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

ALEXANDER MOORE, et al.,

No. C 13-02245 JSW

Plaintiffs,

**ORDER GRANTING MOTION TO  
REMAND**

v.

URBAN OUTFITTERS WHOLESALE, INC.,  
D/B/A ANTHROPOLOGIE, a Pennsylvania  
corporation, et al.,

Defendants.

\_\_\_\_\_ /  
This matter comes before the Court upon consideration of the motion to remand filed by Plaintiff Alexander Moore (“Plaintiff”). The Court has considered the parties’ papers, relevant legal authority, and the record in this case, and it HEREBY GRANTS Plaintiff’s motion to remand.

**BACKGROUND**

On April 10, 2013, Plaintiff, individually and on behalf of other members of the public similarly situated, filed a complaint against Defendant Urban Outfitters Wholesale, Inc. d/b/a Anthropologie (“Urban Outfitters”) in the Superior Court of California, for the County of San Francisco. Plaintiff and the members of the putative class he seeks to represent are current and/or former hourly managers who work at Anthropologie stores. The complaint alleges seven causes of action for violations of California Labor Codes for unpaid overtime, unpaid minimum wages, unpaid meal rest premiums, unpaid rest period premiums, wages not timely paid upon termination, non-complaint wage statements, and for violation of California Business and

1 Professions Code Section 17200, *et seq.*

2 On May 16, 2013, Urban Outfitters filed a notice of removal pursuant to 28 U.S.C.  
3 Sections 1332. (Notice of Removal ¶¶ 8-10.) Urban Outfitters contends that the Court has  
4 jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”), which grants federal  
5 district courts original jurisdiction over certain class action suits. (*Id.*)

6 The Court shall address additional facts as necessary in the remainder of this Order.

7 **ANALYSIS**

8 **A. Legal Standards Relevant to Removal Jurisdiction.**

9 “[A]ny civil action brought in a State court of which the district courts of the United  
10 States have original jurisdiction, may be removed by the defendant . . . to the district court of  
11 the United States for the district and division embracing the place where such action is  
12 pending.” *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 7-8 (1983)  
13 (citation omitted); *see also* 28 U.S.C. § 1441. However, federal courts are courts of limited  
14 jurisdiction. *See, e.g., Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

15 The burden of establishing federal jurisdiction for purposes of removal is on the party  
16 seeking removal, and the removal statute is construed strictly against removal jurisdiction.  
17 *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004); *see also Gaus v. Miles, Inc.*,  
18 980 F.2d 564, 566 (9th Cir. 1992). “Federal jurisdiction must be rejected if there is any doubt  
19 as to the right of removal in the first instance.” *Gaus*, 980 F.2d at 566. In order to determine  
20 whether the removing party has met its burden, a court may consider the contents of the  
21 removal petition and “summary-judgment-type evidence.” *Valdez*, 372 F.3d at 1117. It is well  
22 established that a court must evaluate whether it has jurisdiction based on the circumstances that  
23 exist at the time the notice of removal is filed. *See, e.g., Sparta Surgical Corp. v. National*  
24 *Ass’n of Securities Dealers, Inc.*, 159 F.3d 1209, 1211 (9th Cir. 1998).

25 The Class Action Fairness Act (“CAFA”) provides that district courts have original  
26 jurisdiction over any class action in which (1) the amount in controversy exceeds \$5,000,000,  
27 (2) any plaintiff class member is a citizen of a state different from any defendant, (3) the  
28 primary defendants are not states, state officials, or other government entities against whom the

1 district court may be foreclosed from ordering relief, and (4) the number of plaintiffs in the  
2 class is at least 100. 28 U.S.C. §§ 1332(d)(2), (d)(5).

3 **B. Motion to Remand.**

4 For purposes of removal under CAFA, the parties do not dispute minimal diversity or  
5 that the class comprises at least 100 persons. Thus, the amount in controversy, which must  
6 exceed \$5,000,000, is the only statutory requirement at issue here.

7 Plaintiff does not allege a specific amount in controversy in his complaint but, without  
8 any evidence of bad faith, does plead that the amount is less than \$5,000,000, exclusive of  
9 interest and costs. (*See* Compl. at ¶ 1.) The Court finds that Urban Outfitters bears the burden  
10 of showing by a preponderance of the evidence that the amount in controversy exceeds  
11 \$5,000,000. *See Lowdermilk v. U.S. Bank National Ass’n*, 479 F.3d 994, 997 (9th Cir. 2007)  
12 (holding that the preponderance of the evidence standard applies in situations in which the  
13 plaintiff does not seek a specific amount in damages); *Guglielmino v. McKee Foods, Inc.*, 506  
14 F.3d 696, 699 (9th Cir. 2007); *see also Trahan v. U.S. Bank National Ass’n*, 2014 WL 116606,  
15 at \*4-5 (N.D. Cal. Jan. 13, 2014) (White, J.) (holding that the preponderance of the evidence  
16 standard applies post-*Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1348-49 (2013), and  
17 *Rodriguez v. AT&T Mobility Services, LLC*, 728 F.3d 975 (9th Cir. 2013)).

18 Here, to demonstrate the amount in controversy, Urban Outfitters estimates the amount  
19 in controversy to be over the jurisdictional prerequisite by estimating Plaintiff’s unpaid  
20 overtime and minimum wage claims to total over a million dollars. Urban Outfitters estimates  
21 that Plaintiff seeks one hour of overtime per workweek at an estimated overtime rate of \$21,51  
22 (150% of the average regular hourly rate) and half an hour of overtime per workweek at an  
23 estimated overtime rate of \$28.68 (200% of the average regular hourly rate), for an estimated  
24 workforce of 92 during the alleged four-year period. ((Notice of Removal ¶ 21.) Urban  
25 Outfitters then estimates Plaintiff’s claim for failure to pay straight-time wages at one hour per  
26 employee per workweek, at an estimated hourly wage of \$14.34, for an estimated workforce of  
27 92 per year during the alleged four-year period. (*Id.*)

1           However, such an estimation, which assumes time worked, estimates missed overtime  
2 per week without reference to actual workweeks worked, and estimates number of employees  
3 working at any one time, is unsupported by underlying facts, is speculative, and falls short of  
4 meeting the preponderance of the evidence burden. *See Abrego Abrego v. The Dow Chemical*  
5 *Co.*, 443 F.3d 676, 689 (9th Cir. 2006); *Roth v. Comerica Bank*, 799 F. Supp. 2d 1107, 1128-  
6 1130 (C.D. Cal. 2010). Given that Urban Outfitters are in the possession of the relevant payroll  
7 records, it would have been possible for the company to provide a more accurate estimated  
8 accounting and not rely upon extrapolation and speculation. *See, e.g., Vigil v. HMS Host USA,*  
9 *Inc.*, 2012 WL 3283400, at \*5 (N.D. Cal. Aug. 10, 2012). Plaintiff does not allege that every  
10 putative class members was entitled to overtime, does not allege the frequency in which the  
11 overtime violations occurred, and does not assert the frequency rates for his meal and rest break  
12 violations. Urban Outfitters' calculations require the Court to make assumptions that lack  
13 evidentiary support. *See Roth*, 799 F. Supp. 2d at 1126 (holding that under the preponderance  
14 of the evidence standard, courts require that "defendants adduce[] evidence that would permit  
15 the court to draw an inference that . . . violations occurred with the frequency defendants  
16 presume.").

17           For these reasons, the Court finds that Urban Outfitters has not met its burden to  
18 demonstrate that the amount in controversy exceeds \$5,000,000 by a preponderance of the  
19 evidence. Thus, the Court remands this action to state court.

20   **CONCLUSION**

21           For the reasons stated herein, the Court GRANTS Plaintiff's motion to remand this  
22 action to the County of San Francisco Superior Court. The Clerk shall close the file.

23           **IT IS SO ORDERED.**

24 Dated: May 28, 2014

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE