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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EUGENE GEERLOF, BRADLEY MOORE, BENJAMIN TILOS, JR., SEAN ROBERTS, TIMOTHY RAUSCH, SUE GUNTER, ROTHELL WILLIAMS, MANUEL VALDE, JR., and JAMES E. WOHRLE,

Plaintiffs,

v.

C&S WHOLESALE GROCERS, INC., a Vermont Corporation, Tracy Logistics, LLC, an unknown business entity, and DOES 1 through 100, inclusive,

Defendants.

No. 2:13-cv-02175-MCE-KJN

MEMORANDUM AND ORDER

Through this action, Plaintiffs Eugene Geerlof, Bradley Moore, Benjamin Tilos, Jr., Sean Roberts, Timothy Rausch, Sue Gunter, Rothell Williams, Manuel Valdes, Jr., and James E. Woehrle (collectively "Plaintiffs") seek 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 September 6,

1 2013, Defendants removed the case to the United States District Court for the Central
2 District of California, pursuant to the Court's diversity jurisdiction. On October 18, 2013,
3 the case was transferred to the Eastern District of California, and on October 24, 2013,
4 the case was reassigned to Chief Judge England. On December 9, 2013, Plaintiffs filed
5 an Amended Notice of Motion, ECF No. 35, regarding Plaintiffs' Motion for Remand
6 ("Motion"), ECF No. 20. Subsequently, Defendants filed a Motion to Supplement/Amend
7 Notice of Removal, ECF No. 39, which Plaintiffs do not oppose, see ECF No. 42.

8 For the reasons set forth below, Plaintiff's Motion to Remand is DENIED, and
9 Defendants' Motion to Supplement/Amend Notice of Removal is GRANTED.¹

11 BACKGROUND²

13 Defendant Tracy Logistics employed Plaintiffs Eugene Geerlof, Bradley Moore,
14 Benjamin Tilos, Jr., Sean Roberts, Timothy Rausch, Sue Gunter, Rothell Wililams,
15 Manuel Valdes, Jr., and James E. Woehrle as Warehouse Supervisors at its Stockton
16 Facility. Plaintiff Geerlof was employed in this position from approximately April 2012 to
17 approximately December 2012; Moore, from July to September 2011; Tilos, from April
18 2011 to April 2013; Roberts, from August 2008 to December 2010; Rausch, from
19 November 2010 to the present; Gunter, from September 1996 to the present; Wililams,
20 from February 2011 to the present; Valdes, from August 2011 to the present; and
21 Woehrle, from June 2006 to October 2009.

22 Generally speaking, Plaintiffs allege that they were hired by Defendants,
23 misclassified as "exempt" employees, and paid on a salary basis without any
24 compensation for overtime hours worked, missed meal periods, or rest breaks.

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

28 ² The following recitation of facts is taken, sometimes verbatim, from Plaintiffs' Complaint.

1 Plaintiffs further claim that they worked over eight hours per day, and/or more
2 than forty hours per week during the course of their employment with Defendants.
3 According to Plaintiffs, although Defendants knew or should have known that they were
4 entitled to receive certain wages as overtime compensation, they did not receive such
5 wages. Plaintiffs also assert that they did not receive all their rest and meal periods; nor
6 did they receive one additional hour of pay when they missed a meal period.
7 Additionally, while Defendants knew or should have known that Plaintiffs were entitled to
8 receive at least minimum wages as compensation, they did not receive at least minimum
9 wages for all hours worked.

10 Plaintiffs further allege that they were entitled to timely payment of all wages
11 during their employment and to timely payment of wages earned upon termination of
12 their employment, but he did not receive timely payment of these wages either during
13 their employment or upon termination. Likewise, Defendants did not provide Plaintiffs
14 with complete and accurate wage statements, although Defendants knew or should have
15 known that Plaintiffs were entitled to these statements.

16 Plaintiffs also assert that Defendants failed to keep complete and accurate payroll
17 records. Finally, Defendants falsely represented to Plaintiffs that the wage denials were
18 proper. Instead, according to Plaintiffs, these wage denials were improper and served
19 the purpose of increasing Defendants' profits.

20 These claims were brought by a different plaintiff in a class action in state court,
21 Tompkins v. C&S Wholesale Grocers, Inc., on February 3, 2011.³ On March 14, 2011,
22 the defendants in the Tompkins action removed the case to federal court, asserting
23 diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). The Tompkins plaintiff then moved
24 to remand the case, on the grounds that the operative complaint alleged an amount in
25 controversy below the \$75,000 threshold. The Court granted the plaintiff's motion to
26 remand, finding that there was insufficient evidence to show that the amount in

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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. 22.

1 controversy for the plaintiff's individual claims exceeded \$75,000. The defendants again
2 removed the case to federal court on October 26, 2011, based on discovery conducted
3 prior to that date. The Tompkins plaintiff again moved to remand, and the Court again
4 granted the plaintiff's motion on the grounds that the defendants had not met their
5 burden of proving that the amount in controversy on the plaintiff's individual claims
6 exceeded the jurisdictional threshold.

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

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

17 STANDARD

19 A. Supplement Notice of Removal

20 28 U.S.C. § 1446 allows a defendant to remove an action to federal court within
21 thirty days from the date of receipt of a copy of the initial pleading. It is well settled that
22 the defendant's notice of removal may be amended freely prior to the expiration of this
23 initial thirty-day period. Smiley v. Citibank (S. Dakota), N.A., 863 F. Supp. 1156, 1158
24 (C.D. Cal. 1993) (citing Richardson v. United Steelworkers of Am., 864 F.2d 1162, 1159
25 (5th Cir. 1989), cert. denied, 495 U.S. 946 (1990)). "After the first thirty days, however,
26 the cases indicate that the petition may be amended only to set out more specifically
27 grounds for removal that already have been stated, albeit imperfectly, in the original
28 petition; new grounds may not be added and missing allegations may not be furnished."

1 Id. at 1159 (citing 14A C. Wright, A. Miller, E. Cooper, Federal Practice & Procedure
2 § 3733 (2d ed. 1985)). “The majority of courts, for example, allow defendants to amend
3 ‘defective allegations of jurisdiction’ in their notice as long as the initial notice of removal
4 was timely filed and sets forth the same legal grounds for removal.” Id. (citing Barrow
5 Dev. Co. v. Fulton Ins. Co., 418 F.2d 316, 318 (9th Cir. 1969) (permitting amendment of
6 removal petition to cure inadequate allegation of the citizenship of the defendant
7 corporation)). “If the removing party seeks to cure a defect in the removal petition after
8 the thirty day period has elapsed . . . the court has discretion to prohibit such an
9 amendment.” Hemphill v. Transfresh Corp., No. C–98–0899–VRW, 1998 WL 320840,
10 at *4 (N.D. Cal. June 11, 1998).

11 **B. Remand**

12 There are two bases for federal subject matter jurisdiction: (1) federal question
13 jurisdiction under 28 U.S.C. § 1331 and (2) diversity jurisdiction under 28 U.S.C. § 1332.
14 A district court has federal question jurisdiction in “all civil actions arising under the
15 Constitution, laws, or treaties of the United States.” Id. § 1331. A district court has
16 diversity jurisdiction “where the matter in controversy exceeds the sum or value of
17 \$75,000, . . . and is between citizens of different states, or citizens of a State and citizens
18 or subjects of a foreign state” Id. § 1332(a)(1)-(2). Diversity jurisdiction requires
19 complete diversity of citizenship, with each plaintiff being a citizen of a different state
20 from each defendant. 28 U.S.C. § 1332(a)(1); Caterpillar, Inc. v. Lewis, 519 U.S. 61, 68
21 (1996) (stating that complete diversity of citizenship is required).

22 When a party brings a case in state court in “which the district courts of the United
23 States have original jurisdiction,” the defendant may remove it to the federal court
24 “embracing the place where such action is pending.” 28 U.S.C. § 1441(a). “The party
25 invoking the removal statute bears the burden of establishing federal jurisdiction.”
26 Ethridge v. Harbor House Rest., 861 F.2d 1389, 1393 (9th Cir. 1988) (citing Williams v.
27 Caterpillar Tractor Co., 786 F.2d 928, 940 (9th Cir. 1986)). Under § 1141, any state-
28 court action that originally could have been filed in federal court may be removed by the

1 defendant. City of Chicago v. Int'l Coll. of Surgeons, 522 U.S. 156, 163 (1997) (citing
2 Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987)).

3 In an action involving multiple plaintiffs, a federal court may exercise
4 supplemental jurisdiction over a co-plaintiff's claims that fail to meet the jurisdictional
5 amount in controversy if (1) at least one plaintiff satisfies the amount in controversy,
6 (2) the other elements of diversity jurisdiction are satisfied, and (3) the plaintiff's claims
7 are part of the same "case or controversy." See Exxon Mobil Corp. v. Allapattah Servs.,
8 Inc., 545 U.S. 546, 549 (2005) ("We hold that, where the other elements of jurisdiction
9 are present and at least one named plaintiff in the action satisfies the amount-in-
10 controversy requirement, § 1367 does authorize supplemental jurisdiction over the
11 claims of other plaintiffs in the same Article III case or controversy, even if those claims
12 are for less than the jurisdictional amount specified in the statute setting forth the
13 requirements for diversity jurisdiction."). To determine whether the claims are part of the
14 same case or controversy, the Court examines whether the claims involve a "common
15 nucleus of operative fact." See United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 725
16 (1966) (requiring a "common nucleus of operative fact" to confer supplemental
17 jurisdiction over pendant state law claims).

18 A motion to remand is the proper procedure for challenging removal. "The party
19 invoking the removal statute bears the burden of establishing federal jurisdiction."
20 Ethridge, 861 F.2d at 1393 (internal citations omitted). Courts "strictly construe the
21 removal statute against removal jurisdiction." Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th
22 Cir. 1992) (internal citations omitted). "[I]f there is any doubt as to the right of removal in
23 the first instance," the court must grant the motion for remand. Id. Additionally, "[i]f at
24 any time before final judgment it appears that the district court lacks subject matter
25 jurisdiction, the case shall be remanded" to state court. 28 U.S.C. § 1447(c).

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1 ANALYSIS

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3 A. Supplement Notice of Removal

4 Defendants seek to amend or supplement their Notice of Removal to include new
5 allegations and evidentiary support recently obtained through Defendants' deposition of
6 Plaintiffs Susan Gunter, Rothell Williams, and Manuel Valdes, Jr., which were taken after
7 the Notice of Removal was filed and after Plaintiffs' Motion to Remand was fully briefed.

8 As set forth above, "[t]he majority of courts . . . allow defendants to amend
9 'defective allegations of jurisdiction' in their notice as long as the initial notice of removal
10 was timely filed and sets forth the same legal grounds for removal." Smiley,
11 863 F. Supp. at 1159 (citing Barrow, 418 F.2d at 318) (permitting amendment of removal
12 petition to cure inadequate allegation of the citizenship of the defendant corporation).
13 However, when defendants attempt to assert totally new grounds for removal or "to
14 create jurisdiction where none existed," courts uniformly deny leave to amend. Rockwell
15 Int'l Credit Corp. v. U.S. Aircraft Ins. Grp., 823 F.2d 302, 304 (9th Cir. 1987), overruled
16 on another ground by Partington v. Gedan, 923 F.2d 686 (9th Cir. 1991). Indeed, courts
17 frequently repeat the Barrow's statement that "the removal petition cannot be . . .
18 amended to add allegations of substance but solely to clarify 'defective' allegations of
19 jurisdiction previously made." 418 F.2d at 317; see also Emeryville Redev. Agency v.
20 Clear Channel Outdoor, No. C 06-01279 WHA, 2006 WL 1390561, at *3 (N.D. Cal.
21 May 22, 2006) (discussing "allegations of substance" rule); Hemphill, 1998 WL 320840
22 at *4 (citing Barrow, 418 F.2d at 317); Nat'l Audobon Soc. v. Dep't of Water & Power of
23 City of L.A., 496 F. Supp. 499, 503 (E.D. Cal. 1980) (same). In Barrow, the defendant's
24 removal notice alleged "simply that plaintiff was a citizen of Alaska and defendant of
25 New York," rather than "disclos[ing] both the state of incorporation and the location of the
26 corporation's principal place of business." 418 F.2d at 318.

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1 The Ninth Circuit followed other circuit courts in holding that these “allegations [were]
2 defective in form but not so lacking in substance as to prevent their amendment.” Id.
3 (citing Hendrix v. New Amsterdam Cas. Co., 390 F.2d 299 (10th Cir. 1968)).

4 Furthermore, when a defendant must show that the amount in controversy
5 exceeds the statutory amount, the defendant “may rely upon affidavits and declarations
6 to make that showing; the law in the Ninth Circuit expressly contemplates the district
7 court's consideration of some evidentiary record.” Lewis v. Verizon Commc'ns, Inc.,
8 627 F.3d 395, 400 (9th Cir. 2010); see also Valdez v. Allstate Ins. Co., 372 F.3d 1115,
9 1117 (9th Cir. 2004) (court may consider “summary-judgment-type evidence relevant to
10 the amount in controversy at the time of removal”). While “[i]t is best to make this
11 showing in the notice of removal itself, . . . a party can supplement its showing in an
12 opposition to a motion to remand.” Waller v. Hewlett-Packard Co., 11CV0454-LAB RBB,
13 2011 WL 8601207, at *2 (S.D. Cal. May 10, 2011) (citing Cohn v. Petsmart, Inc.,
14 281 F.3d 837, 840 n.1 (9th Cir. 2002)).

15 In Cohn v. Petsmart, the Ninth Circuit noted that “Petsmart's notice of removal
16 was deficient because it only summarily alleged that the amount in controversy
17 exceeded \$75,000, without alleging any underlying facts to support this assertion.”
18 281 F.3d at 843 (citing Gaus, 980 F.2d at 567). However, Petsmart’s opposition to the
19 plaintiff’s motion to remand provided further factual basis for the amount in controversy
20 alleged in the notice of removal, explaining that the \$75,000 amount was based on the
21 plaintiff’s settlement demand. The Ninth Circuit found that “the district court did not err in
22 construing Petsmart's opposition as an amendment to its notice of removal.” Id. (citing
23 Willingham v. Morgan, 395 U.S. 402, 407 n.3 (1969) (“It is proper to treat the removal
24 petition as if it had been amended to include the relevant information contained in the
25 later-filed affidavits”); 28 U.S.C. § 1653 (“Defective allegations of jurisdiction may be
26 amended, upon terms, in the trial or appellate courts.”)).

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1 Subsequently, the Ninth Circuit stated that Cohn distinguished Gaus, and stands
2 for the proposition “that a district court may consider later-provided evidence as
3 amending a defendant’s notice of removal.” Gen. Dentistry For Kids, LLC v. Kool
4 Smiles, P.C., 379 F. App’x 634, 636 (9th Cir. 2010); see also Morella v. Safeco Ins. Co.
5 of Ill., 2:12-CV-00672 RSL, 2012 WL 2903084, at *1 (W.D. Wash. July 16, 2012) (citing
6 Cohn, 281 F.3d 837) (“[T]he post-removal submission of supporting evidence can be
7 treated as amending the notice of removal.”).

8 Here, Defendants have not changed their grounds for removal from that they
9 originally asserted in the notice of removal—Defendants originally asserted diversity
10 jurisdiction and still assert only that removal on that basis. Cf. Rockwell Int’l Credit
11 Corp., 823 F.2d at 304. Defendants merely seek to supplement their original Notice of
12 Removal with facts that support this basis for jurisdiction. Furthermore, Defendants’
13 Notice of Removal is not so lacking in substance that it could not be amended or
14 supplemented with the information contained in Plaintiff’s deposition. While it is true that
15 Defendants seek to amend their notice of removal not through evidence submitted in
16 opposition to a motion to remand, but through a separate noticed motion, the Court will
17 not “exalt form over substance and legal flaw-picking over the orderly disposition of
18 cases properly committed to federal courts.” Piazza v. EMPI, Inc., 1:07-CV-00954-
19 OWW-GSA, 2008 WL 590494, at *8 (E.D. Cal. Feb. 29, 2008) (quoting Barrow, 418 F.2d
20 at 318).

21 For these reasons, and because Plaintiffs do not oppose the amendment,
22 Defendants’ Motion to Amend/Supplement Notice of Removal is GRANTED, ECF
23 No. 39, and Defendants’ Notice of Removal is amended to include the portions of
24 Plaintiffs’ deposition testimony submitted by Defendants at ECF Nos. 39-2 and 39-3.

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1 **B. Remand**

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

7 **1. Citizenship**

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

12 Here, it is clear that Plaintiffs are citizens of California. The Complaint alleges
13 that each Plaintiff “is an individual residing in the State of California.” ECF No. 2 at 7.
14 The Notice of Removal also states that each Plaintiff was or is currently “employed as a
15 Warehouse Supervisor in the State of California at [Tracy Logistics LLC’s] Stockton
16 Facility.” Additionally, the Notice of Removal cites the allegations in the Complaint that
17 each Plaintiff “is an individual residing in the State of California,” and therefore concludes
18 that each Plaintiff “was domiciled in the State of California at the time he filed this action
19 and is a citizen of California for the purposes of diversity jurisdiction in this matter.” ECF
20 No. 1 at 7-9.

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

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1 Next is the issue of Tracy Logistics' citizenship. For purposes of diversity
2 jurisdiction in a case removed pursuant to 28 U.S.C. § 1441, "like a partnership, an LLC
3 is a citizen of every state of which its owners/members are citizens." Johnson v.
4 Columbia Properties Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006) (citations
5 omitted). Defendants' removal papers make clear that Tracy Logistics is diverse from
6 Plaintiff. ECF No. 1 at 10. Tracy Logistics is owned by its sole member, C&S Logistics
7 of Sacramento/Tracy LLC, which in turn is wholly owned by its sole member, C&S
8 Acquisitions LLC. C&S Acquisitions LLC is wholly owned by its sole member, C&S
9 Wholesale Grocers, Inc., which is a citizen of both Vermont and New Hampshire. Id.
10 Tracy Logistics, like C&S Wholesale Grocers, Inc., is therefore a citizen of Vermont and
11 New Hampshire.

12 Thus, because Plaintiffs are citizens of California, while Defendants are citizens of
13 Vermont and New Hampshire, there is complete diversity between Plaintiffs and
14 Defendants.

15 **2. Amount in Controversy**

16 **a. Defendants' Burden**

17 Defendants contend that the standard for establishing the amount in controversy
18 is a preponderance of the evidence. Plaintiffs, on the other hand, assert that the Court
19 lacks jurisdiction because Plaintiffs allege that the amount in controversy for their
20 individual claims is less than \$75,000 and Defendants have failed to prove with legal
21 certainty that the jurisdictional amount is met. Specifically, the Complaint states in the
22 Jurisdiction and Venue allegations that "the 'amount in controversy' for the named
23 Plaintiff, including claims for compensatory damages, restitution, penalties, and pro rata
24 share of attorneys' fees is less than [\$75,000]." Compl. at 2. No specific amount is
25 stated in Plaintiff's prayer for relief. See Compl. at 18-22. The prayer for relief lists civil
26 and statutory penalties; reasonable attorneys' fees and costs of the suit; actual,
27 consequential, and incidental losses and damages; and other and further relief as the
28 Court deems just and proper.

1 For the reasons set forth in the Court's Order issued February 19, 2014, ECF
2 No. 24, in the related case Cagle v. C&S Wholesale Grocers, Inc., No. 2:13-cv-02134,
3 the Court finds that the standard for determining whether Defendants meet their burden
4 of establishing the amount in controversy is the preponderance of the evidence. Under
5 this standard, "the removing party's burden is 'not daunting,' and defendants are not
6 obligated to 'research, state, and prove the plaintiff's claims for damages.'" Behrazfar v.
7 Unisys Corp., 687 F. Supp. 2d 999, 1004 (C.D. Cal. 2009) (quoting Korn v. Polo Ralph
8 Lauren Corp., 536 F. Supp. 2d 1199, 1204-05 (E.D. Cal. 2008)). When a "[d]efendant's
9 calculations [are] relatively conservative, made in good faith, and based on evidence
10 wherever possible," the court may find that the "[d]efendant has established by a
11 preponderance of the evidence that the amount in controversy" is met. Id. (citing Neville
12 v. Value City Dep't Stores, LLC., No. 07-cv-53-DRH, 2008 WL 2796661, *5-6 (S.D. Ill.
13 July 18, 2008); Eisler v. Med. Shoppe Int'l, Inc., No. 4:05CV2272 JCH, 2006 WL 415953,
14 *2 (E.D. Mo. 2006)).

15 **b. Amount in Controversy Calculations**

16 "The traditional rule is that multiple plaintiffs who assert separate and distinct
17 claims are precluded from aggregating them to satisfy the amount in controversy
18 requirement." Urbino v. Orkin Servs. of California, Inc., 726 F.3d 1118, 1122 (9th Cir.
19 2013) (citing Troy Bank v. G.A. Whitehead & Co., 222 U.S. 39, 40 (1911)). Accordingly,
20 the amount in controversy for each Plaintiff must be determined separately. Should at
21 least one Plaintiff meet the \$75,000 requirement, the Court may exercise its
22 supplemental jurisdiction over the claims of the remaining Plaintiffs.

23 Plaintiff Sue Gunter

24 Defendants contend that the amount in controversy for Gunter's overtime claim
25 alone exceeds \$75,000. Notice of Removal at 13. According to Defendants, Gunter has
26 been employed as a warehouse supervisor at the Stockton facility for approximately 214
27 workweeks during the relevant time period, from July 30, 2009, to the present. Her
28 average hourly rate during the relevant time period is \$26.67. However, the only

1 evidence offered in the Notice of Removal as to the hours worked by Gunter is the
2 deposition testimony of Dennis Bicek.

3 Defendants' amendment to the Notice of Removal, however, contains Gunter's
4 deposition testimony regarding the hours she worked as a Warehouse Supervisor.
5 Gunter states that beginning in June 2009, she started work around "4 o'clock in the
6 afternoon," and on average left work between 2:00 AM and 4:00 AM. Gunter Dep.
7 35-36. This shift was a five-day shift. Id. 37:7-9. Gunter followed this schedule for
8 "roughly a year and a half." Id. 33:13.

9 Gunter then moved to an administrative position as a Warehouse Supervisor, in
10 approximately December 2010. Gunter Dep. 33:11-22. In the administrative position,
11 Gunter's shift started at 2:00 PM and finished "not till at least 2:00 AM, sometimes 3:00
12 or 4:00 AM." Gunter Dep. 36:7-8. That position lasted "approximately six months to a
13 year." Id. 33:8-9. The administrative position was a five-day shift. Id. 37:10-12.

14 Thereafter, in either mid-2011 or late-2011, Gunter became a dock supervisor. Id.
15 at 33-34. As a dock supervisor, Gunter "started at 2:00 PM" and finished between
16 "2:00 to 4:00 AM." Id. 36:13-15. This position was also a five-day shift. Id. 37:13-15. In
17 June 2012, Gunter again changed positions, to "OS&D on GDC." Id. 24:13-16. In that
18 position, Gunter worked the morning shift. She arrived around 3:30 AM, and on average
19 left between 3:30 to 5:00 PM. Id. 36:18-25. In the beginning, this position was a
20 five-day shift, and "sometime in 2013" became a four-day shift. Id. 37:16-25. Finally, in
21 December 2013, Gunter moved back to being a warehouse supervisor in charge of the
22 lifts and receiving. Id. 34:23-35:-4. In this position, Gunter works Sunday through
23 Wednesday, 3:30 AM "till at least 3:30 or 5:00, 5:30 sometimes." Id. 38:8-9. On
24 average, Gunter finishes this shift at "probably about 4:00 to 4:30." Id. 38:15.

25 Gunter also testified that she kept her own contemporaneous records of the time
26 that she worked each day. These records are attached as Exhibit E to the Amendment
27 to Defendants' Notice of Removal. ECF No. 39-3. These records show clearly the hours
28 and weeks worked by Gunter from July 30, 2009, to December 2013.

1 Based on this evidence, the Court calculates the amount in controversy for August 2,
 2 2009 through July 29, 2010 (52 weeks) as follows:

Week	Hours Worked Overtime	Overtime \$ Amount	Hours Worked Doubletime	Doubletime \$ Amount
8/2/2009	22.5	900	10.7	570.74
8/9/2009	18.75	750	9.08	484.33
8/16/2009	18	720	7.41	395.25
8/23/2009	8	320	.83	44.27
8/30/2009	18.08	723.2	5.91	315.24
9/6/2009	No hours worked-- vacation			
9/13/2009	19.25	770	3.75	200.03
9/20/2009	19.67	786.80	1.5	80.01
9/27/2009	17.08	683.2	0	0
10/4/2009	19.58	783.2	3.66	195.22
10/11/2009	14.34	573.6	1.17	62.41
10/18/2009	16.5	660	3	160.02
10/25/2009	11.66	466.4	0	0
11/1/2009	16.58	663.2	0	0
11/8/2009	14.67	586.80	1.25	66.68
11/15/2009	20	800.00	4.46	237.90
11/22/2009	9.5	380	3.33	177.62
11/29/2009	11.5	460	1.66	88.54
12/6/2009	16	640	5.83	310.97
12/13/2009	15.75	630	3.58	190.96
12/20/2009	16	640	2.13	113.61
12/27/2009	18.75	750	1.83	97.61
1/3/2010	16	640	.83	44.27

1	1/10/2010	12	480	3.83	204.92
2	1/17/2010	11.75	470	1.92	102.41
3	1/24/2010	12	480	3.67	195.76
4	1/31/2010	12	480	4.34	231.50
5	2/7/2010	12	480	5.91	315.30
6	2/14/2010	11.83	473.2	2.25	120.02
7	2/21/2010	12	480	5.33	284.30
8	2/28/2010	12	480	5.58	297.64
9	3/7/2010	12	480	5.5	293.37
10	3/14/2010	12	480	1.94	103.48
11	3/21/2010	9.08	363.2	4.83	257.63
12	3/28/2010	10.75	430	3.67	195.76
13	4/4/2010	12	480	2.42	129.08
14	4/11/2010	12	480	3.75	200.03
15	4/18/2010	12	480	1.92	102.41
16	4/25/2010	8.75	350	.58	30.94
17	5/2/2010	8	320	2.58	137.62
18	5/9/2010	11.08	443.2	.08	4.27
19	5/16/2010	12	480	1.66	88.54
20	5/23/2010	12	480	3.07	163.75
21	5/30/2010	12	480	3.58	190.96
22	6/6/2010	12	480	5.41	288.57
23	6/13/2010	8	320	2.25	120.02
24	6/20/2010	8.58	343.2	2.24	119.48
25	6/27/2010	12.25	490	5.17	275.77
26	7/4/2010	4	160	1.92	102.41
27	7/11/2010	9.25	370	3.25	173.36

1	7/18/2010	12.17	486.80	5.58	297.69
2	7/25/2010	13.5	544	1.83	97.61
3	Subtotal:		\$27,290.00		\$8,961.28
4	Total amount in controversy for August 2009-July 2010: \$36,251				

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6
7 As set forth above, the amount in controversy for one year is \$36,251 for
8 Plaintiff's overtime claim. Gunter's deposition testimony, as well as her time entries, for
9 the dates following July 2010 show that Gunter worked substantially similar hours for the
10 remainder of 2010, as well as the years 2011, 2012, and 2013. Based on this evidence,
11 the Court therefore finds that Defendants have shown by a preponderance of the
12 evidence that the amount in controversy exceeds \$75,000 for Gunter's overtime claim
13 alone. Moreover, Plaintiffs do not contest that the amount in controversy for Gunter's
14 non-compliant wage statement claim is \$4,000. Plaintiffs also do not contest that the
15 amount in controversy for their claims for failure to keep requisite payroll records is \$500
16 per Plaintiff. Accordingly, for Gunter, \$4,500 of the alleged amount in controversy is
17 uncontested. Adding only the first year (August 2009- July 2010) of Gunter's overtime
18 claim (\$36,251) to the uncontested amount in controversy (\$4,500) brings the amount in
19 controversy for Gunter to \$40,751.28. Adding only one more year of similar overtime
20 wages would bring the amount in controversy for Gunter's claims over \$75,000. The
21 Court therefore finds that Defendants have shown by a preponderance of the evidence
22 that the amount in controversy for Gunter is well over the jurisdictional threshold of
23 \$75,000. The Court therefore has diversity jurisdiction over Gunter's claims.

24 Plaintiffs Geerlof, Moore, Tilos, Roberts, Rausch, Williams, Valdez, and Woehrle

25 Because Plaintiffs Geerlof, Moore, Tilos, Roberts, Rausch, Williams, Valdes, and
26 Woehrle make allegations similar to Gunter, and submit similar evidence regarding their
27 overtime claims, it is likely that they also meet the jurisdictional threshold. However, it is
28

1 enough that Gunter's claims meet the jurisdictional threshold—Geerlof, Moore, Tilos,
2 Roberts, Rausch, Williams, Valdes, and Woehrle allege claims arising from the same
3 violations of law as Gunter, and all Plaintiffs worked for Defendants at their Stockton
4 Facility. Because these Plaintiffs' respective claims are part of the same case or
5 controversy involved with Gunter's claims, the Court exercises supplemental jurisdiction
6 over the claims of Geerlof, Moore, Tilos, Roberts, Rausch, Williams, Valdez, and
7 Woehrle.

8
9 **CONCLUSION**

10
11 For the reasons set forth above, Plaintiffs' Motion to Remand, ECF No. 20, is
12 DENIED, and Defendants' Motion to Amend/Supplement Notice of Removal, ECF
13 No. 39, is GRANTED.

14 IT IS SO ORDERED.

15 Dated: April 11, 2014

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