Willis v. Xerox Business Services, LLC et al

2013 | Cited 0 times | E.D. California | November 15, 2013

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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

Plaintiff Destinie Willis seeks a remand of this action to Kern County Superior Court. (Doc. 9). Defendants Xerox Business Services, LLC and Xerox Education Solutions, LLC Defendants their opposition to the motion on October 25, 2013 (Doc. 13), to which Plaintiff filed a reply on November 1, 2013. (Doc. 14). On November 8, 2013, the Court heard the oral GRANTED. I. Factual and Procedural History Plaintiff initiated this action by filing a Summons and Complaint in Kern County Superior Court on July 10, 2013. (Doc. 2-1, Exh. 1). She filed a First Amended Complaint in the state court on August 14, 2003. (Doc. 2-1, Exh. 3). Plaintiff alleges she is a former employee of Xerox for unlawful wage and hour policies, and she seeks to bring the action on behalf of herself and all others similarly DESTINIE WILLIS, Plaintiff, v. XEROX BUSINESS SERVICES, LLC; XEROX EDUCATION SOLUTIONS, LLC; and DOES 1 through 20, Defendants.

Case No.: 1:13-cv-01353 - LJO - JLT ORDER REMAND THIS MATTER TO THE KERN COUNTY SUPERIOR COURT (Doc. 9) 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

Education and/or any Doe Defendant to work as a phone representative, or equivalent function, in a California Office at any time from July 10, 2009 through the date of trial of this action and who were (Doc. 2-1 at 24 ¶¶ 1-2). Specifically, Plaintiff raises the following causes of action against Defendants: (1) violations of California Labor Code §§ 221, 222, 223, 1194 and Wage Order No. 4 (failure to pay minimum wage); (2) violations of California Labor Code §§ 510, 558 and 1194 (failure to pay proper overtime); (3) violations of California Labor Code § 204 and applicable wage orders (failure to timely pay all wages earned); (4) violations of California Labor Code § 226 (failure to provide accurate itemized wage statements); (5) violations of California Labor Code § 203 (failure to timely pay final wages); (6) violation of California Business & Professions Code §§17200, et seq (unfair competition/unfair business practices); and a violation of the Private Attorneys General Act. (See id. at 33-38, ¶¶ 32-74).

On August 23, 2013, Defendants filed a Notice of Removal pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1332(a), asserting the Court has diversity jurisdiction over the action pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1332(a). (Doc. 2 at 3). Plaintiff filed the motion to remand now pending before the Court on September 9, 2013. (Doc. 9). II. Removal Jurisdiction

Pursuant to 28 U.S.C. § 1441(a), a defendant has the right to remove a matter to federal court where the district court would have original jurisdiction. Caterpillar, Inc. v. Williams, 482 U.S. 286, 392 (1987). Specifically,

Except otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending. Constitution, laws, or treaties o Id. at § 1331.

A party seeking removal must file a notice of removal of a civil action within thirty days of receipt of a copy of the initial pleading. Id. at § 1446(b). Removal statutes are to be strictly construed, Gaus v. Miles, 980 F.2d 564, 566 (9th Cir. 1992), and the party seeking removal bears the burden of proving its propriety. Duncan v. Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996); Abrego Abrego v. Dow 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

Chem. Co., 443 F.3d 676, 683-85 (9th Cir. 2006); see also Calif. ex. rel. Lockyer v. Dynegy, Inc., 375 Moore-Thomas v.

Alaska Airlines, Inc., 553 F.3d 1241, 1244 (9th Cir. 2009) (citing Gaus, 980 F.2d at 566).

to establish the amount in controversy requirement is the preponder Rodriguez v. AT&T Mobility Service, 728 F.3d 975, 976 (2013). This standard requires a defendant to

[the jurisdictional Korn v. Polo Ralph Lauren Corp., 536 F. Supp. 2d 1199, 1204 (E.D. Cal. 2008) (quoting Sanchez v. Mon. Life Ins. Co., 102 F.3d 398, 404 (9th Cir. 1996) (emphasis omitted). Thus, Defendants have the burden to demonstrate by a preponderance of the evidence that

III. in the Notice of Removal

In the Notice of Removal, Defendants contend the Court has diversity jurisdiction because the parties are d (Doc. 2 at 3).

$85,883, which includes back pay damages of $35,100; penalties in the amount of $14,083; equitable relief and restitution valued at $11,700; and attorney fees totalling $25,000. (Id. at 8).

unpaid wages and overtime pay, penalties under at least three California statutes, equitable relief, restitution for a fourth year of alleged unpaid wages and o (Doc. 2 at 4). -year

(Id. at 5). Defendants contend only fifteen hours in a week in wages, over three years and at an average overtime rate of $15 per hour, (Id.) Also, Defendants assert the penalties in issue Plaintiff seeks (1) penalties for failure to pay wages up to 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22

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hou (Id. at 5-6).

In addition , 432 U.S. 333, 347 (1977); , 538 F.2d 829, 831 (9th Cir. 1976)

for herself of all wages she i (Id.) Calculating the amount of damages for this claim, Defendants explain:

[W]hile Plaintiff to be awarded restitution for an additional year of allegedly owed wages. Accordingly, even if the Plaintiff claims she is entitled to a total of fifteen hours a week in wages regarding her restitution claim under Section 17200, over one year at an average overtime rate of $15 per hour, the amount in controversy for this claim is at least $11,700 on behalf of the named Plaintiff alone. (Id.)

Finally, Defendants note attorney fees are included in the calculations to determine jurisdiction where, as here, . (Doc. 2 at 6) (citing , 479 F.3d 994, 1000 (9th Cir. 2007)). Defendants

discovery, 40 hours for dispositive motions, 100 hours for trial preparation and pre-trial motions, and 60 hours for trial. (Id. at 7). given that a court in the Central District of California recently awarded Los Angeles-based employment (Id.) (citing Drenckhahn v. Costco Wholesale Corp., No. 2:08-CV-1408-JHN-SS (C.D. Cal. May 4, 2012)). Therefore, Defendants estimate fees for (Id.) Also, Defendants estimate counsel will spend

Professions Code § 17200, resulting (Id.) aintiff are included, there

can be no dispute that the amount in controversy in this matter meets the jurisdictional threshold of 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

named plaintiff satisfies the amount-in-controversy requirement and supplemental jurisdiction may be taken over the claims of the putative class members. (Id. at 8, n.14) (citing Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 549 (2005). IV. Motion to Remand Plaintiff contends the Defendants failed to carry their burden to show the amount in controversy Defendants are grossly exaggerated as a result of fundamen Id. at 9.

$26,927.60 which includes $18,525.00 in back pay damages; $7,402.60 in penalties; $1,000 in

attorney fees (apportioned to class members); and no restitution. (Id.) Plaintiff asserts that she worked for Xerox from December 19, 2011 to January 19, 2013. (Doc. 9- Pla Plaintiff argues 19 months of employment rather than a

36-month period, or to 41 of the 79 pay periods. (Id.) With these reductions, Defendants calculations for back-pay damages would be reduced from $35,100 to $18,525 and the penalties would be reduced from $14,083 to $7,402.60. (Id.) In addition, Plaintiff asserts Defendants erroneously assume that she w (Id. at 10). Because she did not do so, Plaintiff contends the amount for restitution should not be considered. (Id.) Further, Plaintiff argues that

pursuant to California Code of Civil Procedure section 1021.5 are not allocated among all class me By dividing the fees estimated by Defendants to a class of 400 (because Defendants assert this case is similar to a class action involving 404 class members), Plaintiff contends the fees that may be apportioned to her for jurisdictional purposes, of less than $1,000. (Id. at 8, 11).

carry their burden of proving that the amount in controversy, exclusive of interest and costs, exceeds 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

$75, County Superior Court. (Id.)

V. Defendants contend original complaint (Doc. 13 at 6, 8), although her First Amended Complaint was filed prior to removal of the action and was referenced in the Notice of Removal. Therefore, opposing remand, Defendants assert they recalculated the amount in controversy based upon the allegations of the First Amended Complaint 1

, and because (Id. at 8, 9). With the recalculations, Defendants assert the amount in controversy includes $19,800 in back-pay damages; $82,400.00 in PAGA penalties; $5,050.00 in penalties for the failure to provide accurate itemized wage statements and failure to timely pay final wages; $11,700.00 for equitable relief; $21,862.50 in , for a total of $165,812.50. (Id. at 10-12). VI. Discussion and Analysis

As an initial matter, Plaintiff argues Defendants should not be permitted to recalculate the it improperly seeks to contradict and replace it completely Id.)

(citing Bicek v. C & S Wholesale Grocers, Inc., 2013 WL 4009239, *4 (E.D. Cal. Aug. 5, 2013)). In Bicek, the Court determined that when the defendants did not seek to change the grounds for removal including diversity jurisdiction and the Class Action Fairness Act but rather

Notice of Removal was permitted. Bicek, 2013 WL 4009239, at *5. Similarly, here Defendants seek to provide additional support for their assertion that the Court has diversity jurisdiction over the matter. Therefore, the recalculations are permissible and will be considered by the Court.

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Plaintiff filed a Second Amended Complaint in this Court on September 26, 2013 (Doc. 11), after seeking a remand of the action. However, because jurisdiction is determined at the time of removal,

the operative complaint for purposes of determining the amount in controversy is the First Amended Complaint filed in the state court prior to removal. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

parties. Lowdermilk, 479 F.3d at 1002. Matheson v. Progressive Specialty Ins. Co., 319 F.3d

1089, 1090-91 (9th Cir. 2003). Defendants must set forth facts to support the assertion that the amount in controversy exceeds the statutory minimum. Gaus, 980 F.2d at 567. The Court may consider -judgment- including declarations and affidavits. Matheson, 319 F.3d at 1090 (citation omitted).

A. Back-pay damages In the Notice of Removal, Defendants earned approximately $28,000 per year during he (Doc. 2 at 5). Specifically, Jaime

Son, Vice President of Human Resources of Xerox Business Services. In addition, Defendants assume, without

explaining why, that Plaintiff could (Id.) Based upon these assumptions, Defendants contend the amount in controversy for back-pay totals $19,800. (Doc. 13 at 20).

Notably, although D isputed she is seeking a minimum 15 the burden does not lie with Plaintiff upon removal. Rather, Defendants must provide some factual support for their calculations. See Garibay v. Archstone Communities LLC, F.3d , 2013 WL 4517934 (9th Cir. Aug. 27, 2013) (finding there was insufficient information to support a finding that the amount in controversy requirement was satisfied on speculative and self-serving assumptions about key unknown variables not explained why it is proper to assume Plaintiff seeks 15 hours a week in overtime and admitted at

the hearing it was simple guesswork; this is insufficient.

B. PAGA Penalties ties places $82,400.00 in controversy. (Doc. 13 at 10). Defendants observe PAGA penalties are subject to a one-year statute of limitations, -year period preceding the July 10, 2013 filing of (Id. at 13) (citing Cal. Civ. Proc. Code §340(a); Baas v. Dollar Tree Stores, 2009 WL 1765759, at *5 (N.D. Cal. June 18, 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

2009). Plaintiff alleges that she is entitled to recover penalties PAGA penalties pursuant to Cal. Labor Code §§ 210, 226.3, 558, 1174.5, and 2698. (See Doc. 2-1 at 38-39; Doc. 13 at 13-14). However, according to Plaintiff, the amount calculated by Defendants is inflated because they assume Defendants would have to pay the heightened penalty would be paid to the state. (Doc. 14 at 16). The first amended complaint asserts the right to recover the (Doc. 13-1 at 36, 37)

For a plaintiff to recover for a that it has violated the Labor Code. Amaral v. Cintas Corp. No. 2, 163 Cal.App.4th 1157, 1207-09 (2008); see also Amalgamated Transit Union Local 1309 v. Laidlaw Transit

Service, Inc., 2009 WL 2448430, at *9 , courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the

1. Calcu

violation of Cal. Labor Code § 210, Defendants find $5,300 is in controversy (1 x $100 initial violation + 26 $200 subsequent violations) and $26,250 for claims under § 226.3 (1 x $250 initial violation + 26 x $1,000 subsequent violations). (Doc. 13 at 13- (Id. at 13, n.11).

In Urbino v. Orkin Servs. of California, Inc., 726 F.3d 1118, 1121-22 (9th Cir. 2013), the Court held,

-court complaint Guglielmino v. McKee Foods Corp., ars the burden of establishing, by a preponderance of the evidence, that the amount in controversy Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 404 (9th Cir.1996). As noted above, in the First Amended Complaint, Plaintiff did not allege a factual basis for the claim that subsequent violation-penalties may be imposed (Doc. 13-1 at 36; Doc. 13 at 13, n. 11). Moreover, 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

Defendant does not proffer any reason to believe that subsequent violation-penalties may be imposed. To the contrary, seemingly, Defendant disputes that they can be imposed. (Doc. 13 at 13). Defendants Defendants dispute that Plaintiff is entitled to recover subsequent violation penalties until Defendants are put on notice of Labor Code v [Citation] Here, neither the Labor Commissioner nor any court is alleged to have put Defendants on notice of Labor Code violations. Id.

In Allen v. Utiliquest, LLC, 2013 WL 4033673 at *8, n. 9 (N.D. Cal. Aug. 1, 2013), the court rejected that subsequent violation penalties could be assumed when determining the amount in controversy where there was no evidence the defendant had notice of Labor Code violations before or during the PAGA period. The Court no Defendants PAGA penalties calculation is also insufficient because it assumes an initial pay period violation and fifty-six subsequent violations for each of the 306 putative class members that worked during the PAGA statutory period. Courts have he to the employer that it is Allen relied on Trang v. Turbine Engine

Components Technologies Corp., 2012 WL 6618854 at *5 (C.D. Cal. Dec. 19, 2012) which held,

papers, it is unclear if or when TECT was put on notice that it was in violation of the Labor Code. Since TECT carries the burden of proof and has provided no evidence about when it was notified of any alleged violations, the court finds any heightened penalties unreasonable. TECT additionally argues that Plaintiff's FAC put the heightened penalties for subsequent violations in controversy simply by quoting the applicable PAGA statute. (Opp'n at 14:18 21; Reply at 7:21 24.) TECT, however, cannot meet its burden of proving an amount in controversy by referring only to the statute; it must point to evidence making it more likely than not that a certain amount in controversy is met. Here,

there is not sufficient evidence offered to establish heightened penalties for this cause of action.

Id., emphasis added. There was a similar result in Jimenez v. Menzies Aviation, Inc., 2013 WL 1411228 at * 4 (N.D. Cal. Apr. 8, 2013) where the court held,

The complaint does not allege that Defendants were put on notice that they were in violation of the Labor Code prior to Plaintiff's termination. Nor have Defendants provided evidence indicating that they were notified of Labor Code violations prior to Plaintiff's termination. Accordingly, because Defendants have failed to demonstrate that it is more likely than not that Plaintiff's claims for PAGA penalties for the Labor Code violations alleged in claims one, three, and five of the complaint are worth $21,900, the Court cannot credit Defendants damages calculation in this regard. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

Finally, in Velasquez v. HMS Host USA, Inc., 2012 WL 6049608 at *9 (E.D. Cal. Dec. 5, 2012), this Court refused to consider subsequent violation penalties, which were unsupported by a sufficient evidentiary basis, when evaluating the amount-in-Defendants again offer no evidence to support their assertion that each putative class member is entitled to maximum penalties under PAGA.

Because there is insufficient evidence to support that subsequent violation penalties are in controversy, the Court agrees the penalties must be recalculated to consider only amounts associated with initial violations, which includes $100 per pay period under Cal. Labor Code §210 (equalling $2,700); $250 per pay period under Cal. Labor Code §226.3 (equalling $6,750); $50 per pay period under Cal. Labor Code §558 (equalling $1,350), and $100 per pay period x 9 for each alleged violation under Cal. Labor Code §2699(f) (equalling $24,300). Thus, the total amount of these penalties is $35,100.

2. Money paid to the state The traditional rule is that multiple plaintiffs who assert separate and distinct claims are precluded from aggregating them to satisfy the amount in controversy requirement. Urbino, 726 F.3d at 1122. Whether a claim is separate and distinct depends on whether Troy Bank of Troy, Ind. v. G.A. Whitehead & Co., 222 U.S. 39, 41. (1911).

The Court notes Defendant does not assert that all of the civil penalties that may be imposed as

least $75,000 in controversy. Indeed, in Urbino, 726 F.3d at 1122-1123, the Ninth Circuit laid this question to rest and held that the interest of the LWDA cannot be considered in determining whether a plaintiff has demonstrated that the amount in controversy exceeds $75,000. The Court held,

Defendants contend however that the interest Urbino asserts is not his individual s collective interest in enforcing its labor laws through PAGA. See, e.g., Arias, 95 Cal.Rptr.3d 588, 209 P.3d at 934; Amalgamated Transit Union, Local 1756, AFL CIO v. Super. Ct., 46 Cal.4th 993, 95 Cal.Rptr.3d 605, 209 single plaintiff seeks to aggregate two or more of his own claims against a single Snyder, 394 U.S. at 335, 89 S.Ct. 1053, and that those claims can be combined to satisfy the minimum amount in

controversy requirement of the diversity statute, id. To the extent Plaintiff can and does assert anything but his individual interest, however, we are unpersuaded that such a suit, the primary benefit of which 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

will inure to the state, satisfies the requirements of federal diversity jurisdiction. The

Thus, the Court finds no logical support that Defendant, while precluded from relying upon the total amounts awardable under PAGA when evaluating the amount in controversy, may rely upon the 75% of the total amount payable to the LWDA, to demonstrate the $75,000 threshold. See Main v. Dolgen California, LLC, 2013 WL 5799019 at *2-3 (E.D. Cal. Oct. 28, 2013) 2

. Notably, even before Urbino, this Court held in Pulera v. F & B, Inc., 2008 WL 3863489, at *4 (E.D. Cal. Aug. 19, 2008), that [th]e amounts recoverable by Plaintiff based on his PAGA claims are separate and distinct from the amounts recoverable by the State of California via the LWDA, and therefore these amounts may not be Likewise, previously this Court explained, employee who sues for civil damages must give 75% of the award to the California Labor and Lopez v. Source Interlink Companies, Inc. awarded Id.

Contrary to this, Defendant relies upon Schiller v. David's Bridal, Inc., 2010 WL 2793650 (E.D. Cal. July 14, 2010). However, in light of Urbino, the Court declines to follow Schiller and disagrees with its suggestion that there should not be the 75% reduction in the amount recoverable for purposes of determining jurisdiction.

With the reductions made above which rejected the claim for subsequent-violation penalties, the PAGA penalties totalled $35,100. However, because 75% of this amount would be paid to the California Labor and Workforce Development Agency, the amount placed in controversy PAGA claims equals $8,775.

C. Other Penalties Plaintiff seeks penalties for failure to provide itemized wage statements and failure to provide final wages within the statutory due date, which are violations of Cal. Labor Code §§ 203 and 226.

2 Though Main considered the entirety of the PAGA for all employees minus the 75% payable to the state to determine whether jurisdiction existed, this occurred because under CAFA, courts are required to consider the amount in controversy as to the entire described class. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

(Doc. 2-1 at 34-36). Defendants assert that these claims place $5,050.00 in controversy, which includes $2,400 under §203 and $2,650 under §226. (Doc. 13 at 15-16). Notably, however, Defendants again

viol See Doc. 13 at 16). As set forth above, there are no facts to support the imposition of heightened

penalties. Consequently, the amount must be reduced to the penalty applicable to an initial violation ($50 rather than $100), which reduces the total in controversy for these claims to $3,750.

D. Equitable relief

-1 at 32, ¶ 31). relief prohibiting Defendants from engaging in the complained-of illegal labor acts and practices in the Id. at 32-33). With her claim for a violation of Cal. Business & Prof. Code § 17200, et seq., Plaintif Id. at 37, ¶ 63).

Defendants asser for wages owed in the three years preceding the filing of the Complaint (those compensatory damages

are computed above), this claim can permit Plaintiff to be awarded restitution for an additional year of in their papers, Defendants contended Id.) Plaintiff argues th erroneous assumption that [she] worked for Defendants more than three years prior to the filing of the . Responding to this assertion, Defendants contend it As Plaintiff notes, she was not employed

by Xerox for four years prior to the filing of the Complaint, and it is unclear why Defendants believe Plaintiff may be rewarded restitution for a year when she did not work. Notably, at the hearing, Defendants conceded that there was no factual support for this estimate.

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speculative, the $11,700 is not considered by the Court in its determination of whether the amount in controversy requirement is satisfied. See Fletcher v. Toro Co., 2009 WL 8405058, at *9 (S.D. Cal.

any amount for purposes of determining its jurisdiction).

E. a fees, either with mandatory or discretionary language, such fees may

Galt G/S v. JSS Scandinavia, 142 F.3d 1150, 1155-56 (9th Cir. 1998).

1. Class claims According to Defendants, a good faith estimate of Plain Morganstein v. Esber, 768 F.Supp. 725, 727 (C.D. Cal. 1991) (awarding 25 percent of the settlement

amount to class counsel as fees).

Labor Code §§ 203 and 226. (Id. at 18, n. 20). However, as discussed above, the potential penalties were reduced from the amount identified by Defendants ($87,450) to a total of $38,850. Consequently, adopting claim that a good faith estimate of fee award is 25 percent of the penalties, fees for the class claims amount to $9,712.50.

2. Claim for a violation of Cal. Bus. & Prof. Code § 17200, et seq.

separated from the claims she states on behalf of the class. (Doc. 2 at 7; Doc.13 at 18). Defendants herself, and not on behalf of her brought pursuant to California Business and Professions Code claim will likely require at least 50 separate hours to litigate, as the facts and law needed to establish such a claim are distinct fr 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

and thus will require separate and additional discovery and trial preparation and work on the part of (Id. could result in an attorney fee award of $25,000 or more solely (Id.)

On the other hand, Plaintiff argues ment

the named plaintiffs in a class action, and that they therefore cannot be allocated solely to those plaintiffs for purposes of amount in controversy. oc. 9 at 10) (quoting Gibson v. Chrysler Corp., 261 F.3d 927, 942-43 (9th Cir. 2001)). In Gibson Gibson, 261 F.3d at

Id. (see Doc. 2-1 at 33, ¶ 31), Plaintiff contends the fees for a violation of Cal. Bus. & Prof. Code § 17200

should be allocated to the class, with only portion of the estimated $25,000 allocated to her for purposes and the Plaintiff Class Id.) (emphasis added). The court is not persuaded by this argument 3

but, significantly, even if the full estimate of $25,000 was have not demonstrated the amount in controversy requirement is satisfied. IV. Conclusion and Order Defendants have failed to carry the burden to demonstrate by a preponderance of the evidence that the amount of damages in controversy exceeds $75,000. Moreover, even if the Court included and allocated $25,000

included $9,712 , the total amount in controversy would still fall short of the jurisdictional minimum.

3 Likewise, there is no support for the claim that $500 per hour is a reasonable hourly rate in the Eastern District of California. Jadwin v. Cnty. of Kern, 767 F. Supp. 2d 1069, 1129 (E.D. Cal. 2011). 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

Therefore, the Court cannot find it has diversity jurisdiction over this action. However, as the Ninth Circuit explained in Garibay, if Defendants [] evidence that the jurisdictional bar is met, it may once a Garibay, 2013 WL 4517934 at *2 (citing Roth v. CHA Hollywood Med. Ctr., 720 F.3d 1121 (9th Cir. 2013)). Accordingly, IT IS HEREBY ORDERED:

1. GRANTED; 2. This matter is REMANDED to Kern County Superior Court; and 3. The Clerk of Court is DIRECTED to close this matter, because this Order terminates

the action in its entirety.

IT IS SO ORDERED. Dated: November 14, 2013 /s/ Jennifer L. Thurston UNITED STATES MAGISTRATE JUDGE