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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

**MARICELA REYES, individually and
on behalf of all others similarly situated,**

Plaintiff,

v.

**CAREHOUSE HEALTHCARE
CENTER, LLC, SOUTHWEST
PAYROLL SERVICES, LLC, and
DOES 1 through 20, inclusive,**

Defendants.

Case No.: SACV 16-01159-CJC(MRWx)

**ORDER DENYING MOTION TO
REMAND**

I. INTRODUCTION & BACKGROUND

On December 16, 2013, Plaintiff Maricela Reyes filed a single-plaintiff employment action in Orange County Superior Court against Defendants Carehouse

1 Healthcare Center, LLC, Southwest Payroll Services, LLC, and Does 1 through 20,
2 inclusive, for (1) race discrimination in violation of California Government Code
3 § 12940(a); (2) age discrimination in violation of California Government Code
4 § 12940(a); (3) retaliation in violation of California Government Code § 12940(h);
5 (4) wrongful termination in violation of public policy, California Labor Code §§ 98.6,
6 232.5; (5) unpaid wages in violation of California Labor Code §§ 1194, 1194.2; (6)
7 failure to pay overtime compensation in violation of California Labor Code § 510; (7)
8 failure to provide meal periods in violation of California Labor Code §§ 226.7, 512; (8)
9 failure to permit rest breaks in violation of California Labor Code § 226.7; (9) failure to
10 provide accurate wage statements in violation of California Labor Code §§ 226, 1174;
11 (10) failure to pay all wages due upon separation of employment in violation of
12 California Labor Code §§ 201, 202, 203; and (11) unfair business practices in violation of
13 California's Unfair Competition Law ("UCL"), California Business and Professions Code
14 §§ 17200 *et seq.* (Dkt. 1-1.) On December 23, 2013, Plaintiff filed a First Amended
15 Complaint adding a claim for failure to prevent discrimination or retaliation in violation
16 of California Government Code § 12940(k). (Dkt. 1-2 [First Amended Complaint,
17 hereinafter "FAC"].)

18
19 More than two years later, Plaintiff filed a Second Amended Complaint on March
20 17, 2016, transforming the sixth through twelfth claims from the FAC (unpaid wages,
21 failure to pay overtime compensation, failure to provide meal periods, failure to permit
22 rest breaks, failure to provide accurate wage statements, failure to pay all wages due upon
23 separation of employment, and unfair business practices) into class claims. (Dkt. 1-3
24 [Second Amended Complaint, hereinafter "SAC"].) She identified the class as all hourly-
25 paid, non-exempt employees who had worked for Defendants since December 13, 2009.
26 (*Id.* ¶ 31.) Defendant Southwest removed the action to this Court on June 22, 2016.
27 (Dkt. 1.)
28

1 Almost one year after removal, on June 12, 2017, Plaintiff filed a motion to
2 remand this action to state court for failure to meet the amount in controversy required
3 for federal jurisdiction under the Class Action Fairness Act (“CAFA”). (Dkt. 35 [Motion,
4 hereinafter “Mot.”].) For the following reasons, the motion is DENIED.¹

5 6 **II. LEGAL STANDARD**

7
8 CAFA provides original federal jurisdiction over class actions in which the amount
9 in controversy exceeds \$5 million, there is minimal diversity between the parties, and the
10 number of proposed class members is at least 100. 28 U.S.C. §§ 1332(d)(2),
11 1332(d)(5)(B). “Congress designed the terms of CAFA specifically to permit a defendant
12 to remove certain class or mass actions into federal court. . . [and] intended CAFA to be
13 interpreted expansively.” *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir.
14 2015). “[N]o antiremoval presumption attends cases invoking CAFA” because CAFA
15 was enacted to facilitate federal courts’ adjudication of certain class actions. *Dart*
16 *Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 550 (2014).

17
18 Under CAFA, a defendant removing a case must file a notice of removal
19 containing a “short and plain statement of the grounds for removal.” *Id.* at 553.
20 Additionally, “a defendant’s notice of removal need include only a plausible allegation
21 that the amount in controversy exceeds the jurisdictional threshold” unless the
22 defendant’s assertion is contested by the plaintiff. *Id.* at 554. Where the defendant’s
23 asserted amount in controversy is contested, “[e]vidence establishing the amount is
24 required.” *Id.* “In such a case, both sides submit proof and the court decides, by a
25 preponderance of the evidence, whether the amount-in-controversy requirement has been
26

27
28 ¹ Having read and considered the papers presented by the parties, the Court finds this matter appropriate
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set
for July 10, 2017, at 1:30 p.m. is hereby vacated and off calendar.

1 satisfied.” *Id.* at 550. Ultimately, the defendant bears the burden of proving that the
2 amount in controversy is met. *Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d 975,
3 978 (9th Cir. 2013). However, this “burden is not daunting, as courts recognize that
4 under this standard a removing defendant is *not* obligated to research, state, and prove the
5 plaintiff’s claims for damages.” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199,
6 1204–05 (E.D. Cal. 2008) (internal quotation marks omitted).

7 8 **III. DISCUSSION**

9 10 **A. Timeliness**

11
12 As an initial matter, Defendants incorrectly argue that Plaintiff’s motion is
13 untimely. (*See* Dkt. 37 [Opposition, hereinafter “Opp.”] at 4–7.) Defendants believe that
14 Plaintiff’s motion is subject to the thirty-day time limit required by 28 U.S.C. § 1447(c),
15 which requires that “[a] motion to remand the case on the basis of any defect other than
16 lack of subject matter jurisdiction . . . be made within 30 days after the filing of the notice
17 of removal.” Defendants contend that Plaintiff’s motion is a “belated attack on the
18 sufficiency of [their] pleading, i.e. the sufficiency of its allegations of the amount in
19 controversy contained in its removal petition,” which is “best characterized as an alleged
20 ‘defect’ in removal procedure,” and “[a]t worst, it is a procedural attack outside the scope
21 of § 1447(c), and thus subject to a ‘reasonable’ time limitation.” (Opp. at 4–5.) Not so.
22 Plaintiff’s motion is entirely premised on Defendants’ purported failure to satisfy the
23 amount in controversy. (*See generally* Mot.) “The amount in controversy requirement is
24 a substantive requirement for subject matter jurisdiction based on CAFA.” *Avila v. Con-*
25 *Way Freight, Inc.*, No. SACV1101949CJCRNBX, 2012 WL 12887771, at *1 (C.D. Cal.
26 May 18, 2012), *aff’d*, 588 F. App’x 560 (9th Cir. 2014).

27
28 //

1 Defendants believe that because their notice of removal contained a plausible
 2 statement giving rise to CAFA jurisdiction, subject matter jurisdiction unquestionably
 3 attaches. (*See id.* at 5 (citing *Dart Cherokee*, 135 S. Ct. at 553).) However, the portion
 4 of *Dart Cherokee* that Defendants rely on explains that the “defendant’s amount-in-
 5 controversy allegation should be accepted *when not contested by the plaintiff* or
 6 questioned by the court.” *Dart Cherokee*, 135 S. Ct. at 553 (emphasis added). Here,
 7 Plaintiff has clearly questioned Defendants’ amount in controversy allegation. Although
 8 the Court appreciates Defendants’ frustration that Plaintiff waited almost one full year
 9 before filing the motion, the motion is nevertheless timely as it questions the Court’s
 10 subject matter jurisdiction, which may be challenged at any time. 28 U.S.C. § 1447.

11

12 **B. Amount in Controversy**

13
 14 In the notice of removal, Defendants offered calculations for Plaintiff’s claims for
 15 unpaid meal and rest period premiums, unpaid overtime compensation, waiting time
 16 penalties, and attorneys’ fees in order to reach the jurisdictional threshold. (Dkt. 1 at 8–
 17 14.) Plaintiff contends that Defendants have not met their burden of establishing the
 18 amount in controversy under CAFA because their calculations are based on
 19 “unreasonable assumptions” about her claims.² (Mot. at 3.)

20
 21 According to the SAC, Defendants “engaged in a systematic pattern of wage and
 22 hour violations.” (SAC ¶ 14.) Regarding the unpaid meal and rest period claims,³ the
 23 SAC alleges that Defendants “required Plaintiff and class members to work for more than
 24 five and/or ten hours per day without providing timely, uninterrupted thirty-minute meal
 25

26 ² Plaintiff does not dispute that the other two CAFA requirements concerning minimal diversity and
 27 proposed class size have been met. (*See generally* Mot.)

28 ³ California law provides that if an employer fails to provide an employee a meal or rest period as
 required, the employee may recover one additional hour of pay at the employee’s regular rate of
 compensation for each work day that the meal or rest period is not provided. Cal. Labor Code § 226.7.

1 periods.” (*Id.* ¶ 91.) It further alleges that “Plaintiff and class members routinely worked
2 shifts in excess of eight hours per day during her employment with Defendants, but was
3 [sic] not permitted to take rest breaks.” (*Id.* ¶ 95.) To calculate the amount in
4 controversy for these meal and rest period claims, Defendants assigned a violation rate of
5 one meal break violation and one rest break violation per week per class member. (Dkt. 1
6 at 9.) Defendants cite numerous CAFA cases within the Ninth Circuit in support of this
7 assumption. (*Id.* (citing *Campbell v. Vitran Exp., Inc.*, 471 Fed. App’x 646, 648–9 (9th
8 Cir. 2012) (finding an assumption that “each claimant missed at least one rest break and
9 one meal break per week” was adequately supported by the complaint’s allegations of
10 regular, consistent, and routine violations and the deposition testimony of the class
11 representatives); *Byrd v. Masonite Corp.*, No. EDCV 16-35 JGB (KKX), 2016 WL
12 2593912, at *5 (C.D. Cal. May 5, 2016) (Allegations of employment violations “at all
13 material times” and as the result of a “uniform policy/practice” supported the
14 “assumption that each class member missed one meal period and one rest period per
15 week”); *Garza v. Brinderson Constructors, Inc.*, 178 F. Supp. 3d 906, 912 (N.D. Cal.
16 2016) (“In this case, plaintiff does not allege that class members were ‘never’ permitted
17 breaks, but plaintiff does allege that he ‘regularly’ missed meal breaks and that
18 defendants maintained a ‘policy or practice’ of both meal and rest break violations.
19 Brinderson’s assumption of one violation per week is reasonable based on the allegations
20 of the SAC.”) (internal citations omitted); *Arreola v. Finish Line*, No. 14-CV-03339-
21 LHK, 2014 WL 6982571, at *4 (N.D. Cal. Dec. 9, 2014) (finding that pleading “regular
22 or consistent” practice supports assumption that every class member “experienced at least
23 one violation once per week”); and *Jasso v. Money Mart Express*, 2012 WL 699465, *4–
24 6 (N.D. Cal. 2012) (“Given the allegations of a “uniform policy and scheme” and that the
25 violations took place “at all material times,” one violation per week on each claimed
26 basis is a sensible reading of the alleged amount in controversy, as pleaded by
27 Plaintiff.”)).) Defendants offer the declaration of Christina Young, the Senior Director of
28 Business Applications for Genesis Curative Services LLC, which provides contracted

1 payroll services to Defendant Southwest, who attests that the putative class members
2 worked a total of 43,829 workweeks during the relevant four-year statutory period at an
3 average hourly rate of pay of \$21.27. (Dkt. 6 [Declaration of Christina Young,
4 hereinafter “Young Decl.”] ¶¶ 5–6.) Accordingly, Defendants calculated the total
5 amount of missed meal/rest break premiums as \$1,864,485.66 (43,829 workweeks x
6 \$21.27 x 2 missed meal/rest break premiums = \$1,864,485.66). (Dkt. 1 at 10.)

7
8 As to the unpaid overtime compensation claim, the SAC alleges that Defendants
9 engaged in a “regular practice of willfully, unfairly and unlawfully” depriving Plaintiff
10 and class members of premium overtime compensation. (SAC ¶ 87; *see also id.* ¶¶ 85–
11 88.) Specifically, Plaintiff and the class allegedly had to (a) “clock out at the end of
12 [their] scheduled shift, even though [they] worked well past [their] scheduled shift and
13 ending times” and (b) “clock out for meal periods when [they were] actually working
14 through [their] meal periods.” (*Id.* ¶¶ 15–16.) Again, Defendants estimated one violation
15 per workweek per class member. (Dkt. 1 at 11 (relying on *Campbell, Inc.*, 471 Fed.
16 App’x at 647–49 (9th Cir. 2012); *Ray v. Wells Fargo Bank, N.A.*, 2011 WL 1790123, *6–
17 7 (C.D. Cal. May 9, 2011) (The defendant’s estimates based on one hour of unpaid
18 overtime per class member were conservative and reasonable given allegation of
19 consistent failure to pay overtime); *Stevenson v. Dollar Tree Stores, Inc.*, 2011 WL
20 4928753, *4 (E.D. Cal. 2011) (Where it was plaintiff’s standard practice not to pay
21 “requisite compensation for all hours worked,” without more specific allegations to
22 narrow the potential scope of damages, the complaint was not susceptible to precise
23 calculations and defendant’s assumptions were thus reasonable); *Quintana v. Claire’s*
24 *Stores, Inc.*, 2013 WL 1736671, *6 (N.D. Cal. 2013) (“According to Defendants’
25 declarant, store managers and assistant store managers are ‘regularly scheduled to work
26 eight (8) hour days’ and that assistant store managers are ‘regularly scheduled to work at
27 least 30 hours per week.’ Given Plaintiffs’ allegations that Defendants systematically
28 failed to pay overtime, this evidence persuades the court that Defendants reasonably

1 estimated that every class member failed to receive an hour of overtime every pay
 2 period.”); *Jimenez v. Allstate Ins. Co.*, 2011 WL 65764, *3 (C.D. Cal. 2011) (Based on
 3 this allegation of “consistent” overtime work, the defendant reasonably “estimated one
 4 hour of unpaid overtime compensation per week for each putative class member.”.)
 5 Based on the same average hourly pay rate of \$21.27, Defendants calculated the average
 6 overtime rate for the putative class members as \$31.91 per hour (*i.e.*, \$21.27 x 1.5 times
 7 the regular hourly rate). (*Id.*) Assuming one hour of unpaid overtime wages for each
 8 putative class member for each workweek during the four-year statutory period, the total
 9 amount of unpaid overtime wages would amount to \$1,398,583.39 (*i.e.*, 43,829
 10 workweeks x \$31.91 per hour x 1 overtime eligible hour per week = \$1,398,583.39). (*Id.*
 11 at 11–12.)

12
 13 Regarding the waiting time penalty claims,⁴ the SAC alleges that “Defendants
 14 willfully, unfairly, fraudulently, or unlawfully failed to pay Plaintiff and certain class
 15 members compensation owed upon separation of employment.” (SAC ¶ 107.) The
 16 notice of removal explains that “[v]iewing Plaintiff’s SAC as a whole, Plaintiff
 17 undoubtedly alleges that each putative class member was underpaid by Defendant in
 18 some way during the applicable period.” (Dkt. 1 at 12 (citing SAC ¶¶ 15(a)–(c)
 19 (“Defendants have increased their profits by violating state wage and hour laws by,
 20 among other things: (a) failing to pay all wages; (b) failing to pay overtime; (c) failing to
 21 provide meal periods or compensation in lieu thereof; (c) [sic] failing to authorize or
 22 permit rest breaks or provide compensation in lieu thereof”)).) 348 putative class
 23 members were terminated from their employment with Defendant from December 16,
 24 2010, to the date of removal. (Young Decl. ¶ 7.) Consequently, Defendants calculate the

25
 26
 27 ⁴ California law provides that “[i]f an employer willfully fails to pay . . . any wages of an employee who
 28 is discharged or who quits, the wages of the employee shall continue as a penalty from the due date
 thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not
 continue for more than 30 days.” Cal. Lab. Code § 203.

1 total amount of potential waiting time penalties as \$1,776,470.40 (*i.e.*, \$21.27 per hour x
2 8 hours x 30 days x 348 former employees = \$1,776,470.40).

3
4 Finally, for Plaintiff's desired attorneys' fees, Defendants maintain that 25% of
5 recovery is a reasonable amount of fees in a class action such as this one. (Dkt. 1 at 13
6 (citing *Hanlon v. Center for Auto Safety*, 150 F.3d 1011, 1029 (9th Cir. 1998); *In re*
7 *Activision Securities Litigation*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989); *Giannini v.*
8 *Northwestern Mut. Life Ins. Co.*, 2012 WL 1535196, at *4 (N.D. Cal. 2012); *Jasso*, 2012
9 WL 699465, at *6–7).) Defendants contend that Plaintiff is not entitled to attorneys' fees
10 for her meal and rest break or her waiting time claims, so 25% of her unpaid overtime
11 claims would total \$349,645.85 (*i.e.*, 25% of \$1,398,583.39 unpaid overtime wage
12 liability). (Dkt. 1 at 14.)

13
14 Based on these calculations, Defendants assert the total amount in controversy is at
15 least \$5,389,185.30. (*Id.*) Plaintiff counters that Defendants assume "every single class
16 member suffered a violation under each claim during every single week of their
17 employment." (Mot. at 3.) Plaintiff relies primarily on *Ibarra* for the proposition that "a
18 'pattern and practice' of doing something does not necessarily mean always doing
19 something." (*Id.* (quoting *Ibarra*, 775 F.3d at 1198–99).) Plaintiff argues that the SAC
20 does not allege that her complained-of violations were regular and consistent or that
21 Defendants *never* provided meal and rest periods. (*Id.* at 5.)

22
23 These challenges are unconvincing. As an initial matter, Defendants did not
24 assume that a violation occurred on *each and every* shift, as was the case in *Ibarra*, 775
25 F.3d at 1199, but employed more reasonable estimates of one violation per week per
26 employee for the meal and rest break and overtime claims. Additionally, Plaintiff
27 concedes that the SAC does not specify the frequency of the violations or the number of
28 class members affected. (*Id.* at 6, 8, 10.) Rather, the SAC alleges that Defendants' wage

1 and hour violations were “*systematic*,” (SAC ¶ 14 (emphasis added)), the overtime
2 violations were “*regular*,” (*id.* ¶ 87 (emphasis added)), and that the class members
3 “*routinely* worked shifts in excess of eight hours per day” but were not permitted to take
4 breaks, (*id.* ¶ 95 (emphasis added)). These allegations go beyond mere claims of a
5 “pattern and practice” that led to “multiple” violations as was alleged in *Ibarra*. See
6 *Salcido v. Evolution Fresh, Inc.*, No. 214CV09223SVWPLA, 2016 WL 79381, at *5
7 (C.D. Cal. Jan. 6, 2016) (“Unlike the ‘parttern [sic] and practice’ that lead to ‘multiple’
8 violations in *Ibarra*, *Salcido* alleges a ‘uniform policy and systematic scheme.’”). Thus,
9 “it is not unreasonable to assume that the company applied the allegedly unlawful
10 policies to all putative class members,” especially since there are no fact-specific
11 allegations precluding such an assumption. *Id.* at *4–5. Plaintiff tries to distinguish
12 cases like *Salcido* because her SAC does not use the term “uniform policy,” (Dkt. 38
13 [“Reply”] at 4), but there is no such magic words requirement—rather, the language of
14 the SAC as a whole supports Defendants’ assumptions.

15
16 Furthermore, unlike in *Ibarra*, Defendants have presented evidence that their
17 calculations were conservative. In her discovery responses, Plaintiff stated that she was
18 “not properly paid for all hours worked *every day* that she worked for Defendant.” (Dkt.
19 37-1 [Declaration of Graham Hoerauf, hereinafter “Hoerauf Decl.”] Ex. B at
20 Interrogatory No. 16 (emphasis added).) At her deposition, Plaintiff also estimated that
21 Defendants did not allow her to take rest breaks three or four days per week and did not
22 provide her with meal breaks six days per week. (Hoerauf Decl. Ex. A at 168:13–18,
23 169:11–14.) Defendants’ estimates are lower than the rates Plaintiff herself previously
24 suggested and are reasonably calculated. See *Korn*, 536 F. Supp. 2d at 1204–05 (the
25 defendant is not obligated to “research, state, and prove the plaintiff’s claims for
26 damages”). Plaintiff argues that these responses were only solicited with regard to her
27 own employment record, which spanned from 2006 until 2012, while the class period
28 begins in 2009 and extends until removal in 2016. (Reply at 6.) However, Plaintiff

1 alleges that her claims are typical of the class, (SAC ¶ 36(b)), and the SAC does not
2 support her belated contention that “the latter part of her employment contains far fewer
3 violations and is more representative of the class period,” (Reply at 6).

4
5 The only limiting language in the SAC is Plaintiff’s allegation that “certain” class
6 members suffered waiting time violations. (SAC ¶¶ 106–07.) But as Defendants point
7 out, the term “certain” is meant to distinguish former and current employees, since only
8 former employees would be entitled to the waiting time claims. (Opp. at 20.) And
9 Defendants’ own calculations for the waiting time penalty claims were properly limited
10 to former employees, not all class members.

11
12 Plaintiff also offers her own calculations to challenge that of Defendants. Plaintiff
13 argues that her rest break claims are based on Defendants’ policy that only allows two
14 fifteen-minute breaks for work periods greater than six hours in duration, so Defendants’
15 estimates should only have included shifts over ten hours, when employees would be
16 entitled to a third rest period. (Mot. at 6.) In support, she cites a motion for leave to file
17 the SAC that was filed in state court wherein she made this argument. (*Id.*; see Dkt. 35-
18 2.) Plaintiff’s counsel apparently reviewed Plaintiff’s time punches for the 658 shifts she
19 worked and calculated the violation rate to be .26 per workweek based on the number of
20 shifts over 10 hours, resulting in a total amount in controversy of \$242,383.14 for the rest
21 break claims. (Mot. at 7; Dkt. 35-1 [Declaration of Jessica Campbell, hereinafter
22 “Campbell Decl.”] ¶ 7.) Plaintiff argues that her overtime claim, in turn, is based on
23 Defendants’ policy of automatically deducting thirty minutes from the total hours worked
24 by an employee for meals, again citing on the motion for leave to file the SAC in state
25 court. (Mot. at 9.) Plaintiff’s counsel calculated her violation rate “by applying an
26 automatic deduction rate of 20% (derived from the calculation . . . using Plaintiff’s time
27 records), which resulted in 0.5 hours of unpaid overtime per workweek,” and applied that
28 rate from the last six months of her employment through the date of removal to arrive at a

1 total of \$699,291.70 amount in controversy for the overtime claim. (Dkt. 35-1 ¶ 8; Mot.
2 at 9–10.) With regard to waiting time penalties, Plaintiff does not provide her own
3 calculation, but simply argues that Defendants’ calculations for this cause of action are
4 unreasonable and therefore should not be considered at all. (Mot. at 10.) However, even
5 adopting Defendants’ calculations for waiting time penalties, Plaintiff claims the total
6 amount in controversy is only \$3,825,210.99. (*Id.* at 11 (\$1,174,625.97 for meal and rest
7 break claims, \$699,291.70 for overtime claims, \$1,776,470.40 for waiting time penalties,
8 and \$174,822.92 (25% of the aggregate of these amounts) for attorneys’ fees.)

9
10 Plaintiff’s calculations are unavailing for two reasons. First, they conflict with
11 Plaintiff’s own discovery responses and deposition testimony. Second, they are based on
12 contentions made in a motion filed in state court that are much more specific than the
13 allegations in the SAC. (*See, e.g.*, SAC ¶ 91 (“Defendants required Plaintiff and class
14 members to work for more than *five and/or ten* hours per day without providing timely,
15 uninterrupted thirty-minute meal periods”) (emphasis added); *id.* ¶ 95 (“Plaintiff and
16 class members routinely worked shifts in excess of *eight* hours per day during her
17 employment with Defendants, but was [sic] not permitted to take rest breaks) (emphasis
18 added); *see generally* SAC (containing no allegations of automatic deductions).) Plaintiff
19 cannot rely on a motion filed in state court to narrow the scope of the SAC. *Ray*, 2011
20 WL 1790123, at *5 (“[T]he amount in controversy is determined at the time of removal
21 and is to be decided based on the allegations in the operative pleading.”).

22
23 Finally, Plaintiff argues that Defendants’ notice of removal employs a class period
24 from December 16, 2009, to present, which contradicts their argument in their
25 previously-filed motion to dismiss before this Court that Plaintiff’s class claims do not
26 relate back to the date of the filing of her original complaint. (Mot. at 12 (referencing
27 Dkt. 26).) Plaintiff contends that Defendants’ calculations should begin on March 17,
28 2013, which Defendants previously argued was as far back as Plaintiff’s claims could

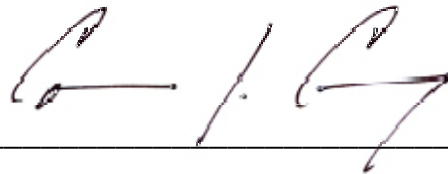
1 reach, meaning that the class period and class size would “presumably” be cut in half,⁵ so
2 the amount in controversy would be \$2,694,592.66. (*Id.* at 12–13.) Plaintiff is incorrect.
3 Defendants’ calculations are from their notice of removal, which was filed far earlier than
4 their motion to dismiss. (Dkt. 1.) In the notice of removal, Defendants assumed that the
5 relevant time period began in December 2009 based on *Plaintiff’s* allegations, since the
6 appropriate inquiry is the amount that Plaintiff put in controversy in the operative
7 complaint at the time of removal. That Defendants believed some of Plaintiff’s later-
8 added class allegations should not relate back does not prevent Defendants from relying
9 on Plaintiff’s allegations to support their amount in controversy calculations, particularly
10 since the Court has declined to rule on Defendants’ relation-back argument for the time
11 being. (*See* Dkt. 30.)

12
13 In sum, Defendants’ calculations are reasonable based on the evidence available
14 and the allegations of the SAC, so Defendants have demonstrated that the amount in
15 controversy is met by a preponderance of the evidence.

16
17 **IV. CONCLUSION**

18
19 For the foregoing reasons, Plaintiff’s motion to remand is DENIED.

20
21
22 DATED: July 5, 2017



23
24 CORMAC J. CARNEY
25 UNITED STATES DISTRICT JUDGE
26

27
28 ⁵ Plaintiff offers no evidence or argument supporting her assumption that the class would be half the size it is now if Defendants ultimately prevail regarding their relation-back argument.