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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK WILSON, individually,)	
and on behalf of members of the)	2:10-cv-3136-GEB-KJN
general public similarly)	
situated, and on behalf of)	
aggrieved employees pursuant to)	<u>ORDER DENYING MOTION TO</u>
the Private Attorneys General)	<u>REMAND</u> *
Act ("PAGA"),)	
)	
Plaintiff,)	
)	
v.)	
)	
BEST BUY COMPANY, INC., a)	
Minnesota company, and DOES 1)	
through 100, inclusive,)	
)	
Defendants.)	
_____)	

Plaintiff moves for an order remanding this case to the Superior Court of the State of California in the County of Sacramento, from which Defendant Best Buy Company, Inc. ("Best Buy") removed this case. Best Buy removed this case under the Class Action Fairness Act of 2005 ("CAFA"). Plaintiff argues this case should be remanded because Best Buy has failed to satisfy the \$5,000,000 amount in controversy required before removal is appropriate under the CAFA. Best Buy opposes the motion.

* This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 The CAFA “vests district courts with ‘original jurisdiction of
2 any civil action in which, inter alia, the amount in controversy exceeds
3 the sum or value of \$5,000,000, exclusive of interest and costs,’ and in
4 which the aggregate number of proposed plaintiffs is 100 or greater, and
5 any member of the plaintiff class is a citizen of a state different from
6 any defendant.” Lowdermilk v. U.S. Bank Nat’l Ass’n, 479 F.3d 994, 997
7 (9th Cir. 2007) (quoting 28 U.S.C. § 1332(d)(2)).

8 I. BACKGROUND

9 Plaintiff alleges in his “class action complaint” that he and
10 other Geek Squad Installers, who were employed by Best Buy, worked over
11 eight hours per day and/or forty hours per week and did not receive
12 overtime compensation. (Compl. ¶ 20.) Plaintiff defines the proposed
13 class as follows: “All current and former ‘Geek Squad Installers,’ or
14 persons with similar titles and/or similar job duties, who worked for
15 Best Buy Co., Inc. in the State of California at any time from October
16 13, 2006 to final judgment.” (Compl. ¶ 36.)

17 Plaintiff alleges the following six claims: 1) failure to pay
18 overtime wages proscribed in sections 510 and 1198 of the California
19 Labor Code; 2) failure to timely pay wages due at termination proscribed
20 in sections 201 and 202 of the California Labor Code (characterized as
21 “waiting time penalties”); 3) failure to provide accurate wage
22 statements proscribed in section 226(a) of the California Labor Code; 4)
23 failure to pay wages to an employee who was required to report for work
24 but who was not put to work, proscribed in section 5 of the Industrial
25 Welfare Commission Wage Order (characterized as “reporting time pay”);
26 5) civil penalties under California Labor Code section 2698, *et seq.*;
27 and 6) relief for unfair business practices under sections 17200, *et*
28 *seq.* of the California Business and Professions Code. (FAC ¶¶ 47-101.)

1 Plaintiff's "class action complaint" does not allege a
2 specific amount in controversy.

3 **II. LEGAL STANDARD**

4 "Where the complaint does not specify the amount of damages
5 sought, the removing defendant must prove by a preponderance of the
6 evidence that the amount in controversy requirement has been met."
7 Abrego Abrego v. The Dow Chem. Co., 443 F.3d 676, 683 (9th Cir. 2006).
8 "Under this burden, the defendant must provide evidence that it is 'more
9 likely than not' that the amount in controversy" satisfies the
10 jurisdictional amount requirement. Sanchez v. Monumental Life Ins. Co.,
11 102 F.3d 398, 404 (9th Cir. 1996).

12 **III. DISCUSSION**

13 In support of its position that the amount in controversy in
14 Plaintiff's putative class action exceeds \$5,000,000, Best Buy presents
15 the declaration of Bonny Nelson, the payroll manager for Best Buy.
16 (Opp'n to Mot. to Remand ("Opp'n") 6:20-25.) Nelson declares, "based on
17 [her] personal knowledge and review of the business records of Best
18 Buy[,] Best Buy employed "637 Geek Squad Installers in California [and
19 those employees] worked a total of approximately 76,649 workweeks, and
20 earned an average hourly rate of approximately \$18.47 per hour." (Decl.
21 of Nelson in Supp. of Opp'n ("Decl. of Nelson") ¶¶ 1, 4.) Nelson also
22 declares that "[f]rom the period of October 13, 2007 to October 13,
23 2010, Best Buy Stores terminated at least 162 Geek Squad employees." Id.
24 ¶ 3. Based on these averments, Best Buy calculates the amount in
25 controversy in Plaintiff's claims as follows: \$2,123,177 for the unpaid
26 overtime; \$567,398 for waiting time penalties; \$1,089,250 for the wage
27 statement violations; and \$2,831,414 for reporting time pay. (Opp'n
28 7:16-10:6.)

1 Plaintiff counters since Best Buy has not presented admissible
2 "employee records reflecting hours worked, shifts worked, weeks worked,
3 etc.," Best Buy has not sustained its burden of showing "that the total
4 amount in controversy exceeds \$5,000,000." (Mot. to Remand ("Mot.")
5 1:11-14.) Specifically, Plaintiff argues Nelson's declaration "fails to
6 identify [the records she reviewed,] what information is compiled, how
7 the records are maintained, or when the information was recorded." Id.
8 5:20-21. Plaintiff also argues Nelson's declaration violates the best
9 evidence rule since Nelson "testifies about the purported contents of
10 the unidentified records." Id. 5:22-23. Best Buy counters that it "is
11 not required to produce extensive company records to support its amount
12 in controversy calculations." (Opp'n 6:3-4.)

13 Although it is unclear how Nelson used the records she
14 reviewed, Nelson also declares her averments are based on her personal
15 knowledge. This evidence, combined with the allegations in Plaintiff's
16 complaint, "establish[es] that it is more likely than not that the
17 amount in controversy exceeds [\$500,000]." Sanchez, 102 F.3d at 404
18 (internal quotation marks omitted).

19 Plaintiff also argues Best Buy overestimates the amount in
20 controversy in Plaintiff's unpaid overtime claim by improperly
21 "assum[ing], without evidentiary support, that [every member of the
22 class was denied] one hour of overtime pay per week[.]" (Pl.'s Reply to
23 Opp'n ("Reply") 9:15-16.) However, Plaintiff has alleged that "[d]uring
24 the relevant time period, Plaintiff and the other class members worked
25 in excess of eight (8) hours in a day . . . [and] in excess of forty
26 (40) hours in a week." (Compl. ¶¶ 54-55.) In light of these allegations,
27 Best Buy's evidence is sufficient to show the plausibility of its unpaid
28 overtime amount in controversy.


1 Plaintiff also argues that Best Buy miscalculates the amount
2 in controversy in Plaintiff's waiting time penalty claim by assuming
3 that all "former employees were entitled to damages for the entire 30
4 day period" recoverable under the statute. (Reply 10:6-7.) However,
5 Plaintiff's allegations support Best Buy's waiting time penalty
6 calculation since Plaintiff alleges "Defendants intentionally and
7 willfully failed to pay Plaintiff and the other class members their
8 wages . . . within seventy-two (72) hours of . . . [the employees]
9 leaving Defendants' employ" and therefore, "Plaintiff and the other
10 class members are entitled to recover the statutory penalty for each day
11 they were not paid, at their regular hourly rate of pay, up to thirty
12 (30) days maximum pursuant to California Labor Code section 203."
13 (Compl. ¶¶ 62, 65.)

14 Plaintiff also argues Best Buy's "calculation of the reporting
15 time pay is flawed because it speculates that the entire class . . .
16 were sent home without work at least once per week[.]" (Reply 9:11-12.)
17 Plaintiff alleges in his Complaint that "Defendants intentionally and
18 willfully failed to compensate Plaintiff and the other class members for
19 show up [pay] as described in IWC Wage Order section (5)." (Compl. ¶
20 74.) In light of this allegation, Best Buy has provided plausible
21 evidence supporting its position on the amount in controversy concerning
22 this claim.

23 **IV. CONCLUSION**

24 For the stated reasons, Plaintiff's remand motion is denied.

25 Dated: February 8, 2011

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GARLAND E. BURRELL, JR.
United States District Judge