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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PAULA DITTMAR, an individual, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

COSTCO WHOLESAL
CORPORATION, Washington corporation, and DOES 1 through 25, inclusive,

Defendants.

CASE NO. 14-CV-1156-LAB-JLB
ORDER

The Ninth Circuit remanded this action to this Court to consider the relevance, if any, of the United States Supreme Court's opinion in *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547 (2014), and the Ninth Circuit's opinion in *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193 (9th Cir. 2015). Those cases explain "when the defendant's assertion of the amount in controversy is challenged by plaintiffs in a motion to remand . . . both sides submit proof and the court then decides where the preponderance lies." *Ibarra*, 775 F.3d at 1198. In *Ibarra*, the defendant relied on an assumption about the rate of its alleged labor law violations that was not grounded in real evidence, and the plaintiff contested the assumption without asserting an alternative violation rate grounded in real evidence.

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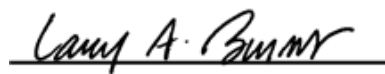
1 *Id.* at 1199. The Ninth Circuit remanded "for both sides to submit proof related to the
2 disputed amount in controversy." *Id.*

3 As in *Ibarra*, Costco relies on several assumptions. See *Dittmar v. Costco Wholesale*
4 *Corp.*, 2014 WL 6892189, at *4-6 (S.D. Cal. Nov. 5, 2014). For example, it assumes all
5 putative class members were harmed in an equal and uniform manner. *Id.* at *4. When
6 calculating the unpaid overtime claim, it assumes fifteen minutes of unpaid overtime for every
7 two-week period. *Id.* When calculating the incorrect itemized wage statements claim, it
8 assumes an almost 100% violation rate. *Id.* at *5. It also assumes that figures for "salaried
9 nonexempt pharmacy managers and other department managers working in California from
10 April 3, 2010 to April 3, 2014" are relevant in calculating total damages for the "Department
11 Manager Class." *Id.* Dittmar contests these assumptions, but doesn't allege an alternative
12 violation rate, e.g., based on her observations as a former employee.

13 Consistent with *Ibarra* and *Dart*, the Court **ORDERS** "both sides to submit proof
14 related to the disputed amount in controversy" so it can "determine if a preponderance of the
15 evidence shows that the amount in controversy exceeds \$5 million." *Ibarra*, 775 F.3d at
16 1199. The parties may submit "affidavits or declarations, or other summary-judgment-type
17 evidence relevant to the amount in controversy at the time of removal." *Id.* at 1197 (quotation
18 omitted). Costco shall file a response no later than May 4, 2015 and Dittmar shall file a reply
19 no later than May 11, 2015. The parties' filings shall be no longer than five pages, not
20 counting any lodged or appended materials.

21 **IT IS SO ORDERED.**

22 DATED: April 23, 2015

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24 **HONORABLE LARRY ALAN BURNS**
25 United States District Judge

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