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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

AMBER HAASE,  
Plaintiff,

No. 2:09-cv-01751-MCE-GGH

v.

MEMORANDUM AND ORDER

AERODYNAMICS INCORPORATED, a  
corporation; ADI SHUTTLE  
GROUP, LLC, a limited  
liability company; and DOES  
ONE through FIFTY, inclusive,  
Defendants.

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Plaintiff Amber Haase seeks monetary relief from Defendants  
Aerodynamics Incorporated and ADI Shuttle Group, LLC for Unlawful  
Employment Practices in violation of the California Fair  
Employment and Housing Act and for Wrongful Termination in  
violation of California public policy.<sup>1</sup>

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<sup>1</sup> Because oral argument was not of material assistance, the  
Court ordered this matter submitted on the briefs. E.D. Cal.  
Local Rule 78-230(h).

1 Presently before the Court is Plaintiff's Motion to Remand  
2 this action to the Superior Court of the State of California for  
3 the County of Sacramento, pursuant to 28 U.S.C. § 1447(c), on  
4 grounds that this Court lacks removal jurisdiction under 28U.S.C.  
5 § 1441(b). For the reasons set forth below, the Court denies  
6 Plaintiff's Motion to Remand.

7  
8 **BACKGROUND**  
9

10 Plaintiff, a California resident, worked for Defendant ADI  
11 Shuttle Group, LLC ("ADI") as a full time flight attendant  
12 beginning in July 2004. (Compl. ¶ 13.) This action is based on  
13 alleged acts of discrimination that occurred during Plaintiff's  
14 employment and eventual termination. Plaintiff alleges that ADI  
15 engaged in a pattern and practice of disregarding Plaintiff's  
16 California Pregnancy Disability Leave Rights, which she claims  
17 ultimately led to her retaliatory termination on December 5,  
18 2008.

19 Plaintiff is suing not only her former employer, ADI, but  
20 also ADI's parent company, Aerodynamics Incorporated  
21 ("Aerodynamics") under theories of alter ego and integrated  
22 enterprise. (Compl. ¶¶ 4-10.) Defendant ADI is a limited  
23 liability company formed under the laws of the State of Delaware  
24 with its principal place of business in the State of Michigan.  
25 (Def.'s Notice of Removal ¶ 13.) Defendant Aerodynamics is a  
26 corporation incorporated under the laws of the State of Michigan  
27 with its principal place of business in the State of Michigan.  
28 (Def.'s Notice of Removal ¶ 12.)

1 Plaintiff filed the present action on May 7, 2009 in the  
2 Superior Court of the State of California for the County of  
3 Sacramento alleging state law claims of Unlawful Employment  
4 Practices and Wrongful Termination in violation of public policy.  
5 Plaintiff's Complaint alleges general damages for each claim "in  
6 excess of the jurisdictional limits of the Superior Court" as  
7 well as for undetermined special damages, punitive damages, costs  
8 and interest. (Compl. 16-17.) Plaintiff also seeks recovery of  
9 attorney's fees for the Unlawful Employment Practices Claim.  
10 (Compl. 16.)

11 On July 21, 2009, Defendants removed the action to this  
12 Court pursuant to 28 U.S.C. § 1441(a) on the basis of diversity  
13 jurisdiction. Plaintiff now moves to remand the action back to  
14 the state court pursuant to 28 U.S.C. § 1447(c) on the grounds  
15 that removal was improper under 28 U.S.C. § 1441(a) and (b)  
16 because Defendants failed to prove by the preponderance of the  
17 evidence that the amount in controversy exceeds \$75,000 as  
18 required to confer this Court with original jurisdiction under  
19 28 U.S.C. § 1332.

20  
21 **STANDARD**  
22

23 A defendant may remove any civil action from state court to  
24 federal district court if the district court has "original  
25 jurisdiction" over the matter. 28 U.S.C. § 1441(a). Generally,  
26 district courts have original jurisdiction over civil actions in  
27 two instances:

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1 (1) where there is complete diversity between the parties, or  
2 (2) where a federal question is presented in an action arising  
3 under the Constitution, federal law, or treaty. 28 U.S.C.  
4 §§ 1331 and 1332.

5 Where jurisdiction is founded on diversity, 28 U.S.C. § 1332  
6 requires that the amount in controversy exceed \$75,000.00.

7 Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1090  
8 (9th Cir. 2003). The removing party bears the burden of  
9 establishing federal jurisdiction. Ethridge v. Harbor House

10 Rest., 861 F.2d 1389, 1393 (9th Cir. 1988). If the  
11 jurisdictional amount in controversy is not facially apparent  
12 from the state court complaint, i.e., if the plaintiff has not  
13 sought a specific amount in damages or if the amount sought is  
14 unclear, then the court must look beyond the facts of the  
15 complaint and apply the preponderance of the evidence standard.

16 Walker, 627 F. Supp. 2d at 1141; Sanchez v. Monumental Life Ins.  
17 Co., 102 F.3d 398, 404 (9th Cir. 1996); Guglielmino v. McKee  
18 Foods Corp., 506 F.3d 696, 701 (9th Cir. 2007). Accordingly, in  
19 order to defeat a motion to remand, the removing defendant must  
20 prove by a "preponderance of the evidence" that the amount in  
21 controversy requirement has been met. Sanchez, 102 F.3d at 404  
22 ("[T]he defendant must provide evidence establishing that it is  
23 'more likely than not' that the amount in controversy exceeds  
24 that amount.").

25 In determining whether the jurisdictional requirement has  
26 been met in such cases, the court may consider evidence submitted  
27 subsequent to the notice of removal, including evidence submitted  
28 in conjunction with an opposition to a motion to remand.

1 Cohn v. Petsmart, Inc., 281 F.3d 837, 840 n.1 (9th Cir. 2002);  
2 see Willingham v. Morgan, 395 U.S. 402, 407 n.3, 89 S. Ct. 1813,  
3 23 L. Ed. 2d 396 (1969) (“[I]t is proper to treat the removal  
4 petition as if it had been amended to include the relevant  
5 information contained in the later-filed affidavits.”).

6 The district court has broad discretion in determining  
7 whether the defendant has made the requisite showing. See  
8 Liberty Mut. Ins. Co. v. Ward Trucking Corp., 48 F.3d 742, 749-50  
9 (3rd Cir. 1995); Rubel v. Pfizer, Inc., 361 F.3d 1016, 1019-20  
10 (7th Cir. 2004). Furthermore, courts construe the removal  
11 statute strictly against removal. Gaus v. Miles, Inc., 980 F.2d  
12 564, 566 (9th Cir. 1992) (citations omitted). Therefore, if  
13 there is any doubt as to the right of removal in the first  
14 instance, remand must be granted. See Gaus, 980 F.2d at 566.  
15 Furthermore, if at any time before final judgment it appears that  
16 a district court lacks subject matter jurisdiction, the case  
17 shall be remanded to state court. 28 U.S.C. § 1447(c).

18 If the district court determines that removal was improper,  
19 then the court may also award the plaintiff costs and attorney  
20 fees accrued in response to the defendant’s removal. 28 U.S.C.  
21 § 1447(c). The court has broad discretion to award costs and  
22 fees whenever it finds that removal was wrong as a matter of law.  
23 Balcorta v. Twentieth-Century Fox Film Corp., 208 F.3d 1102, 1106  
24 n.6 (9th Cir. 2000).

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1 **ANALYSIS**

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3 When federal jurisdiction is sought on the basis of  
4 diversity, jurisdiction will lie if the matter in controversy  
5 exceeds the sum or value of \$75,000.00, and is between citizens  
6 of different states. 28 U.S.C. § 1332(a)(1). The parties here  
7 do not dispute diversity of citizenship. Accordingly, this  
8 motion turns on whether the requisite "amount in controversy"  
9 exists.

10 To successfully maintain this action in federal court,  
11 Defendants must demonstrate that the \$75,000 minimum amount in  
12 controversy standard under 28 U.S.C. § 1332(a) has been met. The  
13 amount in controversy for jurisdictional purposes is determined  
14 by the amount of damages at issue in the action. Hunt v.  
15 Washington State Apple Advertising Commission, 432 U.S. 333, 347-  
16 48, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977); Meisel v. Allstate  
17 Indemnity Co., 357 F. Supp. 2d 1222, 1225 (E.D. Cal. 2005).  
18 Here, Plaintiff has not pled a specific amount in damages other  
19 than that the general damages amount is "in excess of the minimum  
20 jurisdiction of" the California Superior Court, i.e., an  
21 undetermined amount in excess of \$25,000. (Compl. ¶¶ 58, 66.)  
22 Thus, because the amount in controversy is not facially apparent  
23 from the Complaint, Defendants bear the burden of actually  
24 proving, by a preponderance of evidence, the facts to support  
25 federal jurisdiction, namely, the jurisdictional amount.  
26 Sanchez, 102 F.3d at 403. The jurisdictional minimum may be  
27 satisfied by claims for special and general damages, attorneys'  
28 fees and punitive damages.

1 Simmons v. PCR Technology, 209 F. Supp. 2d 1029, 1031 (N.D. Cal.  
2 2002) (citing Conrad Assoc. v. Hartford Accident & Indem. Co.,  
3 994 F. Supp. 1196, 1198 (N.D. Cal. 1998)).

4 Plaintiff asserts that the only evidence as to the amount of  
5 damages is Plaintiff's lost wages and benefits totaling  
6 \$21,830.00 at the time of removal. Plaintiff alleges that  
7 Defendants' "attempt to fill the \$53,170.00 gap" consists of  
8 "speculation, estimates and guesses." (Pl.'s Mot. 1.)  
9 Defendants counter that Plaintiff's Complaint specifically  
10 alleges general damages for emotional distress, special damages  
11 for lost and future wages and benefits, exemplary (or punitive)  
12 damages, and attorney's fees. Defendants assert that "[e]ven  
13 minimal awards of each of these kinds of damages and fees would  
14 place the amount in controversy well in excess of \$75,000."  
15 (Def.'s Opp'n 3.) As delineated below, the Court finds that  
16 Defendants have satisfied their burden.

17  
18 **A. Compensatory Damages**

19  
20 In determining the amount in controversy, the court may  
21 consider compensatory damage claims for "general" or "special"  
22 damages. General damages are those that necessarily or usually  
23 result from particular wrongful acts, and the mere statement of  
24 the cause of action for the injury sufficiently implies that  
25 these damages resulted. Special damages are those that are not  
26 considered to be so necessary or usual a result, and specific  
27 notice is required when they are claimed.

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1 See In re Hawaii Federal Asbestos Cases, 734 F. Supp. 1563, 1567  
2 (D. Hawaii 1990) ("Traditionally, damages fall into two  
3 categories: special and general damages. Special damages  
4 compensate claimants for specific out-of-pocket financial  
5 expenses and losses. General damages provide compensation for  
6 pain, suffering, and emotional distress.").

7 Furthermore, in an action by a single plaintiff against a  
8 single defendant, all claims can be aggregated to meet the  
9 minimum jurisdictional amount. Wolde-Meskel v. Vocational  
10 Instruction Project Community Services, Inc., 166 F.3d 59, 62 (2d  
11 Cir. 1999); see Bank of Calif. Nat'l Ass'n v. Twin Harbors Lumber  
12 Co., 465 F.2d 489, 491 (9th Cir. 1972). Whether a single  
13 plaintiff's claims against several defendants can be aggregated  
14 for jurisdictional purposes depends on whether the defendants are  
15 jointly liable to the plaintiff on each claim. Sovereign Camp  
16 Woodmen v. O'Neill, 266 U.S. 292, 297-98, 45 S. Ct. 49, 50-51  
17 (1924); Libby, McNeill & Libby v. City Nat'l Bank, 592 F.2d 504,  
18 509 (9th Cir. 1978).

19 As indicated above, the underlying complaint was filed in  
20 state court. Under California law, every complaint must contain  
21 a prayer or demand for relief to which the plaintiff claims he or  
22 she is entitled. Cal. Civ. Proc. Code § 425.10(b). The demand  
23 is the decisive factor in determining the amount in controversy  
24 for jurisdictional purposes. Engbretson & Co. v. Harrison, 125  
25 Cal. App. 3d 436 (4th Dist. 1981). As master of his or her  
26 complaint, the plaintiff may choose either to include a separate  
27 prayer for each cause of action or to include a cumulative prayer  
28 encompassing all causes of action.



1 Here, Plaintiff has chosen to plead a prayer of relief for  
2 each cause of action. In doing so, Plaintiff has prayed for  
3 "general damages in excess of the jurisdictional limits of the  
4 Superior Court" for each cause of action. Therefore, Plaintiff  
5 has claimed general damages, which include emotional distress  
6 damages, in excess of \$25,000 for each cause of action. Given  
7 the nature of the allegations and the claims presented, the Court  
8 cannot say that Plaintiff's general damages estimate in this  
9 regard is unreasonable or devoid of merit. In addition,  
10 Plaintiff has also alleged that the two defendants are jointly  
11 liable for any damages under theories of alter ego and integrated  
12 enterprise. Accordingly, the damages pled by Plaintiff's two  
13 causes of action can be aggregated. Thus, Plaintiff has pled  
14 general damages in excess of \$50,000.

15 Furthermore, Plaintiff prays for "special damages in an  
16 amount to be determined." The amount in controversy must be  
17 determined at the time of removal. Meritcare, Inc. v. St. Paul  
18 Mercury Ins. Co., 166 F.3d 214, 217-18 (3d Cir. 1999). At the  
19 time of removal, Plaintiff's lost wage claim, a special damage,  
20 totaled \$21,830. Therefore, on the face of the complaint,  
21 Plaintiff has pled damages totaling \$71,830. Therefore, the  
22 question is whether the sum of the remaining damages claimed by  
23 Plaintiff, punitive damages and attorney's fees, total \$3,170,  
24 thereby satisfying the jurisdictional amount in controversy.

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1           **B.     Punitive Damages**

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3           Punitive damages may be considered in determining the amount  
4 in controversy if they are recoverable as a matter of state law.  
5 Anthony v. Security Pac. Fin. Servs., Inc., 75 F.3d 311, 315 (7th  
6 Cir. 1997). Plaintiff's action is brought pursuant to the  
7 California Fair Employment and Housing Act ("FEHA"), Cal. Gov.  
8 Code § 12900 et seq. Punitive damages are available under FEHA.  
9 Cal. Gov. Code § 12940. Accordingly, this Court may consider  
10 punitive damages when determining the amount in controversy. See  
11 Simmons v. PCR Technology, 209 F. Supp. 2d 1029 (N.D. Cal. 2002).

12           When assessing the probable amount of unspecified punitive  
13 damages for jurisdictional purposes, courts may look to verdicts  
14 in analogous cases as a reasonable approximation. See Simmons v.  
15 PCR Technology, 209 F. Supp. 2d 1029, 1033. To this end,  
16 Defendants attempt to highlight jury verdicts with substantial  
17 punitive damage awards. See, e.g., Lopez v. Bimbo Bakeries USA,  
18 Inc., No. CGC-05-445104, 2007 WL 1765192 (Cal. Super. Ct. May 22,  
19 2007) (awarding \$2,340,700 to former delivery driver claiming  
20 employer failed to accommodate her pregnancy and terminated her  
21 because of her disability leave); Coziahr v. Chula Vista  
22 Elementary Sch. Dist., No. GIS24716, 2007 WL 4590579 (Cal. Super.  
23 Ct. Dec. 7, 2007) (awarding \$1,012,720 to former grade school  
24 teacher claiming a pattern of gender and pregnancy discrimination  
25 over two-year period, ending in her termination).

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1 Plaintiff objects to the proffered jury verdicts on the grounds  
2 that such are "not from any filed court opinion" but rather are  
3 "attorney reports which Thomson Reuters has posted on a West Law  
4 [sic] website." (Pl.'s Reply 12-13.) Plaintiff further objects  
5 that the cited jury verdicts do not identify the amount awarded  
6 for punitive damages as differentiated from the compensatory  
7 award. The Court does not address this argument as even a  
8 minimum award of punitive damages would satisfy the  
9 jurisdictional requirement.

10  
11 **C. Attorney's Fees**

12  
13 Finally, attorney's fees may also be considered in  
14 determining the amount in controversy if such fees are  
15 recoverable by plaintiff, either by statute or by contract. Galt  
16 G/S v. JSS Scandinavia, 142 F.3d 1150, 1155-56 (9th Cir. 1998).  
17 Attorney's fees are recoverable as a matter of right to the  
18 prevailing party under FEHA.<sup>2</sup> Thus, because attorney's fees are  
19 expressly authorized by statute, such fees may be included in  
20 determining the amount in controversy.

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27 <sup>2</sup> In relevant part, California Government Code § 12965(b)  
28 provides: "In actions brought under this section, the court, in  
its discretion, may award to the prevailing party reasonable  
attorney's fees and costs ...."

1 Plaintiff further objects to the inclusion of attorney's  
2 fees in the jurisdictional calculation. Plaintiff argues that in  
3 every case in which a court has included attorney's fees in  
4 determining the amount in controversy, there has been some  
5 factual showing as to the amount of attorney's fees actually  
6 being incurred. Here, however, according to Plaintiff, "there is  
7 absolutely no evidence of plaintiff's counsel's hourly rate, time  
8 spent on work to date, or at what point this case may be  
9 resolved" and thus "it is pure speculation as to what attorney's  
10 fees may or may not be incurred." (Pl.'s Reply 7.) Again, the  
11 Court does not address this argument as even a minimal award of  
12 attorney's fees would cause the amount in controversy to exceed  
13 the jurisdictional minimum. See Simmons, 209 F. Supp. 2d at 1035  
14 ("The court notes that in its twenty-plus years' experience,  
15 attorneys' fees in individual discrimination cases often exceed  
16 the damages.").

17 While an award of punitive damages and attorney's fees alone  
18 would not necessarily exceed \$75,000, when viewed in combination  
19 with the alleged compensatory damages totaling \$71,830, the  
20 amount in controversy clearly exceeds the jurisdictional minimum.  
21 Therefore, this Court is satisfied that Defendants have met their  
22 burden of proving the jurisdictional minimum by a preponderance  
23 of the evidence. Thus, Plaintiff's Motion to Remand to state  
24 court must fail.

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1 **CONCLUSION**

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3 Based on the foregoing, Plaintiff's Motion to Remand (Docket  
4 No. 11) is DENIED.

5 IT IS SO ORDERED.

6 Dated: October 16, 2009

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MORRISON C. ENGLAND, JR.  
10 UNITED STATES DISTRICT JUDGE  
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