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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BRADFORD COLEMAN, individually, )  
 and on behalf of other members )  
 of the general public similarly )  
 situated, and as an aggrieved )  
 employee pursuant to the )  
 Private Attorneys General Act )  
 ("PAGA"), )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ESTES EXPRESS LINES, INC., a )  
 Virginia Corporation, ESTES )  
 WEST, a business entity form )  
 unknown, G.I. TRUCKING COMPANY, )  
 and DOES 2 through 10, )  
 inclusive, )  
 )  
 Defendants. )  
 )

CASE NO.: CV 10-2242 ABC (AJWx)  
  
~~CONFIDENTIAL~~ ORDER RE: PLAINTIFFS'  
 MOTION FOR ORDER REMANDING MATTER  
 TO STATE COURT

22 Pending before the Court is Plaintiff Bradford Coleman's Motion  
 23 for Order Remanding Matter to State Court, filed on April 23, 2010.  
 24 Defendants Estes Express Lines, Inc. ("Estes Express"), and Estes West  
 25 d/b/a G.I. Trucking Co. (collectively "Defendants"), opposed on May  
 26 24, 2010, and Plaintiff replied on June 1, 2010. The Court ordered  
 27 the parties to submit supplemental briefs, which they filed on July 2,  
 28 2010, and July 12, 2010. The Court heard oral arguments on July 19,

1 2010. After considering the case file, extensive briefing, and  
2 arguments in this matter, the Court GRANTS Plaintiff's motion and  
3 REMANDS this case to Los Angeles Superior Court where it was  
4 originally filed.

5 **BACKGROUND<sup>1</sup>**

6 Plaintiff was employed by Estes Express and Estes West (dba G.I.  
7 Trucking) as a "Pickup & Delivery Driver" (or "P&D" Driver) from  
8 approximately October 2004 through September 10, 2009. (First Amended  
9 Compl. ("FAC") ¶ 22.) Plaintiff filed his First Amended Complaint in  
10 Los Angeles Superior Court on February 25, 2010, styled as a class  
11 action. Plaintiff's two proposed classes are an "unpaid wage"  
12 subclass comprised of "[a]ll non-exempt or hourly paid employees who  
13 worked for Defendants in California within four years prior to the  
14 filing" of the complaint, and a "non-compliant wage statement"  
15 subclass comprised of "[a]ll non-exempt or hourly paid employees of  
16 Defendants who worked in California and received a wage statement  
17 within one year prior to the filing" of the complaint. (FAC ¶ 17.)

18 In his original complaint, Plaintiff had named only Estes Express  
19

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20 <sup>1</sup>Because the Court's subject matter jurisdiction is at issue, the  
21 Court may consider the relevant facts from Plaintiff's First Amended  
22 Complaint ("FAC"), as well as the extrinsic evidence submitted by the  
23 parties. See McLachlan v. Bell, 261 F.3d 908, 909 (9th Cir. 2001).

24 Both parties objected to certain evidence. As to Plaintiff's  
25 objections, to the extent the Court relies on Gerczak's declarations  
26 in this opinion, Plaintiff's objections to that evidence are  
27 OVERRULED. As to Defendants' objections, Plaintiff's application  
28 submitted to the California Department of Motor Vehicles is a  
judicially noticeable public record, so Defendants' objection to it is  
OVERRULED. See United States v. Ritchie, 342 F.3d 903, 908 (9th Cir.  
2003) ("Courts may only take judicial notice of adjudicative facts  
that are 'not subject to reasonable dispute.'"). However, Defendants'  
objection to Plaintiff's request for judicial notice of his paystub is  
well-taken and the Court has not considered it in reaching the  
conclusions herein.

1 as a defendant, but on March 10, 2010, he filed a notice with the  
 2 Superior Court that he was replacing one of his Doe Defendants in the  
 3 First Amended Complaint with Estes West. In the amended complaint,  
 4 Plaintiff alleged that both Estes Express and Estes West violated  
 5 myriad California wage and hour statutes, including: California Labor  
 6 Code sections 510 and 1198 (unpaid overtime); Labor Code sections  
 7 226.7 and 512(a) (unpaid meal period premiums); Labor Code section  
 8 226.7 (unpaid rest break premiums); Labor Code sections 201 and 202  
 9 (untimely payment of wages upon termination); Labor Code section 204  
 10 (untimely payment of wages during employment); Labor Code § 226(a)  
 11 (non-compliant wage statements); California Business and Professions  
 12 Code section 17200; and the Private Attorneys General Act (California  
 13 Labor Code sections 2698 et seq.). Specifically, Plaintiff alleged:

- 14 • First claim: "Plaintiff and class members  
 15 consistently worked in excess of eight (8) hours  
 16 in a day, in excess of twelve (12) hours in a day,  
 17 and/or in excess of forty (40) hours in a week"  
 18 and, that during this period, "Defendants  
 19 willfully failed to pay all overtime wages owed to  
 20 Plaintiff and class members." (FAC ¶¶ 43-44.)  
 21 The remedies requested are "unpaid overtime  
 22 compensation, as well as interest, costs and  
 23 attorneys' fees" and civil penalties of \$100 for  
 24 each employee per pay period for the first  
 25 violation and \$200 for each employee per pay  
 26 period for each violation thereafter. (Id. ¶¶  
 27 46-47.)
- 28 • Second claim: "Defendants willfully required  
 Plaintiff and class members to work during meal  
 periods and failed to compensate Plaintiff and  
 class members for work performed during meal  
 periods." (Id. ¶ 57.) The remedies requested are  
 "one additional hour of pay at the employees'  
 hourly rate of compensation for each work day that  
 the meal period was not provided," civil  
 penalties, costs and attorney's fees. (Id. ¶¶  
 60-61.)
- Third claim: "Defendants willfully required  
 Plaintiff and class members to work during rest  
 periods and failed to compensate [them] for work

1 performed during rest periods." (Id. ¶ 67.) The  
2 remedies sought are "one additional hour of pay at  
3 the employee's regular hourly rate of compensation  
4 for each work day that the rest period was not  
5 provided," civil penalties, and costs and  
6 attorney's fees. (Id. ¶¶ 70-71.)

- 7 • Fourth claim: "Defendants willfully failed to pay  
8 Plaintiff and class members who are no longer  
9 employed by Defendants their wages, earned and  
10 unpaid, either at the time of discharge, or within  
11 seventy-two (72) hours of their leaving  
12 Defendant's employ." (Id. ¶ 74.) The remedies  
13 sought are "the statutory penalty wages for each  
14 day they were not paid, up to a thirty (30) day  
15 maximum," civil penalties, and costs and  
16 attorney's fees. (Id. ¶¶ 76-78.)

- 17 • Fifth claim: "Defendants willfully failed to pay  
18 Plaintiff and class members all wages due to them,  
19 within any time period permissible by California  
20 Labor Code section 204." (Id. ¶ 83.) The  
21 remedies sought are those "available for  
22 violations of California Labor Code section 204,"  
23 civil penalties, and costs and attorney's fees.  
24 (Id. ¶¶ 84-85.)

- 25 • Sixth claim: "Defendants have intentionally and  
26 willfully failed to provide employees with  
27 complete and accurate wage statements." (Id. ¶  
28 88.) The remedies sought are "the greater of . .  
29 . actual damages caused by Defendants' failure to  
30 comply . . . or an aggregate penalty not exceeding  
31 four thousand dollars per employee," injunctive  
32 relief to ensure compliance with wage reporting  
33 laws, civil penalties, and costs and attorney's  
34 fees. (Id. ¶¶ 91-93.)

- 35 • Seventh claim: Defendants' alleged acts violated  
36 California Business & Professions Code sections  
37 17200. (Id. ¶ 97.) The remedy sought is  
38 "restitution of the wages withheld and retained by  
39 Defendants during a period that commences four  
40 years prior to the filing of [the] complaint."  
41 (Id. ¶ 99.)

42 The complaint does not limit the number of violations and provides  
43 only that the time frame to assess violations is the four-year period  
44 for the unpaid wages sub-class and one-year period for the non-  
45 compliant wage statements sub-class provided in the class definitions.  
46 Nor did Plaintiff limit the amount of damages he is seeking for the

1 class, other than to allege that "[t]he amount in controversy for each  
2 class representative, including claims for compensatory damages and  
3 pro rata share of attorney's fees, is less than \$75,000." (Id. ¶ 1.)

4 According to Defendants, Estes Express acquired G.I. Trucking in  
5 2005. (2d Gerczak Decl. ¶ 3.) Before that time, G.I. Trucking was  
6 registered as a corporation with the state of California.

7 (Plaintiff's 1st Request for Judicial Notice, Ex. A.). After the  
8 acquisition, Estes Express G.I. Trucking became Estes West, dba G.I.  
9 Trucking, and it assumed the identity of a "wholly-owned subsidiary"  
10 of Estes Express, although it operated as an "internal regional  
11 division" of Estes Express, just like the other regional divisions of  
12 the Southeast, Southwest, Northeast, and Upper Midwest. (Opp'n 17.)

13 Since the acquisition, Estes Express has owned 100% of Estes  
14 West. (2d Gerczak Decl. ¶ 3.) As Estes Express's Director of Human  
15 Resources explains, Estes Express exercises significant control over  
16 the employment-related policies and practices of Estes West. For  
17 example, Estes Express directs "every aspect of the payroll function  
18 in California, including establishing pay periods, pay days and pay  
19 rates for all employees in California and elsewhere in the Estes West  
20 region." (Id.) Estes Express decides whether Estes West employees  
21 are exempt or non-exempt, based on job functions determined by Estes  
22 Express. (Id.) Estes Express also sets policies and determines and  
23 controls the procedures for Estes West employees to take meal and rest  
24 breaks. (Id.) It determines the content and form of paychecks and  
25 the timing of final paychecks upon termination. (Id.)

26 Since the acquisition, Estes Express laid off all but one former  
27 G.I. Trucking employee and there is currently one payroll employee in  
28 California, who reports directly to Estes Express management and has

1 no authority to determine pay practices or to vary from policy and  
2 practices set by Estes Express. (Id.) Instead, the Payroll Manager  
3 and the Human Resources Department for Estes Express in Virginia have  
4 the exclusive responsibility for enforcing payroll policy and ensuring  
5 payroll obligations are met for Estes West employees. (Id.)  
6 Paychecks for Estes West employees are drafted by Estes Express.  
7 (Id.) In the end, Estes West "has no ability to independently set  
8 policy, make payroll decisions, to vary from decisions and policy set  
9 by Estes Express or even to cut payroll checks for California  
10 employees." (Id.)

11 Moreover, Estes West's employee policies are controlled by Estes  
12 Express, such as the content of Estes West's employee handbook and  
13 selection of benefits and the administration of benefit plans. (Id. ¶  
14 4.) Estes Express decides all benefit plan amendments, elimination of  
15 benefits, and the nature and scope of benefits, such as vacation, sick  
16 leave, and holiday pay. (Id.) The Estes West job descriptions are  
17 set by Estes Express, and when layoffs at Estes West were necessary,  
18 Estes Express decided all selection criteria, selected the positions  
19 to be eliminated, and set all severance benefits. (Id.) Although  
20 Estes West has no independent human resources or benefits department,  
21 it has a "regional human resources manager" who reports to Estes  
22 Express's Director of Human Resources. (Id.) And while "Estes  
23 Express possesses and maintains complete control over every  
24 significant term of employment for every Estes employee in the State  
25 of California," local managers of Estes West "give day to day  
26 instructions to employees, but such instructions are given strictly  
27 within the operating rules and guidelines established by" Estes  
28 Express. (Id.)

1 Defendants claim that Estes West could not satisfy a judgment  
2 obtained by Plaintiff and the proposed classes. Estes West maintains  
3 a bank account in California for payroll purposes as required by  
4 California law, which is funded by weekly deposits from Estes  
5 Express.<sup>2</sup> (Id. ¶ 5.) Estes West has no source of revenue, and all  
6 bills sent to customers come from Estes Express, while all money paid  
7 by customers goes directly to Estes Express, except for funds needed  
8 for Estes West's payroll account. (Id. ¶ 6.) Estes Express files a  
9 consolidated tax return that includes Estes West, so Estes West does  
10 not file its own. (Id.) Moreover, Estes West has no business plan,  
11 does not hold independent board meetings, and does not establish its  
12 own budget. (Id. ¶ 7.) It does, however, have its own Board of  
13 Directors, albeit comprised of Estes Express employees. (Id.)  
14 Nevertheless, Defendants claim that Estes Express "makes no effort to  
15 distinguish Estes West from Estes Express to the general public."  
16 (Id.)

17 Estes West does have one functioning officer: a Regional Vice  
18 President, although that position is on Estes Express's payroll and  
19 reports to various executives of Estes Express. (Id. ¶ 8.) That  
20 officer cannot set policy or make company-wide decisions without  
21 approval of Estes Express. (Id.)

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22  
23 <sup>2</sup>The Court notes that Ms. Gerczak's declaration takes care to  
24 subtly obscure the formal corporate distinction between Estes Express  
25 and Estes West, sometimes referring to only "Estes" (see, e.g., 2d  
26 Gerczak Decl. ¶ 5 (indicating that "Estes maintains a bank account in  
27 California")), and often referring to Estes West employees as, for  
28 example, "Estes employee[s] in the State of California" (see, e.g.,  
id. ¶ 4 (noting that Estes Express "possesses and maintains complete  
control over every significant term of employment for every Estes  
employee in the State of California.")). Even so, Defendants never  
disavow Estes West's formal legal identity as a subsidiary of Estes  
Express.

1 Defendants filed a notice of removal on March 26, 2010, claiming  
2 that the case met the requirements for diversity jurisdiction under  
3 the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d) and §  
4 1446. Plaintiff has moved to remand the case, arguing that Defendants  
5 have failed to establish the required minimum amount in controversy,  
6 and, even if they did, the "local controversy" exception to CAFA  
7 removal jurisdiction applies.

8 **LEGAL STANDARD**

9 Defendants removed this case pursuant to 28 U.S.C. § 1441,  
10 invoking the Court's jurisdiction under CAFA. Generally, removal  
11 statutes are strictly construed against removal jurisdiction. Gaus v.  
12 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). "Federal jurisdiction  
13 must be rejected if there is any doubt as to the right of removal in  
14 the first instance." Id.

15 CAFA altered preexisting rules for federal diversity jurisdiction  
16 over state-law class actions, providing now that federal courts may  
17 exercise jurisdiction when the "matter in controversy exceeds the sum  
18 or value of \$5,000,000, exclusive of interest and costs," and when  
19 "any member of a class of plaintiffs is a citizen of a State different  
20 from any defendant." § 1332(d)(2). As before CAFA, "the burden of  
21 establishing removal jurisdiction remains . . . on the proponent of  
22 federal jurisdiction." Abrego Abrego v. Dow Chem. Co., 443 F.3d 676,  
23 685 (9th Cir. 2006). CAFA provides exceptions to jurisdiction, see §  
24 1332(d)(4)(A), (B), however, and once the removing party meets the  
25 burden to establish CAFA jurisdiction, the non-removing party invoking  
26 an exception bears the burden to prove its application. See Serrano  
27 v. 180 Connect, Inc., 478 F.3d 1018, 1024 (9th Cir. 2007).

**DISCUSSION**

1  
2 The parties do not dispute that Plaintiff's class is larger than  
3 100 and that the parties are minimally diverse as required by §  
4 1332(d)(2). Thus, only two issues are presented by Plaintiff's  
5 motion: whether Defendants have demonstrated that Plaintiff is seeking  
6 more than \$5,000,000; and, if so, whether Plaintiff has demonstrated  
7 that the Local Controversy exception nevertheless defeats jurisdiction  
8 under CAFA. Although Defendants prevail on the former issue,  
9 Plaintiff has demonstrated that the Local Controversy exception  
10 applies, and the Court must therefore remand this case to state court.

**A. Amount in Controversy**

11  
12 Although "the plaintiff is 'master of her complaint' and can  
13 plead to avoid federal jurisdiction," Lowdermilk v. U.S. Bank National  
14 Ass'n, 479 F.3d 994, 998-99 (9th Cir. 2007), the parties agree that  
15 Plaintiff has not alleged a specific amount of damages to avoid CAFA  
16 jurisdiction. "Where the complaint does not specify the amount of  
17 damages sought, the removing defendant must prove by a preponderance  
18 of the evidence that the amount in controversy requirement has been  
19 met." Abrego, 443 F.3d at 683. Therefore, a removing defendant must  
20 show "'that it is more likely than not" that the amount in  
21 controversy exceeds'" \$5,000,000.00. Muniz v. Pilot Travel Centers  
22 LLC, No. S-07-0325 FCD EFB, 2007 U.S. Dist. LEXIS 31515, at \*7 (E.D.  
23 Cal. April 30, 2007) (emphasis in original). The burden is not  
24 "daunting," and "a removing defendant is not obligated to 'research,  
25 state, and prove the plaintiff's claims for damages.'" Id. (emphasis  
26 in original). But the defendant cannot speculate; it must "set forth  
27 the underlying facts supporting its assertion that the amount in  
28 controversy exceeds the statutory minimum." Korn v. Polo Ralph Lauren

1 Corp., 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008). In deciding the  
2 amount in controversy, the Court looks to what the plaintiff has  
3 alleged, not what the defendants will owe, but the Court may also  
4 consider summary-judgment type evidence to assess the amount in  
5 controversy. Id.

6 Defendants have offered evidence that Plaintiff's aggregate  
7 alleged damages far exceeded \$5,000,000. First, Defendants calculated  
8 the possible penalties for Plaintiff's sixth cause of action, the non-  
9 compliant wage statements, at \$2,276,000. That calculation was based  
10 upon research of employee records and computer databases to determine  
11 that 569 employees in the class worked for the entire 12-month period  
12 prior to the filing of the complaint.<sup>3</sup> (1st Gerczak Decl. ¶¶ 8-9.)  
13 The maximum possible penalty for non-compliant wage statements is  
14 \$4,000 under California Labor Code section 226(e). Therefore, the  
15 maximum penalty multiplied by the class members (\$4,000 x 569) amounts  
16 to damages totaling \$2,276,000.

17 Next, Defendants calculated \$705,739.37 in damages for  
18 Plaintiff's fourth cause of action for waiting-time penalties under  
19 California Labor Code section 203, which are capped at thirty days of  
20 wages. Defendants limited their calculations to claims of pick up and  
21 delivery drivers like Plaintiff ("P&D Drivers") whose employment ended  
22 during the three-year period prior to the filing of the complaint.  
23 Gerczak determined the number of P&D drivers whose employment ended in  
24 each relevant year (57 in 2007, 51 in 2008, and 40 in 2009). (1st  
25 Gerczak Decl. ¶ 11.) Gerczak then calculated the average hourly rate  
26

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27 <sup>3</sup>Defendants' calculation of the number of class members was  
28 conservative since they did not include employees who were not  
employed for the full twelve months.

1 for P&D Drivers as \$21.61 and the average number of hours worked per  
2 day in each year (7.49 hours/day in 2007, 7.57 hours/day in 2008, and  
3 6.89 hours/day in 2009). (Id.) That resulted in the following  
4 calculations:

5 2007: \$21.61/hr x 7.49 hrs/day x 57 class members  
6 x 30 days = \$276,778.71

7 2008: \$21.61/hr x 7.57 hrs/day x 51 class members  
8 x 30 days = \$250,289.18

9 2009: \$21.61/hr x 6.89 hrs/day x 40 class members  
10 x 30 days = \$178,671.48

11 Thus, Defendants calculated a total of \$705,739.37 in damages for  
12 Plaintiff's waiting-time penalties claim. (Id.)

13 Finally, Defendants calculated \$11,967,618 in damages for the  
14 second and third causes of action for missed meal and rest periods.  
15 Pursuant to the applicable Industrial Welfare Commission (IWC) Wage  
16 Order and California Labor Code § 226.7(b), each class member is  
17 entitled to recover one hour of pay for each work day that the meal  
18 period was not provided and also one hour of pay for each work day  
19 that the rest period was not provided. Defendants assumed one missed  
20 meal period and one missed rest period per day per P&D Driver in the  
21 class over the course of four years, 2006-2009 and again used the  
22 average hourly rate of \$21.61 for P&D Drivers. (1st Gerczak Decl. ¶  
23 12.) Defendants determined the number of P&D drivers employed for  
24 each year (264 in 2006, 266 in 2007, 264 in 2008, and 271 in 2009) and  
25 calculated the following penalties for missed meal periods:

26 2006: \$21.61/hr x 5 days/wk x 52 weeks/yr x 264  
27 drivers = \$1,483,310.40

28 2007: \$21.61/hr x 5 days/wk x 52 weeks/yr x 266  
drivers = \$1,494,547.60

2008: \$21.61/hr x 5 days/wk x 52 weeks/yr x 264  
drivers = \$1,483,310.40

2009: \$21.61/hr x 5 days/wk x 52 weeks/yr x 271

1 drivers = \$1,522,640.60

2 The yearly amounts were then added to determine a total violation of  
3 \$5,983,809. (Id.) Since the calculation was identical for rest  
4 period violations, that amount was doubled, for a total of \$11,967,618  
5 in alleged penalties for the meal and rest period claims. (Id.)

6 Thus, for these claims alone, Defendants calculate that Plaintiff  
7 has put at least \$14,949,357.37 in controversy (\$2,276,000 for non-  
8 compliant wage statements + \$705,739.37 for waiting time violations +  
9 \$11,967,618 for missed meal and rest periods), well above the  
10 \$5,000,000 requirement. And these calculations do not account for  
11 Plaintiff's claim for unpaid overtime, for Plaintiff's claim under  
12 Business and Professions Code section 17200, for any additional  
13 penalties under California Labor Code section 2699, or for attorney's  
14 fees.

15 Plaintiff does not quibble with Defendants' math, but claims that  
16 the calculations rest on two flawed assumptions. First, Plaintiff  
17 argues that Defendants cannot meet their burden of proof by assuming a  
18 100% violation rate. However, courts have assumed a 100% violation  
19 rate in calculating the amount in controversy when the complaint does  
20 not allege a more precise calculation. See, e.g., Korn, 536 F. Supp.  
21 2d at 1205 ("Where a statutory maximum is specified, courts may  
22 consider the maximum statutory penalty available in determining  
23 whether the jurisdictional amount in controversy requirement is  
24 met."); Alvarez v. Ltd. Express, LLC, No. 07CV1051 IEG (NLS), 2007  
25 U.S. Dist. LEXIS 58148, at \*8-9 (S.D. Cal. Aug. 8, 2007); Muniz, 2007  
26 U.S. Dist. LEXIS 31515, at \*10-11. For example, in Alvarez, the  
27 plaintiff broadly alleged meal and rest period violations based on an  
28 "'extreme workload' that made it 'virtually impossible' for

1 defendant's employees to take meal periods and rest breaks" and a  
2 "'company culture' that discouraged meal periods and rest breaks."  
3 2007 U.S. Dist. LEXIS 58148, at \*9. Assuming the allegations in the  
4 complaint were true, the court concluded that the plaintiff's  
5 complaint could support a 100% violation rate. Id.

6 Similarly, in Muniz, the plaintiff did not allege "facts  
7 specific to the circumstances of her or the class members['] allegedly  
8 missed meal and/or rest periods"; "[i]nstead, plaintiff allege[d] a  
9 common course of conduct in violation of the law resulting in injury  
10 to herself and every other hourly employee employed by defendant in  
11 the State of California in the four years preceding the filing of the  
12 Complaint." 2007 U.S. Dist. LEXIS 31515 at \*11-12. The court  
13 permitted the defendant to use a 100% violation rate to determine the  
14 maximum penalties, since the plaintiff was the "'master of [her]  
15 claim[s],' and if she wanted to avoid removal, she could have alleged  
16 facts specific to her claims which would narrow the scope of the  
17 putative class or the damages sought." Id. at 13.

18 As in both Muniz and Alvarez, Plaintiff only broadly alleges his  
19 wage-and-hour violations. For example, he alleges that class members  
20 "consistently worked in excess of eight (8) hours in a day, in excess  
21 of twelve (12) hours in a day, and/or in excess of forty (40) hours in  
22 a week" (FAC ¶ 43); that class members "were required to work for  
23 periods longer than five (5) hours without an uninterrupted meal  
24 period of not less than thirty (30) minutes" (id. ¶ 53) and for  
25 "periods longer than ten (10) hours without a second uninterrupted  
26 meal period of not less than thirty (30) minutes" (id. ¶ 56); that  
27 class members were required to "work four (4) or more hours without .  
28 . . a ten (10) minute rest period per each four (4) hour period

1 worked" (id. ¶ 66); and that, "Defendants willfully failed to pay  
2 Plaintiff and class members who are no longer employed by Defendants  
3 their wages, earned and unpaid, either at the time of discharge, or  
4 within seventy-two (72) hours of their leaving Defendants' employ"  
5 (id. ¶ 74). Plaintiff included no limitation on the number of  
6 violations, and, taking his complaint as true, Defendants could  
7 properly calculate the amount in controversy based on a 100% violation  
8 rate.<sup>4</sup>

9 Plaintiff further argues that limiting the average hourly rate to  
10 the high-paid P&D Drivers improperly inflated the average; had  
11 Defendants included lower-paid hourly dockworkers and clerical staff,  
12 some of whom apparently earn minimum wage, the average would have been  
13 lower. (Reply 2.) In other words, according to Plaintiff, P&D  
14 Drivers make up only 46% of the class and the average hourly rate of  
15 \$21.61 for P&D Drivers was far higher than the average wage would have  
16 been, had Defendants accounted for the other 54% of class members who  
17 made lower hourly rates.

18 Plaintiff is correct that it is "preferable for defendants to  
19 calculate the average hourly wage based on the average wage of all  
20 class members." Helm v. Alderwoods Group, Inc., No. C 08-01184 SI,  
21

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22 <sup>4</sup>To the extent Loudermilk suggests a different result, it is  
23 distinguishable. There, the Court rejected the defendant's argument  
24 that the plaintiff's allegation that she was owed "up to 30 days" of  
25 penalty wages required the amount in controversy to be calculated  
26 assuming a 100% violation rate. Loudermilk, 479 F.3d at 1001. That  
27 conclusion was reached after the court reviewed the defendant's  
28 evidence under the "legal certainty" standard applicable only when the  
29 plaintiff alleges specific damages below the statutory minimum, which  
30 was a "high bar," according to the court. Id. at 1000. Under the  
31 lesser preponderance of evidence standard applicable to this case,  
32 which was the same standard applied in both Alvarez and Muniz, the  
33 Court may appropriately assume a 100% violation rate.

1 2008 WL 2002511, at \*4 n.3 (N.D. Cal. May 7, 2008). However, even  
2 taking Plaintiff's argument to the extreme and assuming that the  
3 appropriate average hourly rate is California's minimum wage of  
4 \$8.00/hour, see Cal. Labor Code § 1182.13, Plaintiff's position does  
5 not defeat jurisdiction.<sup>5</sup>

6 First, because the Court has concluded that a 100% violation rate  
7 is appropriate, Defendants have already established at least  
8 \$2,276,000 is in controversy for Plaintiff's claim for non-compliant  
9 wage statements, and that calculation did not depend on an average  
10 hourly rate for the class. As a result, Defendants need only  
11 establish that the meal break, rest break, and waiting time penalties  
12 put an additional \$2,742,000 in controversy to meet the CAFA  
13 jurisdictional minimum. Second, the Court will assume at least 569  
14 members are in the class, which Plaintiff appears to accept as  
15 accurate for members who worked a full year and even asks the Court to  
16 "assume this is the average size of the class each year." (Reply 3.)  
17 At the assumed minimum hourly rate of \$8.00, the alleged meal and rest  
18 period violations alone equal \$9,468,160, far above the remaining  
19 \$2,742,000 (or even the full \$5,000,000) needed to satisfy the amount  
20 in controversy.<sup>6</sup> And waiting time penalties must be added, which are  
21  
22

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23  
24 <sup>5</sup>Of course, this is a purely hypothetical scenario used for  
25 Plaintiff's benefit, since the class-wide average must be higher,  
26 considering that nearly half of the class consisted of P&D Drivers  
earning an average of \$21.61/hour.

27 <sup>6</sup>That number is reached through the following formula, multiplied  
28 by the four years at issue: \$8.00/hr x 5 days/wk x 52 weeks/yr x 569  
drivers = \$1,183,520. This number must then be doubled to account for  
both a meal period and rest period violation each day.

1 \$261,264, again assuming the minimum wage of \$8.00 per hour.<sup>7</sup> Thus,  
2 Plaintiff's argument that Defendants overstated the average hourly  
3 rate does not defeat the amount in controversy.

4 Finally, even if there was some doubt about the precision of  
5 Defendants' calculations, Defendants also did not account for any  
6 overtime violations, other penalties, or attorney's fees, which may be  
7 considered in calculating the amount in controversy. See Loudermilk,  
8 479 F.3d at 1000. Thus, the Court is satisfied that Defendants have  
9 demonstrated by a preponderance of evidence an amount in controversy  
10 greater than \$5,000,000.

11 **B. Local Controversy Exception**

12 Plaintiff argues that, even if the amount in controversy is  
13 satisfied, this case must be remanded based on CAFA's "Local  
14 Controversy" exception. As previously noted, Plaintiff bears the  
15 burden to demonstrate an exception under CAFA defeats federal  
16 jurisdiction. See Serrano, 478 F.3d at 1024. As relevant here, CAFA  
17 provides the Court "shall decline to exercise jurisdiction under  
18 paragraph (2)-

19 (A) (i) over a class action in which-

20 (I) greater than two-thirds of the members  
21 of all proposed plaintiff classes in the

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22  
23 <sup>7</sup>The \$261,264 is calculated based on the following formulas:

24 2007: \$8.00/hour x 7.49/average hrs. worked per  
25 day x 30 days x 57 class members = \$102,463.20

26 2008: \$8.00/hour x 7.57/average hrs. worked per  
27 day x 30 days x 51 class members = \$92,656.80

28 2009: \$8.00/hour x 6.89/average hrs. worked per  
day x 30 days x 40 class members = \$66,144.00

1 aggregate are citizens of the State in  
2 which the action was originally filed;

3 (II) at least 1 defendant is a defendant—

4 (aa) from whom significant relief is  
5 sought by members of the plaintiff  
6 class;

7 (bb) whose alleged conduct forms a  
8 significant basis for the claims  
9 asserted by the proposed plaintiff  
10 class; and

11 (cc) who is a citizen of the State in  
12 which the action was originally  
13 filed; and

14 (III) principal injuries resulting from  
15 the alleged conduct or any related  
16 conduct of each defendant were  
17 incurred in the State in which the  
18 action was originally filed; and

19 (ii) during the 3-year period preceding the filing  
20 of that class action, no other class action  
21 has been filed asserting the same or similar  
22 factual allegations against any of the  
23 defendants on behalf of the same or other  
24 persons[.]

25 § 1332(d)(4)(A). The local controversy exception is “narrow” and  
26 “a federal court should bear in mind that the purpose of each of  
27 these criteria is to identify a truly local controversy – a  
28 controversy that uniquely affects a particular locality to the  
exclusion of all others.” Evans v. Walter Indus., 449 F.3d 1159,  
1163–64 (11th Cir. 2006) (quoting legislative history).

There is no dispute that, for the purposes of the local  
controversy exception, more than two-thirds of Plaintiff’s class are  
citizens of California, that the principal injuries occurred in  
California, and that Defendants have not been sued in a wage-and-hour  
class action in the previous three-year period. There is also no  
dispute that Estes Express is a citizen of Virginia (and not

1 California) for diversity purposes. The parties' dispute centers on  
2 the exception's second requirement: whether Estes West can be  
3 considered a "citizen of the State in which the action was originally  
4 filed," i.e., California, and whether Estes West is a defendant "from  
5 whom significant relief is sought" and "whose alleged conduct forms a  
6 significant basis for the claims asserted" by Plaintiff.<sup>8</sup>

7 1. Citizenship Requirement

8 Because Estes Express is undisputedly a citizen of Virginia, in  
9 order for the local controversy exception to apply, Estes West must be  
10 a citizen of California. Although Plaintiff does not allege Estes  
11 West's citizenship specifically, Defendants do not deny that it is a  
12 citizen of California: they identify Estes West as a "wholly-owned  
13 subsidiary of Estes Express" that operates in California and Plaintiff  
14 has produced a registration for G.I. Trucking as a California  
15 corporation. Therefore, the Court does not doubt that Estes West is a  
16 citizen of California for CAFA purposes.

17 To defeat the citizenship requirement in the Local Controversy  
18 exception, Defendants argue that Estes West's corporate citizenship  
19 must be disregarded because it is merely an alter ego of its parent,  
20 Estes Express. Because Estes Express is a citizen of Virginia,  
21 imputing its citizenship to Estes West would render Estes West non-  
22 local and would alone defeat the Local Controversy exception. In  
23 support of this claims and as discussed in detail supra, Defendants  
24  
25

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26 <sup>8</sup>The Court rejects Defendants' request that the Court deny  
27 outright Plaintiff's invocation of the Local Controversy exception  
28 because Plaintiff did not initially address these requirements.  
Plaintiff addressed these issues both in his reply brief and in his  
supplemental briefing.

1 have presented evidence to demonstrate that Estes Express exercises  
2 significant control over the operations of Estes West.

3       However persuasive their factual showing is, Defendants' argument  
4 must fail as a matter of both law and equity. Normally, "in a suit  
5 involving a subsidiary corporation, the court looks to the state of  
6 incorporation and principal place of business of the subsidiary, and  
7 not its parent.'" Danjaq, S.A. v. Pathe Commc'ns Corp., 979 F.2d 772,  
8 775 (9th Cir. 1992). This rule stems from the "general principle of  
9 corporate law deeply 'ingrained in our economic and legal systems'  
10 that a parent corporation . . . is not liable for the acts of its  
11 subsidiaries." United States v. Bestfoods, 524 U.S. 51, 61 (1998).

12       "The only recognized exception to this rule" – invoked by  
13 Defendants here – "is where the subsidiary is the alter ego of the  
14 parent corporation," which permits the court to "view the formal  
15 separateness between the two corporations as merely a legal fiction."  
16 Danjaq, 979 F.2d at 775. Yet, the exception has no application where,  
17 as here, a defendant seeks to disregard its corporate structure for  
18 its own benefit. See Disenos Artisticos E Industriales, S.A. v.  
19 Costco Wholesale Corp., 97 F.3d 377, 380 (9th Cir. 1996); United  
20 Continental Tuna Corp. v. United States, 550 F.2d 569, 573 (9th Cir.  
21 1977). "Generally, the corporate veil can be pierced only by an  
22 adversary of the corporation, not by the corporation itself for its  
23 own benefit" because "a corporation is not entitled to establish and  
24 use its affiliates' separate legal existence for some purposes, yet  
25 have their separate corporate existence disregarded for its own  
26 benefit against third parties." Disenos, 97 F.3d at 380. This is the  
27 familiar sword/shield analogy: "[A]lter ego is used to prevent a  
28 corporation from using its statutory separate corporate form as a

1 shield from liability only where to recognize its corporate status  
2 would defeat the rights and equities of third parties; it is not a  
3 doctrine that allows the persons who actually control the corporation  
4 to disregard the corporate form." Communist Party v. 522 Valencia,  
5 Inc., 35 Cal. App. 4th 980, 994 (Ct. App. 1995).

6 In this case, Defendants maintained Estes West as a separate  
7 legal entity in California after acquiring G.I. Trucking, and  
8 continued conducting business in California under that formal  
9 structure. Regardless of Estes Express's control of Estes West,  
10 Defendants cannot now cast aside their chosen corporate structure in  
11 order to gain a significant jurisdictional benefit: the right to  
12 defend themselves in federal court against purely state-law wage and  
13 hour claims brought by a solely California class of employees. Even  
14 though Defendants have not taken advantage of their separate corporate  
15 structure to seek to dismiss the class claims in this case, the rule  
16 is not so limited. Having done business as separate entities,  
17 Defendants "'must assume the burdens thereof as well as the  
18 privileges.'" Communist Party, 35 Cal. App. 4th at 994. Because  
19 "'[t]he alter ego doctrine is applied to avoid inequitable results[,]  
20 not to eliminate the consequences of corporate operations,'" id., the  
21 Court finds that Estes West must be treated as a citizen of California  
22 and the citizenship requirement for the Local Controversy exception is  
23 satisfied.

24 2. Defendant from Whom Significant Relief Is Sought by  
25 Members of the Plaintiff Class

26 The Local Controversy exception further requires that the in-  
27 state defendant be one "from whom significant relief is sought by  
28 members of the plaintiff class." § 1332(d)(4)(A)(II)(aa). Defendants

1 claim this requirement cannot be met because its evidence demonstrates  
2 that any relief obtained by Plaintiff would come from Estes Express,  
3 not Estes West, since Estes West has no source of revenue and no funds  
4 to satisfy a judgment. (2d Gerczak Decl. ¶ 5.) In contrast,  
5 Plaintiff argues that the class has pled all claims against both  
6 Defendants equally, so that under CAFA Estes West is, in fact, an in-  
7 state defendant "from whom significant relief is sought by members of  
8 the plaintiff class," and Estes West's ability to pay any judgment at  
9 some later date is irrelevant. A conflict exists in the case law on  
10 whether the ability of the local defendant to pay a judgment may be  
11 considered under this requirement, and the parties submitted  
12 supplemental briefing on the issue.

13 The Eleventh Circuit has stated that "significant relief" is  
14 sought against a local defendant if the "relief sought against that  
15 defendant is a significant portion of the entire relief sought by the  
16 class." Evans, 449 F.3d at 1167 (citing Robinson v. Cheetah Transp.,  
17 No. 06-0005, 2006 U.S. Dist. LEXIS 10129, at \*12 (W.D. La. Feb. 27,  
18 2006); Kearns v. Ford Motor Company, No. CV 05-5644 GAF (JTLx), 2005  
19 U.S. Dist. LEXIS 41614, at \*35 (C.D. Cal. Nov. 21, 2005)). However,  
20 some courts have taken this requirement to mean that a court should  
21 conduct "a comparison of the relief sought between all defendants and  
22 each defendant's ability to pay a potential judgment." Robinson, 2006  
23 U.S. Dist. LEXIS 10129, at \*12 (emphasis added). As those courts  
24 reason, "[i]f the relief sought from a particular defendant is 'just  
25 small change' compared to the relief sought from the other defendants,  
26 then the particular defendant cannot be considered significant."  
27 Green v. SuperShuttle Int'l, Inc., No. 09-2129 ADM/JJG, 2010 U.S.

28

1 Dist. LEXIS 7456, at \*10 (D. Minn. Jan. 29, 2010) (quoting Robinson,  
2 2006 U.S. Dist. LEXIS 10129, at \*12).

3 Robinson was the first decision to suggest that a local  
4 defendant's actual ability to pay could be relevant under the Local  
5 Controversy exception. In that case, the entirely in-state class sued  
6 an in-state individual truck driver, his out-of-state corporate  
7 employer, and other out-of-state corporate defendants for injuries  
8 sustained from an accident. 2006 U.S. Dist. LEXIS 10129, at \*6.  
9 Relying on a Senate Judiciary Committee Report on CAFA, the court  
10 concluded that the in-state driver was not a defendant from whom  
11 "significant relief" was sought because any relief sought against him  
12 was "just small change" compared to the out-of-state corporate  
13 defendants. Id. at \*12-13. The court's reasoning rested primarily on  
14 a products liability hypothetical situation in the Senate Report in  
15 which a class sued a manufacturer and local automobile dealers for  
16 defective automobiles; the Report stated that, "[e]ven if the  
17 plaintiffs are truly seeking relief from the dealers, the relief is  
18 just small change compared to what they are seeking from the  
19 manufacturers.'" Id. at \*12 (quoting S. Rep. 109-14 at 41 (2005)).  
20 Based on this sentence, the court conducted "not only an assessment of  
21 how many members of the class were harmed by the defendant's actions,  
22 but also a comparison of the relief sought between all defendants and  
23 each defendant's ability to pay a potential judgment." Id.

24 The court in Green applied this comment to a case in which the  
25 alleged local subsidiary was insolvent and unable to satisfy any  
26 judgment. 2010 U.S. Dist. LEXIS 7456, at \*9-11. In that case, the  
27 defendants offered evidence that the local subsidiary was not  
28 profitable and was almost entirely dependent on its out-of-state

1 parent for its "continued viability." Id. at \*10. Based on this  
2 evidence, the court concluded that it was "unlikely" that the  
3 subsidiary "could satisfy a judgment rendered against it if Plaintiffs  
4 prevailed," and because the "lion's share of any putative judgment  
5 would likely be borne by" the parent, the plaintiffs were not seeking  
6 significant relief from the local defendant. Id.

7 The Tenth Circuit, in contrast, has squarely addressed and  
8 rejected consideration of a local defendant's ability to pay to  
9 determine whether "significant relief" is sought by the class. Coffey  
10 v. Freeport McMoran Copper & Gould, 581 F.3d 1240, 1245 (10th Cir.  
11 2009) (per curiam). In Coffey, the purely in-state class brought only  
12 state-law claims involving local environmental contamination, naming  
13 the in-state former owner of the polluting property, as well as  
14 several out-of-state corporate owners of the in-state defendant. Id.  
15 at 1241-43. The court held that the "significant relief" requirement  
16 had been satisfied because (1) all class members had claims against  
17 the local defendant, rather than merely a subset of the class; (2) all  
18 class members were seeking to hold the local defendant jointly and  
19 severally liable for all of the class damages; and (3) it was  
20 reasonably likely that the local defendant would be held equally  
21 responsible for the class damages. Id. at 1244-45.

22 Citing Robinson, the defendants argued that the local defendant  
23 had no assets to satisfy any potential judgment, so its inability to  
24 pay a judgment demonstrated that significant relief was not sought  
25 against it. Id. at 1244. The court squarely rejected this contention  
26 based on the plain language of the statute. Id. at 1245. "The  
27 statutory language is unambiguous, and a 'defendant from whom  
28 significant relief is sought' does not mean a 'defendant from whom

1 significant relief may be obtained.'" Id. "There is nothing in the  
2 language of the statute that indicates Congress intended district  
3 courts to wade into the factual swamp of assessing the financial  
4 viability of a defendant as part of this preliminary consideration,  
5 which is one of six issues for the court to consider when deciding  
6 whether the 'local controversy exception' is met." Id.<sup>9</sup>

7 Defendants urge the Court to reject Coffey and follow Robinson  
8 and Green to conclude that a local defendant's ability to pay is  
9 relevant to whether "significant relief is sought" by the class. The  
10 Court declines Defendants' invitation for two reasons. First, the  
11 Court agrees with Coffey that the statutory language unambiguously  
12 prohibits consideration of a local defendant's ability to pay any  
13 potential judgment. In arguing that the statute is ambiguous and  
14 resort to legislative history is necessary,<sup>10</sup> Defendants focus too  
15 narrowly on the isolated term "significant relief." The issue here is  
16 the meaning of the phrase "from whom significant relief is sought,"  
17 and that language is clear: it refers to a defendant from whom relief  
18 is sought, not a "'defendant from whom significant relief may be  
19 obtained.'" Id. at 1245. Under the plain language of the statute,  
20

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21 <sup>9</sup>At least two later district courts have cited Coffey with  
22 approval, including one in this Circuit. See Lafalier v. Cinnabar  
23 Serv. Co., No. 10-CV-0005-CVE-TLW, 2010 U.S. Dist. LEXIS 36215, at  
24 \*25-26 (W.D. Okla. April 13, 2010) (citing Coffey and stating that  
25 "the defendant's ability to satisfy a judgment is irrelevant" to the  
26 "significant relief" inquiry); Rotenberg v. Brain Research Labs LLC,  
27 No. C-09-2914 SC, 2009 U.S. Dist. LEXIS 91335, at \*10 n.4 (N.D. Cal.  
28 Sept. 15, 2009) (relying on Coffey and noting that "the question is  
whether Plaintiff is seeking 'significant relief' from these  
Defendants, and not whether 'significant relief may be obtained'").

<sup>10</sup>See Abrego, 443 F.3d at 683 ("[C]onsideration of legislative  
history is appropriate where statutory language is ambiguous.  
Ambiguity, however, is at least a necessary condition.").

1 this case is indistinguishable from Coffey. As in Coffey, the entire  
2 class pleads all its claims against Estes West, seeks to hold Estes  
3 West jointly liable with Estes Express, and it appears reasonably  
4 likely that Estes West could be held liable for the class claims.  
5 Even though Defendants offer evidence that Estes West could not  
6 satisfy a judgment, the Court declines to "wade into the factual swamp  
7 of assessing financial viability of a defendant as part of this  
8 preliminary consideration." Id.

9 Even assuming the statutory language were ambiguous and resort to  
10 CAFA's legislative history were necessary, the Court is not persuaded  
11 that Congress intended a different result, as the courts in Robinson  
12 and Green concluded. The Senate Judiciary Committee Report on which  
13 Robinson, Green, and later cases relied provided several applications  
14 of the Local Controversy exception, but never directly discussed the  
15 ability of a local defendant to pay a judgment.<sup>11</sup> See, e.g., Green,  
16 2010 U.S. Dist. LEXIS 7456, at \*9-11; Waters v. Advent Prod. Dev.,  
17 Inc., No. 07 CV 2089 BTM (LSP), 2008 U.S. Dist. LEXIS 50686, at \*13-16  
18 (S.D. Cal. June 26, 2008); Casey v. Int'l Paper Co., No. 3:07 CV 421  
19 RV/MD, 2008 U.S. Dist. LEXIS 1298, at \*16-17 (N.D. Fl. Jan. 7, 2008);  
20 Eakins v. Pella Corp., 455 F. Supp. 2d 450, 452-53 (E.D.N.C. 2006);  
21 Robinson, 2006 U.S. Dist. LEXIS 10129, at \*11-14; Kearns, 2005 U.S.  
22 Dist. LEXIS 41614, at \*33-38. The "small change" comment on which  
23 Robinson and Green relied appeared in the following products liability  
24 hypothetical:

25 A class action is brought in Florida against

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26  
27 <sup>11</sup>Some courts have questioned the value of examining the Senate  
28 Report in interpreting CAFA, since the Report was issued ten days  
after CAFA was signed into law. See, e.g., Caruso v. Allstate Ins.  
Co., 469 F. Supp. 2d 364, 370 (E.D. La. 2007).

1 an out-of-state automobile manufacturer and a few  
2 in-state dealers, alleging that a certain vehicle  
3 model is unsafe because of an allegedly defective  
4 transmission. The vehicle model was sold in all  
5 fifty states but the class action is only brought  
6 on behalf of Floridians. This case would not fall  
7 within the Local Controversy Exception for two  
8 reasons. First, the automobile dealers are not  
9 defendants whose alleged conduct forms a  
10 significant basis of the claims or from whom  
11 significant relief is sought by the class. **Even  
12 if the plaintiffs are truly seeking relief from  
13 the dealers, that relief is just small change  
14 compared to what they are seeking from the  
15 manufacturer.** Moreover, the main allegation is  
16 that the vehicles were defective. In product  
17 liability cases, the conduct of a retailer such as  
18 an automobile dealer does not form a significant  
19 basis for the claims of the class members. . . .

20 S. Rep. No. 109-14, at 41 (2005) (emphasis added); see also Green,  
21 2010 U.S. Dist. LEXIS 7456, at \*10-11; Robinson, 2006 U.S. Dist. LEXIS  
22 10129, at \*13.

23 The Report's comment belies an interpretation that a fact-based  
24 inquiry into a defendant's ability to pay is permissible. The passage  
25 uses the word "seeking" twice to describe the class's relief, calling  
26 for a comparison of the "small change" the plaintiffs are "seeking"  
27 from the local dealers and the significant relief they are "seeking"  
28 from the manufacturer. There is no hint that the local dealer's  
29 solvency is relevant to that question.

30 The Report does, however, include a hypothetical situation very  
31 close to the instant case:

32 A class action is brought in Florida state court  
33 against a Florida funeral home regarding alleged  
34 wrongdoing in burial practices. Nearly all the  
35 plaintiffs live in Florida (about 90 percent).  
36 The suit is brought against the cemetery, a  
37 Florida corporation, and an out-of-state parent  
38 company that was involved in supervising the  
39 cemetery. No other class action suits have been  
40 filed against the cemetery. This is precisely the  
41 type of case for which the Local Controversy  
42 Exception was developed. Although there is one

1 out-of-state defendant (the parent company), the  
 2 controversy is at its core a local one, and the  
 3 Florida state court where it was brought has a  
 strong interest in resolving the dispute. Thus,  
 this case would remain in state court.

4 S. Rep. No. 109-14 at 41. As in this scenario, the class in this case  
 5 is 100% in-state, alleging purely state-law claims against a local  
 6 defendant and its supervising parent, and California has a strong  
 7 interest in resolving the dispute. And, once again, there is no  
 8 suggestion that the cemetery's ability to pay a judgment is relevant  
 9 to the Local Controversy inquiry.

10 Thus, consistent with the plain language of the statute and  
 11 Coffey, the Court finds that Estes West is a local defendant "from  
 12 whom significant relief is sought by members of the plaintiff class."  
 13 See Coffey, 581 F.3d at 1244-45.<sup>12</sup>

14 3. Defendant Whose Alleged Conduct Forms a Significant  
 15 Basis for the Claims Asserted by the Proposed Plaintiff  
 16 Class

17 The significant basis requirement is fulfilled "[i]f the local  
 18 defendant's alleged conduct is a significant part of the alleged  
 19 conduct of all the Defendants." Kaufman v. Allstate New Jersey Ins.  
 20 Co., 561 F.3d 144, 156 (3d Cir. 2009). "The plain text of this  
 21 provision relates the alleged conduct of the local defendant, on one  
 22 hand, to all the claims asserted in the action, on the other" and  
 23 "calls for comparing the local defendant's alleged conduct to the  
 24 alleged conduct of all the Defendants." Id. at 155-56. Under this  
 25 provision, "significant" means "important, notable," and "[t]he local  
 26

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27 <sup>12</sup>The Court need not consider Plaintiff's belated argument that  
 28 the class can seek an injunctive remedy for improper wage statements  
 under California Labor Code section 226(g) against only Estes West.

1 defendant's alleged conduct must be an important ground for the  
2 asserted claims in view of the alleged conduct of all the Defendants."  
3 Id. at 157 (emphasis in original).

4 As with the "significant relief" requirement, the Court asked the  
5 parties to submit supplemental briefing on whether the Court may  
6 consider Defendants' actual conduct or is limited to the conduct  
7 alleged in the complaint to determine whether the local defendant's  
8 "alleged conduct formed a significant basis" of the class claims.  
9 Like the "significant relief" requirement, the case law is in tension  
10 on this question. Compare Evans, 449 F.3d at 1167 (considering  
11 evidence to determine whether local defendant's conduct formed a  
12 "significant basis" of property contamination claims) with Kaufman,  
13 561 F.3d at 157 (stating that, consistent with the plain language of  
14 the statute, "the District Court's focus here must be on the alleged  
15 conduct") and Anderson v. Hackett, 646 F. Supp. 2d 1041, 1048 (S.D.  
16 Ill. 2009) (focusing solely on allegations in complaint because "the  
17 Court must determine if [the local defendant's] 'alleged conduct forms  
18 a significant basis for the claims asserted by the proposed plaintiff  
19 class'" (emphasis in original)).

20 If the Court were to follow Kaufman and Anderson in this case and  
21 rely only on Defendants' alleged conduct, Estes West's alleged conduct  
22 would form a significant basis of the class claims. As already  
23 stated, the class pleads all claims against both Estes Express and  
24 Estes West jointly and alleges the two entities were acting as agents  
25 for and ratified the conduct of one another. (FAC ¶¶ 12-13.) Whether  
26 Estes West will ultimately be held liable is immaterial at this stage.  
27 See Anderson, 646 F. Supp. 2d at 1048. Instead, "the allegations  
28 against [Estes West] would, if proven, establish a right to relief for

1 most, if not all, of the proposed plaintiff class." Id. at 1049. "In  
2 other words, had Plaintiffs brought this action only against [Estes  
3 West], the classes proposed by Plaintiffs and the relief sought . . .  
4 would remain almost unchanged." Id.

5 As Defendants point out, however, limiting this inquiry to the  
6 face of the complaint is in tension with the general rule that a court  
7 may consider extrinsic evidence submitted by a party implicating the  
8 Court's subject-matter jurisdiction. See, e.g., Roberts v.  
9 Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987). Of course, Congress  
10 could have intended to change this rule in the context of CAFA by  
11 using the phrase "alleged conduct" in the statute, as opposed to  
12 "actual conduct," or simply "conduct." See Anderson, 646 F. Supp. 2d  
13 at 1048.<sup>13</sup> The Court need not decide the question. Even considering  
14 Defendants' evidentiary submission, the Court finds that Estes West's  
15 conduct forms a "significant basis" of the class claims.

16 The court in Kaufman outlined several factors to consider in  
17 determining whether a local defendant's "alleged conduct" forms a  
18 "significant basis" of the class claims:

- 19 1) the relative importance of each of the claims  
20 to the action; 2) the nature of the claims and  
21 issues raised against the local defendant; 3) the  
22 nature of the claims and issues raised against all  
23 the [d]efendants; 4) the number of claims that  
24 rely on the local defendant's alleged conduct; 5)  
25 the number of claims asserted; 6) the identity of  
26 the [d]efendants; 7) whether the [d]efendants are  
27 related; 8) the number of members of the putative  
28 classes asserting claims that rely on the local

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25 <sup>13</sup>Even that point is not entirely clear. In the Senate Judiciary  
26 Committee Report, the Committee noted that it "understands that in  
27 assessing the various criteria established in all these new  
28 jurisdictional provisions, a federal court may have to engage in some  
fact-finding, not unlike what is necessitated by the existing  
jurisdictional statutes." S. Rep. 109-14 at 44.

1 defendant's alleged conduct; and 9) the  
2 approximate number of members in the putative  
3 class.

4 Kaufman, 561 F.3d at 157 n.13. Again, most of these factors are  
5 satisfied by Plaintiff's complaint: all of the wage and hour claims  
6 are alleged against Defendants equally; Defendants are intimately  
7 related to one another as parent and subsidiary; and every member of  
8 the 569-member class pleads claims against Estes West.

9 Defendants offer evidence that Estes Express set nearly all of  
10 Estes West's personnel policies and practices. Yet, Defendants' own  
11 evidence suggests that Estes West had a role in enforcing those  
12 policies: it had a separate payroll analyst, a Regional Vice  
13 President, a human resources manager, and, critically, other managers  
14 who "give day to day instructions to employees." (2d Gerczak Decl. ¶¶  
15 4, 8.) Plaintiff does not limit his claims to the policies  
16 promulgated by Estes Express, and his claims could be reasonably  
17 interpreted to cover the lack of proper enforcement of those policies  
18 by Estes West's local "day to day" managers. (See, e.g., FAC ¶ 57  
19 (alleging only that "Defendants willfully required Plaintiff and class  
20 members to work during meal periods"), ¶ 67 (alleging only that  
21 "Defendants willfully required Plaintiff and class members to work  
22 during rest periods").) Thus, even considering Estes Express's  
23 evidentiary submission, Estes West's alleged conduct forms a  
24 "significant basis" for the claims alleged in the complaint.<sup>14</sup>

---

25  
26 <sup>14</sup>The Court rejects Defendants' suggestion that, because  
27 Plaintiff has alleged his claims against both Estes Express and Estes  
28 West equally, he cannot show one Defendant's conduct was more  
significant than the other. See Anderson, 646 F. Supp. 2d at 1048  
(rejecting argument that out-of-state defendant's conduct was worse  
than local defendant to defeat "significant basis" requirement).

**CONCLUSION**

1  
2 While Defendants have demonstrated that more than \$5,000,000 is  
3 in controversy under CAFA, Plaintiff has demonstrated that CAFA's  
4 Local Controversy exception applies in this case. Therefore, the  
5 Court must decline to exercise jurisdiction. See Serrano, 478 F.3d at  
6 1022. Plaintiff's motion is GRANTED and this case is REMANDED to Los  
7 Angeles Superior Court.

8 **IT IS SO ORDERED.**

9 **DATED:**

July 19, 2010



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AUDREY B. COLLINS  
UNITED STATES DISTRICT JUDGE