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## Brain Freeze: California Federal Court Rejects Ice Cream Shop's CAFA Removal

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A California district court recently remanded a wage and hour class action back to state court, rejecting evidence and arguments in support of removal under the Class Action Fairness Act (CAFA).

In *Hayes v. Salt & Straw, LLC*, the plaintiff employee brought a workplace class action, asserting nine separate causes of action under California's Labor Code and a claim for violation of California's Unfair Competition Law. The lawsuit broadly alleged that the defendant ice cream shop "failed to properly compensate employees, forced them to work through required breaks...failed to keep accurate records," "failed to include non-discretionary bonuses in the regular rate of pay used to calculate overtime," and "failed to properly compensate...employees for overtime wages based on their alternative workweek schedule."

The defendant removed to federal court under CAFA, and the plaintiff sought to remand, arguing that CAFA's \$5 million threshold had not been established. The district court agreed with the plaintiff, and remanded the case back to state court, finding that the removing defendant "relied on unreasonable assumptions to estimate the amount in controversy."

### CAFA Background

As the court explained, Congress intended CAFA to be "interpreted

expansively.” CAFA gives federal courts [jurisdiction over class actions](#) involving at least 100 class members, where there is minimal diversity (i.e. at least one plaintiff is diverse from at least one defendant), and, critically, the amount in controversy is more than \$5 million.

A defendant seeking to remove under CAFA “need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” If the plaintiff contests the amount in controversy, both sides submit argument and evidence, and the defendant bears “the burden of proving that the amount in controversy is met” under a preponderance of the evidence standard. The court explained that a removing defendant is entitled to make “reasonable assumptions” “founded on the allegations of the complaint” in order “to estimate the amount in controversy,” but that the defendant’s “assumptions must also cohere with the actual evidence presented by the parties.”

## Permissible Evidence In Support of CAFA Removal

Rather than submit underlying payroll records as evidence, the defendant submitted declaration from counsel and from a human resources manager, “based on her review of regularly kept payroll records.” The plaintiff argued that the payroll records themselves were required, rather than the declarations based on those records.

The court disagreed, finding the “declarations well-supported and competent evidence for the purposes of [the CAFA removal] motion.” The court pointed out that the plaintiff offered no competing evidence, and there was no indication that the declarations were unreliable.

## Court’s Rejection of Defendant’s Assumptions

The court agreed with the plaintiff’s argument that the defendant relied on “unreasonable and unsubstantiated assumptions” to arrive at its ostensibly “conservative estimates” of four of the claims against it. The court repeatedly criticized the defendant’s argument, insofar as the defendant assumed a 100 percent violation rate in each of its estimates.

As the court explained, removal in wage and hour cases commonly “turns on the frequency of the alleged violations of California labor laws,” but that a plaintiff’s allegation of a “pattern and practice” of doing something that violates the labor laws “does not necessarily mean always doing something.”

- **Overtime Wage Estimate:** To arrive at its estimate of the claim for unpaid overtime, the defendant assumed “one hour of unpaid overtime per employee workweek.” According to the court, this assumption contradicted the defendant’s evidence, which demonstrated that 86 percent of its employees “worked a schedule that would not allow them to earn any overtime wages.”
- **Waiting Time Penalty Estimate:** To arrive at its estimate of the claim for waiting time penalties unpaid overtime, the defendant assumed that “every employee who was terminated during the relevant period was denied final wages for the statutory maximum thirty days.” The court explained that plaintiff made no such allegation, and that there were “no allegations or evidence suggesting a uniform policy of withholding final wages.”

- **Wage Statement Claim Estimate:** To arrive at its estimate of the claim pertaining to inaccurate wage statements, the defendant assumed “that every wage statement for every employee during the relevant period was non-compliant,” and argued that “with this many violations alleged, every one of the wage statements issued during the class period could potentially have been noncompliant.” The court found this assumption unreasonable, explaining that the number of claims alleged “has no obvious relationship to the frequency of the alleged labor law violations.”
- **Off the Clock Estimate:** To arrive at its estimate of the claim pertaining to off-the-clock work, the defendant assumed “a minimum wage violation in every pay period for every employee throughout the relevant period,” but on appeal, provided “a more conservative estimate.” As the court explained, however, that reduction was insufficient to establish the jurisdictional amount, given the other unreasonable assumptions.

Employers should bear in mind that CAFA is a useful strategic tool for litigating class actions in federal court, which can be a more favorable forum. The *Hayes* decision serves as a useful reminder for employers seeking to use CAFA to remove state court lawsuits to federal court, both about the kinds of evidence that can be used to support removal, and the “reasonable assumptions” that can be used to support the \$5 million jurisdictional threshold.