

1 motion to remand on September 20, 2016. During that hearing, the
2 Court instructed CFL to file a supplemental declaration
3 indicating how many of CFL's drivers resided in California and
4 drove for defendant in California for the four years preceding
5 the filing of this action.

6 On September 27, 2016, CFL filed its supplemental
7 declaration. ECF No. 33. In the declaration, Vice President and
8 Chief Financial Officer of CFL, Todd Militzer, stated that
9 "[d]uring the four years preceding the filing of this action, at
10 least 159 truck drivers resided and drove in California under
11 independent contractor agreements with CFL." Militzer Suppl.
12 Decl. ¶ 3, ECF No. 33.

13 Mr. Militzer's declaration establishes that the putative
14 class exceeds 100 members. But, despite this declaration, CFL
15 has failed to show that the amount in controversy exceeds the \$5
16 million jurisdictional threshold required by CAFA. While there
17 is no presumption against removal when a case is removed pursuant
18 to CAFA, "the defendant still bears the burden of establishing
19 removal jurisdiction." Cisneros, 2016 WL 4059612, at *2. CFL
20 has failed to meet its burden

21 CFL supported its notice of removal with a declaration from
22 Vicky O'Brien that stated that independent owner-operator truck
23 drivers "paid more than \$5,000,000 in fuel costs" from January to
24 October 2015. O'Brien Decl. ¶ 11, ECF No. 1-8. CFL did not
25 provide any data or explanation of how Ms. O'Brien reached this
26 conclusion.

27 In support of his motion to remand, Mr. Henry supplied the
28 Court with a data summary sheet that was sent from CFL to Mr.

1 Henry's counsel to show the data upon which Ms. O'Brien relied in
2 writing her declaration. Ex. 1 to Bhowmik Decl., ECF No. 25-2.
3 This. The data summary sheet indicates that "the fuel deductions
4 are for all miles, and not just for California miles." Ex. 1 to
5 Bhowmik Decl.

6 In opposition to Mr. Henry's motion to remand, CFL submitted
7 a declaration from Mr. Militzer stating that the putative class
8 "paid more than \$7,450,000.00 in deductions for fuel purchased
9 while performing services" for CFL in the four years preceding
10 the filing on the complaint in this action. Militzer Decl. ¶ 8,
11 ECF No. 28-1. Mr. Militzer further indicated that "[i]n 2015,
12 the independent owner-operator truck drivers [in the putative
13 class] drove a total of 5,652,394 miles . . . 3,168,524 [of those
14 miles] were driven in California." Id. ¶ 11. Additionally, "the
15 proportion of California miles driven in relation to the total
16 miles driven . . . should have been approximately the same since
17 2011." Id. ¶ 12. As noted by Plaintiff's counsel at oral
18 argument, Mr. Militzer's declaration indicates that only 56% of
19 the miles driven in 2015 were driven in California. Because the
20 proportion of California mileage versus non-California "should
21 have been approximately the same" in the four years prior to
22 2015, this means that only about 56% of the \$7,450,000 in fuel
23 deductions were for California miles. Thus, Defendants have
24 shown by Mr. Militzer's declaration that about \$4,172,000 is in
25 controversy in this case. Mr. Militzer's declaration also
26 indicates that putative class members paid more than \$2,250,000
27 in lease payments. But, Mr. Militzer does not indicate if these
28 lease payments include the costs expended for purchasing or

1 leasing the vehicle. As indicated by Villalpando v. Exel Direct
2 Inc., 2015 WL 5179486, *4 (N.D. Cal. Sept. 3, 2015), while "the
3 costs of operating a motor vehicle in the course of employment
4 may be [reimbursed], the costs of furnishing the vehicle *itself*
5 are not." Villalpando, 2015 WL 5179486, *4 (emphasis in
6 original) (internal citations omitted). Thus, the Court cannot
7 include the \$2,250,000 in alleged lease payments in calculating
8 the amount in controversy.

9 CFL has only definitively shown that about \$4.1 million is
10 in controversy in this case which is well below the \$5 million
11 jurisdictional threshold. Therefore, Plaintiff's motion to
12 remand is GRANTED, and the Court hereby remands this case to the
13 Superior Court for the County of Sacramento. Because the Court
14 no longer has jurisdiction over this case, it cannot decide
15 Defendant's motion to change venue.

16 IT IS SO ORDERED.

17 Dated: October 5, 2016

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19 JOHN A. MENDEZ,
20 UNITED STATES DISTRICT JUDGE
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