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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CANDELARIA ARITA, an individual,)	Case No. CV 13-05497 DDP (MANx)
)	
Plaintiff,)	
)	ORDER GRANTING MOTION TO REMAND
v.)	
)	
RITE AID CORPORATION, a Delaware corporation,)	[Dkt. No. 10]
)	
Defendant.)	
_____)	

Presently before the court is Plaintiff's Motion to Remand ("Motion"). Having considered the parties' submissions, the court grants the Motion and adopts the following Order.

I. Background¹

Defendant hired Plaintiff Candelaria Arita as a store clerk and cashier in February 2007. (Compl. ¶ 7). As of October 2010, Defendant created a hostile work environment for Plaintiff, a Hispanic female, because of Plaintiff's race and disability. (Compl. ¶ 8). Plaintiff has two amputated fingers. (Compl. ¶ 15). Plaintiff's supervisor frequently criticized Plaintiff, berated her

¹ The facts herein are stated as alleged in Plaintiff's Complaint.

1 in front of customers, and intentionally assigned her to perform
2 duties that caused her pain and discomfort as a result of her
3 disability. (Compl. ¶¶ 10, 15). A security guard also ridiculed
4 Plaintiff's accent, complained loudly about the number of Latino
5 employees, and repeatedly threatened to fire Plaintiff. (Compl. ¶
6 12).

7 Plaintiff further alleges that she complained to Human
8 Resources about the mistreatment and unfounded warnings she
9 received at work, but that Human Resources did not take any
10 remedial measures. (Compl. ¶ 17). On June 17, 2011, Plaintiff was
11 terminated from her employment, ostensibly because she charged a
12 customer for a single scoop of ice cream instead of a double scoop.
13 (Compl. ¶ 18).

14 On May 3, 2013, Plaintiff filed a Complaint in Los Angeles
15 County Superior Court against Defendant. The Complaint alleges six
16 causes of action against Defendant:

17 (1) race/national/origin/ancestry discrimination in violation of
18 the Fair Employment and Housing Act (FEHA), Cal. Gov't Code §
19 12940; (2) failure to prevent discrimination in violation of FEHA;
20 (3) wrongful termination in violation of FEHA; (4) declaratory
21 relief; (5) injunctive relief; and (6) wrongful termination in
22 violation of public policy.

23 On July 30, 2013, Defendant removed to this court on the basis
24 of diversity jurisdiction, pursuant 28 U.S.C. §§ 1332 and 1441.
25 Plaintiff now moves to remand pursuant to 28 U.S.C. § 1332(a) for
26 lack of subject matter jurisdiction because Defendant has failed to
27 establish that the amount in controversy exceeds the \$75,000
28 statutory minimum.

1 **II. Legal Standard**

2 Federal courts are courts of limited jurisdiction. Kokkonen
3 v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). A
4 defendant may remove to federal court "any civil action brought in
5 a State court of which the district courts of the United States
6 have original jurisdiction" 28 U.S.C. § 1441(a).
7 District courts have original jurisdiction over "all civil actions
8 where the matter in controversy exceeds the sum or value of
9 \$75,000, exclusive of interest and costs, and is between citizens
10 of different States." 28 U.S.C. § 1332(a).

11 Generally, a defendant may remove any civil action from state
12 court to a district court that has original jurisdiction. 28
13 U.S.C. § 1441(a). A district court must remand a case if, at any
14 time before to final judgment, it appears that the district court
15 lacks subject matter jurisdiction. 28 U.S.C. § 1447(c). The
16 removal statute is strictly construed against removal jurisdiction,
17 and federal jurisdiction must be rejected if any doubt exists as to
18 the right of removal. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th
19 Cir. 1992). The party removing the case to federal court and
20 asserting diversity jurisdiction bears the burden of proving that
21 original jurisdiction exists. See Kanter v. Warner-Lambert Co.,
22 265 F.3d 853, 857-58 (9th Cir. 2001). In cases where a plaintiff's
23 state court complaint is unclear or ambiguous on the requisite
24 amount in controversy, "the removing defendant bears the burden of
25 establishing, by a preponderance of the evidence, that the amount
26 in controversy exceeds [the statutory amount]." Sanchez v.
27 Monumental Life Ins. Co., 102 F.3d 398, 404 (9th Cir. 1996).

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1 **III. Discussion**

2 Plaintiff moves to remand for lack of subject matter
3 jurisdiction, asserting that Defendant failed to show that
4 Plaintiff's Complaint meets the amount in controversy requirement.
5 Both parties agree that the complaint does not specify a particular
6 amount of damages and is unclear on the amount in controversy.
7 Both parties acknowledge that the Defendant, as the removing party,
8 has the burden of proof of establishing that the amount in
9 controversy exceeds the statutory minimum of \$75,000. 28 U.S.C. §
10 1332(a).

11 The amount in controversy is an estimate of the total amount
12 in dispute, not a prospective assessment of defendant's liability.
13 See Lewis v. Verizon Commc'n, Inc., 627 F.3d 395, 400 (9th Cir.
14 2010). The amount in controversy requirement excludes "only
15 interest and costs and therefore includes attorney's fees",
16 compensatory damages for general or special damages, like "back
17 payment of health benefits and taxes", and punitive damages. See
18 Guqlielmino v. McKee Foods Corp., 506 F.3d 696, 700-01 (9th Cir.
19 2007).

20 In this case, the parties dispute the amount of Plaintiff's
21 lost wages. Defendant estimates, based on a 40-hour work week,
22 that Plaintiff seeks at least \$43,120.00 in back pay. (Notice of
23 Removal at 5). It does not appear, however, that Plaintiff ever
24 worked a 40-hour week. Rather, Plaintiff's pay records suggest
25 that she worked no more than thirty six hours in a week, and
26 sometimes worked as few as twenty five hours per week. (Mot. at 7;
27 Declaration of Jennifer A. Lipski ¶ 2). Thus, as Defendant appears
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1 to acknowledge, the back wages sought by Defendant may total under
2 \$30,000.

3 Defendant contends that emotional and punitive damages and
4 attorney's fees will suffice to bridge the gap between Plaintiff's
5 relatively modest claim for lost wages and the \$75,000
6 jurisdictional minimum. Defendant first argues that Plaintiff's
7 emotional distress claims "could lead to substantial damages."
8 (Opp. at 4). While Defendant gives examples of cases where
9 emotional distress claims resulted in damage awards in excess of
10 \$75,000, Defendant has not adequately explained how those claims
11 and fact patterns are similar to this case. In the absence of any
12 justification the court "will not speculate as to the damages
13 potentially embodied in the plaintiffs' vague request for emotional
14 distress." Miller v. Michigan Millers Ins. Co., 1997 WL 136242, at
15 *5 (N.D.Cal. 1997).

16 "When the amount in controversy depends largely on alleged
17 punitive damages, the court will scrutinize a claim more closely"
18 to be certain jurisdiction exists. Lange v. State Farm Mut. Auto.
19 Ins. Co., 2009 WL 322835, at *1 (C.D. Cal. 2009) (internal
20 quotation and citation omitted). Defendant is correct that a party
21 asserting diversity jurisdiction may refer to other jury verdicts
22 to bolster its claims regarding punitive damages. Faulkner v.
23 Astro-Med Inc., 1999 WL 820198 at *4 (N.D. Cal. 1999). Those
24 verdicts, however, must involve facts analogous to the case at
25 hand. Id. Here, as with its argument regarding emotional distress
26 damages, Defendant cites two cases in which juries awarded millions
27 of dollars in punitive damages. (Opp. at 5-6). Again, however,

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1 Defendant fails to explain how the facts of those cases, beyond the
2 basic nature of the claims, are analogous to this case.

3 Lastly, attorney's fees, too, may be included in the amount in
4 controversy if recoverable by statute or contract. Galt G/S v. JSS
5 Scandinavia, 142 F.3d 1150, 1155-56 (9th Cir. 1998). FEHA states
6 that "reasonable attorney's fees" may be awarded to the prevailing
7 party. Cal. Gov't Code. § 12965(b). Defendant, however, has made
8 no attempt to estimate reasonable attorney's fees in this case.
9 Instead, Defendant states, without any support, that "even a
10 conservative estimate of attorney's fees" in conjunction with other
11 relief sought by Plaintiff will place the total amount in
12 controversy over \$75,000. (Opp. at 7).

13 Defendant's speculative and conclusory assertions and
14 unexplained references to other cases are insufficient to satisfy
15 its burden to demonstrate, by a preponderance of the evidence, that
16 the amount in controversy here exceeds \$75,000 and that this court
17 has subject matter jurisdiction over this matter.

18 **IV. Conclusion**

19 For the above reasons, Plaintiff's Motion to Remand is
20 GRANTED.

21
22
23 IT IS SO ORDERED.

24
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26 Dated: January 31, 2014



DEAN D. PREGERSON
United States District Judge

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28 cc:order, docket, remand letter to
Los Angeles Superior Court, No. BC 507818