

JS-6

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 JANIESHONNA LEWIS,
12 Plaintiff,
13 v.

14 ARAMARK HEALTHCARE SUPPORT
SERVS., LLC, and Does 1100, inclusive,
15 Defendants.
16

Case No. 2:13-cv-05991-ODW (Ex)

ORDER REMANDING CASE TO LOS ANGELES SUPERIOR COURT

17 On August 15, 2013, Defendant Aramark Healthcare Support Services removed
18 this action to federal court. Having carefully considered the papers filed in
19 conjunction with Aramark's Notice, the Court concludes that Aramark has failed to
20 meet its burden on removal of establishing this Court's subject-matter jurisdiction
21 over this case. The Court therefore **REMANDS** this case to the Los Angeles Superior
22 Court.

23 Federal courts are courts of limited jurisdiction, having subject-matter
24 jurisdiction only over matters authorized by the Constitution and Congress. U.S.
25 Const. art. III, § 2, cl. 1; *e.g.*, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.
26 375, 377 (1994). A suit filed in state court may be removed to federal court only if the
27 federal court would have had original jurisdiction over the suit. 28 U.S.C. § 1441(a).
28 However, courts strictly construe the removal statute against removal jurisdiction, and

1 “[f]ederal jurisdiction *must* be rejected if there is any doubt as to the right of removal
2 in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)
3 (emphasis added). The party seeking removal bears the burden of establishing federal
4 jurisdiction. *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006).

5 Federal courts have original jurisdiction where an action presents a federal
6 question under 28 U.S.C. § 1331, or where diversity of citizenship exists under
7 28 U.S.C. § 1332. To exercise diversity jurisdiction, a federal court must find
8 complete diversity among the adverse parties, and the amount in controversy must
9 exceed \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a). Where a
10 plaintiff does not specify a particular damages figure in the state-court complaint, the
11 removing defendant must provide evidence establishing that it is “more likely than
12 not” that the amount in controversy exceeds \$75,000.00. *Sanchez v. Monumental Life*
13 *Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). Evidence a court may consider includes
14 “facts presented in the removal petition as well as any summary-judgment-type
15 evidence relevant to the amount in controversy at the time of removal.” *Matheson v.*
16 *Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003).

17 Additionally, in determining the amount in controversy, the Court may include
18 the request for punitive damages and emotional distress damages if they are
19 recoverable under the applicable law. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 947
20 (9th Cir. 2001); *Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1033–34 (N.D. Cal.
21 2002). California law allows the recovery of punitive damages based on claims for
22 violations of FEHA, wrongful termination, and intentional infliction of emotional
23 distress. *Tameny v. Atl. Richfield Co.*, 27 Cal. 3d 167, 176 (1980); *Simmons*, 209 F.
24 Supp. 2d at 1033. To establish emotional distress and punitive damages, “defendant
25 may introduce evidence of jury verdicts in cases involving analogous facts.”
26 *Simmons*, 209 F. Supp. 2d at 1033.

27 Finally, in ordinary diversity cases, a request for attorney’s fees cannot be
28 included in the jurisdictional amount unless an underlying statute authorizes an award

1 of attorney’s fees. *Lowdermilk*, 479 F.3d 994, 1000 (9th Cir. 2007) (citing *Galt G/S v.*
2 *JSS Scandinavia*, 142 F.3d 1150, 1155–56 (9th Cir. 1998)). But even when including
3 attorneys’ fees, a court “cannot base [its] jurisdiction on Defendant’s speculation and
4 conjecture.” *Lowdermilk*, 479 F.3d at 1002. Ultimately, the defendant must
5 overcome “the strong presumption against removal jurisdiction” by “setting forth, in
6 the removal petition itself, the *underlying facts* supporting its assertion that the
7 amount in controversy exceeds” the required \$75,000. *Gaus*, 980 F.2d at 567.

8 Lewis’s state-court Complaint did not specify the damages she seeks.
9 Therefore, as the proponent of federal jurisdiction, Aramark bore the burden on
10 removal to establish by specific facts or summary-judgment-like evidence, or both,
11 that it is more likely than not that the amount in controversy exceeds \$75,000 in this
12 case. Aramark has not met this burden.

13 At the time of removal, Aramark calculated that lost wages totaled
14 approximately \$30,960. (Notice of Removal 16.) Thus, Aramark must demonstrate
15 that the sum of the remaining damages satisfies the jurisdictional minimum. Aramark
16 is correct that the Court may consider the aggregate value of claims for lost wages,
17 emotional-distress damages, punitive damages, and attorneys’ fees to determine the
18 jurisdictional amount. But Aramark does not present any “underlying facts supporting
19 its assertion that the amount in controversy exceed[ed]” \$75,000, *Gaus*, 980 F.2d at
20 567. Instead, Aramark merely asserts that “[w]ere Plaintiff to prevail in this action,
21 the damages *could* exceed \$75,000,” because Lewis alleges twelve causes of action
22 and seeks to recover several categories of damages. (Notice of Removal 15 (emphasis
23 added).) Aramark’s allegations regarding punitive and emotional-distress damages,¹
24 and attorney’s fees² are similarly anemic.

25
26 ¹ “In determining whether the jurisdictional minimum is met, courts consider all recoverable
27 damages, including emotional distress damages.” (Notice of Removal 17 (citing *Hunt v. Wash. State*
Apple Adver. Comm’n, 432 U.S. 33, 34748 (1977).)

28 ² Aramark correctly states that “Courts have held that an award of attorneys’ fees, if such fees are
authorized may be considered for purposes of calculating the amount in controversy. (Notice of

1 Aramark’s bald citations to cases that simply authorize courts to attorneys’ fees
2 and emotional distress damages in calculating the jurisdictional minimum are entirely
3 insufficient to meet Aramark’s burden to establish the amount in controversy by a
4 preponderance of the evidence. Aramark must prove sufficiently analogous *facts*
5 supporting the jurisdictional amount. *Simmons*, 209 F. Supp. 2d at 1031.

6 For example, in its discussion of punitive damages Aramark merely asserts that
7 “California juries have returned verdicts with substantial punitive damage awards in
8 employment discrimination actions.” (Notice of Removal 18 (citing *Simmons*, 209 F.
9 Supp 2d at 1029).) But Aramark points to no analogous underlying facts in *Simmons*
10 or any other case that demonstrate that a substantial punitive damage award may
11 similarly be awarded in this action.

12 Absent evidence of jury verdicts in other cases and explanation of how those
13 cases represent conduct analogous to the conduct Aramark allegedly directed at
14 Lewis, the Court can only speculate whether Lewis could draw similar damages
15 awards here sufficient to meet the amount in controversy required to sustain this
16 Court’s exercise of diversity jurisdiction. The failure to provide the Court with any
17 examples of analogous jury verdicts renders Aramark’s citation to those cases
18 meaningless.

19 Because the Court finds that Aramark has not met its burden on removal to
20 establish that the amount in controversy in this case exceeds \$75,000, the Court must

21 ///

22 ///

23 ///

24 ///

25 ///

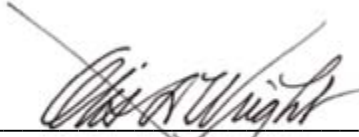
26 ///

27
28 Removal 19 (citing *Galt G/S*, 142 F.3d at 1155–56.) But Aramark fails to offer *any* facts relevant to
this particular case.

1 reject federal jurisdiction over this action. The Court therefore **VACATES** the
2 October 28 scheduling conference in this matter (ECF No. 7) and **REMANDS** this
3 case to the Los Angeles County Superior Court. The Clerk of Court shall close this
4 case.

5 **IT IS SO ORDERED.**

6 August 21, 2013

7
8 

9
10

HON. OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28