

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4 DAVID GIANNINI, individually and  
5 on behalf of all others similarly  
6 situated and in the interest of  
7 the general public of the State  
8 of California,

9                                    Plaintiff,

10                                   v.

11 NORTHWESTERN MUTUAL LIFE  
12 INSURANCE COMPANY, a Wisconsin  
13 company; NORTHWESTERN MUTUAL -  
14 SAN FRANCISCO BAY AREA GROUP,  
15 INC., a California corporation;  
16 and JOHN GOODENOUGH, an  
17 individual,

18                                   Defendants.

No. C 12-77 CW

ORDER ALLOWING  
DEFENDANTS TO  
SUBMIT  
SUPPLEMENTAL  
EVIDENCE

United States District Court  
For the Northern District of California

19                                   Plaintiff David Giannini moves to remand this putative class  
20 action to state court. Defendant Northwestern Mutual Life  
21 Insurance Company, SFBAG Insurance Services, Inc., sued as  
22 Northwestern Mutual - San Francisco Bay Area Group, Inc., and John  
23 Goodenough oppose the motion.

24                                   Plaintiff argues, in part, that Defendants have not satisfied  
25 the amount-in-controversy requirement to establish removal  
26 jurisdiction under the Class Action Fairness Act of 2005 (CAFA).  
27 When it is not "'facially apparent' from the complaint that the  
28 jurisdictional amount is in controversy," a "court may consider  
facts in the removal petition, and may require parties to submit  
summary-judgment-type evidence relevant to the amount in  
controversy at the time of removal." Singer v. State Farm Mut.

1 Auto. Ins. Co., 116 F.3d 373, 377 (9th Cir. 1997) (internal  
2 quotations omitted). While, from the additional evidence  
3 submitted by Defendants thus far, it appears possible that the  
4 jurisdictional amount is in controversy in this case, the evidence  
5 currently in the record does not allow the Court to conclude that  
6 this amount in fact is more likely than not in controversy without  
7 speculation. While Defendants offer evidence regarding the number  
8 of "work weeks" that putative class members worked during the  
9 relevant time period, they do not offer any evidence regarding the  
10 total number of days worked by putative class members during that  
11 time or the average number of days worked per "work week" by  
12 putative class members during that time.

13 The Court also notes that attorneys' fees are properly  
14 included in the amount in controversy for purposes of evaluating  
15 jurisdiction under CAFA. Guglielmino v. McKee Foods Corp., 506  
16 F.3d 696, 700 (9th Cir. 2007). Further, this Court agrees that,  
17 "[w]here the law entitles the prevailing plaintiff to recover  
18 reasonable attorney fees, a reasonable estimate of fees likely to  
19 be incurred to resolution is part of the benefit permissibly  
20 sought by the plaintiff and thus contributes to the amount in  
21 controversy." Brady v. Mercedes-Benz USA, Inc., 243 F. Supp. 2d  
22 1004, 1011 (N.D. Cal. 2002). Therefore, the Court will include a  
23 reasonable estimate of attorneys' fees in the calculation.

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Accordingly, Defendants are GRANTED LEAVE to file supplemental evidence addressing the deficiency identified above within seven days of the date of this Order. Defendants shall include with their submission an updated estimate of the amount in controversy and the calculations underlying this estimate. Plaintiff may respond to Defendants' supplemental evidence four days thereafter.

IT IS SO ORDERED.

Dated: 4/10/2012

  
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CLAUDIA WILKEN  
United States District Judge