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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6
7 **WAYNE RUSSELL,**
8 Plaintiff,

9 vs.

10 **ARAMARK REFRESHMENT SERVICES, LLC,**
11 Defendant.

Case No. 16-cv-00613-YGR

ORDER GRANTING MOTION TO REMAND

Re: Dkt. No. 14

12 Plaintiff Wayne Russell filed the instant action in the Superior Court for the State of
13 California, County of Alameda, on behalf of himself and in a representative capacity on behalf of
14 similarly situated employees. Plaintiff brings claims for penalties under California's Labor Code
15 and Private Attorney Generals Act ("PAGA") based on: failure to furnish accurate wage
16 statements and failure to state availability of paid sick leave. On February 5, 2016, Defendant
17 Aramark Refreshment Services, LLC removed the action based on diversity jurisdiction, 28
18 U.S.C. § 1332(a)(1). (Dkt. No. 1, Notice of Removal, "NOR.")

19 Currently pending before the Court is Plaintiff's motion to remand the case, arguing that
20 Defendant has not established the amount in controversy exceeds \$75,000. (Dkt. No. 14, "Mtn.")
21 Having read and carefully considered the papers submitted, the admissible evidence, and the
22 pleadings in this action, the Court hereby **GRANTS** the motion.¹

23 **I. LEGAL STANDARD**

24 Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of*
25 *America*, 511 U.S. 375, 377 (1994) (federal courts "possess only that power authorized by

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28 ¹ Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court
finds this motion appropriate for decision without oral argument.

1 Constitution and statute”). A defendant may remove a civil action from state court if the action
2 could have originally been filed in federal court. 28 U.S.C. § 1441. A plaintiff may seek to have a
3 case remanded to the state court from which it was removed if the district court lacks jurisdiction
4 or if there is a defect in the removal procedure. 28 U.S.C. § 1447(c). The removal statutes are
5 strictly construed, so as to limit removal jurisdiction. *Shamrock Oil & Gas Corp. v. Sheets*, 313
6 U.S. 100, 108-09 (1941).

7 A district court must remand a case if it appears before final judgment that the court lacks
8 subject matter jurisdiction. 28 U.S.C. § 1447(c). There is typically a strong presumption against
9 finding removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The burden
10 of establishing federal jurisdiction for purposes of removal is on the party seeking removal. *See*
11 *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004). The party seeking removal “has
12 the burden to prove, by a preponderance of the evidence, that removal is proper.” *Geographic*
13 *Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d 1102, 1007 (9th Cir. 2010). “Federal jurisdiction
14 must be rejected if there is any doubt as to the right of removal in the first instance.” *Gaus*, 980
15 F.2d at 566; *accord Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir.
16 2003). The court “resolves all ambiguity in favor of remand to state court.” *Hunter v. Philip*
17 *Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009).

18 **II. DISCUSSION**

19 The parties agree that, absent attorney fees, the amount in controversy for Plaintiff’s
20 individual PAGA claims is only \$4,950. (NOR ¶¶ 22-26; Mtn. at 2:10.) Accordingly, all that
21 must be determined is whether Defendant met its burden to establish that attorney’s fees of at least
22 \$70,050.01 can also be considered in controversy. *See* 28 U.S.C. § 1332(a)(1) (“the matter in
23 controversy *exceeds* the sum or value of \$75,000...”) (emphasis supplied).

24 “The amount in controversy includes... attorney’s fees, if authorized by statute or
25 contract.” *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2006). Plaintiff’s prayer for
26 relief specifically seeks attorney’s fees. (NOR, Exh. A at 8.) Irrespective of whether Plaintiff
27 specifically requests attorney’s fees, PAGA authorizes such an award. “Any employee who
28 prevails in any [PAGA] action shall be entitled to an award of reasonable attorney’s fees and

1 costs.” Cal. Labor Code § 2699(g)(1); *see also Patel v. Nike Retail Services, Inc.*, 58 F.Supp.3d
2 1032, 1048 (N.D.Cal. 2014) (prevailing plaintiff in PAGA action may recover attorney fees).

3 Defendant offers a single estimate of \$90,000 in attorney’s fees for the Court’s
4 consideration. Defendant calculates this estimate based on 200 hours of attorney time at a
5 “relatively conservative rate” of \$450 per hour. (NOR ¶ 31.) Defendant primarily relies on
6 *Lippold v. Godiva Chocolatier, Inc.* – a PAGA class action – to generate its estimate of attorney’s
7 fees in this case. 2010 WL 1526441 at *1 (N.D.Cal. Apr. 15, 2010). In *Lippold*, the court stated
8 that “attorneys handling wage-and-hour cases typically spend far more than 100 hours on the
9 case.” *Id.* at 4. However, as this Court recently held in a similar PAGA representative action:

10 [S]ince *Lippold*, several district courts have recognized that the
11 Ninth Circuit’s holding in *Urbino v. Orkin Servs. of California, Inc.*,
12 726 F.3d 1118 (9th Cir. 2013), has undermined *Lippold*’s reasoning
13 and have declined to extend *Lippold* to PAGA class actions in light
14 of *Urbino*. In *Urbino*, the Ninth Circuit held that civil penalties
15 under PAGA cannot be aggregated among class members to
16 determine to meet the amount in controversy requirement for federal
17 diversity jurisdiction. 726 F.3d at 1122. Following *Urbino*, the
18 growing consensus among district courts in California is that
19 attorney’s fees similarly cannot be aggregated, but rather they must
20 be pro-rated among putative class members when determining the
21 amount in controversy. *Patel*, 58 F.Supp.3d at 1049 (“When the rule
22 is that claims are not aggregated...(as it is now for PAGA actions
23 under *Urbino*), it would seriously undermine the anti-aggregation
24 rule to allow attorney’s fees to be allocated solely to a named
25 plaintiff in determining the amount in controversy”) (internal
26 alterations omitted); *Mitchell v. Grubhub Inc.*, 2015 WL 5096420 at
27 *7 (C.D.Cal. Aug. 28, 2015) (noting that, following *Urbino*, “several
28 district courts in this Circuit have determined that the amount in
controversy in PAGA actions should only include a plaintiff’s pro-
rated attorneys’ fees”); *Perez v. WinnCompanies, Inc.*, 2014 WL
5823064 at *10-11 (E.D.Cal. Nov. 10, 2014) (“in a putative class
action, attributing attorneys’ fees solely to a named plaintiff for
purposes of determining the amount in controversy would be
improper, because the plaintiff would not ultimately be entitled to
the entirety of that award upon a favorable disposition of the case”).
The Court finds the reasoning in these cases persuasive, and
concludes that post-*Urbino*, “only the portion of attorney’s fees
attributable to [Plaintiff’s] claims count towards the amount in
controversy.” *Patel*, 58 F.Supp.3d at 1049.

Taylor v. Interstate Group, LLC, 2016 WL 861020, at *6 (N.D.Cal. March 7, 2016).

1 Thus, even if the Court were to accept Defendant’s estimate of \$90,000 as appropriate, that
2 entire amount cannot be attributed to Plaintiff. Instead, the “amount must be distributed *pro rata*”
3 to all similarly situated employees whom Plaintiff seeks to represent. *Id.* Even assuming that only
4 one other such employee exists in the state of California, pro-rating Defendant’s estimate of
5 attorney’s fees only amounts to \$45,000 per person. *See Patel*, 58 F.Supp.3d at 1048-49 (in light
6 of defendant’s failure to establish the number of employees in California for whom the plaintiff
7 could bring a representative PAGA claim, the court calculated fees based on assumption of “five
8 such employees”). This is far below the \$70,050.01 required to clear the jurisdictional hurdle.

9 Defendant contends that its \$90,000 estimate need not be pro-rated because it only
10 accounts for attorney’s fees Plaintiff will incur with respect to his individual claims. The Court
11 disagrees. Under these circumstances, Defendant’s estimate appears to be vastly overstated.
12 Defendant offers no case in which an individual Plaintiff seeking approximately \$5,000 in PAGA
13 penalties recovered attorney’s fees in the range of \$90,000. Accordingly, Defendant has failed to
14 meet its burden to establish jurisdiction.

15 **IV. CONCLUSION**

16 Based upon the foregoing, the Court finds that Defendant has not met its burden of
17 establishing that the amount in controversy in this litigation exceeds the jurisdictional threshold
18 under 28 U.S.C. § 1332. Therefore, the motion for remand is **GRANTED**. The clerk is directed to
19 **REMAND** this action to the Superior Court for the State of California, County of Alameda.

20 **IT IS SO ORDERED.**

21 Dated: March 11, 2016

22 
23 YVONNE GONZALEZ ROGERS
24 UNITED STATES DISTRICT COURT JUDGE