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1 MARC M. SELTZER (54534)  
mseltzer@susmangodfrey.com  
2 KATHRYN P. HOEK (219247)  
khoek@susmangodfrey.com  
3 STEVEN G. SKLAVER (237612)  
ssklaver@susmangodfrey.com  
4 AMANDA BONN (270891)  
abonn@susmangodfrey.com  
5 SUSMAN GODFREY L.L.P.  
1901 Avenue of the Stars, Suite 950  
6 Los Angeles, CA 90067  
Telephone: (310) 789-3100  
7 Fax: (310) 789-3150

8 *Attorneys for Defendant Alta-Dena Certified Dairy, LLC*

CLERK U.S. DISTRICT COURT  
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LOS ANGELES

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FILED

11 UNITED STATES DISTRICT COURT  
12  
13 CENTRAL DISTRICT OF CALIFORNIA  
14  
15 WESTERN DIVISION

15 JUAN PEREZ, on behalf of himself and  
16 those similarly situated,

17 Plaintiffs,

18 v.

19 ALTA-DENA CERTIFIED DAIRY,  
20 LLC, a Delaware Limited Liability  
Company; and DOES 1 through 10,  
inclusive,

21 Defendants.

Civil Action No. **CV 13-04335-CAS**  
**CLASS ACTION** (JCL)

**ALTA-DENA CERTIFIED  
DAIRY, LLC'S NOTICE OF  
REMOVAL OF CIVIL  
ACTION UNDER 28 U.S.C. §§  
1332(a), 1332(d)(2), 1441(a)  
(DIVERSITY AND CAFA)**

[Los Angeles Superior Court Case  
No. BC509036]

1 Pursuant to 28 U.S.C. §§ 1332(a), 1332(d)(2), 1441(a), and 1453(b),  
2 Defendant Alta-Dena Certified Dairy, LLC (“Alta-Dena”) hereby gives notice of  
3 the removal of the above-entitled action from the Superior Court of the State of  
4 California, County of Los Angeles, Case No. BC-509036, to the United States  
5 District Court, Central District of California, Western Division.

6 For this Notice of Removal, Alta-Dena pleads as follows:

7 1. There is jurisdiction over this removed action pursuant to 28 U.S.C. §  
8 1441(a) because the matter in controversy exceeds \$75,000, exclusive of interest  
9 and costs, and is between citizens of different states, and therefore originally could  
10 have been filed in this Court pursuant to 28 U.S.C. § 1332(a). In addition, there is  
11 jurisdiction pursuant to the Class Action Fairness Act of 2005 (“CAFA”), because  
12 this is a class action in which the amount in controversy exceeds \$5,000,000 and at  
13 least one member of the class is a citizen of a State different from any defendant.  
14 28 U.S.C. §§ 1332(d)(2), 1453(b).

15 2. On May 15, 2013, Juan Perez (“Plaintiff”) commenced this action in  
16 the Superior Court of the State of California for the County of Los Angeles, entitled  
17 *Juan Perez v. Alta Dena Certified Dairy, LLC*, as Case Number BC509036. A true  
18 and correct copy of the original complaint, summons, and civil cover sheet is  
19 submitted herewith as Exhibit 1 to the Declaration of Kathryn Hoek (“Hoek  
20 Decl.”).

21 3. Because this action was filed and is pending in the Superior Court of  
22 the State of California for the County of Los Angeles, removal of this action to this  
23 District Court is proper under 28 U.S.C. § 1446(a).

24 4. This Notice of Removal is timely because it is being filed within thirty  
25 days of Plaintiff’s service of his Complaint on Alta-Dena Certified Dairy, LLC on  
26 May 17, 2013. 28 U.S.C. § 1446(b).

27 5. The summons, civil case cover sheet, complaint, proof of service of  
28 summons, and Initial Status Conference Order constitute all process, pleadings and

1 orders that have been filed in this action. True and correct copies of these  
2 documents, along with a copy of the docket, are submitted herewith as Exhibits 1-2  
3 to the Hoek Declaration.

4 6. Written notice of the filing of this Notice of Removal will be promptly  
5 served upon Plaintiff. A true and correct copy of this Notice of Removal is being  
6 filed with the Clerk of the Superior Court of California for the County of Los  
7 Angeles as soon as practicable.

8 **I. SUMMARY OF COMPLAINT**

9 7. Plaintiff Juan Perez alleges that he was employed by Alta-Dena as a  
10 truck driver since 2005. (Compl. ¶ 7) Plaintiff alleges that Alta-Dena “failed to  
11 authorize and/or permit Mr. Perez (and other similarly situated drivers) with legally  
12 compliant meal and/or rest breaks, which further resulted in other California Labor  
13 Code violations[.]” (*Id.*)

14 8. In addition to his individual claims, Plaintiff brings claims on behalf of  
15 a putative class of “[a]ll persons who were employed by Defendant as a ‘Driver’ for  
16 as long as the statutory period will allow (the ‘putative class’).” (*Id.* ¶ 8)

17 9. Plaintiff alleges that “Defendant had a uniform policy and practice of  
18 restricting all drivers’ [sic] during their alleged meal periods to remain within a  
19 one-mile (or half-mile) radius of their designated routes. Thus, Defendant did not  
20 allow Plaintiff or any putative class member duty free meal period(s) as required by  
21 the California Labor Code and the applicable Industrial Welfare Commission Wage  
22 Orders.” (*Id.* ¶ 14) Plaintiff also alleges that Defendant’s meal and rest break  
23 policy failed “to comply with meal and rest break timing requirements.” (*Id.*)  
24 Plaintiff alleges that “Defendant had a corporate policy and/or practice that did not  
25 permit ‘drivers’ (such as Plaintiff) from taking a meal and/or rest break until a  
26 shipment was completed (*i.e.*, driven from Defendant’s place of business to another  
27 local California delivery destination),” and that “Defendant would neither authorize  
28 nor permit a meal and/or rest break in between routes because that would delay

1 delivery.” (*Id.*) Plaintiff alleges that, as a result, “from at least 2005, Plaintiff and  
 2 the putative class members were not authorized or permitted to take a meal and/or  
 3 rest break, and – in turn – received less than what was due to them on the next pay  
 4 check (and/or at the termination of employment).” (*Id.*) Plaintiff alleges that he “is  
 5 informed and believes these policies and/or practices continued from at least 2005  
 6 to December 31, 2010, . . . [and] applied to all of Defendant’s drivers in Southern  
 7 California.” (*Id.*) Plaintiff further alleges that “beginning in at least 2005 to at least  
 8 December 31, 2010, Defendant instituted a practice of automatically deducting 30  
 9 minutes of work time and, thus, 30 minutes of pay each day from each driver  
 10 regardless of whether or not the driver actually took a duty free meal period if the  
 11 driver worked beyond his minimum shift of eight or ten hours.” (*Id.* ¶ 15)

12 10. Plaintiff brings claims on behalf of himself and the putative class for  
 13 (1) failure to provide rest periods and meal periods, in violation of Cal. Labor Code  
 14 §§ 226.7 and 512; (2) failure to pay statutory minimum wage, straight time, and  
 15 overtime and “off-the-clock work”, in violation of Cal. Labor Code §§ 510, 511,  
 16 1182.12, and 1194, and the applicable IWC Order; (3) failure to pay all wages  
 17 earned, in violation of Cal. Labor Code §§ 201-04; (4) “clawing back” earned  
 18 wages or making unauthorized deductions from employees’ compensation, in  
 19 violation of Cal. Labor Code §§ 221-224; (5) failure to provide accurate itemized  
 20 wage statements, in violation of Cal. Labor Code § 226; and (6) unfair business  
 21 practices, in violation of Cal. Bus. & Prof. Code §§ 17200, et seq. (*Id.* ¶¶ 20-52)

22 11. In addition, Plaintiff brings wage and hour claims on behalf of himself  
 23 and the putative class under the Labor Code Private Attorneys General Act of 2004  
 24 (“PAGA”), Cal. Labor Code §§ 2698-2699, seeking to recover various civil  
 25 penalties. (Compl. ¶¶ 22, 27, 32-34, and 43)

26 12. Plaintiff prays for relief in the form of general damages, compensatory  
 27 damages, special damages, punitive damages, statutory and civil penalties, pre- and  
 28

1 post-judgment interest, attorneys' fees and costs of suit, and equitable relief.  
 2 (Compl. Prayer For Relief ¶¶ 1-9)

## 3 **II. DIVERSITY OF CITIZENSHIP**

### 4 **A. Complete Diversity of Citizenship for § 1332(a) Jurisdiction.**

5 13. In order to show that removal is proper under 28 U.S.C. § 1332(a), the  
 6 diversity jurisdiction statute, Alta-Dena must establish complete diversity of  
 7 citizenship. *See, e.g., Snell v. Cleveland, Inc.*, 316 F.3d 822, 824 (9th Cir. 2002).

#### 8 **1. Plaintiff's Citizenship**

9 14. Plaintiff alleges that "[a]t all times mentioned herein, and at the time  
 10 the causes of action arose, Mr. Perez was an individual and citizen of the County of  
 11 Los Angeles, State of California . . . ." (Compl. ¶ 2) (emphasis added) Thus, for  
 12 jurisdictional purposes, Plaintiff is a citizen of California. *Cf. Mantin v. Broadcast*  
 13 *Music, Inc.*, 244 F.2d 204, 206 (9th Cir. 1957) (noting that allegations of citizenship  
 14 satisfy the requirements of diversity jurisdiction).

#### 15 **2. Alta-Dena Certified Dairy, LLC's Citizenship**

16 15. Alta-Dena Certified Dairy, LLC is a limited liability company  
 17 ("LLC") organized under the laws of Delaware. (Compl. ¶ 1) For purposes of  
 18 diversity jurisdiction, "an LLC is a citizen of every state of which its  
 19 owners/members are citizens." *Johnson v. Columbia Props. Anchorage, LP*, 437  
 20 F.3d 894, 899 (9th Cir. 2006).

21 16. Alta-Dena Certified Dairy, LLC has one member, Dean West II, LLC,  
 22 which is also a limited liability company. (Declaration of Marjorie Ball ("Ball  
 23 Decl.") ¶ 2)

24 17. Dean West II, LLC has one member, Dean Dairy Holdings, LLC, also  
 25 a limited liability company. (*Id.* ¶ 3)

26 18. Dean Dairy Holdings, LLC's sole member is Dean Holding Company,  
 27 a corporation organized under the laws of the State of Wisconsin, with its corporate  
 28

1 headquarters located at 2711 North Haskell Avenue, Suite 3400, Dallas, Texas  
2 75204. (*Id.* ¶¶ 4-6)

3 19. Dean Holding Company is owned entirely by Dean Foods Company, a  
4 corporation whose principal place of business is also located in Dallas, Texas. The  
5 large majority of Dean Holding Company's officers reside and work in the Dallas,  
6 Texas area and, when decisions are made about the business of Dean Holding  
7 Company, they are made by those officers in Dallas, Texas. (*Id.* ¶ 6)

8 20. Dean Holding Company is thus a citizen of Wisconsin and Texas for  
9 purposes of diversity jurisdiction. *Johnson*, 437 F.3d at 899 (noting that "a  
10 corporation is a citizen only of (1) the state where its principal place of business is  
11 located, and (2) the state in which it is incorporated"); *see also Hertz Corp. v.*  
12 *Friend*, 130 S. Ct. 1181 (2010) (holding that "'principal place of business' is best  
13 read as referring to the place where a corporation's officers direct, control, and  
14 coordinate a corporation's activities," in other words, "the place that Courts of  
15 Appeals have called the corporation's 'nerve center'" or "the place where the  
16 corporation maintains its headquarters").

17 21. As a result, Alta-Dena Certified Dairy, LLC is a citizen of Wisconsin  
18 and Texas for diversity jurisdiction purposes. *Johnson*, 437 F.3d at 899.

19 22. Because Plaintiff is a citizen of California, while Alta-Dena Certified  
20 Dairy, LLC is a citizen of Wisconsin and Texas, Plaintiff and Alta-Dena are diverse  
21 for purposes of diversity jurisdiction. 28 U.S.C. § 1332(a)(1).

22 **B. Minimal Diversity of Citizenship for § 1332(d)(2) Jurisdiction.**

23 23. Although, as explained above, the parties to this litigation are  
24 *completely* diverse in citizenship, in order to establish jurisdiction under CAFA,  
25 Alta-Dena need only show that the parties are minimally diverse. *See Coleman v.*  
26 *Estes Exp. Lines, Inc.*, 631 F.3d 1010, 1012 (9th Cir. 2011). In other words, "one  
27 plaintiff's diversity from one defendant suffices" to establish diversity for CAFA  
28

1 purposes. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 595 n.12  
 2 (2005).

3 24. As discussed above, Plaintiff, a citizen of California, is unquestionably  
 4 diverse from Alta-Dena Certified Dairy, LLC, a citizen of Wisconsin and Texas.  
 5 As such, the minimal diversity requirement is satisfied.

### 6 **III. AMOUNT IN CONTROVERSY**

7 25. The amount-in-controversy requirement is satisfied for purposes of  
 8 diversity jurisdiction as well as CAFA jurisdiction. 28 U.S.C. §§ 1332(a),  
 9 1332(d)(2). “[W]here a plaintiff’s state court complaint does not specify a  
 10 particular amount of damages, the removing defendant bears the burden of  
 11 establishing, by a preponderance of the evidence, that the amount in controversy  
 12 exceeds [the jurisdictional minimum].” *Sanchez v. Monumental Life Ins. Co.*, 102  
 13 F.3d 398, 404 (9th Cir. 1996). “Under this burden, the defendant must provide  
 14 evidence establishing that it is ‘more likely than not’ that the amount in controversy  
 15 exceeds that amount.” *Id.* “To establish the jurisdictional amount, [a defendant]  
 16 need not concede liability.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 394, 400  
 17 (9th Cir. 2010); *Coleman*, 730 F. Supp. 2d at 1148 (holding defendant “is not  
 18 obligated to research, state, and prove the plaintiff’s claim for damages” to establish  
 19 jurisdiction).<sup>1</sup> “[C]ourts have assumed a 100% violation rate in calculating the  
 20 amount in controversy when the complaint does not allege a more precise  
 21 calculation.” *Coleman*, 730 F. Supp. 2d at 1148.

22 26. The minimum amount required for individual claims is \$75,000, and  
 23 the minimum amount required for class actions under CAFA is \$5 million. 28  
 24 U.S.C. §§ 1332(a), 1332(d)(2).

25  
 26 <sup>1</sup> In *Coleman*, for example, the court held that the defendant met its burden by a  
 27 preponderance of the evidence with a declaration stating the number of employees  
 28 and calculating damages based on a 100% assumed violation rate supported by the  
 Complaint’s allegations. 730 F. Supp. 2d at 1149.

1           A.    **\$75,000 Amount-In-Controversy For Diversity Jurisdiction**

2                   1.    **Plaintiff's Individual Wage and Hour Claims**

3           27.    In Paragraph 14 of his Complaint, Plaintiff alleges that from "at least  
4   2005 to December 31, 2010":

- 5               • Alta-Dena had a "uniform policy and practice" that "*did not allow*  
6               Plaintiff or any putative class member *duty free* meal period(s)."
- 7               • Alta-Dena's meal and rest break policy failed "to comply with meal  
8               and rest break timing requirements," and, as a result, "Plaintiff and  
9               other drivers *often* went six (6) hours if not longer without a meal  
10              and/or rest break."
- 11             • Alta-Dena did not "inform Plaintiff or the putative class member that  
12              there [*sic.*] were entitled to a second meal break if they worked over  
13              10 and/or 12 hours in a day (which Plaintiff *often* did)."

14           28.    Before filing his complaint in this case, Plaintiff submitted a  
15   declaration in another case against Alta-Dena (and other defendants). That action,  
16   *de la Cueva v. Alta-Dena Certified Dairy LLC*, No. CV 12-1804-GHK ("the *de la*  
17   *Cueva* action"), was brought by Miguel de la Cueva and sought to assert claims  
18   against Alta-Dena that were similar to the claims Plaintiff asserts here. Plaintiff  
19   filed his declaration in support of Mr. de la Cueva's motion for class certification,  
20   which the court denied. In his declaration, Plaintiff made the following statements  
21   under oath regarding his employment by Alta-Dena:<sup>2</sup>

- 22             • "I *generally* worked a 5-8 schedule, meaning I worked five days a  
23              week, and was scheduled for at least eight hours a day." (Hoek Decl.,  
24              Ex. 3 ¶ 2)
- 25             • *Usually* I worked at least 10 hours a day and *often* more. . . . [T]he  
26              amount of time managers gave me to complete my route left hardly

27   <sup>2</sup> A true and correct copy of Plaintiff's declaration in the *de la Cueva* action is  
28   attached as Exhibit 3 to Hoek Declaration, filed herewith.

any room - if at all- to take a 30-minute duty free meal break and two 15-minute rest breaks.” (*Id.*)

- “I *often* was unable to take a 30-minute duty free meal break, or two 15-minute rest breaks. And the times I was able to take a meal break, it was well after the 6th hour of my shift (and *almost always* after all my deliveries were completed - at least eight or nine hours into my 8 shift).” (*Id.* ¶ 3)
- “[T]he way my route was assigned to me, it was *almost impossible* take a 30-minute meal break (and *definitely not* a 15 minute rest break as well) before the 6th hour without being late.” (*Id.* ¶ 4)

a. Meal and Rest Break Premiums

29. California Labor Code § 227.6 provides that “[i]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 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 § 227.6. Industrial Welfare Commission (“IWC”) Order No. 9, in turn, provides “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.” IWC Order No. 9 ¶ 11(a), codified at 8 Cal. Code Regs. § 11090.

30. The statute of limitations for missed meal and rest break premiums is three years. *See Murphy v. Kenneth Cole Prods., Inc.*, 56 Cal. Rptr. 3d 880, 883 (2007) (“[L]abor code section 226.7 constitutes a wage or premium pay and is governed by a three-year statute of limitations . . . .”)

31. Assuming that the statute of limitations governing Plaintiff’s claims was tolled by the filing of the *de la Cueva* action on February 1, 2012, the three-

1 year statutory period for his meal and rest break premium claims would run from  
 2 February 1, 2009 to February 1, 2012.<sup>3</sup> However, Plaintiff makes no allegations  
 3 against Alta Dena after December 31, 2010. Thus, the statutory period on  
 4 Plaintiff's meal and rest break premium claims under Section 226.7 would run from  
 5 February 1, 2009 to December 31, 2010, or a total of 95 work weeks (45 work  
 6 weeks in 2009 and 50 work weeks in 2010).

7 32. Plaintiff also asserts a claim under California's Unfair Competition  
 8 law ("UCL"), Bus. & Prof. Code, § 17200 *et seq.*, and apparently intends to use that  
 9 claim to try to extend the statute of limitations on his meal and rest break premium  
 10 claims to 4 years.<sup>4</sup> In that case, the statutory period on Plaintiff's premium claims  
 11 would run from February 1, 2008 to December 31, 2010, or a total of 145 work  
 12 weeks (45 work weeks in 2008 and 50 work weeks in each of 2009 and 2010).

13 33. Plaintiff's "regular rate of compensation" averaged approximately  
 14 \$24.77 per hour between February 2009 and December 2010, and approximately  
 15 \$25.14 per hour between February 2008 and December 2010. (Ball Decl. ¶ 9)

16 34. Plaintiff alleges that as a result of Defendant's policy of restricting  
 17 drivers during their meal periods, he *never* was provided a duty-free meal period.  
 18 (Compl. ¶ 14) Plaintiff asserts that he "*generally*" worked 5 days a week for at  
 19 least 8 hours a day and that he "*often*" worked 10 or more hours. (*Id.*; Hoek Decl.  
 20 Ex. 3 ¶ 2) Plaintiff alleges that he was not permitted "a second duty-free meal  
 21 period after 10 and/or 12 hours of work, if at all." (Compl. ¶ 21)

22 35. With respect to rest breaks, Plaintiff alleges that he "*often*" worked 6  
 23 or more hours without a rest break. (Compl. ¶ 14) He alleges that "Defendant . . .  
 24 did not authorize or permit its drivers two rest periods during a work-day," that he

25  
 26 <sup>3</sup> Alta-Dena does not concede that Plaintiff's claims were tolled, and reserves its  
 rights to challenge on the merits any arguments that Plaintiff's claims were tolled.

27 <sup>4</sup> Alta-Dena does not concede that the UCL may be used to extend the statute of  
 28 limitations on Plaintiff's claims, and reserves its right to challenge on the merits  
 any arguments that the statutory period for Plaintiff's claims is extended.

1 “often” did not get a rest break, and that he “generally” worked at least 8 hours.  
2 (Compl. ¶ 14; Hoek Decl. Ex. 3 ¶ 2)

3 36. Plaintiff’s allegations and testimony support using a 100 percent  
4 violation rate for determining the amount in controversy on his meal period and rest  
5 break premium claims. *See, e.g., Coleman*, 730 F. Supp. 2d at 1149 (holding that  
6 defendant met its burden by a preponderance of the evidence with a declaration  
7 stating the number of employees and calculating damages based on a 100%  
8 assumed violation rate supported by the complaint’s allegations); *Schuler v.*  
9 *Morton’s of Chicago, Inc.*, No. CV 10-06762-ODW, 2011 WL 280993, at \*5 (C.D.  
10 Cal. Jan. 25, 2011) (finding diversity jurisdiction satisfied under legal certainty  
11 standard based on assumed 100% violation rates for meal and rest break claims);  
12 *Stevenson v. Dollar Tree Stores, Inc.*, No. CV 11-1433-KJM, 2011 WL 4928753, at  
13 \*4 (E.D. Cal. Oct. 17, 2011) (approving calculation based on a “more often than  
14 not” frequency of missed meal breaks given “plaintiff’s allegations that members of  
15 the class were ‘routinely’ denied meal periods or not compensated for missed meal  
16 periods, combined with his allegations regarding the defendant’s ‘policy and  
17 practice’”).<sup>5</sup>

18 37. Nonetheless, for purposes of this notice of removal, Alta-Dena  
19 assumes only 3 meal period and 3 rest break violations per week, recognizing that  
20 this far underestimates the actual amount in controversy.

21 38. Calculating premium pay accordingly, the amount in controversy on  
22 Plaintiff’s claim for meal and rest break premium pay claim is at least \$14,329.80  
23 to \$21,549.90, as reflected below:

24 <sup>5</sup> *See also Butterworth v. Am. Eagle Outfitters, Inc.*, No. CV 11-1203-LJO, 2011  
25 U.S. Dist. LEXIS 132816, at \*19 (E.D. Cal. Nov. 17, 2011) (holding that “the  
26 magistrate judge properly rejected Mr. Butterworth’s objections to American  
27 Eagle’s use of the 100% violation rate” and finding minimum amount in  
28 controversy satisfied under a preponderance standard); *Muniz v. Pilot Travel Ctrs.*  
*LLC*, No. CV 07-0325-FCD, 2007 WL 1302504, at \*4 (E.D. Cal. May 1, 2007)  
(finding amount in controversy satisfied based on assumed 100% violation rate and  
without the need for submission of “extensive business records”).

Premium Pay applying 3-year limitation period of Section 227.6

Meal Periods:  $\$25.14 \times 3 \text{ violations/week} \times 95 \text{ work weeks} = \$7,164.90$

Rest Breaks:  $\$25.14 \times 3 \text{ violations/week} \times 95 \text{ work weeks} = \$7,164.90$

*Total:* = \$14,329.80

Premium Pay applying 4-year limitation period of UCL

Meal Periods:  $\$24.77 \times 3 \text{ violations/week} \times 145 \text{ work weeks} = \$10,774.95$

Rest Breaks:  $\$24.77 \times 3 \text{ violations/week} \times 145 \text{ work weeks} = \$10,774.95$

*Total:* = \$21,549.90

b. "Clawed Back" Wages

39. Plaintiff claims that "beginning in at least 2005 to at least December 31, 2010, Defendant instituted a practice of automatically deducting 30 minutes of work time and, thus, 30 minutes of pay each day from each driver regardless of whether or not the driver actually took a 30 minute duty free meal period[.]" (Compl. ¶ 15) Plaintiff asserts that "[b]y automatically deducting 30 minutes from drivers pay regardless of whether they worked during that time or not, Defendant failed to pay Plaintiff and the putative class members at least the current minimum wage for those hours worked and also failed to pay for 30 minutes of overtime compensation that was due. Indeed, Defendant failed to pay for this time at all." (*Id.* ¶ 23) Plaintiff seeks the return of the withheld wages, as well as civil penalties under California Labor Code § 225.5. (*Id.* ¶ 26)

40. As with the meal and rest break premium claims, the statutory time period for this claim is three years, although Plaintiff apparently seeks to extend that time period by asserting a UCL claim. Once again, assuming that Plaintiff's claims were tolled by the February 1, 2012 filing date in the *de la Cueva* action, and taking into account the fact that he alleges no claims against Alta-Dena after December 2010, the statutory period for Plaintiff's "clawed back" wages claim would run from February 2009 to December 2010 (95 work weeks) using a 3-year

1 statute of limitations, and from February 2008 to December 2010 (145 work weeks)  
2 using a 4-year statute of limitations.

3 41. Based on Plaintiff's allegations and testimony, the amount in  
4 controversy on this claim may be calculated assuming a 100 percent violation rate.  
5 Nonetheless, Alta-Dena conservatively calculates the amount in controversy on the  
6 "clawed back" wages claim using only 3 instances per week in which 30 minutes  
7 were deducted from Plaintiff's pay despite Plaintiff not receiving a duty-free meal  
8 period. Thus, the amount in controversy on this claim is at least \$3,582.45 to  
9 \$5,387.48, as reflected below:

10 "Clawed Back" Wages applying 3-year limitation period

11  $\$25.14 \times .50 \times 3 \text{ violations/week} \times 95 \text{ work weeks} = \$3,582.45$

12 "Clawed Back" Wages applying 4-year limitation period

13  $\$24.77 \times .50 \times 3 \text{ violations/week} \times 145 \text{ work weeks} = \$5,387.48$

14 42. This calculation does not even take into account Plaintiff's claim for  
15 overtime wages, which would substantially increase the amount in controversy.

16 c. Inaccurate Wage Statements

17 43. Plaintiff also claims that, based on the alleged missed meal periods and  
18 rest breaks and unauthorized deductions, Alta-Dena knowingly and intentionally  
19 failed to provide Plaintiff with accurate itemized wage statements in violation of  
20 California Labor Code § 226. (Compl. ¶¶ 40-44)

21 44. Plaintiff claims that he is entitled to civil penalties under (1) California  
22 Labor Code § 226(e), which provides for a \$50 penalty for the first pay period in  
23 which a violation occurs and \$100 for each subsequent pay period, not to exceed  
24 \$4,000; and (2) California Labor Code § 226.3, which he claims provides a civil  
25 penalty of \$250 per employee per initial violation and \$1,000 per employee per  
26 subsequent violation. (Compl. ¶¶ 42-43)

45. The statute of limitations for penalty claims is one year. Cal. Code Civ. P. § 340. Plaintiff does not allege any conduct by Alta Dena after December 2010, thus it is Defendant's position that his penalty claims are time-barred. However, because potential defenses do not affect the amount in controversy, these penalty claims must be considered in determining the amount in controversy. *See St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 US 283, 295-296 (1938) (holding that potential defenses are not considered in determining amount in controversy); *Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka*, 599 F3d 1102, 1108 (9th Cir. 2010) (holding that contractual limitation on liability did not affect amount in controversy); *Riggins v. Riggins*, 415 F.2d 1259, 1261-1262 (9th Cir. 1969) (holding that statute of limitations defense might bar portion of relief sought did not affect amount in controversy); *Scherer v. Equitable Life Assur. Society of U.S.*, 347 F3d 394, 398 (2d Cir. 2003) (holding that collateral estoppel doctrine might bar portion of relief sought did not reduce amount in controversy); William W. Schwarzer, A. Wallace Tashima, and James M. Wagstaffe, *Rutter Group Practice Guide: Federal Civil Procedure Before Trial, Calif. & 9th Cir. Editions*, Ch. 2C-8 § 2:1797 (2013) ("Potential defenses to all or part of the claim do not affect the amount in controversy—even if disclosed on the face of the complaint (e.g., potential statute of limitations defense). Reason: Defendant may not raise the defense; even if raised, the defense may be shown to be invalid.").

46. Accepting for purposes of removal Plaintiff's allegation that he never received duty free meal periods and "often" did not receive rest breaks, the amount in controversy for Plaintiff's penalty claims is at least \$27,800, as reflected below:

Section 226(e) Penalties

\$50 for the first pay period, plus \$100 each for the subsequent 25 pay periods during the one-year statutory period = \$2,550

Section 226.3 Penalties

250 for the first pay period, plus \$1,000 each for the subsequent 25 pay periods during the one-year statutory period = \$25,250

*Total:* = \$27,800

47. Therefore, Plaintiff's individual wage and hour claims involve an alleged total amount in controversy of at least \$45,712.25 to \$54,737.38, as reflected below:

Meal & Rest Break Premium Pay: \$14,329.80 (3 yrs) to \$21,549.90 (4 yrs)

"Clawed Back" Wages: \$3,582.45 (3 yrs) to \$5,387.48 (4 yrs)

Inaccurate Wage Statement Penalties: \$27,800

*Total:* = \$45,712.25 (3 yrs) to \$54,737.38 (4 yrs)

## 2. PAGA Wage and Hour Claims.

48. In addition to his individual claims, Plaintiff purports to bring wage and hour claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code §§ 2698-2699. (Compl. ¶¶ 22, 27, 32, and 43)

49. "Under PAGA, a plaintiff brings a representative action as an 'aggrieved employee,' on behalf of himself and other current or former employees, and seeks civil penalties for Labor Code violations by employers, with 75 percent going to the LWDA [California's Labor and Workforce Development Agency] and the remaining 25 percent to the aggrieved employees." *Id.* (citing Cal. Labor Code § 2699(a), (i)). *Urbino v. Orkin Servs. of Cal., Inc.*, 882 F. Supp. 2d 1152, 1158 (C.D. Cal. 2011). A plaintiff asserting a PAGA claim is thus "essentially bringing a law enforcement action designed to protect the public and not to benefit private parties." *Arias v. Super. Ct.*, 95 Cal. Rptr. 3d 588, 600 (2009) (internal quotation marks and citation omitted).

50. When several plaintiffs unite to enforce a single title or right, in which they have a common and undivided interest, "it is enough if their interests collectively equal the jurisdictional amount." *Troy Bank of Troy, Ind. v. G.A.*

1 *Whitehead & Co.*, 222 U.S. 39, 40 (1911). The Ninth Circuit has held that where  
 2 the claims of a group of plaintiffs “derive[] from rights that [the plaintiffs] hold in  
 3 group status, then the claims are common and undivided. If not, the claims are  
 4 separate and distinct.” *Eagle v. Am. Tel. & Tel. Co.*, 769 F.2d 541, 546 (9th Cir.  
 5 1985).

6 51. In *Urbino*, a Central District of California court held “that the amount  
 7 in controversy in a PAGA claim is predicated on the total amount of civil penalties  
 8 sought by the aggrieved employees.” 882 F. Supp. 2d at 1164. The court explained  
 9 that the amount in controversy should include aggregated PAGA claims because:

10 while an aggrieved employee may separately litigate a PAGA claim if  
 11 the LWDA declines to do so, a PAGA action is essentially a  
 12 representative action brought by a group of aggrieved employees on  
 13 behalf of the State. The primary beneficiary is the public at large, not  
 14 the private individuals involved. As noted in *Arias v. Superior Court*,  
 15 ‘any direct financial benefit to those harmed by the employer’s  
 16 unlawful conduct is ancillary to the primary object’ of a PAGA  
 17 claim—namely, to further the reach of the LWDA and protect the  
 18 public’s interest. Furthermore, the PAGA statute does not enable a  
 19 single aggrieved employee to litigate his or her own claims, but  
 20 requires an aggrieved employee ‘on behalf of herself or himself and  
 other current or former employees’ to enforce violations of the Labor  
 Code by their employers. The statute also awards civil penalties to  
the aggrieved employees as a whole. The statute therefore  
 contemplates a common group action with civil penalties being  
 awarded to the entire group.

21 *Id.* at 1161 (internal citations omitted) (emphasis added).

22 52. The court’s decision in *Urbino* echoed another recent decision by the  
 23 Eastern District of California holding that the amount in controversy on a PAGA  
 24 claim should be aggregated for purposes of diversity jurisdiction. *See Thomas v.*  
 25 *Aetna Health of Cal., Inc.*, No. 10-cv-01906-AWI-SKO, 2011 WL 2173715, at \*19  
 26 (E.D. Cal. June 2, 2011) (“In sum, a PAGA claim is common and undivided  
 27 because the right to pursue the action derives solely from the LWDA’s interest in  
 28 enforcement of the Labor Code. Aggrieved employees have no right to seek any

1 individual recovery under PAGA and are precluded from bringing repeated PAGA  
 2 suits. As a result, aggrieved employees have no separate and individual rights to  
 3 pursue under PAGA that would transform it from a law enforcement action that  
 4 furthers the interests of the LWDA into a myriad of separate and distinct claims of  
 5 the aggrieved employees.”).

6 53. Plaintiff’s PAGA claims, therefore, derive from a “common and  
 7 undivided interest,” and must be aggregated in order to determine whether the  
 8 amount-in-controversy exceeds \$75,000.

9 54. Plaintiff’s Complaint claims “at least 99” aggrieved employees on  
 10 whose behalf he brings his PAGA claims. (Compl. ¶ 10) In fact, Alta-Dena  
 11 continuously employed approximately 105 drivers during the applicable period.  
 12 (Ball Decl. ¶¶ 11-12) Plaintiff seeks to recover at least three different statutory  
 13 penalties pursuant to PAGA on behalf of these allegedly aggrieved employees.<sup>6</sup>  
 14 The statute of limitations for these claims is one year. Thus it is Defendant’s  
 15 position that the claims are time-barred, but since Plaintiff has put the claims at  
 16 issue by alleging them in his Complaint, they must be considered for purposes of  
 17 establishing the amount in controversy.

18 55. *First*, Plaintiff seeks recovery of penalties that the LWDA could  
 19 collect pursuant to Labor Code § 210(a). (Compl. ¶ 32) Labor Code § 210(a),  
 20 provides that “[i]n addition to, and entirely independent and apart from, any other  
 21 penalty provided in this article, every person who fails to pay the wages of each  
 22 employee as provided in Section[] . . . 204 . . . shall be subject to a civil penalty”  
 23 amounting to (1) “one hundred dollars (\$100) for each failure to pay each  
 24 employee,” and (2) “[f]or each subsequent violation, or any willful or intentional  
 25

26 <sup>6</sup> PAGA provides that “[n]otwithstanding any other provision of law, any provision  
 27 of this code that provides for a civil penalty to be assessed and collected by the  
 28 [LWDA] . . . may, as an alternative, be recovered through a civil action brought by  
 any aggrieved employee on behalf of himself or herself and other current or former  
 employees . . . .” Cal. Labor Code § 2699(a).

1 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25  
2 percent of the amount unlawfully withheld.” Cal. Labor Code § 210(a)(1)-(a)(2).  
3 Section 204, in turn, provides that “[a]ll wages . . . earned by any person in any  
4 employment are due and payable twice during each calendar month, on days  
5 designated in advance by the employer as the regular paydays.” Cal. Labor Code §  
6 204(a).

7 56. Plaintiff alleges that “[b]y failing to pay premium pay for meal and/or  
8 rest breaks that were not provided, Defendant failed to pay all wages earned within  
9 10 or 11 days following the semi-monthly pay period in which work was  
10 performed” and thus “willfully has violated California Labor Code § 204.”  
11 (Compl. ¶ 30) Plaintiff alleges that he and other members of the class were never  
12 provided a duty free meal period and “often” were not provided any meal period at  
13 all as a result of Alta-Dena’s policies and practices.

14 57. *Second*, Plaintiff seeks recovery of penalties that the LWDA could  
15 collect pursuant to Labor Code § 226.3 (Compl. ¶ 43), which provides that “[a]n  
16 employer who violates subdivision (a) of Section 226 shall be subject to a civil  
17 penalty in the amount of two hundred fifty dollars (\$250) per employee per  
18 violation in an initial citation and one thousand dollars (\$1,000) per employee for  
19 each violation in a subsequent citation, for which the employer fails to provide the  
20 employee a wage deduction statement or fails to keep the records required in  
21 subdivision (a) of Section 226.” Cal. Labor Code § 226.3. Such penalties “are in  
22 addition to any other penalty provided by law.” *Id.* Subdivision (a) of Section 226,  
23 in turn, requires that employers provide accurate itemized wage statements. Cal.  
24 Labor Code § 226(a).

25 58. *Third*, Plaintiff seeks to recover statutory penalties under PAGA’s  
26 separate penalty provision, Cal. Labor Code § 2699(f), for alleged violations of  
27 California’s meal break laws. (Compl. ¶ 22) Labor Code § 2699(f) states that  
28 “[f]or all provisions of this code except those for which a civil penalty is

specifically provided, there is established a civil penalty for a violation of these provisions,” amounting to “one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” A plaintiff alleging a PAGA claim for missed meal periods in violation of Labor Code § 226.7 may thus collect penalties pursuant to Labor Code § 2699(f). *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal.4th 1094, 1111 (2007) (holding “the Court of Appeal erred in construing section 226.7 as a penalty” because “the ‘additional hour of pay’ [language] is a premium wage intended to compensate employees, not a penalty”).

59. Calculating these statutory penalties based on each of the 105 alleged putative class members having at least one missed meal period per pay period, the amount in controversy on these claims is at least \$3,722,250, as reflected below:

Section 210(a) PAGA Penalties

(\$100 for the first violation + \$200 each for 25 subsequent violations) x 105 drivers  
= \$535,500

Section 226.3 PAGA Penalties

(\$250 for the first violation + \$1,000 each for the 25 subsequent violations) x 105 drivers = \$2,651,250

Section 2699(f) PAGA Penalties

(\$100 for the first violation + \$200 each for 25 subsequent violations) x 105 drivers  
= \$535,500

*Total:* \$3,722,250

**3. Attorneys’ Fees.**

60. Plaintiff seeks an award of attorneys’ fees for his wage-and-hour claims. Such statutory attorneys’ fees are properly included in the amount-in-controversy for jurisdictional purposes. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998)). In *Simmons v. PCR Tech.*, the Court held that

1 “[w]hile attorneys’ fees alone would not necessarily exceed \$75,000, when viewed  
2 in combination with alleged compensatory, punitive, and emotional distress  
3 damages, the jurisdictional minimum is clearly satisfied.” 209 F. Supp. 2d  
4 1029,1035 (N.D. Cal. 2002).

5 61. The benchmark for attorneys’ fees in the Ninth Circuit is 25% of the  
6 recovery. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998)  
7 (“This circuit has established 25% of the common fund as a benchmark award for  
8 attorney’s fees.”).

9 62. The total amount in controversy on Plaintiff’s individual and PAGA  
10 penalty claims is at least approximately \$3,767,962.25 to \$3,776,987.38, thus the  
11 amount of attorneys’ fees could be at least \$941,990.56 to \$944,246.85 (25% x total  
12 amount in controversy).

13 **4. Total Amount-In-Controversy for Diversity Jurisdiction**

14 63. Plaintiff’s potential damages on his individual and PAGA claims, both  
15 of which can form the amount-in-controversy, are at least **\$3,767,962.25 to**  
16 **\$3,776,987.38**, far exceeding the \$75,000 threshold set forth at 28 U.S.C. §  
17 1332(a), even *without* including the claim for attorneys’ fees. The attorneys’ fees  
18 bring the amount-in-controversy to **\$4,709,952.81 to \$4,721,234.23**, as reflected  
19 below:

<u>Meal &amp; Rest Break Premium Pay:</u>	\$14,329.80 (3 yrs) to \$21,549.90 (4 yrs)		
<u>“Clawed Back” Wages:</u>	\$3,582.45 (3 yrs) to \$5,387.48 (4 yrs)		
<u>Inaccurate Wage Statement Penalties:</u>	\$27,800		
<u>PAGA Penalties:</u>	\$3,722,250		
<b><u>Subtotal:</u></b>	<b>\$3,767,962.25</b>	<b>to</b>	<b>\$3,776,987.38</b>
<u>Attorneys’ Fees:</u>	\$941,990.56	to	\$944,246.85
<b><u>TOTAL:</u></b>	<b>\$4,709,952.81</b>	<b>to</b>	<b>\$4,721,234.23</b>

64. Moreover, these calculations do not even include Plaintiff’s claims for failure to pay overtime, failure to pay minimum wages, or waiting time penalties, and also do not assume a 100% violation rate (although that assumption would be supported by Plaintiffs’ pleadings and testimony)—which would further increase the amount-in-controversy. Therefore, it is obvious that Alta-Dena has met its burden of establishing by a preponderance of the evidence that the amount in controversy exceeds \$75,000.

**B. \$5,000,000 Amount-In-Controversy For CAFA Jurisdiction**

65. Because jurisdiction exists based on diversity, there is no need to establish jurisdiction under CAFA. Nonetheless, Alta-Dena demonstrates that the amount-in-controversy requirement of CAFA also is met here.

66. The damages outlined above, standing alone, come close to satisfying the \$5,000,000 amount-in-controversy threshold under CAFA. When combined with other alleged damages, the \$5 million threshold is easily satisfied.

67. *First*, Plaintiff claims that he never was provided a duty free meal period and was “often” deprived of meal and rest periods without being paid one hour of premium wages, and that his claims are typical for those of all putative class members. (Compl. ¶14) The statute of limitations on such claims is three

1 years. *Murphy*, 40 Cal. 4th at 1110-11. However, as noted above, Plaintiff seeks to  
2 extend the limitations period to four years by asserting UCL claims.

3 68. Once again, assuming that Plaintiff's claims were tolled by the  
4 February 2012 filing date in *de la Cueva* and given that Plaintiff alleges no claims  
5 against Alta-Dena after December 2010, the statutory period for these claims would  
6 run from February 2009 to December 2010 (95 work weeks) using a 3-year statute  
7 of limitations, or from February 2008 to December 2010 (145 work weeks) using a  
8 4-year statute of limitations.

9 69. Between February 1, 2009 and December 31, 2010, Alta-Dena  
10 continuously employed approximately 105 drivers. (Ball Decl. ¶ 12) Their average  
11 hourly rate of pay was approximately \$24.48 per hour. (*Id.*)

12 70. Between February 1, 2008 and December 31, 2010, Alta-Dena  
13 continuously employed approximately 105 drivers. (*Id.* ¶ 11.) Their average  
14 hourly rate of pay was approximately \$24.48 per hour. (*Id.*)

15 71. Plaintiff alleges that putative class members were *never* allowed duty-  
16 free meal periods as a result of Alta-Dena's policies. (Compl. ¶ 14: "Thus,  
17 Defendant did not allow Plaintiff or any putative class member duty free meal  
18 period(s) as required by the California Labor Code and the applicable Industrial  
19 Welfare Commission Wage Orders.") Plaintiff alleges that he and other drivers  
20 worked ten or more hours a day, thus entitling them to a second-duty free meal  
21 period. (*Id.*) Plaintiff also alleges that he and other drivers "often" were not  
22 provided earned first or second rest breaks. (*Id.*) Again, his allegations and  
23 testimony support using a 100 percent violation rate.

24 72. Calculating class-wide premium pay based on just 3 meal period and 3  
25 rest break violations per driver per week—and recognizing that the amount in  
26 controversy could be at least two or three times as much based on Plaintiff's  
27  
28

1 allegations—this claim alone adds at least another \$1,465,128 to \$2,236,248 to the  
2 amount-in-controversy for CAFA purposes:<sup>7</sup>

3 Premium Pay applying 3-year limitation period of Section 227.6

4 \$24.48 x 6 violations/week x 95 work weeks x 105 employees = \$1,465,128

5 Premium Pay applying 4-year limitation period of UCL

6 \$24.48 x 6 violations/week x 145 work weeks x 105 employees = \$2,236,248

7 73. *Second*, Plaintiff claims that as a result of the alleged missed meal  
8 periods, putative class members did not receive accurate itemized wage statements.  
9 In addition to the “heavy penalties” under PAGA, Plaintiff seeks to recover  
10 penalties pursuant to Labor Code § 226(e) on behalf of all putative class members.  
11 Cal. Labor Code § 226(e) (“[A]n employee suffering injury as a result of a knowing  
12 and intentional failure by an employer to comply with subdivision (a) is entitled to  
13 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay  
14 period in which a violation occurs and one hundred dollars (\$100) per employee for  
15 each violation in a subsequent pay period, not exceeding an aggregate penalty of  
16 four thousand dollars (\$4,000) . . .”).

17 74. The statute of limitations for these penalty claims is one year. Once  
18 again, even assuming Plaintiff may seek the benefit of the February 1, 2012 filing  
19 date in the *de la Cueva* action, it is Defendant’s position that these penalty claims  
20 are time-barred. Since potential defenses cannot be considered at this procedural  
21 posture, these penalty claims must be included for purposes of assessing the amount  
22 in controversy.

23 75. Calculating these alleged penalties based on 105 purported class  
24 members receiving inaccurate wage statements for each pay period during the one-  
25 year limitations period because they missed at least one meal period per pay period,

26  
27 <sup>7</sup> See *Helm v. Alderwoods Grp.*, No. C 08-01184 SI, 2008 WL 2002511, at \*4 n.3  
28 (N.D. Cal. May 7, 2008) (accepting calculations for CAFA amount-in-controversy  
based on average hourly wages of non-exempt employees).

1 this alleged claim could add at least another \$267,750 to the amount-in-  
2 controversy:

3 Section 226(e) Penalties

4 (\$50 for the first pay period + \$100 each for the subsequent 25 pay periods) x 105  
5 employees = \$267,750

6 76. Therefore, the amount in controversy increases by at least an  
7 additional \$1,732,878 to \$2,503,998 when the claims of class members are  
8 aggregated for purposes of establishing CAFA jurisdiction.

9 77. Combining Plaintiffs' individual claims, PAGA claims, and class  
10 claims, along with attorney's fees, demonstrates that the amount-in-controversy is  
11 at least **\$6,876,050.31 to \$7,851,231.72**, thus exceeding \$5,000,000 for CAFA  
12 purposes:

13	<u>Perez Meal &amp; Rest Break Premium Pay:</u>	\$14,329.80 (3 yrs) to 21,549.90 (4 yrs)	
14	<u>Perez "Clawed Back" Wages:</u>	\$3,582.45 (3 yrs) to \$5,387.48 (4 yrs)	
15	<u>Perez Inaccurate Wage Statement Penalties:</u>	\$27,800	
16	<u>PAGA Penalties:</u>	\$3,722,250	
17	<u>Class Meal &amp; Rest Break Premium Pay:</u>	\$1,465,128 (3 yrs) to \$2,236,248 (4 yrs)	
18	<u>Class Section 226(e) Penalty Claims:</u>	\$267,750	
19	<u>Subtotal:</u>	\$5,500,840.25	to \$6,280,985.38
20	<u>Attorneys' Fees:</u>	\$1,375,210.06	to \$1,570,246.35
21	<b><u>TOTAL:</u></b>	<b>\$6,876,050.31</b>	<b>to \$7,851,231.73</b>

22 **IV. SUMMARY OF JURISDICTIONAL FACTS**

23 78. This Court has jurisdiction both under the diversity jurisdiction statute  
24 as well as under CAFA. 28 U.S.C. §§ 1332(a), 1332(d)(2).

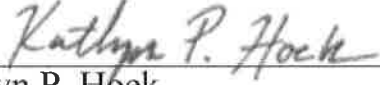
25 79. The Court has diversity jurisdiction because the amount-in-controversy  
26 on Plaintiff's individual claims (or Plaintiff's individual and PAGA claims) exceeds  
27 \$75,000 and the parties are completely diverse.  
28

1           80. The Court has CAFA jurisdiction because the aggregate amount-in-  
2 controversy for all claims exceeds \$5,000,000 and the parties are minimally  
3 diverse.

4           WHEREFORE, Defendant Alta-Dena Certified Dairy, LLC respectfully  
5 requests that the above-titled action be removed from the Superior Court of the  
6 State of California for the County of Los Angeles to this District Court.

7  
8 Dated: June 17, 2013

MARC M. SELTZER  
KATHRYN P. HOEK  
STEVEN G. SKLAVER  
AMANDA BONN  
SUSMAN GODFREY L.L.P.

9  
10  
11 By   
12 Kathryn P. Hoek  
13 *Attorneys for Defendant*  
14 *Alta-Dena Certified Dairy, LLC*  
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**PROOF OF SERVICE**

I, the undersigned, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 950, Los Angeles, California 90067-6029.

On June 17, 2013, I served the foregoing document(s) described as follows:

**ALTA-DENA CERTIFIED DAIRY, LLC'S NOTICE OF  
REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. §§ 1332(a),  
1332(d)(2), 1441(a) (DIVERSITY AND CAFA)**

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached service list, as follows:

XX BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

\_\_\_\_ BY PERSONAL SERVICE: I caused to be delivered such envelope by hand to the offices of the addressee.

\_\_\_\_ BY FEDERAL EXPRESS OR OVERNIGHT COURIER

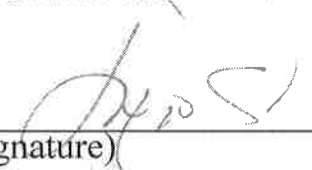
\_\_\_\_ BY TELECOPIER

XX BY ELECTRONIC MAIL: I caused said documents to be prepared in portable document format (PDF) for e-mailing and served by electronic mail as indicated on the attached service list.

Executed on June 17, 2013, at Los Angeles, California

XX (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

M.F. Williams  
(Type or Print Name)

  
(Signature)

**SERVICE LIST**

**Attorneys for Plaintiff Juan Perez**

Timothy B. McCaffrey, Jr.

Natasha Chesler

THE LAW OFFICES OF TIMOTHY B. MCCAFFREY, JR.

A Professional Corporation

11377 West Olympic Boulevard, Suite 500

Los Angeles, California 90064-1683

Telephone: (310)882-6407

Facsimile: (310)882-6359

Email: [tmccaffrey@tbmlaw.net](mailto:tmccaffrey@tbmlaw.net)

Email: [nchesler@tbmlaw.net](mailto:nchesler@tbmlaw.net)

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

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Christina A. Snyder and the assigned discovery Magistrate Judge is Jacqueline Chooljian.

The case number on all documents filed with the Court should read as follows:

**CV13- 4335 CAS (JCx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☒ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

COPY

## CIVIL COVER SHEET

<b>I. (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) JUAN PEREZ, on behalf of himself and those similarly situated.		<b>DEFENDANTS</b> (Check box if you are representing yourself <input type="checkbox"/> ) ALTA-DENA CERTIFIED DAIRY, LLC, a Delaware Limited Liability Company; and DOES 1 through 10, inclusive													
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number, if you are representing yourself, provide same.) Timothy B. McCaffrey, Jr., Natasha Chesler, The Law Offices of Timothy B. McCaffrey, Jr., 11377 West Olympic Boulevard, Suite 500 Los Angeles, California 90064-1683 Telephone: (310) 882-6407, Facsimile: (310) 882-6359		<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number, if you are representing yourself, provide same.) MARC M. SELTZER (54534), KATHRYN P. HOEK (219247), STEVEN G. SKLAVER (237612) SUSMAN GODFREY LLP, 1501 Avenue of the Stars, Suite 950 Los Angeles, CA 90067, Telephone: (310) 789-3100 Fax: (310) 789-3150													
<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.) <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> -For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table style="width:100%;"> <tr> <td>Citizen of This State</td> <td>PTF <input checked="" type="checkbox"/> 1 DEF <input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td>PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>		Citizen of This State	PTF <input checked="" type="checkbox"/> 1 DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6												
<b>IV. ORIGIN</b> (Place an X in one box only.) <input type="checkbox"/> 1. Original Proceeding <input checked="" type="checkbox"/> 2. Removed from State Court <input type="checkbox"/> 3. Remanded from Appellate Court <input type="checkbox"/> 4. Reinstated or Reopened <input type="checkbox"/> 5. Transferred from Another District (Specify) <input type="checkbox"/> 6. Multi-District Litigation															
<b>V. REQUESTED IN COMPLAINT: JURY DEMAND:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check "Yes" only if demanded in complaint.) <b>CLASS ACTION under F.R.Cv.P. 23:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> MONEY DEMANDED IN COMPLAINT: \$															
<b>VI. CAUSE OF ACTION</b> (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Labor Code Violation															
<b>VII. NATURE OF SUIT</b> (Place an X in one box only.)															
<b>OTHER STATUTES</b> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/Etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org. <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.) <input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment	<b>REAL PROPERTY CONT.</b> <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 American with Disabilities-Employment <input type="checkbox"/> 446 American with Disabilities-Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> Other: <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee Conditions of Confinement <b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Employee Ret. Inc. Security Act	<b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405 (g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405 (g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609										

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AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☐ NO ☒ YES

If yes, list case number(s): (1) Ikeda, No. CV 12-03034 R (FFMx); (2) de la Cueva, No. CV 12-01804 GHK (CWx); (3) Parker, No. CV 13-02621 BRO (VBKx)

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply) ☒ A. Arise from the same or closely related transactions, happenings, or events; or  
☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☒ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

<b>County in this District:*</b>	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

<b>County in this District:*</b>	California County outside of this District; State, if other than California; or Foreign Country
	Texas, Wisconsin

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.  
**NOTE: In land condemnation cases, use the location of the tract of land involved.**

<b>County in this District:*</b>	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

**\*Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**

**Note:** In land condemnation cases, use the location of the tract of land involved

**X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT):** Kathryn P. Hoch **DATE:** June 17, 2013  
**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))