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UNITED STATES DISTRICT COURT  
Northern District of California

MARIA SALVADOR

No. C 10-05262 MEJ

Plaintiffs,

**ORDER REMANDING CASE**

v.

HILTON WORLDWIDE, INC., et al.,

Defendants.

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**I. INTRODUCTION**

Pending before the Court is Plaintiff Maria Salvador's ("Plaintiff") Motion to Remand for lack of diversity jurisdiction. Dkt. No. 5. The Court finds this matter suitable for determination without oral argument. *See* Civil L.R. 7-1(b). For the reasons that follow, the Court **GRANTS** Plaintiff's Motion to Remand and **REMANDS** this matter to the California Superior Court, County of Alameda.

**II. BACKGROUND**

On October 6, 2010, Plaintiff filed this lawsuit against her former employer, Defendant Hilton Worldwide, Inc. ("Defendant") in San Francisco County Superior Court. Compl., Not. of Removal ("Compl."), Ex. A, Dkt. No. 1. In her Complaint, Plaintiff states that she had been employed by Defendant for approximately 25 years, most recently as a Floor Supervisor at the Hilton Oakland Airport Hotel. *Id.* ¶ 6. Plaintiff states that she was accused of stealing a white "cue ball" from a pool table and was subsequently discharged by Defendant on September 1, 2009. *Id.* ¶¶ 7-10. Plaintiff alleges that her union filed a grievance on her behalf and Defendant was ordered to reinstate her with back pay. *Id.* ¶ 12. As a result of these events, Plaintiff alleges that she suffered humiliation, nervousness, shame, and embarrassment. *Id.* ¶ 15.

1 Plaintiff's complaint alleges one cause of action for slander per se. In her Prayer for Relief,  
2 Plaintiff seeks general, special, and punitive damages.<sup>1</sup>

3 On November 19, 2010, Defendant removed the case to this Court based on diversity of  
4 citizenship pursuant to 28 U.S.C. § 1332. Not. of Removal, Dkt. No. 1. On February 10, 2011,  
5 Plaintiff filed the present motion to remand, arguing that Defendant has failed to show that the  
6 amount in controversy exceeds \$75,000. Defendant filed an opposition on February 24, 2011, Dkt.  
7 No. 10, to which Plaintiff filed a reply on March 3, 2011, Dkt. No. 15.

### 8 III. DISCUSSION

#### 9 A. Legal Standard

10 A defendant may remove a civil action from state court to federal district court so long as  
11 original jurisdiction would lie in the district court to which the case is removed. 28 U.S.C. §  
12 1441(a). Because there is a "strong presumption" against removal jurisdiction, the defendant  
13 removing the action bears the burden of establishing that removal is proper. *Gaus v. Miles, Inc.*, 980  
14 F.2d 564, 566 (9th Cir. 1992). In its Notice of Removal, Defendant asserts that diversity jurisdiction  
15 exists to support its removal of this action to federal court. *See* Dkt. No.1 at 2. Pursuant to 28  
16 U.S.C. § 1332(a), a district court may exercise diversity jurisdiction over a case when the parties are  
17 citizens of different states and the amount in controversy exceeds \$75,000. Here, it is undisputed  
18 that diversity of citizenship exists between Plaintiff and Defendant. Thus, the central question is  
19 whether the amount in controversy requirement is satisfied.

20 Plaintiff's Complaint is silent as to the amount of damages she is seeking for her slander  
21 claim. The Ninth Circuit has held that, "in cases where a plaintiff's state court complaint does not  
22 specify a particular amount of damages, the removing defendant bears the burden of establishing, by  
23 a preponderance of the evidence, that the amount in controversy exceeds [\$75,000]. Under this  
24 burden, the defendant must provide evidence establishing that it is 'more likely than not' that the

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26 <sup>1</sup>Plaintiff's prayer for relief also seeks attorney's fees and costs. However, in her motion,  
27 Plaintiff states that her counsel used a template when drafting the complaint, and the template  
28 included a claim for attorney's fees. Plaintiff states that her counsel inadvertently failed to remove  
this claim. Pl.'s Mot. at 6:23-25, Dkt. No. 5.

1 amount in controversy exceeds that amount.” *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398,  
2 404 (9th Cir. 1996); *see also Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th  
3 Cir. 2003). To determine whether a defendant has made this showing, a court may consider facts in  
4 the removal petition, as well as any “summary-judgment-type evidence relevant to the amount in  
5 controversy at the time of removal.” *Matheson*, 319 F.3d at 1090 (citing *Singer v. State Farm Mut.*  
6 *Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997)). Included in the amount in controversy are claims  
7 for special and general damages, attorneys’ fees (if applicable), and punitive damages. *Conrad*  
8 *Assocs. v. Hartford Accident & Indem. Co.*, 994 F. Supp. 1196, 1198-99 (N.D. Cal. 1998); *see also*  
9 *Lippold v. Godiva Chocolatier, Inc.*, 2010 WL 1526441, at \*1 (N.D. Cal. 2010). A defendant’s  
10 conclusory allegations regarding the amount in controversy, however, are insufficient. *Matheson*,  
11 319 F.3d at 1090-91.

12 If, after considering the evidence the defendant has proffered, there is still some doubt as to  
13 whether the amount in controversy element is satisfied, the court should remand the case to state  
14 court. *Id.* at 1090. The Court therefore turns to the evidence Defendant has proffered.

15 **B. Application to the Case at Bar**

16 In its Notice of Removal, Defendant states that Plaintiff’s allegations satisfy the  
17 jurisdictional prerequisite for the amount in controversy because “[i]t cannot be said to a legal  
18 certainty that Plaintiff would not be entitled to recover the jurisdiction amount.” Not. of Removal ¶  
19 17, Dkt. No. 1. In its Opposition, Defendant admits that Plaintiff does not articulate in her  
20 Complaint the amount of compensatory damages she seeks, but argues that “redress for injuries to  
21 her reputation as well as emotional distress . . . could in and of themselves surpass \$75,000.” Def.’s  
22 Opp’n at 4:12-14, Dkt. No. 10. Defendant contends that this potential damages award, coupled with  
23 a potential punitive damages award, makes it “more likely than not” that Plaintiff could recover  
24 more than \$75,000.

25 After carefully considering Defendant’s arguments and thoroughly reviewing the evidence it  
26 has submitted, the Court finds that Defendant has failed to meet its burden of establishing that the  
27 amount in controversy exceeds \$75,000. First, Plaintiff’s claim against Defendant is that she  
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1 suffered damages as a result of the slander allegations in her Complaint, yet she has not asserted a  
2 specific figure in her Complaint. To the extent that Defendant relies on Plaintiff’s potential damages  
3 award, it has not identified any facts specific to this case that would satisfy the amount in  
4 controversy requirement. Plaintiff alleges one cause of action for slander, and Defendant has  
5 provided no evidence that courts in cases similar to the facts alleged in Plaintiff’s complaint have  
6 awarded more than \$75,000.

7         Second, Defendant contends that the amount in controversy requirement is satisfied because  
8 Plaintiff seeks punitive damages. “It is well established that punitive damages are part of the  
9 amount in controversy in a civil action.” *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir.  
10 2001) (citations omitted). “However, the mere possibility of a punitive damages award is  
11 insufficient to prove that the amount in controversy requirement has been met.” *J. Marymount, Inc.*  
12 *v. Bayer Healthcare, LLC*, 2009 WL 4510126, at \*4 (N.D. Cal. 2009); *see also Burk v. Med. Sav.*  
13 *Ins. Co.*, 348 F. Supp. 2d 1063, 1069 (D. Ariz. 2004) (citing *Surber v. Reliance Nat’l Indem. Co.*,  
14 110 F. Supp .2d 1227, 1232 (N.D. Cal. 2000)). Rather, a defendant must present evidence to show  
15 that any “punitive damages, coupled with other relief that Plaintiff seeks, will more likely than not  
16 exceed the jurisdictional minimum.” *McCaa v. Mass. Mut. Life Ins. Co.*, 330 F. Supp. 2d 1143,  
17 1149 (D.Nev. 2004).

18         Here, Defendant provides no evidence specific to Plaintiff’s case; rather, it cites to three  
19 cases in support of its argument. Two of those cases – *Cole v. Desert Media Grp.*, 1994 WL 184622  
20 (N.D. Cal. 1994), and *Davenport v. Mut. Benefits Health & Accident Ass’n*, 325 F.2d 785 (9th Cir.  
21 1963) – are inapplicable because the plaintiffs originally filed their cases in federal court. The  
22 Supreme Court has drawn a sharp distinction between original jurisdiction and removal jurisdiction  
23 in diversity cases where the amount in controversy is in doubt: “[I]n cases brought in the federal  
24 court . . . it must appear to a legal certainty that the [plaintiff's] claim is really for less than the  
25 jurisdictional amount to justify dismissal. . . . A different situation is presented in the case of a suit  
26 instituted in a state court and thence removed.” *Gaus*, 980 F.2d at 566 (alterations in original) (citing  
27 *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-90 (1938)). In other words, when a  
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1 plaintiff brings suit in federal court alleging that the amount in controversy exceeds the jurisdictional  
2 minimum, a defendant challenging the federal court’s jurisdiction must establish to a legal certainty  
3 that the plaintiff’s claim does not satisfy the requisite jurisdictional amount. *Sanchez*, 102 F.3d at  
4 402. Thus, the presumption in *Cole* and *Davenport* was that jurisdiction existed, and Defendant had  
5 to prove to a legal certainty that jurisdiction did not exist. Here, because Defendant removed the  
6 case to federal court, there is a “strong presumption” against removal jurisdiction, and Defendant  
7 bears the burden of establishing that removal is proper. *Gaus*, 980 F.2d at 566.

8 Defendant also cites to *Ryan v. State Farm Mut. Ins. Co.*, 934 F.2d 276 (11th Cir. 1991). In  
9 *Ryan*, the court found that diversity jurisdiction existed in part because the plaintiff specified in her  
10 complaint that she sought \$100,000 in punitive damages. *Id.* at 277. This case is clearly  
11 distinguishable from the case at bar because Plaintiff has not specified the punitive damages she  
12 seeks. Thus, because Defendant has not shown that Plaintiff is more likely than not to receive  
13 punitive damages in an amount that will bring her total damages award over the jurisdictional  
14 threshold, the Court finds that Defendant has failed to meet its burden.

15 Further, for purposes of determining the amount in controversy requirement, courts have  
16 often rejected the argument that punitive damages satisfy the amount where the defendant fails to  
17 cite to cases that have analogous facts to the action at issue. *See, e.g., Conrad Assocs.*, 994 F. Supp.  
18 at 1201 (“Defendant’s burden cannot be met simply by pointing out that the complaint seeks  
19 punitive damages and that any damages awarded under such a claim could total a large sum of  
20 money, particularly in light of the high burden that must be met in order for a plaintiff even to be  
21 eligible for receipt of discretionary punitive damages.”); *Haisch v. Allstate Ins. Co.*, 942 F. Supp.  
22 1245, 1249 (D. Ariz. 1996) (“It would be inherently speculative for this Court to conclude that the  
23 amount in controversy requirement can be met by simply asserting that large punitive damage  
24 awards have been awarded in the past against insurance companies faced with allegations of fraud . .  
25 . . Defendant has failed to articulate why the particular facts that are alleged in the instant action  
26 might warrant extraordinary punitive damages.”); *Sasser v. Allstate Ins. Co.*, 2008 WL 4532562, \*4  
27 (N.D. Cal. 2008) (“[T]he complaint contains largely boilerplate allegations regarding defendants’  
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1 bad faith in denying their claim, and the Court is unable to make an assessment of the likelihood of  
2 plaintiffs obtaining punitive damages. On this record, the Court finds that defendants have not met  
3 their burden of showing that it is more likely than not that punitive damages will raise the amount in  
4 controversy over \$75,000.”)


5 Taking the foregoing evidence and authorities into consideration, the Court finds that  
6 Defendant has failed to meet its burden of establishing that the amount in controversy in this case  
7 exceeds \$75,000. Plaintiff has not alleged in her Complaint that she is seeking more than \$75,000,  
8 and she maintains that, at this stage, she is uncertain as to the amount of damages. As to Plaintiff’s  
9 demand for punitive damages, there is nothing in the record indicating that this award would exceed  
10 the jurisdictional amount. Thus, Defendant has not demonstrated by a preponderance of the  
11 evidence that the amount in controversy in this case exceeds \$75,000. Consequently, the Court  
12 lacks jurisdiction over this matter and must remand the action to state court. *See* 28 U.S.C. §  
13 1447(c).

14 **IV. CONCLUSION**

15 For the reasons set forth above, the Court **GRANTS** Plaintiff’s request to remand this matter  
16 to state court for lack of jurisdiction. The Clerk of the Court is directed to **REMAND** this action to  
17 Alameda County Superior Court.

18 **IT IS SO ORDERED.**

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20 Dated: March 9, 2011

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23 Maria-Elena James  
24 Chief United States Magistrate Judge  
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