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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ANNA ALVARADO and CHRISTINE
12 TROTTER,
13
14 v.
15 HOME DEPOT U.S.A., INC.,
16
17 Defendant.

Case No.: 18cv611-MMA (NLS)

**ORDER GRANTING MOTION TO
REMAND;**

[Doc. No. 11]

**REMANDING ACTION TO STATE
COURT**

19
20 Plaintiffs Anna Alvarado and Christine Trotter (“Plaintiffs”) bring this action
21 against Defendant Home Depot U.S.A., Inc. (“Home Depot”) alleging, *inter alia*, unfair
22 business practices and violations of the California Labor Code. Home Depot removed
23 this case to federal court on March 26, 2018. Doc. No. 1. Plaintiffs move to remand on
24 grounds that Home Depot has failed to meet its burden to establish the minimum amount
25 in controversy necessary for removal under Title 28, United States Code, sections 1332
26 and 1441. *See* Doc. No. 11. Home Depot filed an opposition to the motion to remand, to
27 which Plaintiffs replied. *See* Doc. Nos. 13, 15. For the reasons set forth below, the Court
28 **GRANTS** Plaintiff’s motion to remand.

1 **BACKGROUND**

2 Plaintiffs, both California residents, each served as Assistant Store Managers for
3 Home Depot. Plaintiffs allege that Home Depot failed to provide them with overtime
4 wages, meal periods, rest periods, vacation wages, wages upon termination, and accurate
5 wage statements during their employment. Plaintiffs initially filed suit against Home
6 Depot in San Diego County Superior Court on January 29, 2018, alleging claims
7 regarding violations of the California Labor Code and California Business and
8 Professional Code. Home Depot removed the case to this Court asserting diversity
9 jurisdiction. Plaintiffs seek the following relief: (1) nominal and compensatory damages;
10 (2) restitution and injunctive relief; (3) penalties pursuant to California Labor Code §
11 201, § 203, § 218.5, § 218.6, § 221, § 225.5, § 226, § 226.2, § 226.3, § 226.7, § 512, and
12 § 558; (4) prejudgment and post-judgment interest; (5) costs of suit; (6) attorney’s fees;
13 and (7) any further equitable relief. Plaintiffs’ complaint does not indicate the total
14 amount of damages sought.

15 Plaintiffs now seek to return to state court. Defendant opposes remand, arguing
16 that this Court may properly exercise subject matter jurisdiction based on the diversity of
17 the parties and the amount in controversy. The parties primarily disagree over whether
18 the Court may aggregate the value of Plaintiffs’ claims to meet the amount in
19 controversy, and whether the Court may consider post-removal attorney’s fees and pre-
20 litigation settlement discussions in calculating the amount in controversy.

21 **LEGAL STANDARD**

22 A defendant may remove an action from state court to a federal district court when
23 the district court would have had original jurisdiction. 28 U.S.C. § 1441. A federal
24 district court has original jurisdiction over an action between citizens of different states
25 where the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332.
26 In determining the amount in controversy, the court first looks to the plaintiff’s
27 complaint. *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2014). Where
28 damages are unstated or ambiguous, the defendant seeking removal bears the burden to

1 show that the amount in controversy exceeds \$75,000. *Gaus v. Miles, Inc.*, 980 F.2d.
2 564, 566-67 (9th Cir. 1992) (citing *Garza v. Bettcher Indus., Inc.*, 752 F. Supp. 753, 763
3 (E.D. Mich. 1990.). If the plaintiff contests the defendant’s calculations, the parties may
4 submit evidence outside the complaint, including affidavits, declarations, and “reasonable
5 chain[s] of logic” to substantiate their assertions of the amount in controversy. *LaCross*
6 *v. Knight Transp. Inc.*, 775 F.3d 1200, 1201 (9th Cir. 2015). The court then decides
7 whether, by a preponderance of the evidence, the aggregate value of the amount in
8 controversy meets the jurisdictional minimum. *See Dart Cherokee Basin Operating Co.,*
9 *LLC v. Owens*, 135 S. Ct. 547, 554 (2014). Where the evidence submitted by both sides
10 is balanced or “in equipoise,” the court will deny federal jurisdiction. *Ibarra*, 775 F.3d at
11 1199.

12 There is a strong presumption against removal, such that the removing party bears
13 the burden of establishing that the statutory requirements of federal jurisdiction have been
14 met. *See Rodriguez v. AT & T Mobility Servs. LLC*, 728 F.3d 975, 978 (9th Cir. 2013).
15 The court must remand the case “if there is any doubt as to the right of removal.” *Gaus*,
16 980 F.2d at 566.

17 DISCUSSION

18 Plaintiffs move for an order remanding this action to state court because “Home
19 Depot cannot provide by a preponderance of credible evidence that the minimum amount
20 in controversy has been met to permit this court to exercise diversity jurisdiction over this
21 action.” Doc. No. 11-1, at 7 (internal quotations omitted). Among other things, Plaintiffs
22 argue Home Depot may not aggregate the value of their separate claims, nor include a
23 potential award of attorney’s fees in their calculations. Home Depot opposes on grounds
24 that Plaintiffs fail to provide evidence showing that removal was improper, and that
25 Home Depot reasonably calculated Plaintiffs’ claims in determining the amount in
26 controversy exceeds \$75,000.

1 As previously noted, Plaintiffs' complaint does not indicate the total amount of
2 damages sought. However, the total amount in controversy alleged in Plaintiff
3 Alvarado's pre-litigation settlement demand is as follows:

4 Claim	Potential Amount in Controversy
5 Unpaid Overtime	\$32,795.10
6 Unpaid Meal Period Premiums	\$1,681.03
7 Unpaid Rest Period Premiums	\$8,128.80
8 Unpaid Vacation Wages	\$1,493.76
9 Waiting Time Penalties	\$6,727.20
10 PAGA Penalties	\$8,250 ¹
11 TOTAL:	\$61,826.56

12
13 Home Depot also alleges that \$30,000 per plaintiff is a reasonable calculation of
14 attorney's fees, bringing the total amount in controversy for Plaintiff Alvarado to
15 approximately \$91,826.56. Home Depot further alleges that although Plaintiff Trotter did
16 not make a pre-litigation settlement demand, Plaintiff Trotter alleges identical claims to
17 Plaintiff Alvarado, and therefore it is reasonable to assume her amount in controversy is
18 at least equal to that of Plaintiff Alvarado.

19 In calculating their conflicting amounts, the parties disagree over three main points:
20 (A) whether Home Depot may aggregate Plaintiffs' claims to reach the amount in
21 controversy; (B) whether post-removal attorney's fees should be included in the amount
22 in controversy; and (C) whether Home Depot has proven the potential value of Plaintiff
23 Trotter's claims by a preponderance of the evidence.
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27 ¹ The Court notes that Plaintiff Alvarado does not allege a PAGA claim in the complaint. Doc. No. 1, at
28 10. Nevertheless, Defendant includes the PAGA penalties in its estimate of the amount in controversy,
and relies on this amount to meet the jurisdictional requirement. Doc. No. 1, at 4.

1 **A. Plaintiffs' Claims May Not be Aggregated to Meet the Amount in Controversy**

2 As an initial matter, Home Depot alleges in the Notice of Removal that Plaintiff
3 Alvarado's claims aggregated with Plaintiff Trotter's claims exceed the amount in
4 controversy jurisdictional requirement. Doc. No. 1, at 6. However, the claims may not
5 be aggregated in this manner. Instead, "plaintiffs who seek to enforce separate and
6 distinct rights must each have an amount in controversy that exceeds \$75,000." *Snyder v.*
7 *Harris*, 394 U.S. 332, 335-36 (1969).

8 In similar cases, when more than one employee sues to recover wages or other
9 benefits in a non-class action, courts have not permitted aggregation of the value of the
10 individual employees' claims. *See, e.g., Wastier v. Schwan's Consumer Brands*, No.
11 07CV1594, 2007 WL 4277552 (S.D. Cal. Dec. 5, 2007). For example, in *Wastier*, three
12 plaintiffs, employees of the same company, sought relief under California state law for
13 the company failing to pay overtime compensation. The company removed the action
14 based on diversity jurisdiction, but the court remanded the action to state court, finding
15 that the company improperly aggregated the value of the plaintiffs' claims in an attempt
16 to satisfy the amount in controversy requirement. *See id.* Likewise, Home Depot may
17 not aggregate the value of Plaintiffs' claims in order to meet the required amount in
18 controversy.

19 **B. Post-Removal Attorney's Fees Are Included in the Amount in Controversy**

20 Plaintiffs claim attorney's fees pursuant to sections of the California Labor Code in
21 their prayer for relief. The parties agree, "where an underlying statute authorizes an
22 award of attorney's fees, either with mandatory or discretionary language, such fees may
23 be included in the amount in controversy." *Galt/GS v. JSS Scandinavia*, 142 F.3d 1150,
24 1156 (9th Cir. 1998). However, the parties disagree as to whether the Court should
25 consider a reasonable estimate of the total anticipated attorney's fees, or consider only the
26 fees incurred at the time of removal, in determining the amount in controversy.

27 The Ninth Circuit has not yet expressed an opinion as to whether expected or
28 projected future attorney's fees may properly be considered in controversy at the time of

1 removal for purposes of the diversity jurisdiction statute, and the decisions of the district
2 courts are split on the issue. *See, e.g., Davis v. Staples Inc. et al.*, No. CV 13-8937 FMO,
3 2014 WL 29117 (C.D. Cal. Jan. 3, 2014) (noting courts are split as to whether only
4 attorney’s fees that have accrued at the time of removal should be considered in
5 calculating the amount in controversy, or whether the calculation should take into
6 account fees likely to accrue over the life of the case).

7 In the class action context, the Ninth Circuit has instructed courts to consider “the
8 reality of what is at stake in the litigation,” and the defendant’s “damages exposure”
9 regarding the \$75,000 amount in controversy requirement. *Ibarra*, 775 F.3d at 1198.
10 Thus, where a statute authorizes recovery of fees, many courts consider a reasonable
11 estimate of the total projected fees to be incurred during litigation, in order to accurately
12 assess a defendant’s damages exposure. *See, e.g., Adkins v. J.B. Hunt*, 293 F. Supp. 3d
13 1140, 1148 (E.D. Cal. 2018); *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004,
14 1010-11 (N.D. Cal. 2002); *Simmons v. PCR Technology*, 209 F. Supp. 2d 1029, 1034-35
15 (N.D. Cal. 2002).

16 Here, Plaintiffs sue under multiple sections of the California Labor Code that
17 provide for attorney’s fees, both pre- and post-removal, as a factor in evaluating “what is
18 at stake in the litigation” and Home Depot’s “damage exposure” regarding the \$75,000
19 amount in controversy requirement. *Ibarra*, 775 F.3d at 1198. The parties assert
20 different “reasonable estimates” of Plaintiffs’ potential fees. Plaintiffs have not provided
21 any set value to determine the attorney’s fees incurred thus far, or potential fees incurred
22 in the future. Home Depot alleges that, “the Central District has accepted \$300 per hour
23 as a reasonable hourly rate for estimation of attorney fees in similar cases.” Doc. No. 13,
24 at 8-9. Home Depot relies on this to calculate the projected amount of attorney’s fees for
25 this lawsuit as \$30,000.

26 Even if the Court accepts this as a reasonable fee, Home Depot improperly attributes
27 the total amount of the attorney’s fees to each Plaintiff, rather than the Plaintiffs sharing
28 the fees pro rata. *Goldberg v. CPC Int’l, Inc.*, 678 F.2d 1365, 1367 (9th Cir. 1982)

1 (holding that potential attorneys' fees should be distributed pro rata to each class member
2 or plaintiff). Using Home Depot's estimate, each Plaintiff would incur \$15,000 in
3 attorney's fees.

4 Home Depot proffers Plaintiff Alvarado's pre-litigation demand of \$61,826.56 in
5 conjunction with reasonable attorney's fees exceeds the \$75,000 jurisdictional threshold.
6 Do. No. 13 at 3. "A settlement letter is relevant evidence of the amount in controversy if
7 it appears to reflect a reasonable estimate of the plaintiff's claim." *Cohn v. Petsmart, Inc.*
8 281 F.3d 837, 840 (9th Cir. 2002). Where a plaintiff later "attempt[s] to disavow his
9 letter or offer[s] contrary evidence," the letter may lose its persuasive value. *Id.* The
10 "demand," which Plaintiff's counsel describes as "inflated," consisted of multiple claims,
11 including a \$33,000 PAGA claim of which Plaintiff Alvarado would be entitled to 25%
12 (\$8,250). Do. No. 1, Ex. C at 8. However, Plaintiffs do not include a PAGA claim in the
13 lawsuit. Removing the PAGA claim from the equation, the pre-litigation settlement
14 demand suggests Plaintiff Alvarado's damages are only \$53,576.56.

15 Assuming the Court accepts Home Depot's \$30,000 estimate of attorney's fees,
16 properly pro-rated as \$15,000 in fees for each Plaintiff, the amount in controversy for
17 Plaintiff Alvarado's claims would only reach \$68, 576.56. Because this does not exceed
18 the jurisdictional minimum requirement of \$75,000, the Court lacks diversity jurisdiction
19 over Plaintiff Alvarado's claims.

20 **C. Home Depot Has Not Shown that the Amount in Controversy Exceeds \$75,000**
21 **by a Preponderance of the Evidence with Regard to Plaintiff Trotter.**

22 Home Depot does not provide any independent evidence with regard to the claims
23 brought by Plaintiff Trotter. Instead, Home Depot relies solely on the claims brought by
24 Plaintiff Alvarado to calculate Plaintiff Trotter's amount in controversy. *Id.* Home
25 Depot speculates that the alleged value of Plaintiff Trotter's claims should be higher,
26 given that she was an assistant manager for three times as long as Plaintiff Alvarado. *Id.*
27 Plaintiffs point out that, "even though Home Depot has control over Ms. Trotter's
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1 records, it has chosen to withhold or ignore these records and instead opts to rely on Ms.
2 Alvarado's settlement demand and the Complaint only." Doc. No. 15, at 7.

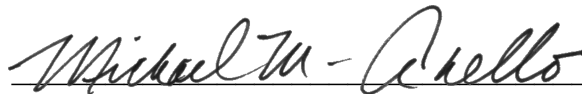
3 Because Home Depot's calculations of Plaintiff Trotter's claims are speculative,
4 and given the strong presumption against removal, Home Depot has not met their burden
5 of demonstrating that Plaintiff Trotter's claims exceed the requisite amount in
6 controversy. *See Roth v. Comerica Bank*, 799 F. Supp. 2d 1107, 1127-28 (C.D. Cal. Aug.
7 31, 2010); *Smith v. Brinker Int'l Inc.*, No. C10-0213 VRW, 2010 WL 1838726 (N.D. Cal.
8 May 5, 2010) ("Because defendants' calculation of damages for alleged overtime and
9 missed meal and rest periods is speculative and based on conjecture, the court limits the
10 calculation of the amount in controversy to the reasonably certain amount of statutory
11 penalties that could be claimed.").

12 **CONCLUSION**

13 Based on the foregoing, the Court **GRANTS** Plaintiffs' motion and **REMANDS**
14 this action to the Superior Court of the State of California, County of San Diego. The
15 Court **DIRECTS** the Clerk of Court to close the case.

16 **IT IS SO ORDERED.**

17 DATE: June 5, 2018



18 HON. MICHAEL M. ANELLO
19 United States District Judge
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