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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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WAQAS N. BUTT, individually and  
on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

9W HALO WESTERN OPCO, L.P., a  
Delaware limited liability  
company doing business as  
ANGELICA TEXTILE SERVICES; and  
DOES 1 through 50, inclusive,

Defendants.

No. 2:22-cv-02012 WBS AC

MEMORANDUM AND ORDER RE:  
PLAINTIFF'S MOTION TO REMAND  
AND DEFENDANT'S MOTION TO  
CONSOLIDATE

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Plaintiff Waqas N. Butt initiated this action against  
defendant 9W Halo Western Opco, L.P., doing business as Angelica  
Textile Services, under the Private Attorneys General Act of 2004  
("PAGA"), Cal. Lab. Code § 2699. (See Compl. (Docket No. 1-2).)  
Defendant removed the action to this court from the Sacramento  
County Superior Court. (Docket No. 1.) Defendant moved to  
consolidate this matter with Butt v. 9W Halo Western Opco, L.P.,

1 No. 2:22-cv-01446 WBS AC. (Docket No. 15.) Plaintiff now moves  
2 to remand. (Docket No. 18.)

3 I. Discussion<sup>1</sup>

4 "Under 28 U.S.C. § 1441, a defendant may remove an  
5 action filed in state court to federal court if the federal court  
6 would have original subject matter jurisdiction over the action."  
7 Moore-Thomas v. Ala. Airlines, Inc., 553 F.3d 1241, 1243 (9th  
8 Cir. 2009).

9 A. Federal Question Jurisdiction

10 Federal courts have original jurisdiction over actions  
11 arising under federal law. 28 U.S.C. § 1331. Defendant argues  
12 that there is a federal question under the Labor Management  
13 Relations Act, 29 U.S.C. § 185, because plaintiff was subject to  
14 a collective bargaining agreement ("CBA"). Defendant raises this  
15 argument for the first time in its opposition brief. (See Def.'s  
16 Opp'n (Docket No. 19) at 7.)

17 "[T]he defendant must state the basis for removal  
18 jurisdiction in the petition for removal." O'Halloran v. Univ.  
19 of Wash., 856 F.2d 1375, 1381 (9th Cir. 1988). "A defendant  
20 seeking to remove a case to federal court must do so within  
21 thirty days of being served with the complaint." ARCO Env't  
22 Remediation, LLC v. Dep't of Health & Env't Quality of Mont., 213  
23 F.3d 1108, 1117 (9th Cir. 2000). The notice of removal "cannot  
24 be amended to add a separate basis for removal jurisdiction after  
25 the thirty day period." Id. (internal quotation marks omitted).

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27 <sup>1</sup> Pursuant to Local Rule 230(g), the court finds it would  
28 not benefit from oral argument and accordingly takes the motion  
under submission upon the record and briefs.

1 The court therefore declines to consider defendant's federal  
2 question argument, which cannot be properly raised at this  
3 juncture. See O'Halloran, 856 F.2d at 1381; Marsoobian v.  
4 Transamerica Life Ins. Co., No. 1:16-cv-1412 LJO MJS, 2016 WL  
5 7173737, at \*7 (E.D. Cal. Dec. 9, 2016); Wickens v. Blue Cross of  
6 Cal., Inc., No. 15-cv-834 GPC JMA, 2015 WL 4255129, at \*2 (S.D.  
7 Cal. July 14, 2015).<sup>2</sup>

8 B. Diversity Jurisdiction

9 Federal courts have original jurisdiction over cases  
10 where complete diversity exists between the parties and the  
11 amount in controversy exceeds \$75,000, exclusive of interest and  
12 costs. 28 U.S.C. § 1332(a). There is a "strong presumption"  
13 against exercising removal jurisdiction when the amount in  
14 controversy is in question, and "[f]ederal jurisdiction must be  
15 rejected if there is any doubt as to the right of removal in the  
16 first instance." Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th  
17 Cir. 1992) (internal citations omitted).

18 The amount in controversy includes "all relief claimed  
19 at the time of removal to which the plaintiff would be entitled  
20 if [he] prevails," Chavez. v. JPMorgan Chase & Co., 888 F.3d 413,  
21 418 (9th Cir. 2018), which may include "damages (compensatory,  
22 punitive, or otherwise) . . . as well as attorneys' fees under

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23 <sup>2</sup> Defendant's argument on federal question jurisdiction  
24 also fails on the merits. Plaintiff asserts claims arising under  
25 a state statute that do not "seek[] purely to vindicate a right  
26 or duty created by the CBA itself" and do not present an "active  
27 dispute over the meaning of [the CBA's] terms." See Alaska  
28 Airlines Inc. v. Schurke, 898 F.3d 904, 920-21 (9th Cir. 2018),  
cert. denied 139 S. Ct. 1445 (2019) (internal quotation marks  
omitted). Accordingly, the Labor Management Relations Act does  
not preempt plaintiff's PAGA claims. See id.

1 fee shifting statutes,” Gonzalez v. CarMax Auto Superstores, LLC,  
2 840 F.3d 644, 648 (9th Cir. 2016).

3 “In assessing the amount in controversy, [courts] may  
4 consider allegations in the complaint and in the notice of  
5 removal, as well as summary-judgment-type evidence relevant to  
6 the amount in controversy.” Chavez, 888 F.3d at 416. When a  
7 plaintiff’s state court complaint does not specify an amount of  
8 damages, the removing defendant bears the burden of establishing,  
9 by a preponderance of the evidence, that the amount in  
10 controversy exceeds \$75,000. Sanchez v. Monumental Life Ins.  
11 Co., 102 F.3d 398, 404 (9th Cir. 1996). “Under this burden, the  
12 defendant must provide evidence establishing that it is more  
13 likely than not that the amount in controversy exceeds that  
14 amount.” Id. (internal quotation marks omitted). A defendant  
15 “need include only a plausible allegation that the amount in  
16 controversy exceeds the jurisdictional threshold.” Dart Cherokee  
17 Basin Operating Co. v. Owens, 574 U.S. 81, 89 (2014). However,  
18 conclusory allegations as to the amount in controversy are  
19 insufficient. See Corral v. Select Portfolio Servicing, Inc.,  
20 878 F.3d 770, 774 (9th Cir. 2017).

21 Plaintiff disputes that the requisite amount in  
22 controversy has been met. Defendant argues that the amount in  
23 controversy is satisfied based on the penalties associated with  
24 plaintiff’s claims and plaintiff’s anticipated attorneys’ fees.  
25 The court will address each in turn.

26 1. Value of Plaintiff’s Claims

27 Defendant’s notice of removal states that plaintiff  
28 alleges nine PAGA violations, for which plaintiff would be

1 entitled to penalties for the initial violation and for each  
2 subsequent violation. Defendant states that during the PAGA  
3 period, running from May 28, 2021 to November 7, 2022 (the date  
4 of removal), there were 74 pay periods, and calculates  
5 plaintiff's penalties based on that assumption. (See Notice of  
6 Removal (Docket No. 1) at 9.) However, as plaintiff points out,  
7 plaintiff's final date of employment was June 3, 2021, and  
8 therefore plaintiff worked a maximum of two pay periods during  
9 the PAGA period. (See Decl. of Gennea Moore (Docket No. 1-3) ¶  
10 4.) Assuming defendant's figures of \$1,050 in penalties for the  
11 initial violations and \$2,700 in penalties for each subsequent  
12 pay period in which there were violations (see Notice of Removal  
13 at 9), plaintiff's total PAGA penalties are \$6,450.<sup>3</sup>

14 Under PAGA, civil penalties recovered by aggrieved  
15 employees are distributed as follows: "75 percent to the Labor  
16 and Workforce Development Agency ["LWDA"] . . . and 25 percent to  
17 the aggrieved employees." Cal. Lab. Code § 2699(i). While there  
18 is a split among district courts on the issue, this court has  
19 previously held that the LWDA's portion of PAGA penalties is not  
20 to be considered when calculating the amount in controversy. See  
21 Guerrero v. Nwestco, LLC, No. 2:22-cv-01620 WBS JDP, 2022 WL  
22 16961124, at \*2 (E.D. Cal. Nov. 16, 2022); Escobar v. Capstone  
23 Logistics, LLC, No. 2:20-cv-02501 WBS JDP, 2021 WL 913174, at \*2-  
24 3 (E.D. Cal. Mar. 10, 2021). In Urbino v. Orkin Services of  
25 California, Inc., 726 F.3d 1118 (9th Cir. 2013), the Ninth  
26 Circuit found that "[t]he state, as the real party in interest

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27 <sup>3</sup> This \$6,450 figure results from \$2,700 multiplied by  
28 two pay periods, plus \$1,050.

1 [with respect to the LWDA's share of PAGA penalties], is not a  
2 'citizen' for diversity purposes." See Escobar, 2021 WL 913174,  
3 at \*3 (quoting Urbino, 726 F.3d at 1122-23). This language  
4 "implies that . . . [the state]'s interest is not to be  
5 considered." Id. (quoting Hesselink v. Am. Fam. Life Assurance  
6 Co. of Columbus, No. SACV-20-02051 CJC DFM, 2020 WL 7768711, at  
7 \*3 (C.D. Cal. Dec. 30, 2020)). The LWDA's share of the PAGA  
8 penalties associated with plaintiff's claims should therefore not  
9 be included in calculating the amount in controversy. See  
10 Guerrero, 2022 WL 16961124, at \*2; Escobar, 2021 WL 913174, at  
11 \*2-3.

12 Plaintiff's 25% share of the \$6,450 in PAGA penalties  
13 is \$1,612.50. To satisfy the \$75,000 amount in controversy  
14 requirement, defendant must therefore establish that plaintiff's  
15 attorneys' fees are likely to exceed \$73,378.50.

16 2. Attorneys' Fees

17 "[W]here an underlying statute authorizes an award of  
18 attorneys' fees, either with mandatory or discretionary language,  
19 such fees may be included in the amount in controversy," Shoner  
20 v. Carrier Corp., 30 F.4th 1144, 1148 (9th Cir. 2022) (citing  
21 Galt G/S v. JSS Scandinavia, 142 F.3d 1150, 1156 (9th Cir. 1998),  
22 including attorneys' fees incurred after the time of removal,  
23 Fritsch v. Swift Transp. Co. of Ariz., LLC, 899 F.3d 785, 794  
24 (9th Cir. 2018). If plaintiff prevails on his PAGA claims, he  
25 will be entitled to attorneys' fees as a matter of right. See  
26 Cal. Lab. Code § 2699. Accordingly, the court may consider  
27 attorneys' fees when assessing the amount in controversy here.

28 Only plaintiff's pro rata share of attorneys' fees is

1 appropriately considered. In Gibson v. Chrysler Corp., the Ninth  
2 Circuit addressed this issue in the context of attorneys' fees  
3 sought under Cal. Civ. Proc. Code § 1021.5, which deals with  
4 actions enforcing a right that affects the public interest. See  
5 261 F.3d 927, 942 (9th Cir. 2001), holding modified on other  
6 grounds by Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S.  
7 546 (2005). The Gibson court found that an entire class's  
8 anticipated attorneys' fees cannot be allocated to a named  
9 plaintiff for purposes of satisfying the amount in controversy.  
10 See id. at 941. It based this finding on the language of the  
11 authorizing statute, which provides that a court may award  
12 attorneys' fees "to a successful party" rather than to a named or  
13 representative party. See id. at 942-43 (quoting Cal. Civ. Proc.  
14 Code § 1021.5) (emphasis in original).

15 PAGA is analogous because it does not specify that only  
16 a named or representative party is entitled to attorneys' fees.  
17 See Cal. Lab. Code § 2699 ("[a]ny employee who prevails in any  
18 action" is entitled to attorneys' fees). Consistent with this  
19 interpretation, the Ninth Circuit has indicated that the Gibson  
20 rule applies in the PAGA context. See Canela v. Costco Wholesale  
21 Corp., 971 F.3d 845, 850 (9th Cir. 2020). District courts,  
22 including this court, have also applied Gibson to PAGA claims.  
23 See, e.g., Guerrero, 2022 WL 16961124, at \*2; Davenport v.  
24 Wendy's Co., No. 2:13-cv-02159 GEB, 2013 WL 6859009, at \*2 (E.D.  
25 Cal. Dec. 24, 2013).

26 The court will therefore consider only plaintiff's pro-  
27 rata share of anticipated attorneys' fees. As a result,  
28 defendant must establish that plaintiff's pro rata share of the

1 attorneys' fees is likely to exceed \$73,378.50.

2 In cases involving a "common fund" that is distributed  
3 to class members, district courts can award attorneys' fees based  
4 on either a percentage of the total fund or a lodestar  
5 calculation that incorporates reasonable valuations of the hours  
6 expended and the hourly rate. Hanlon v. Chrysler Corp., 150 F.3d  
7 1011, 1029 (9th Cir. 1998). "The reasonableness of attorneys'  
8 fees, when such fees are unascertainable on the face of the  
9 complaint, can be calculated by looking to other attorneys' fees  
10 awards in similar cases." Garnett v. ADT LLC, 74 F. Supp. 3d  
11 1332, 1337 (E.D. Cal. 2015) (Shubb, J.) (citing Garcia, 2014 WL  
12 2468344, at \*5; Kroske v. U.S. Bank Corp., 432 F.3d 976, 980 (9th  
13 Cir. 2005)). In determining what constitutes a reasonable  
14 attorneys' fee, district courts may rely on "their own knowledge  
15 of customary rates and their experience concerning reasonable and  
16 proper fees." Oth Ingram v. Oroudjian, 647 F.3d 925, 928 (9th  
17 Cir. 2011).

18 Defendant states that there are more than 2,000  
19 aggrieved employees included in this action. (Notice of Removal  
20 at 5.) For purposes of this inquiry, the court assumes that  
21 there are 2,000 aggrieved employees and allocates the attorneys'  
22 fees equally between them. Based on these assumptions,  
23 plaintiff's counsel would need to be awarded more than  
24 \$146,757,000 as a "reasonable" attorneys' fee award.<sup>4</sup> See  
25 Buchanan v. Aramark Campus, LLC, No. 19-cv-00384 VKD, 2019 WL  
26 3302164, at \*7 (N.D. Cal. July 23, 2019) (applying similar

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27 <sup>4</sup> This \$146,757,000 figure results from \$73,378.50 in  
28 attorneys' fees multiplied by 2,000 employees.




1 calculation in determining total requisite attorneys' fees based  
2 on plaintiff's pro rata share). Defendant has provided no reason  
3 to believe that attorneys' fees in this unextraordinary PAGA  
4 action would reach such an absurdly high amount.

5 Accordingly, the court finds that defendant has not  
6 proven by a preponderance of the evidence that the \$75,000 amount  
7 in controversy threshold is satisfied and has therefore failed to  
8 overcome the presumption in favor of remand.<sup>5</sup>

9 IT IS THEREFORE ORDERED that plaintiff's motion to  
10 remand (Docket No. 18) be, and the same hereby is, GRANTED. This  
11 case is hereby REMANDED to the Superior Court of the State of  
12 California, in and for the County of Sacramento.

13 IT IS FURTHER ORDERED that defendant's motion to  
14 consolidate (Docket No. 15) is DENIED as moot.

15 Dated: January 13, 2023

16   
17 WILLIAM B. SHUBB  
18 UNITED STATES DISTRICT JUDGE

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27 <sup>5</sup> The court need not address plaintiff's argument that  
28 defendant's notice of removal was not timely filed as it would  
not alter the outcome.