UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV-14-1352-MWF (PLAx) **Date: May 28, 2014**
Title: Miko Stafford -*v*- Brinks, Incorporated, et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER DENYING PLAINTIFF'S MOTION TO REMAND [15]

This matter comes before the Court on the Motion to Remand Case to California Superior Court (the "Motion"), filed by Plaintiff Miko Stafford. (Docket No. 15). The Court has read and considered the papers, and a hearing was held on April 28, 2014. As set forth below, the Motion is **DENIED**.

The Motion argues that, under the recent Ninth Circuit case of *Baumann v. Chase Investment Services Corp.*, -- F.3d --, No. 12-55644, 2014 WL 983587 (9th Cir. Mar. 13, 2014), the amount in controversy in Plaintiff's claims under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code §§ 2698–2699.5, are not class claims and cannot be aggregated with Plaintiff's class claims to meet the $5,000,000 jurisdictional minimum under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d). The Ninth Circuit has not addressed this precise issue in *Baumann* or otherwise, and the district courts can and do differ. This Court concludes both that (a) the entire PAGA amount is in controversy and (b) the PAGA claims are subject to aggregation under CAFA.

Legal Standard

Under CAFA, the Court has "original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which" there is minimal diversity. 28 U.S.C. § 1332(d)(2).

The removing party bears the burden of showing that jurisdiction is proper. *Abrego Abrego v. Dow Chemical Co.*, 443 F.3d 676, 683 (9th Cir. 2006) (concluding that CAFA did not shift the burden to the plaintiff). If it is unclear from the complaint what amount of damages the plaintiff has sought, "the defendant bears the burden of actually proving the facts to support jurisdiction, including the jurisdictional amount." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

Calculation of the Amount in Controversy

Paragraph 17(a) of the Complaint defines the PAGA employees in a manner quite different from the purported class definition, using the date of December 16, 2013. With this date, the Court doubts that the amount in controversy would be met. However, in the Rule 26 report, "2013" is described as a typographical error. (Parties' Joint FRCP 26(f) Report, at 3:20-24 (Docket No. 19)). The Court is inclined to allow this error to be corrected.

Defendant suggests that the total amount in controversy for the class claims is **$2,385,950**. To arrive at this figure, Defendant created a spreadsheet from its business records containing the dates worked by all of Defendant's employees in California from January 3, 2013 to on or about January 28, 2014. There were 967 relevant employees. (Declaration of Aaron Cole in Support of Removal ("Cole Decl.") ¶ 5 (Docket No. 2)). The number of weeks worked by each employee was divided by 2 and rounded up to the nearest whole number to account for Defendant's bi-weekly pay periods, and this number reflected the number of wage statements received by each employee during the statutory period. (*Id.* ¶ 6). This number was used to calculate penalties available under Labor Code § 226(e). This number may slightly overstate the damages by as much as $96,700 because of improper rounding, if wage statements were not issued during the week of January 3, 2013.

Defendant suggests that the amount in controversy for the PAGA claim is **$4,771,900**. This number is calculated using the same class of employees and the same series of wage statements as the class claims. (*Id.* ¶¶ 9-10).

The Effect of *Baumann v. Chase Investment Services, Inc.*

Plaintiff's primary argument is that under *Baumann*, PAGA penalties may not be combined with individual class claims to meet the amount in controversy requirement under CAFA. *Baumann* makes no such holding. The *Baumann* court specifically limited its consideration to a single issue:

> There is no question that this PAGA action involves statutory violations allegedly suffered by more than 100 Chase employees, that the citizenship of one of those employees is different than Chase's, or that the aggregated statutory penalties sought exceed $5,000,000. Therefore, the only issue for decision is whether this is a "class action."

Baumann, 2014 WL 983587, at *2.

The action at issue in *Baumann* "did not invoke the California class action statute." *Id.* at *3. Rather, it was brought only under PAGA itself, which allows "an aggrieved employee" to bring "a civil action . . . on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3." Cal. Lab. Code § 2699(a). The action was brought solely under the procedures of § 2699.3, and not the California class action statute.

CAFA defines "class action" as an action brought under Rule 23 of the Federal Rules of Civil Procedure or a "similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). Accordingly, the *Baumann* court sought to determine only whether sections 2699(a) and 2699.3 of the California Labor Code were "similar" to Rule 23 and "authoriz[ed] an action to be brought by 1 or more representative persons as a class action." *Id.* The court answered that question in the negative. It did not pass on whether PAGA claims brought alongside class claims under the California class action statute were "claims of individual class members" appropriate for aggregation under CAFA, 28 U.S.C. § 1332(d)(6).

In fact, a part of the *Baumann* opinion could easily be read as supporting aggregation of PAGA claims to meet the amount in controversy requirement of CAFA. "There is no question," the court wrote, "that the aggregated statutory penalties sought exceed $5,000,000." *Baumann*, 2014 WL 983587, at *2. The Notice of Removal filed in the district court indicated that $13,120,950 in PAGA penalties were in controversy. *See* Notice of Removal at 13, *Baumann v. Chase Inv. Servs. Corp.*, No. 11-CV-6667-GHK-FMO, Docket No. 1 (C.D. Cal. Aug. 12, 2011). Perhaps this statement was inadvertent, and not a conclusive determination of the aggregation issue; however, the question of whether PAGA claims are in controversy for purposes of CAFA was within the scope of the court's review. The court reviewed a district court opinion that had "declined to address CAFA jurisdiction." *Id.* at *1. The court chose to address CAFA jurisdiction in the first instance, rather than remand, on its authority to review an "order" rather than a "question" under 28 U.S.C. § 1292(b). *Id.* (citing *In re Cinematronics, Inc.*, 916 F.2d 1444, 1449 (9th Cir. 1990)). The court could easily have addressed the issue Plaintiff raises here, but rather concluded that there was "no question" that the amount in controversy requirement was met.

Regardless of these possible implications of *Baumann*, it is clear that the Ninth Circuit has not directly addressed the problem at issue here.

Whether Portions of the PAGA Claims Belonging to the State May Form Part of the Amount in Controversy

District courts have, with apparent uniformity, included PAGA claims in the amount in controversy in class action suits under CAFA. *See Pagel v. Dairy Farmers of Am., Inc.*, -- F. Supp. 2d --, No. CV-13-2382 SVW (VBKx), 2013 WL 6501707, at *5 (C.D. Cal. Dec. 11, 2013) (collecting cases); *Main v. Dolgen Cal., LLC*, No. CV 13-1637-MCE, 2013 WL 5799019, at *2 (E.D. Cal. Oct. 28, 2013); *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx), 2012 WL 2373372, at *15-16 (C.D. Cal. June 22, 2012); *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO, 2010 WL 2793650, at *6 (E.D. Cal. July 14, 2010). The primary axis of controversy among the district courts in the Ninth Circuit has been whether to include all of the expected civil penalties under PAGA, or only that portion that may ultimately be paid to the

individual employees. Defendant claims that it is appropriate to include 100 percent of the expected recovery on the PAGA claims in the amount in controversy, while Plaintiff has not addressed the issue.

Under PAGA, 75 percent of the civil penalties recovered are awarded to the Labor and Workforce Development Agency ("LWDA"), while "aggrieved employees" recover 25 percent of the penalties. *See* Cal. Lab. Code § 2699(i) ("[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.").

Defendant suggests that the total amount in controversy for the PAGA claim is **$4,771,900**. This is calculated by totaling the number of allegedly improper wage statements provided to each putative class member during the statutory period, and allowing a $100 penalty for the first wage statement and a $200 penalty for each wage statement thereafter. Cal. Lab. Code § 2699(f)(2). (Declaration of Aaron Cole in Support of Removal ¶¶ 9-10 (Docket No. 2)). According to Defendant's calculations, then, the total recovery that could be realized by the individual employees is **$1,192,975**.

District courts in this Circuit have split over whether any recovery that is expected to be paid to LWDA is a part of the amount in controversy under CAFA. Those courts that have included only the 25 percent payable to individual employees in the amount in controversy have focused on the fact that PAGA claims are owned by the government, and government claims are not "claims of individual class members" under the claim-aggregation rule in CAFA, § 1332(d)(6). *See Controulis v. Anheuser-Busch*, No. CV 13-07378 RGK (AJWx), 2013 WL 6482970, at *2 (C.D. Cal. Nov. 20, 2013); *Main*, 2013 WL 5799019, at *2; *Hernandez*, 2012 WL 2373372, at *15-16.

This position finds some support in dicta in the Ninth Circuit opinion in *Urbino v. Orkin Services of California, Inc.*, 726 F.3d 1118 (9th Cir. 2013). In *Urbino*, the

Ninth Circuit determined that penalties payable to individual employees under PAGA may not be aggregated in order to meet the $75,000 minimum amount in controversy for diversity jurisdiction under § 1332(a). *Id.* at 1121. The Circuit applied the well-known anti-aggregation rule of diversity jurisdiction, under which the claims of at least one plaintiff must meet the $75,000 jurisdictional minimum. *Id.* at 1122 (citing *Troy Bank v. G.A. Whitehead & Co.*, 222 U.S. 39, 40, 32 S. Ct. 9, 56 L. Ed. 81 (1911)).

The defendant argued that the plaintiff was asserting neither his individual interest nor the interests of the individual employees, but the state's collective interest in enforcing its labor laws through PAGA. The Circuit neither accepted nor rejected this argument, but reasoned that even if the plaintiff were asserting the state's undivided interest, the claim of the state does not satisfy the requirements of diversity jurisdiction, because the state is not a "citizen" for diversity purposes. *Id.* at 1123 (citing *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 461, 100 S. Ct. 1779, 64 L. Ed. 2d 425 (1980)).

Urbino did not address CAFA jurisdiction at all. Nevertheless, courts have used the language in *Urbino* as a signal that the Ninth Circuit would interpret CAFA to exclude from the amount in controversy any amount payable to LWDA. *See Controulis*, 2013 WL 6482970, at *2 ("The reasoning of *Urbino* suggests that PAGA penalties are not claims of individual plaintiffs because the 'primary benefit' of such penalties 'inure[s] to the state.'" (citing *Urbino*, 726 F.3d at 1123)); *see also Main*, 2013 WL 5799019, at *2 (concluding that *Urbino* compels the exclusion of amounts payable to the state).

Urbino did not hold that PAGA claims are claims belonging to the state, rather than claims of the individual employees. It stated, rather, that ***if*** PAGA claims were understood as claims belonging to the state, as the defendant contended, the claims would not be a part of the amount in controversy because the state is not a "citizen." *Urbino*, 726 F.3d at 1123. The *Urbino* court seemed skeptical of the assertion that PAGA claims are actually claims of the state. Before addressing the defendant's suggestion that a PAGA claim belongs to the state, *Urbino* stated that claims under the California Labor Code are "held individually." *Id.* at 1122. Nevertheless, the Circuit

wrote, "[t]o the extent Plaintiff can—and does—assert anything but his individual interest, . . . we are unpersuaded that such a suit, the primary benefit of which will inure to the state, satisfies the requirements of federal diversity jurisdiction." *Id.* at 1122-23.

In fact, this dictum in *Urbino* seems to point to the conclusion that whether or not a PAGA claim is understood best as a claim of the state, it should not be understood as two separate claims, only one of which is a claim of the individual. A PAGA plaintiff is either (a) asserting "his individual interest," or (b) bringing "a suit, the primary benefit of which will inure to the state." *Id.*

The primary weakness in the cases suggesting that only 25 percent of the potential PAGA recovery is in controversy is the premise that a PAGA claim is essentially divisible into two overlapping claims, one belonging to the state and one belonging to the individual employee, which may be raised by either party but must be raised simultaneously. Only if this proposition is true could the individual's "claim" and not the state's "claim"—which is based on necessarily identical facts and must rise or fall with the individual's claim—be placed in controversy for purposes of CAFA. There is no support for this proposition in the statute or in the case law.

Accordingly, the cases holding that the entire amount of the PAGA penalties is placed in controversy by the employee's suit have focused on the fact that the claims are indivisible. *See Pagel*, 2013 WL 6501707, at *6-9 (reasoning that because an employee's PAGA claim necessarily places the amount recoverable by the agency in controversy, and because the amount in controversy may be measured from the defendant's perspective, the entire amount must be included in the amount in controversy); *Quintana v. Claire's Stores*, No. CV 13-368 PSG, 2013 WL 1736671, at *7 (N.D. Cal. Apr. 22, 2013) ("The interest in collecting civil penalties for violations belongs to the LWDA who may decide not to pursue those remedies; the representative plaintiff steps in to the LWDA's shoes to prosecute the action only after the LWDA makes that decision.").

Indeed, there appear to be no circumstances under which the amount in controversy for diversity jurisdiction purposes has been held to include only benefits that would inure in the plaintiff, rather than a third party. To the contrary, the consistent rule has been that the amount in controversy is determined by "either viewpoint"—the plaintiff's or the defendant's. The amount in controversy in a given action is the greater of either the value that the plaintiff would realize from a favorable outcome or the value to the defendant of avoiding a favorable outcome. *See In re Ford Motor Co./ Citibank*, 264 F.3d 952, 959 (9th Cir. 2001) ("Under the 'either viewpoint' rule, the test for determining the amount in controversy is the pecuniary result to either party which the judgment would directly produce.").

Although in many cases the value of the judgment to both parties is equivalent, the "either viewpoint" rule is important when a plaintiff seeks an equitable remedy. A plaintiff may properly seek prospective injunctive relief, the benefit of which will inure in the plaintiff, similarly situated third parties, and the public at large. The cost of compliance with a proposed injunction for the defendant may thus greatly exceed the value of the injunction to the plaintiff. It is the cost to the defendant that is "in controversy" under these circumstances even though the benefit extends beyond the plaintiff.

Another analogous circumstance is the shareholder derivative action. Like a PAGA claim, a shareholder bringing a derivative action asserts the rights of a third party and is awarded with only a pro rata share in any recovery, while the primary benefit of a successful suit inures in the third party. The amount in controversy includes the entire amount sought on behalf of the corporation, not simply the amount recoverable by the plaintiff, because the corporation is the real party in interest. *See Koster v. (Am.) Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 522, 67 S. Ct. 828, 91 L. Ed. 1067 (1947) ("Plaintiffs, like this one, if their own financial stake were the test, sometimes do not have a sufficient individual interest to make up the required jurisdictional amount. Again this class of cases is favored with the fiction that plaintiffs' possible recovery is not the measure of the amount involved for jurisdictional purposes but that the test is the damage asserted to have been sustained

by the defendant corporation."). Of course, shareholder derivative actions may be distinguished from PAGA claims because the entire amount of recovery realized by the corporation, in theory, inures in its shareholders. In PAGA, by contrast, recovery is strictly divided between the state agency and individual employees.

The cases that have supported dividing PAGA claims into one claim of an individual and an overlapping claim of the state have reasoned that claims belonging to the state should not be aggregated with individual claims to reach the applicable amount in controversy.

In *Hernandez*, for instance, the district court emphasized the fact that the state agency could bring its action independently of the aggrieved employee's action under PAGA. It relied on *Pulera v. F & B, Inc.*, No. 2:08-cv-00275 MCE DAD, 2008 WL 3863489, at *4 (E.D. Cal. Aug. 19, 2008), a non-CAFA diversity jurisdiction case that anticipated the Ninth Circuit's holding in *Urbino* that individual employees' claims under PAGA could not be aggregated to meet the $75,000 diversity jurisdiction floor:

> As the *Pulera* court noted, the aggregation of employees' individual rights does not compel their aggregation with the rights of a state agency, the LWDA. [T]he *Pulera* court observed that the "common and undivided interest" exception relies on the notion that "neither [party] can enforce [the claim] in the absence of the other." Under PAGA, "[h]owever, the LWDA can choose to enforce those claims itself, regardless of the employee's involvement," just as employees can, if LWDA approves, sue without any direct involvement by the agency. The statute thus permits either the LWDA or the aggrieved employees to act independently to enforce the Labor Code. This cuts against aggregating the agency's claims with the employees' claims, even if the employees' individual claims should be aggregated under the "common and undivided interest" exception.

Hernandez, 2012 WL 2373372, at *16 (citations omitted). *Hernandez* failed to consider, however, that a PAGA claim brought by an employee cannot be

severed from the agency's claim. The employee could not choose to bring a PAGA action on her own behalf, seeking only 25 percent of the statutory civil penalties, and stipulating that the state agency should take nothing. The employee's decision to bring a PAGA claim necessarily places the state agency's potential recovery in controversy.

Main similarly relied on *Pulera* to support this conclusion. It also cited *Urbino*, without recognizing that both *Pulera* and *Urbino* were non-CAFA diversity jurisdiction cases determining whether the "common and undivided" exception to the general non-aggregation rule applies to PAGA claims. The district court seemed to suggest that *Urbino* compelled its conclusion:

> The Ninth Circuit recently found that a plaintiff's claims under PAGA are separate and distinct rather than common and undivided, and thus, the civil penalties may not be aggregated to satisfy the amount in controversy requirement. The Ninth Circuit explained, "we are unpersuaded that such a suit, the primary benefit of which will inure to the state, satisfies the requirements of federal diversity jurisdiction." In keeping with this precedent, this Court previously held that recovery under PAGA may not be aggregated because the amount recovered by a plaintiff "based on his PAGA claims [is] separate and distinct from the amounts recoverable by the State of California via the LWDA."

Main, 2013 WL 5799019, at *2 (citations omitted). The *Main* court failed to consider the fact that CAFA removes the anti-aggregation rule, and thus all claims of individual class members may be aggregated whether or not they are "common and undivided." *See* 28 U.S.C. § 1332(d)(6).

The best argument supporting including only amounts recoverable by the individual employees is a textual one. Only the "claims of individual class members"—rather than any claim placed in controversy in the action—"shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000." 28 U.S.C. § 1332(d)(6). Under PAGA, the individual employees cannot,

under any circumstances, recover any part of the 75 percent of the statutory penalties reserved for the state agency. Accordingly, only 25 percent of the penalties could be "claims of the individual class members."

Indeed, CAFA can reasonably be understood as limiting its ambit to those class actions in which the class members seek remedies for themselves in excess of $5,000,000. The purposes of CAFA clearly target the class members themselves, and not other parties that may benefit from the class claims. CAFA § 2(b)(1), Pub. L. No. 109-2, 119 Stat. 4, 5 (2005) ("The purposes of this Act are to . . . assure fair and prompt recoveries for class members with legitimate claims . . . ."). When the expected remedies recoverable by class members fall below the jurisdictional limitation, CAFA's purposes are not met.

However, the "either viewpoint" rule provides the correct response to this argument. Even though not all of the recovery inures to the plaintiff's benefit, the claim necessarily puts the entire possible award into controversy. There is no basis in the statutory language of CAFA, and Plaintiff has pointed to no guidance in the legislative history, suggesting that Congress intended to abrogate the "either viewpoint" rule for purposes of CAFA jurisdiction.

Accordingly, the Court holds that it is improper to divide PAGA claims and include in the amount in controversy only the 25 percent of the penalties recoverable by the aggrieved employees. The Court must still determine whether the entire PAGA claim is a claim of the individual class members, or whether it is actually a claim of the state agency.

Whether PAGA Claims May Form Part of the Amount in Controversy

The remaining question is whether PAGA claims can ever constitute "claims of individual class members" under CAFA, 28 U.S.C. § 1332(d)(6), which may be aggregated to determine whether $5,000,000 is at issue in this class action.

To begin, the Court rejects Plaintiff's argument that her artful pleading is determinative of the jurisdictional issue. Plaintiff argues that even if PAGA claims may be pleaded as part of a class action suit, her decision to bring her PAGA claim "against the company and Does 1-50 by Plaintiff" seeking remedies "on behalf of the State of California" displays that the PAGA claims are not claims of individual class members. (Compl. at 7 ¶ 32-33).

Although it is true that Plaintiff did not assert that the PAGA claims were brought on behalf of the class, the Complaint seeks both privately available remedies under Labor Code 226(a) and civil penalties available under the same code section that may be brought by private parties under PAGA. The "individual class members" under the class action claims are identical to the "aggrieved employees" under CAFA. Any recovery under PAGA would be payable to the aggrieved employees themselves. Plaintiff's decision to state that she seeks civil penalties on behalf of the state rather than on behalf of the employees is gratuitous and does not alter this Court's analysis of its jurisdiction.

As stated above, all or virtually all courts faced with class actions that include both class claims and PAGA claims have included PAGA penalties in the amount in controversy. *See Pagel*, 2013 WL 6501707, at *5 (collecting cases). While most of these cases predated *Baumann*, and thus the Ninth Circuit had not yet definitely ruled on whether PAGA claims are "class actions" under CAFA, most district courts to consider that question had ruled in line with the *Baumann* holding. *See Alcantar v. Hobart Serv.*, No. EDCV 11-1600 PSG (SPx), 2013 WL 146323, at *3 (C.D. Cal. Jan. 14, 2013) ("[T]he majority of federal courts have determined that class certification under Rule 23 is not required to maintain a cause of action under PAGA."). Therefore, there is little reason to believe that these district courts would have changed their decisions in light of *Baumann*.

None of these courts, however, directly considered whether PAGA claims are "claims of individual class members" subject to aggregation. A claim belonging entirely to the state agency likely cannot be understood as a claim of individual class members. California courts have held that PAGA claims are brought primarily on

behalf of the state agency, whose interests are represented by the individual employee. "An employee plaintiff suing [under PAGA] does so as the proxy or agent of the state's labor law enforcement agencies." *Arias v. Superior Court*, 46 Cal. 4th 969, 986, 95 Cal. Rptr. 3d 588 (2009).

In this respect, a PAGA claim is similar to a *qui tam* action under the federal or state False Claims Acts. 31 U.S.C. §§ 3729 *et seq.*; Cal. Gov't Code §§ 12650 *et seq.* In *qui tam* actions, a government agency assigns to a private party "relator" the right to pursue claims belonging to the agency in exchange for a bounty proportional to the ultimate recovery awarded to the agency. These actions are in fact brought in the name of the public entity, and the public entity remains the real party in interest throughout the action, whether or not it chooses to intervene. *United States ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 720 (9th Cir. 1994). The Supreme Court has held that although the action is brought by the private citizen, it is the government's injury in fact that supports the third party's standing under Article III. *Vt. Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771-78, 120 S. Ct. 1858, 146 L. Ed. 2d 836 (2000).

PAGA is distinguishable from claims under the False Claims Act, of course, because PAGA claims are brought in the name of the individual employee on his or her own behalf and on behalf of all other aggrieved employees. *See* Cal. Lab. Code § 2699(a) (providing that any civil penalty allowable under the Labor Code "may, as an alternative, be recovered through a civil action ***brought by an aggrieved employee on behalf of himself or herself and other current or former employees***" (emphasis added)); *Arias*, 46 Cal. 4th at 980 ("Under [PAGA], an 'aggrieved employee' may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations."). A False Claims Act claim, in contrast, is explicitly brought on behalf of the government by the individual as relator, who is awarded a percentage of the recovery as a bounty.

Similarly, under PAGA, the distribution between the individual employees and the state agency is not defined as a recovery by the state, a portion of which is payable to the employees, but rather a distribution of remedies "recovered by aggrieved

employees." Cal. Lab. Code § 2699(i) ("[C]ivil penalties recovered by aggrieved employees shall be distributed as follows . . . .").

Under California law, it appears that PAGA claims are claims belonging to the individual employees. Even though the employees "represents the same legal right and interest as the state labor law enforcement agencies," *Arias*, 46 Cal. 4th at 969, they nevertheless represent their own interests as well. Accordingly, PAGA claims are "claims of individual class members," which may be aggregated to meet the amount in controversy under CAFA. 28 U.S.C. § 1332(d)(6).

Controulis appears to be the only cases suggesting the opposite outcome, relying on *Urbino*:

> The $4,536,800 in potential PAGA penalties are not "claims of individual class members," as required by 28 U.S.C. § 1332(d)(6). If the representative plaintiff prevails in a PAGA claim, the aggrieved employees are statutorily entitled to only 25 percent of the civil penalties, while the remaining 75 percent is paid to the state. The reasoning of *Urbino* suggests that PAGA penalties are not claims of individual plaintiffs because the "primary benefit" of such penalties "inure[s] to the state." Given that the state is not a "class member" and PAGA penalties are not "claims of individual class members," as required by 28 U.S.C. § 1332(d)(6), such penalties cannot be aggregated to meet the $5,000,000 amount in controversy requirement.

Controulis, 2013 WL 6482970, at *2 (citations omitted). As discussed above, however, *Urbino* did not hold that PAGA claims belong to the state. It merely entertained the defendant's argument that PAGA claims belong to the state, and held that if defendant's contention were true, there could be no subject matter jurisdiction under § 1332(a) because the state is not a citizen of a state. *Urbino*, 726 F.3d at 1123. In fact, *Controulis* is incorrect in asserting that *Urbino* holds that PAGA penalties are not included in the § 1332(a) amount in controversy; rather, *Urbino* held that individuals' PAGA claims are "separate and distinct"

from one another and accordingly cannot be aggregated. *Id.* at 1122 ("Each employee suffers a unique injury—an injury that can be redressed without the involvement of other employees. Defendants' obligation to them is not 'as a group,' but as 'individuals severally.'" Thus, diversity jurisdiction does not lie because their claims cannot be aggregated." (citations omitted)).

It may be argued that PAGA claims should be understood as belonging to California because the state is permitted to investigate and prosecute any claim itself. PAGA requires individual employee plaintiffs to give written notice to LWDA of the specific Labor Code violations. Cal. Lab. Code § 2699.3(a)(1), (b)(1). If the law enforcement agencies decide to prosecute the claims, no recovery would be available to the individual employees under PAGA (although the employees would be free to pursue their individual claims to the extent private rights of action are authorized under the appropriate Labor Code sections).

PAGA, however, explicitly allows that civil penalties may be pursued under two *alternative* methods: a penalty assessed and collected by LWDA or a civil action brought by an aggrieved employee. Just as the former alternative is an action belonging to the state, the latter alternative belongs to the individual employee.

Accordingly, PAGA claims are "claims of individual class members" subject to aggregation under CAFA. Since PAGA claims are included in the amount in controversy, the jurisdictional limitation is met, and the Motion is **DENIED**.

IT IS SO ORDERED.