Rivera v. Agreserves, Inc.

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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

CARLOS MARIN RIVERA, individually, and on behalf of other members of the general public similarly situated,

Plaintiffs, v. AGRESERVES, INC., a Utah corporation; and Does 1 through 100, inclusive,

Defendants.

Case: 1:23-CV-393-JLT-CDB ORDER DENYING MOTION TO REMAND (Doc. 8)

This class action alleges that AgReserves violated several provisions of the California Labor Code, including provisions related to rest breaks, meal breaks, overtime pay, termination wages, and providing employees with accurate wage statements. (Doc. 1-1). Carlos Rivera filed this action in Kern County Superior Court on behalf of himself and similarly situated employees in California. AgReserves removed the suit to this Court based on diversity jurisdiction, 28 U.S.C. § 1332(A), as well as the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). (Doc. 1 at 3, 11.) Plaintiff requests remand of this action claiming that the requirement for federal jurisdiction is not met. (Doc. 8.) Defendant opposes the motion, (Doc.

remand is DENIED. ///

I. BACKGROUND Carlos Marin Rivera brought this class action suit in Kern County Superior Court on against his former employer AgReserves, Inc. (Doc. 1-1.) Plaintiff was employed by AgReserves as a non-exempt, hourly paid employee on three occasions (all dates are approximate): from July 28, 2017 October 6, 2017 on a seasonal basis; from April 6, 2018 to September 28, 2018 on a seasonal basis; and from January 25, 2019 October 20, 2021. (Doc. 1-1 at ¶ 19.) Plaintiff worked for AgReserves as a general laborer whose primary job duties included farm-related work. (Doc. 1-1 at ¶ 19.) Plaintiff complains that for the four years prior to the filing of this suit, Defendant failed to:

Pay employees proper regular and overtime wages in violation of Cal. Lab. Code

§§ 510, 1194, and 1198 ; Provide employees compliant meal breaks or premium compensation in lieu

thereof in violation of Cal. Lab. Code §§ 226.7 and 512(a)

Provide employees with rest periods or premium compensation in lieu thereof as

required by Cal. Lab. Code § 226.7 201 break Provide employees with wages timely upon termination in violation of Cal. Lab.

Code §§ 201 waiting time penalties Provide employees with accurate itemized wage statements as required by Cal.

Lab. Code § (Doc. 1-1.) -all claim for violation of California Business and Professions Code §§ 17200, et seq., for unfair business practices. (Doc. 1-1 at 16.) Plaintiff alleges that he and other class members described as any California judgment s per week and

standard pay rate instead of the statutorily required time-and-a-half or double pay. (Doc. 1-1 at ¶¶ specify how many times or how often Defendant committed meal break violations, rest period violations, termination wage violations, or wage statement violations; however, Plaintiff states -1 at ¶ 86.) Plaintiff seeks al unpaid wages at the applicable wage rates and such general and special damages as may -judgment interest on any unpaid wages commencing from the oc. 1-1 at 18.) The complaint does not estimate the amount in controversy in this case. AgReserves removed the action to this Court. (Doc. 1.) AgReserves calculated estimates d that this Court has proper jurisdiction either due to diversity between Plaintiff and Defendant or pursuant to the Class Action Fairness Act of 2005. The Notice of Removal alleges are worth more than $75,000, and that his class claims are valued at more than $5,000,000, as required by CAFA. 1

Plaintiff contested the calculations . In his motion to remand, Plaintiff asserts that jurisdiction is not proper because the amounts in controversy do not meet the jurisdictional thresholds such that this case should be remanded to Kern County Superior Court. AgReserves opposes the motion to remand and, to update and support its amount in controversy estimates, provides a sworn declaration from its expert, Dr. Krock. (Docs. 16, 16-2.) 2

II. LEGAL STANDARD Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377,

(1994). Only state court actions that could have originally been filed in federal court may be removed to federal court by the defendant. 28 U.S.C. § 1441(a); Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987).

A. Diversity Jurisdiction under 28 U.S.C. § 1332

the

1 The parties do not dispute the other jurisdictional requirements of these statutes; only amount in controversy is at issue in the motion before the Court. 2 (Doc. 16-2.) favor of remand. Gaus v. Miles,

Inc., 980 F.2d 564, 566 (9th Cir. 1992). When, as here, a party removes a case to federal court under 28 U.S.C. § 1446, that party bears the burden of establishing jurisdiction exists. Kokkonen, 511 U.S. at 377; Gaus 980 F.2d at 566.

B. Federal Jurisdiction under CAFA in 28 U.S.C. § 1332(d)(1), the class has more than 100 members, the parties are minimally

Dart Cherokee Basin Operating Co., LLC v. Owens, 574 U.S. 81, 84 85 (2014) (citing Standard Fire Ins. Co. v. Knowles, 568 U.S. , had often been used to litigate multi-state or even

Singh v. Am. Honda Fin. Corp., 925 F.3d 1053, 1067 (9th Cir. 2019) (quoting United Steel v. Shell Oil Co., 602 F.3d 1087, 1090 (9th Cir. 2010)). The Supreme C Allen v. Boeing Co., 784 F.3d 625, 633

(9th Cir. 2015) (alteration in original) (quoting Dart Cherokee, 574 U.S. at 89).

Washington v. Chimei Innolux Corp., 659 F.3d 842, 847 (9th Cir.

Ibarra v. Manheim Investments, Inc., 775 F.3d 1193, 1197 (9th Cir. 201 federal- -in-controversy allegation should be accepted

removal need include only a plausible allegation that the amount in controversy exceeds the and Arias v. Residence Inn by Marriott, 936 F.3d 924 25 (9th Cir. 2019) (quoting Dart Cherokee, 574 U.S. at 87 89; Ibarra, 775 F. 3d at 1197); see also When a

removing defendant shows recovery that acknowledged nor sought to establish that the class recovery is potentially any less, the defendant Arias, 936 F.3d at 927 (internal quotation marks and citation omitted).

Dart Cherokee, 574 U.S. at 89. If

evidence is require Harris v. KM Indus., Inc., 980 F.3d 694, 699 (9th Cir. 2020). ance of the evidence that the aggregate amount in controversy exceeds $5 million when federal jurisdiction is Ibarra, 775 F. 3d at 1197. -judgment-type evidence relevant to the amount in controversy at Id.; LaCross v. Knight Transp. Inc., 775 F.3d 1200, 1202 (9th Cir. 2015); see also Arias district court finds, by a preponderance of the evidence, that the amount in controversy exceeds

the jurisdictional threshold. Dart Cherokee, 574 U.S. at 88 (citations omitted).

The amount in controversy is not the amount of damages that the plaintiff will likely recover, see Chavez v. JPMorgan Chase & Co. prospective ass Lewis v. Verizon Communs., Inc., 627 F.3d 395,

401 (9th Cir. 2010). Id. Thus, tiff could reasonably Arias, 936 F.3d at 927. To determine the amount in controversy for CAFA purposes, the claims of individual members in a putative class action are aggregated. 28 U.S.C. § 1332(d)(6); see also Standard Fire Ins. Co v. Knowles (2013) 133 S. Ct. 1345, 1348. ///

III. ANALYSIS A. Federal Jurisdiction under CAFA The parties agree that the putative class has more than 100 members and that the parties are minimally diverse. In dispute is whether whether the amount in controversy exceeds the $5,000,000 required AgReserves argues that the $5 million threshold is met, relying first, second, third, fourth, and fifth causes of action, as (Doc. 1 at 15 20; Doc. 16-2.) After Rivera challenged the amount in controversy estimates

retained an expert to analyze their 909 putative class members and used their employment data to conclude that the amount in

controversy in this case is somewhere between $5.6 million and $8.4 million. (Doc. 16-2 at ¶¶ 11, 47 49.) Rivera disputes the subtotal alleged by AgReserves for each claim.

1. Overtime Claim ing to properly calculate the number of overtime hours worked, as well as failing to pay non-exempt employees the proper rate for those overtime hours. (Doc. 1-1 at ¶¶ 36 46.) California Labor Code section 510 requires employers to pay employees that work in excess of eight hours in a day or forty hours in a week at a rate of no less than one and a half times the regular rate of pay for an employee. See Cal. Lab. Code § 510(a). It also ensures a compensation rate of no less than twice the regular rate of pay when an employee works more than twelve hours in a day or more than eight hours on the seventh consecutive day of work. Id.

Rivera alleges that during the relevant time period, he and other class members

(Doc. 1-1 at ¶ 21.) -1 at ¶ 43.)

calculated an amount in controversy for this claim that assumed two hours extra of overtime per 6-day workweek per employee. (Doc. 1 at 15 16.) In opposing the motion to remand, however, AgReserves interprets the complaint to include claims for both underpaid overtime hours which were improperly paid at the regular rate of pay and completely unpaid, off-the-clock overtime hours. (Doc. 16 at 10.)

As an initial matter, Rivera opposes this interpretation of the complaint and contends that his complaint does not allege completely unpaid, off-the-clock overtime. (Doc. 17 at 3 5.) AgReserves counters that it is reasonable to interpret the complaint as containing off-the-clock overtime violations. 3

T claim does not allege that overtime hours went completely unpaid, but that putative class members

were not paid for overtime at the proper rate. (Doc. 1-1 at ¶ at their regular rate of pay for hours of work that were statutorily required to be compensated at

worked and/or a consequence o -1 at ¶¶ 27, 77.) Under

these circumstances, the Court finds it reasonable for AgReserves to read the complaint as alleging some completely unpaid, off-the-clock overtime hours in addition to underpaid hours. Arias v. Residence Inn by Marriott

AgReserves assesses the value of these off-the-clock claims by assuming 1.5 hours of unpaid, off-the-clock overtime per week for all 909 putative class members at a value of one-and- a- -2 at ¶¶ 36 37.) This amounts to $1,745,988.08 for 72,795 overtime hours. (Doc. 16-2 at ¶ 37.) Rivera does not substantively dispute the calculation for off-the-clock claims in its reply aside

3 AgReserves cites to paid for all hours worked and/or -1 at ¶ 29.) This paragraph of the compla Plaintiff and class members to work during meal periods and failed to compensate Plaintiff and class members for -1 at ¶ 54.) . (Doc. 17 at 3 5.) The Court finds -the-clock claims to be reasonable.

As to the value of the claim for underpaid overtime hours, Rivera argues that AgReserves used an improper violation rate for underpaid overtime hours in its opposition. (Doc. 17 at 3.) The Court agrees. unpaid overtime hours using a 100% violation rate without explanation. His declaration explains:

To calculate potential unpaid overtime premium wages exposure, I multiplied the overtime hours worked by the minimum wage for the year in which the hours were worked and then multiplied that amount by 0.5 to account for the potential unpaid premium portion of overtime. For example, if an employee worked three hours of overtime in a week in 2020, I would multiply those three hours by the minimum wage of $13.00 in 2020 and then multiply that by 0.5 to arrive at $19.50 of potential unpaid overtime premium wages. (Doc. 16-2 at ¶ 34.)

Dr. Krock ultimately identified 322,216.24 overtime hours worked by the 909 putative class employees. He then calculated that those overtime hours were worth $2.2 million in underpaid overtime. (Doc. 16-2 ¶ 25.) By his own explanation, Dr. Krock assumed that all overtime hours worked by an employee went underpaid. AgReserves argues that this 100% overtime pay violations. (Doc. 16 at 17.)

AgReserves offers no case law supporting this violation rate. In fact, one case cited by Cavada v. Inter-Continental Hotels Group, Inc., 2019 WL

5677846 at 5 (S.D. Cal. Nov. 11, 2019) (citing Ibarra v. Manheim Invs., Inc., 775 F.3d 1193, 1198 99 (9th Cir. 2015)). ion rates of 25% to 60% can be

Avila v. Rue21, Inc., 432 F. Supp. 3d 1175, 1189 (E.D. Cal. 2020) (collecting cases). Rivera argues that, in place of the 100% violation rate calculation, the Court should use the violation rate originally proposed by AgReserves in the Notice of Removal, which was two underpaid overtime hours per week amounting to approximately $687,181. (Doc. 17 at 16; see also Doc. 1 at ¶¶ 67 70.) The Court agrees that two hours of underpaid overtime is a reasonable estimation based on the allegations in the complaint, and it is supported by case law. See Andrade v. Beacon Sales Acquisition, Inc., No. CV1906963CJCRAOX, 2019 WL 4855997 at *3 (C.D. Cal. Oct. 1, 2019) (approving a violation rate of one hour of off-the-clock work and two hours of underpaid overtime per workweek). As such, the total estimated amount in controversy aim amounts to $2,433,169.08.

2. Meal Break Claim Under California Labor Code §§ 226.7 and 516, employers must provide non-exempt employees working more than five hours in a shift with at least one interrupted meal break of at least 30 minutes. If an emplo period may be waived by mutual consent of the employer and employee. Employees working

more than ten hours per day must be given a second thirty-minute meal period, unless they are working fewer than twelve hours, in which case the second meal period can likewise be waived. Employees are entitled to one additional hour at their regular pay rate for each workday in which a compliant meal period was not provided. Cal. Lab. Code § 226.7(b).

Rivera alleges in his second cause of action that AgReserves forced employees who were scheduled to work six or more hours and periods longer than 5 hours without an uninterrupted meal period of not less than 30 min (Doc. 1-1 at ¶¶ 52 53.) To estimate the amount in controversy as to this claim, Dr. Krock

during the relevant time that were at least five hours in length such that they qualified for at least one meal break. (Doc. 16 at 11; Doc. 16-2 at ¶ 26.) After identifying 247,920 meal-break- eligible shifts, Dr. Krock assigned a 20% violate rate, or one missed required meal per each five shifts. For each of the 49,585 instances of missed meal periods, Dr. Krock applied one hour of pay at the lowest hourly rate earned among all class members in the applicable given year, amounting to $663,030.20.

Rivera complains that a 20% violation rate is inappropriate here because he did not allege class members to work through their meal and rest periods without paying them proper

-1 at ¶ 86.) As such, the Court agrees with Defendants that a 20% violation rate is appropriate. Garza v. Brinderson Constructors, Inc., 178 F. Supp. 3d 906, 911 12 (N.D. Cal. 2016) (holding that an assumption of one violation per week was reasonable where

Gipson v. Champion Home Builders, Inc., 2020 WL 4048503 at *6 (E.D. Cal. July 20, 2020) (holding that a rate of one day per workweek

Rivera next complains that Defendant amount in controversy estimate is flawed because it does not consider the putative class members who executed meal waivers for shifts not exceeding six hours, including Rivera himself. (Doc. 17 at 7.) Rivera provides a sworn declaration in support of - includes the meal period waiver form. (Doc. 17-at at 4.) Rivera alleges that the meal waiver th

For all employees who signed such waivers, only shifts in excess of six hours instead of the estimated five hours would be meal- eligible.

The Court agrees with Rivera that meal break waivers may impact the amount in controversy as to this claim. However, unreasonable, particularly where Rivera has not provided evidence or case law supporting an alternative number. 4

3. Rest Break Claim § 226.7 by failing to allow putative class members to take at least ten minutes of rest time per

4 -hour shifts identified by Dr. Krock were six hours or longer, making the amount in controversy as to this claim would be $427,322.23. This alternative calculation appears wholly speculative. four hours of work where employees were scheduled to work more than three and a half hours per day. (Doc. 1-1 at ¶¶ 59 owed the rest period premium due for non- ly rate . . . for each work day that the rest

-1 at ¶ 67, citing Cal. Lab. Code § 226.7(b).)

shifts for the putative class during the relevant time that would have been eligible for at least one . -2 at ¶ 29.) Dr. -2 at ¶ 30.) Dr. Krock then multiplied the number

of shifts longer than 3.5 hours that each putative class member had worked by 20% and rounded up to the next whole number. He then multiplied the number of assumed rest period violations by -2 at ¶ 31.) Dr. Krock ultimately concluded that for all 909

putative class members, the total number of potential rest break violations was 50,821, valued at approximately $679,585.80. (Doc. 16-2 at ¶ 32.)

Rivera once again complains that a 20% violation rate is inappropriate because he does complaint plainly alleges

-founded and reasonable under the circumstances.

4. Waiting Time Penalties cause of action asserts that AgReserves failed to comply with California Labor Code §§ 201, 202, which require employers to pay all compensation owed to employees at or around termination from employment. (Doc. 1-1 at ¶¶ 68 82.) Section 203 provides a penalty for employers who willfully fail to pay any wages of an employee who is discharged or quits, which

includes wages that accrue from the date due up to thirty days thereafter. Cal. Labor Code §§ 201, 202, 203. The statute imposes a three-year statute of limitations for waiting time penalties, determined from the date the complaint was filed. Pineda v. Bank of Am., N.A., 50 Cal. 4th 1389, 1401 (2010).

. (Doc. 1-1 at ¶¶ 71,

72.) AgReserves represents that Dr. Krock identified 298 employees terminated from AgReserves within the applicable three-year statute of limitations. (Doc. 16 at 18.) Dr. Krock

Plaintiff and other similarly situated employees all wages owed upon separation of their -1 at ¶ 70.) Dr. Krock also assumed the maximum thirty-day penalty allowed by statute for all 298 employees, and he further assumed eight hours of work per day. (Doc. 16-2 at ¶ 38.) Using these figures, Dr. Krock estimates the value of the waiting time penalties to be $980,400.

Rivera complains that Dr. Krock -hour workdays with no support, despite the fact that

length for each of t Rivera does not propose an alternate calculation for either metric but

argument as to the assumed shift length is without merit Removal assumed that terminated employees worked an even longer 8.33 hours per day, (Doc. 1 at ¶¶ 83 84), a figure that Rivera did not contest in its motion for remand. As to the estimated because assumed that any employee who went 42 days without recording time had been terminated. (Doc. 16-2 at ¶ 23.) The de extensive experience with analyzing employee data for class action claim valuation, he has found that the 42- comparing those estimates to actual termination dates as they become available. (Doc. 16-2 at ¶ 23.) Though Rivera is correct that this assumption is imperfect, the Court finds that it is reasonable as explained under the circumstances.

5. Wage Statement Violations fifth cause of action alleges violations of California Labor Code § 226(a). (Doc. 1-1 at ¶¶ 68 82.) total hours worked by an employee, the number of piece-rate units earned for employees paid on a piece-rate basis, all deductions, net wages earned, identifying information of the employee and the employer, and the like. Cal. Lab. Code § 226(a). Under Labor Code 226, if an employer provides an inaccurate or incomplete wage statement, employees may be entitled to recover $50 for the initial pay period in which a violation occurs and $100 for each violation in a subsequent pay period, not to exceed $4,000. See Cal. Labor Code § 226. The statute of limitation for wage statement penalties is one year. See Cal. Code. Civ. Proc. § 340.

Rivera alleges that Defendants failed to provide employees with the complete and accurate wage statements required by § 226(a) provide complete and accurate information regarding the total number of hours they worked in a

given pay period, the applicable hourly rates in effect during the pay period, and the corresponding numb -1 at ¶ 81.) AgReserves estimates the value of these claims to be $447,221. (Doc. 16 at 18.) To calculate that figure, urs worked and/or the corresponding hourly rates [in the wage statements provided to employees] are inaccurate as a consequence (Doc. 16 at 18, citing Doc. 1-1 at ¶ 77.)

Dr. wage statements during the relevant time period. (Doc. 16- does not explain exactly how the 4,721 violative wage statements amount to $447,221 in potential recovery for the class. Rivera attempts to do so in its reply and concludes that Dr. Krock inappropriately applied a $50 penalty rate for 500 pay periods and a $100 penalty rate for 4,220 pay periods. Rivera asserts that the applied here, because an employer must be notified that it is violating a Labor Code provision

Rivera cites Patel v. Nike Retail Servs., Inc. in support. 58 F. Supp. 3d 1032, 1042 43 (N.D. Cal. 2014). The Patel court extended the logic of a California Court of Appeal opinion provisions of Labor Code §§ 210 and 225.5. Patel, 58 F. Supp. 3d at 1042 43 (citing Amaral v.

Cintas Corp. No. 2, 163 Cal.App.4th 1157 (2008)). The Amaral court concluded that, under §§

violations after it had been given notice that its practices violate the California Labor Code. Id. under sections 210 and 225.5. See Amaral, 163 Cal.App.4th at 1209, 78 Cal.Rptr.3d 572 (noting

Patel 226 such that t has previously violated § 226.

Courts in this district have disagreed as to whether Patel Amaral to § 226 was correct. In Garnett, the Court held that the language of § 226 differed enough from that of §§ 210 and 255.5 that Amaral in the latter statutes did not apply to § 226. Garnett v. ADT LLC, 74 F. Supp. 3d 1332, 1336 (E.D. Cal. 2015). Specifically, the Court noted that in §§ 226, it The court found that:

[i]t is not at all clear that the Amaral court would have interpreted this language the same way it interpreted the language of sections 210 and 225.5. In fact, one of the parties in Amaral argued that sections 210 and 225.5 should be distinguished from examples of see Amaral, 163 Cal.App.4th at 1208, 78 Cal.Rptr.3d 572 (citing Cal. Lab.Code § 2699(f)(2)), but the courts opinion leaves ambiguous whether the court agreed with that understanding. Garnett, 74 F. Supp. 3d at 1336. The Garnett court further highlighted §§ subsequent violation, or any willful or intentional violation, in contrast to § 226, which does Instead, the statute predicates all Cal. Lab.Code § 226(e). Id. The court went on to interpret § 226 as requiring heightened

penalties for every pay period that occurs chronologically after the first pay period in which an employer fails to comply with section 226(a), regardless of whether the employer was on specific notice that their conduct violated the law before the later violations. Absent controlling authority dictating otherwise, the Court agrees with Garnett of a $50 penalty rate for 500 periods, amounting to $447,221, is reasonable. This brings the estimated amount in controversy

to $5.2 million. 5

B. Diversity Jurisdiction Because the Court has proper jurisdiction under CAFA, it need not analyze whether jurisdiction is also appropriate under 28 U.S.C. § 1332(A). /// /// /// /// /// 5 In any event, the Co stake in this action by a preponderance of the evidence. For example, AgReserves has not provided counsel's hourly rates or anticipated time expenditures from which an estimated lodestar could be calculated. Gipson v. Champion Home Builders, Inc., No. 120CV00392DADSKO, 2020 WL 4048503 (E.D. Cal. July 20, 2020) (citing Gonzalez v. Comenity Bank, No. 1:19-cv-00348-AWI-EPG, 2019 WL 5304925, at *11 (E.D. Cal. Oct. 21, 2019) (determining a s hourly rate and the court's knowledge of customary rates in comparable cases); Reyes v. Staples Office Superstore, LLC, No. 19-cv-07086-CJC- on the plaintiff's attorney's admission of his hourly rate, together with the court's knowledge of customary rates and that comparable employment cases in that district tend to take between 100 and 300 hours to litigate through trial)).

IV. CONCLUSION For the reasons set forth above, the Court finds that it has proper jurisdiction over the matter tion to remand the case to Kern County Superior Court, (Doc. 8), is DENIED.

IT IS SO ORDERED. Dated: August 14, 2023