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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MARIA JOHNSON, as an individual and on behalf of all others similarly situated, and as a private attorney general,

Plaintiff,

v.

LOWE'S HOME CENTERS, LLC, a North Carolina limited liability company; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 2:21-at-00036

DEFENDANT LOWE'S HOME CENTERS, LLC'S NOTICE OF REMOVAL OF CLASS ACTION

(Removal from the Superior Court of California for the County of Solano, Case No. FCS055726)

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TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA, AND TO PLAINTIFF MARIA JOHNSON AND HER COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1453, and 1711, Defendant Lowe's Home Centers, LLC hereby removes to the United States District Court for the Eastern District of California the above-captioned state court action, originally filed as Case No. FCS055726 in Solano County Superior Court, State of California. Removal is proper on the following grounds:

I. TIMELINESS OF REMOVAL

1. Plaintiff Maria Johnson ("Plaintiff") filed a putative Class Action Complaint against Lowe's Home Centers, LLC ("Lowe's" or "Defendant") in Solano County Superior Court, State of California, Case No. FCS055726 on November 23, 2020. Pursuant to 28 U.S.C. § 1446(a), attached as Exhibits A–J to the Declaration of Michele L. Maryott ("Maryott Decl.") are true and correct copies of all process, pleadings, and orders served on Lowe's in this matter: (A) Summons, (B) Class and Representative Action Complaint, (C) Civil Case Cover Sheet, (D) Notice of Case Management Conference One and Notice of Assignment of Judge for All Purposes, (E) Amended Standing Order for Electronic Service of Documents in Complex Litigation, (F) Complex Case Management Order (One); Notice of Hearing (Class Action), (G) Alternative Dispute Resolution (ADR) Information, (H) Stipulation and Order – Alternative Dispute Resolution, (I) Civil Mediation Center Brochure, and (J) Notice of Service of Process.

2. According to the Notice of Service of Process, Plaintiff personally served Lowe's through its registered agent for service of process on December 17, 2020. *See* Maryott Decl., Ex. J, Notice of Service of Process. Consequently, service was completed on December 17, 2020. This notice of removal is timely because it is filed within 30 days after service was completed. 28 U.S.C. § 1446(b); *Anderson v. State Farm Mut. Auto. Ins. Co.*, 917 F.3d 1126, 1128 n.2 (9th Cir. 2019).

II. SUMMARY OF ALLEGATIONS AND GROUNDS FOR REMOVAL

3. Removal is proper pursuant to 28 U.S.C. §§ 1441 and 1453 because this Court has subject matter jurisdiction over this action and all claims asserted against Lowe's pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d).

4. CAFA applies "to any class action before or after the entry of a class certification order by the court with respect to that action." 28 U.S.C. § 1332(d)(8). This case is a putative "class action" under CAFA because it was brought under a state statute or rule, namely California Code of Civil Procedure § 382, authorizing an action to be brought by one or more representative persons as a class action. *See* 28 U.S.C. § 1332(d)(1)(B); *see also* Maryott Decl., Ex. B, Class and Representative Action Complaint ("Compl.") ¶ 15.

5. Plaintiff requests "an order certifying" various "proposed [c]lass[es]." Maryott Decl., Ex. B, Compl., Prayer for Relief. She seeks to represent (1) "all current and former non-exempt employees of [Lowe's] in the State of California who were paid sick pay wages in a workweek in which they earned non-discretionary remuneration, including incentives or bonuses, at any time since May 27, 2016"; (2) "all current and former non-exempt employees of [Lowe's] in the State of California who were paid overtime adjustment wages at any time since May 27, 2019"; and (3) "all current and former non-exempt employees of [Lowe's] in the State of California who were paid hours worked differential wages at any time since May 27, 2019." *Id.*, Compl. ¶ 15.

6. Plaintiff alleges four causes of action against Lowe's: (1) Unpaid Sick Pay (including derivative penalties for such unpaid sick pay, including waiting time penalties); (2) Inaccurate Itemized Wage Statements; (3) Unfair or Unlawful Business Practices; and (4) Violations of the California Labor Code §§ 2698, *et seq*.

7. Among other things, Plaintiff alleges that putative class members are entitled to unpaid wages, waiting time penalties, penalties for failure to provide accurate wage statements, and attorneys' fees and costs. *See id.*, Compl., Prayer for Relief. Specifically, Plaintiff's theory of the case centers on her allegation that Lowe's "routinely underpays sick pay wages" to the putative class because it pays putative class members sick pay "at the base hourly rate of pay, as opposed to the regular rate of pay, which would take into account all non-discretionary remuneration in addition to their base hourly wages, including for example incentives or bonuses, or the rate resulting from dividing the employees' total wages, not including overtime premium pay, by the employees' total hours worked in the full pay periods of the prior 90 days of employment." *See id.*, Compl. ¶¶ 27–29. According to Plaintiff, non-exempt Lowe's employees "regularly earn" such "non-discretionary remuneration, including for

example incentives or bonuses." *See id*. ¶¶ 3, 27. Plaintiff further alleges that this allegedly routine underpayment of sick wages requires Lowe's to, pursuant to Labor Code section 203, pay thirty days of waiting time penalties to Plaintiff and all former non-exempt Lowe's employees who were discharged or terminated between May 27, 2016 and the present, if that former employee *ever* received "sick pay wages in a workweek in which they earned non-discretionary remuneration" prior to their termination. *See id.* ¶¶ 15, 27–29.

8. Removal of a class action is proper if: (1) there are at least 100 members in the putative class; (2) there is minimal diversity between the parties, such that at least one class member is a citizen of a state different from any defendant; and (3) the aggregate amount in controversy exceeds $5 million, exclusive of interest and costs. *See* 28 U.S.C. §§ 1332(d), 1441.

9. Lowe's denies any liability in this case, both as to Plaintiff's individual claims and as to her putative class claims, and further maintains that this action was improperly filed in court because Plaintiff agreed to binding individual arbitration of the claims she has asserted in this action. Lowe's also intends to oppose class certification on multiple grounds, including that (a) Plaintiff must arbitrate her claims against Lowe's individually pursuant to the binding and enforceable arbitration agreement and class action waiver executed by Plaintiff, and (b) class treatment is inappropriate under these circumstances in part because there are many material differences between the named Plaintiff and the putative class members Plaintiff seeks to represent, as well as amongst the putative class members. Lowe's expressly reserves all rights to move to compel individual arbitration, oppose class certification, and contest the merits of all claims asserted in the Complaint. However, for purposes of the jurisdictional requirements *for removal only*, the allegations in Plaintiff's Complaint identify a putative class of more than 100 members and put in controversy, in the aggregate, an amount that exceeds $5 million. *See id.*, § 1332(d).

A. The Proposed Class Consists of More Than 100 Members

10. Based on Plaintiff's allegations, this action satisfies CAFA's requirement that the putative class action contains at least 100 members. *See* 28 U.S.C. § 1332(d)(5)(B).

11. One of Plaintiff's proposed classes includes "all current and former non-exempt employees of [Lowe's] in the State of California who were paid sick pay wages in a workweek in which

they earned non-discretionary remuneration, including incentives or bonuses, at any time since May 27, 2016." Maryott Decl., Ex. B, Compl. ¶ 15.

12. As a preliminary matter, this putative class is pleaded as a fail-safe class because it is "defined in a way that precludes membership unless the liability of the defendant is established." *Kamar v. RadioShack Corp.*, 375 Fed. App'x 734, 736 (9th Cir. 2010); *see also Booth v. Appstack, Inc.*, 2016 WL 3030256, at *9 (W.D. Wash. May 25, 2016) (noting that the court "removed the phrase[s]" from the class definition that made the classes "fail safe" to avoid the due process and management problems associated with those types of classes); *Howard v. CVS Caremark Corp*., 2014 WL 11497793, at *3 (C.D. Cal. Dec. 19, 2014), *aff'd*, 628 F. App'x 537 (9th Cir. 2016) (discussing "obvious problems" associated with fail-safe class definitions). Whether employees were paid "nondiscretionary remuneration" in a given workweek is a legal determination that can only be made by the Court or ultimate factfinder. *See* 29 C.F.R. § 778.211 (discussing various factors to be considered in determining whether a bonus, for example, is discretionary or nondiscretionary, including whether it was promised in advance or in the nature of a gift). It is well established that Lowe's does *not* need to "prove it actually violated the law" to establish this Court's jurisdiction under CAFA. *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 927 (9th Cir. 2019). Thus, Lowe's need not prove precisely how many employees were purportedly "underpaid" sick wages nor agree at this stage that any particular sum was non-discretionary. Instead, Lowe's need only show that the allegations of the Complaint support the assumed violation rate. *Id*. at 925 ("[A] removing defendant is permitted to rely on 'a chain of reasoning that includes assumptions' . . . founded on the allegations of the complaint."); *see also Vasquez v. Randstad US, L.P.*, 2018 WL 327451, at *5 (N.D. Cal. Jan. 9, 2018) (upholding a 100% violation rate for a meal period claim where, like here, the plaintiff alleged that the defendant "consistently" and "regularly" committed the alleged violations).

13. According to Lowe's data, there were approximately 18,799 full-time, non-exempt individuals employed by Lowe's in California who were paid sick pay wages at any time during the period of November 23, 2017 to December 21, 2020. Declaration of Casey Morales ("Morales Decl.") ¶ 4(a). Plaintiff alleges that non-exempt Lowe's employees "regularly earn non-discretionary remuneration, including for example incentives or bonuses," which Lowe's "routinely" fails to properly

account for when compensating its non-exempt employees for sick leave taken. *See* Maryott Decl., Ex. B, Compl. ¶¶ 3, 29. Thus, even if Lowe's were to assume that this alleged "routine" failure impacted only one in four full-time, non-exempt employees in just one workweek they worked during the period of November 23, 2017 to December 21, 2020, Plaintiff's putative sick pay class would encompass at least 4,699 individuals. *See Branch v. PM Realty Grp., L.P.*, 647 F. App'x 743, 745–46 (9th Cir. 2016) (holding "extrapolated violation rate" of two meal period violations per week was reasonable where plaintiff stated in a declaration that he and the putative class "frequently" had breaks interrupted); *Danielsson v. Blood Centers of Pac.*, 2019 WL 7290476, at *6 (N.D. Cal. Dec. 30, 2019) (finding assumption of "a 20% violation rate for meal and rest breaks during the putative class period" to be "reasonable given the allegations of a 'pattern and practice' of such violations").

14. This putative class size estimate is highly conservative because (a) it excludes part-time employees, who make up a significant portion of Lowe's workforce and who may also earn non-discretionary remuneration and take sick leave, (b) it excludes both full-time and part-time non-exempt employees who have been hired since December 21, 2020, and (c) it assumes only one in four full-time, non-exempt employees who worked between November 23, 2017 and December 21, 2020 had just one workweek over three years in which they earned non-discretionary remuneration in the same workweek as taking some increment of sick leave. This assumption is much more conservative than assumptions frequently found reasonable in meal and rest break cases where plaintiffs allege "routine" or "regular" violations, because it assumes that only one in four former full-time employees worked just *one* pay period during their course of employment during which they received sick pay and some non-discretionary remuneration in the same workweek. *See Avila v. Kiewit Corp.*, 789 F. App'x 32, 33–34 (9th Cir. 2019) (reversing remand after finding that allegations of "frequent" and "regular" missed meal periods and rest breaks allowed the defendant to "reasonably . . . assume[] that each of the class members suffered the violations alleged"); *Danielsson*, 2019 WL 7290476, at * 7 (explaining that a reasonable violation rate is based on "the nature of averages: even if a handful of class members may have experienced fewer violations than [d]efendant assumes, it is equally probable that other class members experienced more violations than [d]efendant assumed").

15. Accordingly, while Lowe's denies that class treatment is permissible or appropriate, the proposed class consists of more than 100 members.

B. Lowe's and Plaintiff Are Not Citizens of the Same State

16. Under CAFA's minimum diversity of citizenship requirement, the plaintiff or any member of the putative class must be a citizen of a different state from any defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

17. A person is a citizen of the state in which he or she is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). A party's residence is prima facie evidence of his or her domicile. *Ayala v. Cox Auto., Inc.*, 2016 WL 6561284, at *4 (C.D. Cal. Nov. 4, 2016) (citing *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994)). According to information Plaintiff provided to Lowe's, Plaintiff currently resides in California. Morales Decl. ¶ 3. Plaintiff is therefore considered a citizen of California for purposes of removal under CAFA. *See Ayala*, 2016 WL 6561284, at *4.

18. A corporation is a citizen of its state of incorporation and the state of its principal place of business. 28 U.S.C. § 1332(c)(1). "[A]n LLC is a citizen of every state of which its owners/members are citizens." *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Lowe's is a limited liability company organized under the laws of North Carolina and has its principal place of business in North Carolina. Morales Decl. ¶ 2. Lowe's Companies, Inc. is the sole member of Lowe's and Lowe's is wholly owned by Lowe's Companies, Inc., which is a North Carolina corporation with its principal place of business in North Carolina. *Id.* As such, Lowe's is a citizen of North Carolina. *See* 28 U.S.C. § 1332(c)(1); *Johnson*, 437 F.3d at 899.

19. Accordingly, Plaintiff and Lowe's are citizens of different states and CAFA's minimal diversity requirement is met. 28 U.S.C. § 1332(d)(2)(A).

C. The Amount in Controversy Exceeds $5 Million

20. CAFA requires that the amount in controversy in a class action exceed $5 million, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). In calculating the amount in controversy, a court must aggregate the claims of all individual class members. *Id.* § 1332(d)(6).

21. "[A] defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart Cherokee Basin Op. Co. v. Owens*, 574 U.S. 81, 89 (2014). To satisfy this burden, a defendant may rely on a "reasonable" "chain of reasoning" that is based on "reasonable" "assumptions." *LaCross v. Knight Transp. Inc.*, 775 F.3d 1200, 1201–02 (9th Cir. 2015). "An assumption may be reasonable if it is founded on the allegations of the complaint." *Arias*, 936 F.3d at 925; *see also Salter v. Quality Carriers, Inc.*, 974 F.3d 959, 964 (9th Cir. 2020) ("[I]n *Arias* we held that a removing defendant's notice of removal need not contain evidentiary submissions but only plausible allegations of jurisdictional elements," quotations and citations omitted). That is because "[t]he amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of defendant's liability." *Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010). "[W]hen a defendant seeks federal-court adjudication, the defendant's amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court." *Dart Cherokee*, 574 U.S. at 87. Importantly, a plaintiff seeking to represent a putative class cannot "bind the absent class" through statements aimed to limit his recovery in an effort to "avoid removal to federal court." *Std. Fire Ins. Co. v. Knowles*, 568 U.S. 588, 595–96 (2013).

22. Moreover, in assessing whether the amount in controversy requirement has been satisfied, "a court must 'assume that the allegations of the complaint are true and assume that a jury will return a verdict for the plaintiff on all claims made in the complaint.'" *Campbell v. Vitran Exp., Inc.*, 471 F. App'x 646, 648 (9th Cir. 2012) (quoting *Kenneth Rothschild Tr. v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002)). In other words, the focus of the Court's inquiry must be on "what amount is put 'in controversy' by the plaintiff's complaint, not what a defendant will *actually* owe." *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (emphasis in original) (citing *Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005)).

23. Although Lowe's denies that Plaintiff's claims have any merit, Lowe's avers, for the purposes of meeting the jurisdictional requirements for removal *only*, that if Plaintiff were to prevail on every claim and allegation in her Complaint on behalf of the putative class, the requested monetary recovery would exceed $5 million.

1. Plaintiff's Allegations Regarding Waiting Time Penalties *Alone* Establish That the Amount in Controversy Exceeds $5 Million

24. Lowe's reserves the right to present evidence establishing the amount placed in controversy by each of Plaintiff's claims should Plaintiff challenge whether the jurisdictional amount-in-controversy threshold is satisfied. *See Dart Cherokee*, 574 U.S. at 87–89; *see also Salter*, 974 F.3d at 964 (holding that only a "factual attack" that "contests the truth of the plaintiff's factual allegations, usually by introducing evidence outside the pleadings" requires the removing defendant to "support her jurisdictional allegations with competent proof," quotations and citations omitted). "[W]hen a notice of removal plausibly alleges a basis for federal court jurisdiction, a district court may not remand the case back to state court without first giving the defendant an opportunity to show by a preponderance of the evidence that the jurisdictional requirements are satisfied." *Arias*, 936 F.3d at 924. But for present purposes, it is sufficient to note that Plaintiff's claims regarding waiting time penalties alone place more than $5 million in controversy.

25. If an employer fails to pay all wages due to an employee at the time of termination, as required by Labor Code Section 201, or within 72 hours after resignation, as required by Labor Code Section 202, then the wages "shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced," for up to a maximum of 30 calendar days. Cal. Lab. Code § 203. An employer may not be liable for these penalties if a good faith dispute exists as to whether the wages are owed. Cal. Code Regs. tit. 8, § 13520. Further, to be liable for waiting time penalties, an employer's failure to pay wages within the statutory time frame must be *willful*. *See* Cal. Lab. Code § 203. "A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer *intentionally* fails to pay wages to an employee when those wages are due." Cal. Code Regs., tit. 8, § 13520 (emphasis added). According to Plaintiff, a former non-exempt Lowe's employee would be entitled to waiting time penalties pursuant to California Labor Code section 203 if that individual had one pay period where he or she both took sick pay and received other non-discretionary remuneration. Maryott Decl., Ex. B, Compl. ¶¶ 15, 26.

26. To calculate waiting time penalties, the employee's daily rate of pay is multiplied by the number of days the wages remained unpaid, up to a maximum of 30 days. *See Mamika v. Barca*,

68 Cal. App. 4th 487, 493 (1998) (holding that the waiting time penalty is "equivalent to the employee's daily wages for each day he or she remained unpaid up to a total of 30 days" and noting that the "critical computation" is "the calculation of a daily wage rate, which can then be multiplied by the number of days of nonpayment, up to 30 days"); *Tajonar v. Echosphere, L.L.C.*, 2015 WL 4064642, at *4 (S.D. Cal. July 2, 2015). Where final "wages [due] are alleged to have not been paid, the full thirty-days may be used for each of the putative class members." *Marentes v. Key Energy Servs. Cal., Inc.*, 2015 WL 756516, at *9 (E.D. Cal. Feb. 23, 2015); *see also Crummie v. CertifiedSafety, Inc.*, 2017 WL 4544747, at *3 (N.D. Cal. Oct. 11, 2017) (where a plaintiff alleges "putative class members were owed (and are still owed)" wages, it is "completely reasonable to assume waiting time penalties accrued to the thirty-day limit").

27. Plaintiff alleges that she and other putative class members who received sick pay in the same week that they received non-discretionary remuneration and ended their employment with Lowe's during at least the three-year period prior to filing this Complaint[1]—November 23, 2017 to December 21, 2020, *see* Maryott Decl., Ex. B, Compl. ¶¶ 28–29—are entitled to recovery of waiting time "penalties," pursuant to California Labor Code section 203, *id.* ¶¶ 29–30. Plaintiff's claim for waiting time penalties is therefore derivative of her sick pay claim, which she alleges was the product of a "uniform administration of corporate policy." *Id.* ¶ 30. Based on these allegations, it is reasonable to assume that Plaintiff and the putative class would claim the "waiting time penalties accrued to the thirty-day limit." *See Crummie*, 2017 WL 4544747, at *3 (upholding thirty-day assumption based on allegations of a pattern or practice of withholding wages owed).

28. Under Plaintiff's theory, an employee would be owed waiting time penalties if Lowe's failed to accurately calculate sick pay *once* in a pay period in which the employee earned a bonus or incentive pay during the course of their employment with Lowe's. Lowe's employed approximately 18,799 full-time employees between November 23, 2017 and December 21, 2020 who received sick pay at some point during that time period. Morales Decl. ¶ 4(a). Of those individuals, 7,215 of them resigned or were terminated between November 23, 2017 and December 21, 2020. *Id.* ¶ 4(b). The

[1] The statute of limitations for an action for final wages not timely paid under Labor Code sections 201 and 202 is three years. Cal. Civ. Proc. Code § 338(a); *Pineda v. Bank of Am., N.A.*, 50 Cal. 4th 1389, 1398 (2010).

average hourly pay rate for those 7,215 employees was, during the operative three-year period, $15.75. *Id.* ¶ 4(c).

29. As discussed above, Lowe's contends that Plaintiff has improperly pled a fail-safe class such that Lowe's need not determine, for purposes of removal, precisely how many employees received "nondiscretionary remuneration" in a workweek in which they also utilized sick leave. Accordingly, even though Plaintiff alleges that such renumeration was earned "regularly" by *all* non-exempt employees from May 27, 2016 to present, for purposes of removal, Lowe's uses a conservative estimate that only one in four prior *full-time*, non-exempt employees who used sick leave did so in a pay period where they also received nondiscretionary remuneration between the shorter statutory period of November 23, 2017 to December 21, 2020.

30. If, under Plaintiff's theory, one in four full-time, non-exempt individuals who left the employment of Lowe's during the *three* years preceding the filing of the Complaint were undercompensated for sick pay (which equates to 1,803 employees), the amount in controversy with respect to the waiting time penalties for full-time employees alone would be approximately **$5.1 million**, calculated as follows:

$15.75 average hourly rate x 6 hours per day:[2]	$94.50 daily rate
$94.50 x 30 days maximum penalty:	$2,835 per employee
Amount in controversy for waiting time penalties, based on Plaintiff's allegations ($2,835 x 1,803 employees):	**$5,111,505**

2. Plaintiff's Requests for Attorneys' Fees Alone Places Another $1,277,876 in Controversy

31. Plaintiff also explicitly seeks attorneys' fees should she recover under any of the claims in this action. *See* Maryott Decl., Ex. B, Compl., Prayer For Relief. Prospective attorneys' fees are properly included in the amount in controversy for purposes of evaluating CAFA jurisdiction. *See Arias*, 936 F.3d at 922 ("[W]hen a statute or contract provides for the recovery of attorneys' fees,

[2] This is a conservative estimate based on the fact that full-time Lowe's employees are expected to work a minimum of 30 hours per week. *See* Morales Decl. ¶ 5. This calculation does not include any waiting time penalties allegedly owed to part-time employees, which would further increase the amount in controversy.

prospective attorneys' fees must be included in the assessment of the amount in controversy."). Under the Ninth Circuit's well-established precedent, 25% of the common fund is generally used as a benchmark for an award of attorneys' fees. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998); *Barcia v. Contain-A-Way, Inc.*, 2009 WL 587844, at *5 (S.D. Cal., Mar. 6, 2009) ("In wage and hour cases, '[t]wenty-five percent is considered a benchmark for attorneys' fees in common fund cases.'" (quoting *Hopson v. Hanesbrands Inc.*, 2008 WL 3385452 at *3 (N.D. Cal.2008)).

32. Here, Lowe's has established that the amount in controversy is at least $5.1 million, and Plaintiff has not indicated that she will seek less than 25% of a common fund in attorneys' fees. *See* Maryott Decl., Ex. B., Compl., Prayer For Relief (seeking attorneys' fees). Lowe's denies that any such attorneys' fees are owed to Plaintiff or putative class members, but relies on Plaintiff's allegation that she will be entitled to attorneys' fees for purposes of this jurisdictional analysis. Although Lowe's has shown that the amount in controversy without considering attorneys' fees surpasses the jurisdictional threshold, this Court should nevertheless include the potential attorneys' fees in evaluating jurisdiction. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007).

33. Using a 25% benchmark figure for attorneys' fees for Plaintiff's allegations regarding alleged Labor Code Section 226 violations and waiting time penalties results in estimated attorneys' fees of approximately **$1.277 million**, calculated as follows:

Conservative estimate of amount in controversy based on waiting time penalties:	$5,111,505
Attorneys' fees benchmark:	25%
Estimated attorneys' fees in controversy:	**$1,277,876**

3. In Total, Just One of Plaintiff's Four Causes of Action, Including Attorneys' Fees, Places More Than $6.38 Million in Controversy

34. The amount in controversy figures set forth above are underinclusive of the actual amount placed in controversy by Plaintiff's claims because they are based on conservative assumptions including, (i) limiting the number of employees who were allegedly "routinely" undercompensated for sick pay to only one in four *full-time*, non-exempt employees who left their employment with Lowe's from November 23, 2017 to December 21, 2020, (ii) excluding from the estimate part-time employees

and employees hired after December 21, 2020, and (iii) excluding any alleged damages for, among other things, recovery sought for underpaid wages (First Cause of Action), inaccurate itemized wage statements (Second Cause of Action), or unfair and unlawful business practices (Third Cause of Action).

35. Plaintiff's allegations therefore place more than the requisite $5 million in controversy. The jurisdictional amount-in-controversy requirement is met, and removal to this Court is proper under CAFA.

III. THE COURT HAS JURISDICTION AND REMOVAL IS PROPER

36. Based on the foregoing facts and allegations, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d).

37. The United States District Court for the Eastern District of California is the federal judicial district in which the Solano County Superior Court sits. This action was originally filed in the Solano County Superior Court, rendering venue in this federal judicial district and division proper. 28 U.S.C. §§ 84(c), 1441(a).

38. True and correct copies of the (A) Summons, (B) Class and Representative Action Complaint, (C) Civil Case Cover Sheet, (D) Notice of Case Management Conference One and Notice of Assignment of Judge for All Purposes, (E) Amended Standing Order for Electronic Service of Documents in Complex Litigation, (F) Complex Case Management Order (One); Notice of Hearing (Class Action), (G) Alternative Dispute Resolution (ADR) Information, (H) Stipulation and Order – Alternative Dispute Resolution, (I) Civil Mediation Center Brochure, and (J) Notice of Service of Process are attached as Exhibits A–J to the Declaration of Michele L. Maryott filed concurrently herewith. These filings constitute the complete record of all records and proceedings in the state court.

39. Upon filing the Notice of Removal, Lowe's will furnish written notice to Plaintiff's counsel, and will file and serve a copy of this Notice with the Clerk of the Solano County Superior Court, pursuant to 28 U.S.C. § 1446(d).

DATED: January 15, 2021

GIBSON, DUNN & CRUTCHER LLP
MICHELE L. MARYOTT
KATHERINE V.A. SMITH
KATIE M. MAGALLANES

By: */s/ Michele L. Maryott*
Michele L. Maryott

Attorneys for LOWE'S HOME CENTERS, LLC