

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

FRED PINEDA

No. 2:11-cv-01278-MCE-CMK

Plaintiff,

v.

MEMORANDUM AND ORDER

THE HOME DEPOT, U.S.A., INC. and  
DOES 1 through 100, inclusive,

Defendants.

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Plaintiff Fred Pineda ("Plaintiff") originally commenced this action in Superior Court of California for the County of San Joaquin. Plaintiff alleges the following six causes of action against Defendant, The Home Depot, U.S.A., Inc. ("Defendant"): 1) age discrimination; 2) harassment on the basis of age-hostile work environment retaliation; 3) failure to prevent age discrimination; 4) wrongful termination; 5) retaliation; and 6) intentional infliction of emotional distress. On May 12, 2011, Defendant timely and properly removed the case to this Court. (ECF No. 1.) On May 19, 2011, Defendant filed a Motion to Dismiss pursuant to Federal Rule of Civil

1 Procedure 12(b)(6). (ECF No. 7.) Plaintiff has now filed a Motion  
2 to Remand the case back to state court (ECF No. 10), alleging  
3 that Defendant failed to demonstrate the requisite amount in  
4 controversy necessary to establish diversity jurisdiction. For  
5 the reasons set forth below, Plaintiff's Motion for Remand is  
6 granted.<sup>1</sup>

### 8 STANDARD

10 A defendant may remove any civil action from state court to  
11 federal district court if the district court has original  
12 jurisdiction over the matter. 28 U.S.C. § 1441(a). Generally,  
13 district courts have original jurisdiction over civil actions in  
14 two instances: (1) where a question of law is presented that  
15 arises "under the Constitution, laws, or treaties of the United  
16 States," or (2) "where the matter in controversy exceeds the sum  
17 or value of \$75,000, exclusive of interest and costs," and there  
18 is complete diversity of citizenship between the parties.  
19 28 U.S.C. §§ 1332 and 1331, respectively.

20 The removing party bears the burden of establishing federal  
21 jurisdiction. Ethridge v. Harbor House Rest., 861 F.2d 1389,  
22 1393 (9th Cir. 1988). If the court has any doubt as to the right  
23 of removal in the first instance, remand must be granted.  
24 Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (citations  
25 omitted).

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27 <sup>1</sup> Because oral argument will not be of material assistance, the  
28 Court orders this matter submitted on the briefs. E.D. Cal.  
Local Rule 230(h).

1 Where jurisdiction is based upon diversity, 28 U.S.C. § 1332  
2 requires that the amount in controversy exceed \$75,000.  
3 Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1090  
4 (9th Cir. 2003). In removal cases, if the state court complaint  
5 does not specify the amount of damages being sought, the  
6 defendant bears the burden of demonstrating, by a preponderance  
7 of the evidence, that the amount in controversy requirement is  
8 satisfied. Sanchez v. Monumental Life Ins. Co., 102 F.3d 398,  
9 404 (9th Cir. 1996); Gaus, 980 F.2d at 567.

## 11 ANALYSIS

### 13 A. Plaintiff's Motion for Remand

15 When federal jurisdiction is sought on the basis of  
16 diversity, jurisdiction will be established if the matter in  
17 controversy exceeds the sum or value of \$75,000 and the case is  
18 between citizens of different states. 28 U.S.C. § 1332(a)(1).  
19 The parties concede that this matter is between citizens of  
20 different states.<sup>2</sup> The salient issue raised by this motion,  
21 therefore, is whether Defendant has sufficiently demonstrated  
22 that the amount in controversy exceeds \$75,000.

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26 <sup>2</sup> Plaintiff is a resident of California. (Pls.' Compl. ¶¶ 1-2,  
27 Jan. 11, 2011, ECF No. 1). Defendant is a Delaware corporation  
28 with its principal place of business in Georgia. (Def.'s Pet. For  
Removal, ¶¶ 10-11, May 12, 2011, ECF No. 1).

1 Plaintiff's Complaint requests pecuniary damages, punitive  
2 damages, attorney's fees pursuant to the alleged damages suffered  
3 under each of his state causes of action.<sup>3</sup> Specifically,  
4 Plaintiff's claim for pecuniary loss includes lost wages and  
5 benefits, mental, physical and nervous discomfort, annoyance,  
6 distress, anguish, worry, anxiety, pain and suffering, and  
7 possible medical expenses. However, the Complaint only states an  
8 amount to be determined "according to proof." (Compl. ¶¶ 47, 51.)

9 Defendant argues that even though Plaintiff does not claim a  
10 specific amount, viewed in their entirety, Plaintiff makes it  
11 "factually apparent from the body of the Complaint that the claim  
12 exceeds the jurisdictional amount." (Pet. for Removal 5-6, ECF  
13 No. 1). Defendant cites cases from the Fifth Circuit to support  
14 its claim that the jurisdictional amount can be inferred from the  
15 complaint.<sup>4</sup>

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21 <sup>3</sup> Attorney's fees may be included in the amount in controversy if  
22 they are recoverable pursuant to statute or contract. Cal. Gov.  
23 Code § 12965(b) allows a court, in its discretion, to provide  
reasonable attorney's fees and costs to the prevailing party in  
cases of unlawful employment practices brought under § 12940.

24 <sup>4</sup> Defendant cites Lockett v. Delta Airlines, Inc., 171 F.3d 295  
25 (5th Cir. 1999) (affirming the district court's determination that  
a complaint alleging damage to property, travel expenses, an  
26 emergency ambulance trip, a six day stay in the hospital, and  
pain and suffering exceeded \$75,000) and White v. FCI USA, Inc.,  
27 319 F.3d 672 (5th Cir. 2003) (affirming the district court's  
determination that a complaint alleging a long list of  
28 compensatory damages, punitive damages and attorney's fees  
exceeded \$75,000).

1        However, the Ninth Circuit has made clear that, where a  
2 plaintiff's state court complaint does not specify a particular  
3 amount of damages, the removing defendant bears the burden of  
4 establishing the jurisdictional amount is met "by a preponderance  
5 of the evidence." Sanchez, 102 F.3d at 404. Under this burden,  
6 the defendant must provide evidence establishing "more likely  
7 than not" that the amount in controversy exceeds the  
8 jurisdictional minimum. Id. Further, "[t]he authority which the  
9 statute vests in the court to enforce the limitations of its  
10 jurisdiction precludes the idea that jurisdiction may be  
11 maintained by mere averment." Gaus, 980 F.2d at 566.

12        Defendant does not provide even speculative numbers as to  
13 Plaintiff's potential lost wages, benefits or medical expenses,  
14 but simply re-lists Plaintiff's claims and infers that altogether  
15 they must exceed \$75,000. (Pet. 5-6, ECF No. 1). Further, while  
16 punitive and emotional distress damages may be considered in  
17 determining the amount in controversy, Defendant has submitted no  
18 evidence indicating what Plaintiff's punitive and emotional  
19 distress damages might be under the circumstances. Even granting  
20 that such damages are appropriate in the instant case, the Court  
21 will not speculate as to what would constitute a reasonable  
22 estimate of those damages.

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1 Far from demonstrating "by a preponderance of the evidence,"  
2 that the present dispute involves claims exceeding \$75,000,  
3 Defendant has simply made conclusory assertions insufficient  
4 under Ninth Circuit precedent. This Court, therefore, declines to  
5 exercise its discretion to request additional discovery and/or  
6 briefing regarding the amount in controversy. Therefore,  
7 Plaintiff's Motion to Remand is granted.

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9 **B. Plaintiff's Request for Attorney's Fees**

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11 Plaintiff seeks attorney's fees from Defendant in the amount  
12 of \$652.50 because he alleges Defendant "has utterly failed to  
13 meet the standard of proof for removal and used inapposite case  
14 law in an effort to disguise the absence of any evidence."  
15 (Pl.'s Mot. for Remand, 6, June 7, 2011, ECF No. 10.)

16 If the district court determines that removal was improper,  
17 the court "may require payment of just costs and any actual  
18 expenses, including attorney fees, incurred as a result of the  
19 removal." 28 U.S.C. § 1447(c). The Court has broad discretion  
20 to award costs and fees whenever it finds that removal was wrong  
21 as a matter of law. Balcorta v. Twentieth-Century Fox Film  
22 Corp., 208 F.3d 1102, 1106 n.6 (9th Cir. 2000). Following remand  
23 of a case, fees should be denied when an objectively reasonable  
24 basis for removal exists. Dall v. Albertson's Inc., 349 F. App'x.  
25 158, 160 (9th Cir. 2009) (citing Martin v. Franklin Capital Corp.,  
26 546 U.S. 132 (2005)).

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1 While Defendant has not demonstrated "by a preponderance of  
2 the evidence," that Plaintiff's claims exceed \$75,000, failing to  
3 do so does not demonstrate Defendant did not have an "objectively  
4 reasonable" belief that claims would exceed the amount. The mere  
5 quantity and diverse types of damages sought justify Defendant's  
6 belief that the claims exceeded \$75,000, even if it failed to  
7 prove they did exceed the amount by the standard required by law.

8 Therefore, Plaintiff's request for attorney's fees is  
9 denied.

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11 **CONCLUSION**  
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13 Given the strong presumption against removal and Defendant's  
14 failure to demonstrate the requisite amount in controversy is  
15 met, the Court must remand this case to the state court.  
16 Accordingly, Plaintiff's Motion for Remand (ECF No. 10) is  
17 GRANTED. Plaintiff's Motion for Attorney's Fees (ECF No. 10) is  
18 DENIED. Defendant's Motion to Dismiss (ECF No. 7) is DENIED as  
19 moot.

20 IT IS SO ORDERED.

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22 Dated: August 5, 2011

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25 MORRISON C. ENGLAND, JR.  
26 UNITED STATES DISTRICT JUDGE  
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