

1 Plaintiff began working for defendant as a truck driver
2 in 2011, first as a temporary employee and later on a permanent
3 basis. (Notice of Remand Ex. A ("Compl.") at ¶ 19 (Docket No.
4 1).) In June and July 2013, plaintiff raised complaints
5 regarding age discrimination and safety violations on the part of
6 defendant, after which defendant allegedly suspended him without
7 pay and ultimately terminated his employment. (Id. ¶¶ 22-41.)

8 Pursuant to the collective bargaining agreement between
9 defendant and plaintiff's union, an arbitrator determined on
10 February 13, 2014, that defendant did not have just cause to
11 terminate plaintiff but did have just cause to suspend him
12 without pay for sixty days. (Id. ¶ 45; Clark Decl. ¶ 4 (Docket
13 No. 4).) Accordingly, the arbitrator ordered plaintiff
14 reinstated and made whole for any loss of pay and benefits, minus
15 sixty days of pay. (Compl. ¶ 45.)

16 Plaintiff then filed his Complaint in the Superior
17 Court of California, County of Sacramento, on February 27, 2014,
18 bringing claims of: (1) retaliation in violation of the
19 California Fair Employment and Housing Act ("FEHA"), Cal. Gov't
20 Code §§ 12900 et seq.; (2) retaliation in violation of California
21 Labor Code section 6310; (3) retaliation in violation of
22 California Labor Code section 1102.5; and (4) wrongful
23 termination in violation of public policy. (Id. ¶¶ 50-83.)

24 Defendant subsequently reinstated plaintiff in March,
25 (Clark Decl. ¶ 6), and removed the action to federal court on
26 April 11, 2014, (Docket No. 1). Plaintiff now moves to remand
27 this action to state court, upon the ground that removal was
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1 improper because this court lacks subject matter jurisdiction
2 over the proceeding. (Docket No. 4.)

3 II. Discussion

4 "[A]ny civil action brought in a State court of which
5 the district courts of the United States have original
6 jurisdiction, may be removed by the defendant or the defendants,
7 to the district court of the United States for the district . . .
8 where such action is pending." 28 U.S.C. § 1441(a). However, if
9 "it appears that the district court lacks subject matter
10 jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c).

11 Federal courts have original jurisdiction over cases
12 where complete diversity exists between the parties and the
13 amount in controversy exceeds \$75,000. 28 U.S.C. § 1332.
14 Because the parties do not dispute that diversity exists between
15 all parties, the sole issue is whether the amount in controversy
16 exceeds \$75,000.

17 Plaintiff's Complaint does not specify a particular
18 amount of alleged damages. In such cases, "the removing
19 defendant bears the burden of establishing, by a preponderance of
20 the evidence, that the amount in controversy exceeds [\$75,000]."
21 Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 404 (9th Cir.
22 1996). When determining whether the removing defendant has met
23 this burden, the court may consider "facts presented in the
24 removal petition as well as any summary-judgment-type evidence
25 relevant to the amount in controversy at the time of removal.
26 Conclusory allegations as to the amount in controversy are
27 insufficient." Matheson v. Progressive Specialty Ins. Co., 319
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1 F.3d 1089, 1090-91 (9th Cir. 2003) (per curiam) (citation and
2 quotation marks omitted).

3 Plaintiff argues that the amount in controversy is less
4 than \$75,000 because he was reinstated to his position in March
5 2014, mitigating to some degree his claim for lost wages.¹
6 (Clark Decl. ¶ 4 (Docket No. 4).) Damages for lost wages,
7 however, are not the sole remedy plaintiff seeks. To the
8 contrary, each of plaintiff's claims seeks additional remedies in
9 the form of general damages for emotional distress, punitive
10 damages,² and attorneys' fees.³ (See Compl. ¶¶ 50-83.)
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12 ¹ Defendant argues that lost wages are still in
13 controversy because plaintiff's Complaint alleges that he was
14 passed over for a promotion in favor of a younger and less
15 experienced person, (Compl. ¶¶ 22-23), after which he filed an
16 external complaint with the Equal Employment Opportunity
17 Commission (EEOC) claiming age discrimination, (*id.* ¶ 30).
18 Plaintiff's Complaint here, however, does not state a claim for
age discrimination itself but instead claims that defendant
retaliated against plaintiff for filing the age discrimination
complaint with the EEOC. (*Id.* ¶¶ 51-13.) Accordingly, lost
wages from the alleged age discrimination are not at issue.

19 ² The amount in controversy may include punitive damages
20 when they are recoverable as a matter of law. Gibson v. Chrysler
21 Corp., 261 F.3d 927, 945 (9th Cir. 2001); Simmons v. PCR Tech.,
22 209 F. Supp. 2d 1029, 1033 (N.D. Cal. 2002). Because plaintiff
23 brings a claim under FEHA, and "[p]unitive damages are
recoverable for FEHA violations," Yeager v. Corr. Corp. of Am.,
944 F. Supp. 2d 913, 931 (E.D. Cal. 2013) (Ishii, J.), punitive
damages may be included in the amount in controversy here.

24 ³ If a statute underlying plaintiff's claim authorizes an
25 award of attorneys' fees, the court may include such fees when
26 determining the amount in controversy. Galt G/S v. JSS
27 Scandinavia, 142 F.3d 1150, 1156 (9th Cir. 1998). If plaintiff
28 prevails on his FEHA claim, he will be entitled to attorneys'
fees as a matter of right. See Cal. Gov't Code § 12965.
Accordingly, the court may consider attorneys' fees when
assessing the amount in controversy.

1 Defendant points to a settlement demand letter from
2 October 2013 as evidence of the amount at which plaintiff valued
3 these claims. "A settlement letter is relevant evidence of the
4 amount in controversy if it appears to reflect a reasonable
5 estimate of the plaintiff's claim." Cohn v. Petsmart, Inc., 281
6 F.3d 837, 840 (9th Cir. 2002) (citations omitted). In Cohn,
7 because the plaintiff did not represent that his settlement
8 demand was inflated, disavow the letter, or offer any contrary
9 evidence regarding his valuation of the case, the court relied on
10 the settlement letter to find that the amount-in-controversy
11 requirement was met. Id.; see also Arellano v. Home Depot
12 U.S.A., Inc., 245 F. Supp. 2d 1102, 1108 (S.D. Cal. 2003)
13 (finding that a letter that demanded either \$70,000 or \$90,000
14 sufficed to satisfy the amount in controversy requirement when
15 plaintiff did not offer any argument or evidence that figures in
16 the letter were "inflated or otherwise unreliable").

17 Here, in addition to \$179,856 for lost wages and
18 benefits, plaintiff's letter demanded \$315,144 to compensate for
19 his alleged emotional distress as well as attorneys' fees and
20 punitive damages. (Cheng Decl. ¶ 2 (Docket No. 8-1).) Thus,
21 even assuming that the reinstatement moots plaintiff's claim to
22 lost wages, he still estimated that his remaining remedies were
23 valued at an amount over the jurisdictional requirement of
24 \$75,000.

25 Plaintiff, as in Cohn, also does not claim that his
26 settlement demand was inflated, disavow the letter, or offer any
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1 contrary evidence regarding his valuation of the case.⁴ See
2 Cohn, 281 F.3d at 840. Nor does plaintiff offer any argument or
3 evidence that the figures in the settlement letter were
4 "otherwise unreliable." Arellano, 245 F. Supp. 2d at 1108.
5 Instead, plaintiff's counsel acknowledges the letter but simply
6 chides defendant for not responding to it. (Clark Decl. ¶ 6
7 (Docket No. 9-1).) The letter thus "appears to reflect a
8 reasonable estimate of the plaintiff's claim," Cohn, 281 F.3d at
9 840, and provides relevant evidence, uncontroverted by plaintiff,
10 regarding the amount in controversy in this action.

11 Accordingly, because defendant has demonstrated that it
12 is more likely than not that the amount in controversy exceeds
13 \$75,000, this court has diversity jurisdiction and must deny
14 plaintiff's order to remand.

15 IT IS THEREFORE ORDERED that plaintiff's motion to
16 remand be, and the same hereby is, DENIED.

17 Dated: July 1, 2014

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19 **WILLIAM B. SHUBB**
20 **UNITED STATES DISTRICT JUDGE**

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⁴ Defendant also asserts that plaintiff's refusal to
26 stipulate to an amount of damages below \$75,000 is further
27 evidence of the amount in controversy. However, courts accord
28 little weight to such stipulations prepared after removal. See
Simmons, 209 F. Supp. 2d at 1033 (citing St. Paul Mercury Indem.
Co. v. Red Cab Co., 303 U.S. 283, 292 (1938)).