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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANNY PAYNE,

Plaintiff,

v.

C&S WHOLESALE GROCERS, INC.,
a Vermont corporation, TRACY
LOGISTICS, LLC, an unknown
business entity, and Does 1 through
11, inclusive,

Defendants.

No. 2:13-cv-02153-MCE-KJN

MEMORANDUM AND ORDER

Through this action, Plaintiff Danny Payne (“Plaintiff”) seeks relief from Defendants C&S Wholesale Grocers, Inc. (“C&S”) and Tracy Logistics, LLC (“Tracy Logistics”) (collectively “Defendants”) for violations of the California Labor Code and California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq. Plaintiff originally filed his Complaint in the Superior Court of California, County of Los Angeles. On August 29, 2013, Defendants removed Plaintiff’s case to the United States District Court for the Central District of California pursuant to the Court’s diversity jurisdiction. On October 17, 2013, the case was transferred from the Central District of California to the Eastern District of California.

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1 Presently before the Court is Plaintiff's Motion to Remand ("Motion"). Mot., Oct. 1, 2013,
2 ECF No. 16. For the reasons set forth below, Plaintiff's Motion is DENIED.¹

3
4 **BACKGROUND²**

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6 Defendant Tracy Logistics has employed Plaintiff as a Warehouse Supervisor at
7 its Stockton Facility since August 2011. Generally speaking, Plaintiff alleges that he was
8 hired by Defendants, misclassified as an "exempt" employee, and paid on a salary basis
9 without any compensation for overtime hours worked, missed meal periods, or rest
10 breaks.

11 Plaintiff further claims that he worked over eight hours per day, and/or more than
12 forty hours per week during the course of his employment with Defendants. According to
13 Plaintiff, although Defendants knew or should have known that he was entitled to receive
14 certain wages as overtime compensation, he did not receive such wages. Plaintiff also
15 asserts he did not receive all his rest and meal periods; nor did he receive one additional
16 hour of pay when he missed a meal period. Additionally, while Defendants knew or
17 should have known that Plaintiff was entitled to receive at least minimum wages as
18 compensation, he did not receive at least minimum wages for all hours worked.

19 Plaintiff goes on to allege that he was entitled to timely payment of all wages
20 during his employment and to timely payment of wages earned upon termination of his
21 employment, but he did not receive timely payment of these wages either during his
22 employment or upon termination. Likewise, Defendants did not provide Plaintiff with
23 complete and accurate wage statements, although Defendants knew or should have
24 known that Plaintiff was entitled to these statements.

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27 ¹ Because oral argument would not be of material assistance, the Court ordered this matter
submitted on the briefs pursuant to E.D. Cal. Local Rule 230(g).

28 ² The following recitation of facts is taken, at times verbatim, from Plaintiff's Complaint.

1 Plaintiff also asserts that Defendants failed to keep complete and accurate payroll
2 records. Finally, Defendants falsely represented to Plaintiff that the wage denials were
3 proper. Instead, according to Plaintiff, these wage denials were improper and served the
4 purpose of increasing Defendants' profits.

5 These claims were brought by a different plaintiff in a class action in state court,
6 Tompkins v. C&S Wholesale Grocers, Inc., on February 3, 2011.³ On March 14, 2011,
7 the defendants in the Tompkins action removed the case to federal court, asserting
8 diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). The Tompkins plaintiff then moved
9 to remand the case, on the grounds that the operative complaint alleged an amount in
10 controversy below the \$75,000 threshold. The Court granted the plaintiff's motion to
11 remand, finding that there was insufficient evidence to show that the amount in
12 controversy for the plaintiff's individual claims exceeded \$75,000. The defendants again
13 removed the case to federal court on October 26, 2011, based on discovery conducted
14 prior to that date. The Tompkins plaintiff again moved to remand, and the Court again
15 granted the plaintiff's motion on the grounds that the defendants had not met their
16 burden of proving that the amount in controversy on the plaintiff's individual claims
17 exceeded the jurisdictional threshold.

18 On June 15, 2012, after the Court remanded the case a second time, the
19 Tompkins defendants deposed the named plaintiff in that case, David Tompkins. On
20 September 21, 2012, the defendants offered Mr. Tompkins a Joint Offer to Compromise
21 under California Civil Procedure Code § 998(b)(2), in the amount of \$75,001.00.
22 Mr. Tompkins accepted the Joint Offer on October 3, 2012.

23 The subject wage and hour claims were subsequently brought in a new class
24 action, Bicek v. C&S Wholesale Grocers, Inc., No. 13-cv-00411, on behalf of the same
25 putative class. Bicek, which is also before this Court, is a class action which this Court
26 has jurisdiction over pursuant to the Class Action Fairness Act.

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28 ³ All facts relating to the Tompkins action are taken from Defendants' Opposition to Plaintiff's
Motion to Remand. ECF No. 14.

STANDARD

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3 There are two bases for federal subject matter jurisdiction: (1) federal question
4 jurisdiction under 28 U.S.C. § 1331 and (2) diversity jurisdiction under 28 U.S.C. § 1332.
5 A district court has federal question jurisdiction in “all civil actions arising under the
6 Constitution, laws, or treaties of the United States.” Id. § 1331. A district court has
7 diversity jurisdiction “where the matter in controversy exceeds the sum or value of
8 \$75,000, . . . and is between citizens of different states, or citizens of a State and citizens
9 or subjects of a foreign state” Id. § 1332(a)(1)-(2). Diversity jurisdiction requires
10 complete diversity of citizenship, with each plaintiff being a citizen of a different state
11 from each defendant. 28 U.S.C. § 1332(a)(1); Caterpillar, Inc. v. Lewis, 519 U.S. 61, 68
12 (1996) (stating that complete diversity of citizenship is required).

13 When a party brings a case in state court in “which the district courts of the United
14 States have original jurisdiction,” the defendant may remove it to the federal court
15 “embracing the place where such action is pending.” 28 U.S.C. § 1441(a). “The party
16 invoking the removal statute bears the burden of establishing federal jurisdiction.”
17 Ethridge v. Harbor House Rest., 861 F.2d 1389, 1393 (9th Cir. 1988) (citing Williams v.
18 Caterpillar Tractor Co., 786 F.2d 928, 940 (9th Cir. 1986)). A motion to remand is the
19 proper procedure for challenging removal. “The party invoking the removal statute bears
20 the burden of establishing federal jurisdiction.” Ethridge, 861 F.2d at 1393 (internal
21 citations omitted). Courts “strictly construe the removal statute against removal
22 jurisdiction.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (internal citations
23 omitted). “[I]f there is any doubt as to the right of removal in the first instance,” the court
24 must grant the motion for remand. Id. Additionally, “[i]f at any time before final judgment
25 it appears that the district court lacks subject matter jurisdiction, the case shall be
26 remanded” to state court. 28 U.S.C. § 1447(c).

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1 **ANALYSIS**

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3 Defendants removed the instant case pursuant to the Court’s diversity jurisdiction.
4 As set forth above, a district court has diversity jurisdiction “where the matter in
5 controversy exceeds the sum or value of \$75,000, . . . and is between citizens of
6 different states, or citizens of a State and citizens or subjects of a foreign state” Id.
7 § 1332(a)(1)-(2).

8 **1. Citizenship**

9 Diversity jurisdiction requires complete diversity of citizenship, with each plaintiff
10 being a citizen of a different state from each defendant. 28 U.S.C. § 1332(a)(1);
11 Caterpillar, Inc. v. Lewis, 519 U.S. 61, 68 (1996) (stating that complete diversity of
12 citizenship is required).

13 Here, it is clear that Plaintiff is a citizen of California. The complaint alleges that
14 “Plaintiff Danny Payne is an individual residing in the State of California.” ECF No. 2-1 at
15 3. The Notice of Removal also states that “Plaintiff alleges that he ‘is an individual
16 residing in the State of California’ Therefore, Plaintiff was domiciled in the State
17 of California at the time he filed this action and is a citizen of California for the purposes
18 of diversity jurisdiction in this matter.” ECF No. 1 at 6-7.

19 C&S is a corporation, and thus has dual citizenship for diversity purposes. See
20 28 U.S.C. § 1332(c). A corporation is a citizen both of the state where it was
21 incorporated and the state where it has its primary place of business. Id. Because C&S
22 is incorporated in Vermont with its principal place of business in New Hampshire, it is a
23 citizen of Vermont and New Hampshire for purposes of diversity jurisdiction.

24 Next is the issue of Tracy Logistics’ citizenship. For purposes of diversity
25 jurisdiction in a case removed pursuant to 28 U.S.C. § 1441, “like a partnership, an LLC
26 is a citizen of every state of which its owners/members are citizens.” Johnson v.
27 Columbia Properties Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006) (citations
28 omitted). Defendants’ removal papers make clear that Tracy Logistics is diverse from

1 Plaintiff. ECF No. 1 at 7-8. Tracy Logistics is owned by its sole member, C&S Logistics
2 of Sacramento/Tracy LLC, which in turn is wholly owned by its sole member, C&S
3 Acquisitions LLC. C&S Acquisitions LLC is wholly owned by its sole member, C&S
4 Wholesale Grocers, Inc., which is a citizen of both Vermont and New Hampshire. Tracy
5 Logistics, like C&S Wholesale Grocers, Inc., is therefore a citizen of Vermont and New
6 Hampshire.

7 Thus, because Plaintiff is a citizen of California, while Defendants are citizens of
8 Vermont and New Hampshire, there is complete diversity between Plaintiff and
9 Defendants.

10 **2. Amount in Controversy**

11 **a. Defendants' Burden**

12 Defendants contend that the standard for establishing the amount in controversy
13 is a preponderance of the evidence. Plaintiff, on the other hand, takes the position that
14 the Court lacks jurisdiction because he alleges that the amount in controversy for his
15 individual claims is less than \$75,000 and Defendants have failed to prove with legal
16 certainty that the jurisdictional amount is met. Specifically, the Complaint states in the
17 Jurisdiction and Venue allegations that “the ‘amount in controversy’ for the named
18 Plaintiff, including claims for compensatory damages, restitution, penalties, and pro rata
19 share of attorneys’ fees is less than [\$75,000].” Compl. at 2. No specific amount is
20 stated in Plaintiff’s prayer for relief. See Compl. at 19-23. The prayer for relief lists civil
21 and statutory penalties; reasonable attorneys’ fees and costs of the suit; actual,
22 consequential, and incidental losses and damages; and other and further relief as the
23 Court deems just and proper.

24 For the reasons set forth in the related case Cagle v. C&S Wholesale Grocers,
25 Inc., No. 2:13-cv-02134, in the Court’s Order issued February 19, 2014, ECF No. 24, the
26 Court finds that the standard for determining whether Defendants meet their burden of
27 establishing the amount in controversy is the preponderance of the evidence. Under this
28 standard, “the removing party’s burden is ‘not daunting,’ and defendants are not

1 obligated to ‘research, state, and prove the plaintiff’s claims for damages.’” Behrazfar v.
2 Unisys Corp., 687 F. Supp. 2d 999, 1004 (C.D. Cal. 2009) (quoting Korn v. Polo Ralph
3 Lauren Corp., 536 F. Supp. 2d 1199, 1204-05 (E.D. Cal. 2008)). When a “[d]efendant’s
4 calculations [are] relatively conservative, made in good faith, and based on evidence
5 wherever possible,” the court may find that the “[d]efendant has established by a
6 preponderance of the evidence that the amount in controversy” is met. Id. (citing
7 Neville v. Value City Dep’t Stores, LLC., No. 07-cv-53-DRH, 2008 WL 2796661, *5-6
8 (S.D. Ill. July 18, 2008); Eisler v. Med. Shoppe Int’l, Inc., No. 4:05CV2272 JCH, 2006 WL
9 415953, *2 (E.D. Mo. 2006)).

10 **b. Amount in Controversy Calculations**

11 Plaintiff takes issue with Defendants’ calculation of the amount in controversy for
12 Plaintiff’s overtime claim, asserting that “each figure required to calculate overtime
13 damages (hours worked, workweeks, and salary) is offered by Defendants without any
14 competent evidence.” ECF No. 16 at 9.

15 However, in support of Defendants’ Opposition to the Motion, Defendants offer
16 Plaintiff’s deposition testimony, as well as the declarations of certain C&S employees.
17 First, Christopher Clark, the Regional Director of Field Human Resources for C&S,
18 testified that Plaintiff was employed at the Stockton facility for approximately 104
19 workweeks, from August 29, 2011, through the date of Clark’s declaration, October 10,
20 2013. Clark Decl. at 2-3. From August 29, 2011, to August 29, 2013, Plaintiff earned an
21 average salary of \$28.16. Clark Decl. at 2. The Court accepts this, for purposes of
22 calculating the amount in controversy, as sufficient evidence of Plaintiff’s salary and
23 number of weeks worked.

24 Plaintiff testified that during his first year at the Stockton facility, he generally
25 worked five days per week, from approximately 2:00 PM to 7:00 AM, or 17 hours per
26 day. Payne Dep. at 38-39. He stated that he typically worked “15-, 16-hour days,
27 sometimes longer.” Payne Dep. at 39. Thus, for 52 weeks, beginning on August 29,
28 2011, the Court estimates that, at a minimum Plaintiff worked 15 hours per day, which

1 amounts to 20 hours overtime per week and 15 hours double time per week: (52 x
2 \$28.16 per hour x 20 hours OT x 1.5 = \$43,929.60) + (52 x \$28.16 per hour x 15 hours
3 DR x 2 = \$43,929.60). Accordingly, for the first year of Plaintiff's employment alone,
4 there is \$87,859.20 in controversy. Plaintiff also testified that in the time that he in the
5 transportation office, for between six and eight months, he worked fourteen to fifteen
6 hours per day. Payne Dep. at 205-07. This additional time adds at least \$29,286.40 to
7 the amount in controversy, calculated as follows: (26 weeks x 16 hours OT per week x
8 \$28.16 x 1.5 = \$17,571.84) + (26 weeks x 8 hours DT per week x \$28.16 x 2 =
9 \$11,714.56).

10 Plaintiff's primary Operations Manager, Norberto Caballery, testified that
11 "Mr. Payne typically worked and works, on average, 12 hours per day on each shift and
12 sometimes more." Caballery Decl. at 3. When Plaintiff switched to the day shift, he "got
13 an extra day," so he worked four days instead of five days per week. Payne Dep. at
14 196. However, the Court finds that there is inadequate evidence as to the number of
15 weeks that Plaintiff worked the day shift, and thus does not include this number in
16 calculating the amount in controversy.

17 Additionally, the Court accepts \$4,000 as the amount in controversy for Plaintiff's
18 Non-Compliant Wage Statement claim and \$500 as the amount in controversy for
19 Plaintiff's Failure to Keep Requisite Payroll Records claim, as Plaintiff does not dispute
20 these amounts. See Mot. at 8-9. The Court therefore finds that, at a minimum, the
21 amount in controversy is \$121,645.60. Defendants have therefore shown, by a
22 preponderance of the evidence, that the amount in controversy is over the jurisdictional
23 threshold of \$75,000. As such, Plaintiff's Motion is DENIED.

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CONCLUSION

For the reasons just stated, Plaintiff's Motion to Remand, ECF No. 16, is DENIED.
IT IS SO ORDERED.

Dated: March 12, 2014



MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT