000 in its entirety thereby reducing defendants’ estimated amount in controversy to
16 \$5,437,324.34.⁷

17 **B. The Amount of Attorneys’ Fees in Controversy**

18 “[A] court must include future attorneys’ fees recoverable by statute or contract when
19 assessing whether the amount-in-controversy requirement is met.’ The defendant retains the
20 burden, however, of proving the amount of future attorneys’ fees by a preponderance of the
21 evidence.” *Arias*, 936 F.3d at 927 (quoting *Fritsch v. Swift Transportation Co. of Arizona, LLC*,
22 899 F.3d 785, 788, 794 (9th Cir. 2018)). In his complaint, plaintiff seeks the award of attorneys’
23 fees under various provisions of the California Labor Code and Code of Civil Procedure. (Doc.
24 No. 2-1, Compl. ¶¶ 8, 15, 27, 48, 51, 56.) There is no dispute between the parties that attorneys’
25 fees are recoverable under these statutes (*see* Doc. Nos. 3, 6, 7). In dispute, however, is whether
26 defendants have established by a preponderance of the evidence that the attorneys’ fees in
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28 ⁷ \$6,605,324.34 - \$1,168,000 = \$5,437,324.34. (*See* Doc. Nos. 2-2 at 5; 6-2 ¶ 14.)

1 controversy should be calculated at a rate of 25%. (Doc. No. 7 at 3–4; *see also* Doc. Nos. 1 ¶ 11;
2 2-2 ¶ 11; 6-2 ¶ 11.)

3 Here, defendants submit no evidence to justify the proposed 25% rate for attorneys’ fees
4 in controversy. (*See* Doc. Nos. 1, 2-2, 6-2.) Rather, they argue that the rate constitutes a
5 “reasonable assumption” of attorneys’ fees at the pleading stage as a matter of law regardless of
6 the lack of evidence to support that percentage award. (Doc. No. 6 at 2, 5.) However, the Ninth
7 Circuit has rejected calculation of attorneys’ fees in controversy for purposes of CAFA at a 25%
8 rate as a matter of law, and held instead that “the defendant *must* prove the amount of attorneys’
9 fees at stake by a preponderance of the evidence,” noting that courts “may *not* relieve the
10 defendant of its evidentiary burden by adopting a *per se* rule for one element of the amount at
11 stake in the underlying litigation.” *Fritsch*, 899 F.3d at 796 (emphasis added).

12 There is a split among district courts in California as to whether to automatically calculate
13 attorneys’ fees in controversy at a 25%, or a different rate, without evidence in light of the
14 decision in *Fritsch*. *See Avila v. Rue21, Inc.*, 432 F. Supp. 3d 1175, 1193–94 (E.D. Cal. 2020)
15 (recognizing the split among district courts in California as to whether attorneys’ fees in
16 controversy should be calculated at a 25% rate even without evidence establishing such rate).
17 *Compare Ramos v. MOOG Inc.*, No. CV 19-10775-AB (SSX), 2020 WL 969023, at *4 (C.D. Cal.
18 Feb. 27, 2020) (adopting a 13.86% rate in attorneys’ fees in controversy without evidence
19 establishing such rate); *Kastler v. Oh My Green, Inc.*, No. 19-cv-02411-HSG, 2019 WL 5536198,
20 at *7 (N.D. Cal. Oct. 25, 2019) (adopting a 15% rate in determining the attorneys’ fees in
21 controversy, without evidence, based on custom and experience); *Cortez v. United Nat. Foods,*
22 *Inc.*, No. 18-CV-04603-BLF, 2019 WL 955001, at *5 (N.D. Cal. Feb. 27, 2019) (applying a 25%
23 rate in determining the attorneys’ fees in controversy because, “[p]laintiff does not raise any
24 factors counseling against the application of the 25% benchmark,” and the record does not reflect
25 “a departure from this benchmark.”); *Ramirez v. Benihana Nat’l Corp.*, No. 18-cv-05575-MMC,
26 2019 WL 131843, at *2 (N.D. Cal. Jan. 8, 2019) (same) *with Garcia v. Shasta Beverages Inc.*,
27 No. CV 19-10222 PA (AFMx), 2020 WL 598508, at *7 (C.D. Cal. Feb. 5, 2020) (disregarding
28 the proposed 25% rate in attorneys’ fees in controversy for lack of evidentiary support); *Snow v.*

1 *Watkins & Shepard Trucking, Inc.*, No. ED CV 18-2206-DMG (SPx), 2019 WL 1254571, at *4
2 (C.D. Cal. Mar. 18, 2019) (same); *Zamarripa*, 2019 WL 3246502, at *6 (same). It is the
3 undersigned’s view that in *Fritsch* the Ninth Circuit required that any rate of attorneys’ fees in
4 controversy be established by a preponderance of the evidence. *See Gipson v. Champion Home*
5 *Builders, Inc.*, No. 1:20-cv-00392-DAD-SKO, 2020 WL 4048503, at *9 (E.D. Cal. July 20, 2020)
6 (“Consistent with the Ninth Circuit’s opinion in *Fritsch*, the court will not relieve defendant of its
7 evidentiary burden in this regard.”); *Castillo v. Trinity Servs. Grp., Inc.*, No. 1:19-cv-01013-
8 DAD-EPG, 2020 WL 3819415, at *9 (E.D. Cal. July 8, 2020) (same); *Avila*, 432 F. Supp. 3d at
9 1193 (same).

10 Here, because defendants have failed to establish the proposed 25% rate in attorneys’ fees
11 in controversy by a preponderance of the evidence, the court will decline to incorporate
12 defendants’ proposed rate into the amount-in-controversy calculation. *See, e.g., Arias*, 936 F.3d
13 at 928 (declining to calculate attorneys’ fees in controversy at a 25% rate without evidentiary
14 support); *Schwarz v. Triwest Healthcare All. Corp.*, No. 2:20-cv-00312 KJM EFB, 2020 WL
15 4195778, at *4 (E.D. Cal. July 21, 2020) (same); *Salazar v. PODS Enters., LLC*, No. 19-cv-260-
16 MWF-KKx, 2019 WL 2023726, at *9 (C.D. Cal. May 8, 2019) (same). *But see, e.g., Felipe*
17 *Vasquez v. RSI Home Products, Inc., et. al.*, No. 8:20-cv-01494-JWH-JDEx, 2020 WL 6778772,
18 at *10 (C.D. Cal. Nov. 12, 2020) (relying on court awards of attorneys’ fees to plaintiff’s attorney
19 in two previous class action cases as evidence supporting a finding that a 25% rate is reasonable);
20 *Lopez v. First Student, Inc.*, 427 F. Supp. 3d 1230, 1238 (C.D. Cal. 2019) (same); *Gonzalez v.*
21 *Comenity Bank*, No. 1:19-cv-00348-AWI-EPG, 2019 WL 5304925, at *11 (E.D. Cal. Oct. 21,
22 2019) (factoring attorneys’ fees into the amount-in-controversy calculus based on counsel’s
23 affidavit stating his hourly rate and the court’s knowledge of customary rates in comparable
24 cases); *Reyes v. Staples Office Superstore, LLC*, 2019 WL 4187847, at *5 (C.D. Cal. Sept. 3,
25 2019) (same). Without the proposed 25% rate in attorneys’ fees in controversy, or \$1,321,064.87,
26 defendants’ estimated total amount in controversy is reduced to \$4,116,259.47—well below the

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1 jurisdictional threshold.⁸ (Doc. Nos. 2-2 at 5; 6-2 ¶ 14.) Moreover, even if the court were to
2 assume a 15% attorneys' fee award, or \$617,438.92,⁹ was *per se* reasonable, *see Kastler*, 2019
3 WL 5536198, at *7, and add that into the reduced amount in controversy, that would still put the
4 total amount in controversy at \$4,733,698.39 – below the threshold amount.¹⁰ *But see Harris*,
5 980 F.3d at 701 (holding that courts should “*not* supply further assumptions of its own,” and
6 should only weigh the reasonableness of the assumptions given by the removing party).

7 **CONCLUSION**

8 Because defendants have failed to establish that the amount in controversy exceeds \$5
9 million, as required by § 1332(d)(1), the court has no CAFA jurisdiction over this action. The
10 court declines to reach defendants' remaining amount-in-controversy calculation based on the
11 other claims and costs.¹¹ Because defendants have failed to satisfy their burden of establishing
12 removal jurisdiction by a preponderance of the evidence, plaintiff's motion to remand (Doc. No.
13 3) is GRANTED. This lawsuit is hereby REMANDED to the Kern County Superior Court.

14 IT IS SO ORDERED.

15 Dated: March 30, 2021

16 
UNITED STATES DISTRICT JUDGE

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18 ⁸ \$5,437,324.34 (without the wage statement claim) - \$1,321,064.87 in attorneys' fees in
19 controversy = \$4,116,259.47. (*See supra* note 7.)

20 ⁹ \$4,116,259.47 x 0.15 = \$617,438.92.

21 ¹⁰ \$4,116,259.47 (without the wage statement claim and attorneys' fees in controversy) +
22 \$617,438.92 in attorneys' fees in controversy = \$4,733,698.39.

23 ¹¹ In addition to the other claims, defendants suggest that between \$33,000 and \$150,000 in costs
24 for appointment of receiver should be included in the amount-in-controversy calculus, given that
25 plaintiff seeks the appointment of a receiver as relief in the complaint. (Doc. No. 6-1, Fassett
26 Decl. ¶¶ 4–6.) It is unclear, however, if such costs should be incorporated as part of an amount in
27 controversy. *See Fritsch*, 899 F.3d at 793 (defining “amount in controversy” to include “damages
28 (compensatory, punitive, or otherwise), the costs of complying with an injunction, and attorneys’
fees awarded under fee-shifting statutes or contract,” but exclusive of “any interests and [other]
costs”). Nevertheless, even if \$150,000 in costs for appointing a receiver is added to the reduced
amount in controversy of \$4,116,259.47, defendants still fall short of the \$5 million jurisdictional
threshold.