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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERTO MARTINEZ, Plaintiff - Appellee, v. CRAB ADDISON, INC., Erroneously Sued As Joe's Crab Shack, Inc., Defendant - Appellant, and DOES 1 THROUGH 50, INCLUSIVE, Defendant.	No. 09-56573 D.C. No. 2:09-cv-02084-SVW-JWJ MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Argued and Submitted November 4, 2009
Pasadena, California

Before: SCHROEDER, BERZON and IKUTA, Circuit Judges.

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The district court's determination that Crab Addison failed to establish by a preponderance of the evidence that "the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs," 28 U.S.C. § 1332(d)(2), was not clearly erroneous. *See Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 683 (9th Cir. 2006). Specifically, the district court did not clearly err in determining that the declaration of Kevin Cottingim failed to disclose critical information and assumptions, including the number of weeks or pay-periods that were used in its calculations, and that this failure made the declaration insufficient to establish that the amount in controversy exceeds the jurisdictional minimum. The district court also violated no constitutional rights in considering Martinez's notice of supplemental authority; courts have long recognized the propriety of considering such notices of relevant case law. *See, e.g.*, Fed. R. App. P. 28(j).

AFFIRMED.