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2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION  
5

6 JESSICA JIMENEZ, individually and on behalf  
7 of all other current and former similarly situated  
8 California employees of Defendants,

9 Plaintiff,

10 vs.

11 MENZIES AVIATION, INC. and MENZIES  
12 AVIATION GROUP (USA), INC.,

13 Defendants.

Case No: C 10-3477 SBA

**ORDER TO SHOW CAUSE RE  
REMAND**

14 On June 2, 2010, Plaintiff commenced the instant wage and hour class and  
15 representative action in the Superior Court of California, County of San Francisco. The  
16 Complaint alleges that Defendants violated California labor laws and regulations by failing to  
17 pay wages for “off-the-clock” work and failing to provide tools and equipment or  
18 reimbursement for work-related expenses. Dkt. 1. On August 9, 2010, Defendants removed  
19 this action based on diversity jurisdiction, pursuant to 28 U.S.C. § 1332(a). Id.<sup>1</sup> Plaintiff is a  
20 resident of California. Compl. ¶ 5; Notice of Removal ¶ 3. Defendants are Delaware  
21 corporations, with principal places of business in Texas. Compl. ¶¶ 9, 10; Notice of Removal  
22 ¶¶ 4, 5.

23 Though the Complaint is silent as to the amount of damages at issue, Plaintiff alleges in  
24 her Complaint that she was employed by Defendants from January 15, 2009 to February 22,  
25 2010, or approximately thirteen months. Compl. ¶ 15. Her most recent wage rate was \$14.83  
26 per hour. Id. ¶ 17. Plaintiff bases her claim that Defendants failed pay “off-the-clock” wages  
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28 <sup>1</sup> While the Complaint is styled as a class and representative action, Defendants did not  
allege removal jurisdiction based on the Class Action Fairness Act, 28 U.S.C. § 1332(d).

1 on her allegation that she “spent approximately one hour off-the-clock each way (for a total of  
2 two hours per shift) waiting and riding [Defendants’] shuttle bus when she parked at  
3 [Defendants’] parking lot.” Id. ¶ 27. Plaintiff also alleges that she incurred unreimbursed  
4 work-related expenses of “at least \$50.00” for the professional fitting of her work uniforms and  
5 approximately \$22.00 per week for the professional cleaning of her uniforms. Id. ¶¶ 36, 38.  
6 Plaintiff also seeks penalties under the Private Attorney General Act, California Labor Code §  
7 2699, for each violation of the California Labor Code that she alleges, penalties for  
8 Defendants’ failure to pay her all amounts due at termination and failure to provide accurate  
9 itemized wage statements, and an award of reasonable attorney’s fees as permitted by the  
10 California Labor Code. The Notice of Removal avers that the “aggregate of these alleged  
11 unpaid wages, unpaid overtime compensation, unreimbursed business expenses, statutory  
12 penalties and attorney’s fees will far exceed \$75,000.” Notice of Removal ¶ 8.

13         The parties are now before the Court on Defendants’ Motion to Dismiss under Federal  
14 Rule of Civil Procedure 12(b)(6). Dkt. 6. Before reaching the merits of Defendants’ motion,  
15 however, the Court is obligated to examine its subject matter jurisdiction. See FW/PBS, Inc. v.  
16 City of Dall., 493 U.S. 215, 229 (1990); United Investors Life Ins. Co. v. Waddell & Reed,  
17 Inc., 360 F.3d 960, 966-67 (9th Cir. 2004). “[R]emoval statutes are strictly construed against  
18 removal.” Luther v. Countrywide Home Loans Servicing, LP, 533 F.3d 1031, 1034 (9th Cir.  
19 2008). “The presumption against removal means that the defendant always has the burden of  
20 establishing that removal is proper.” Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241,  
21 1244 (9th Cir. 2009). As such, any doubts regarding the propriety of the removal favor  
22 remanding the case. See Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

23         “Federal courts are courts of limited jurisdiction. They possess only that power  
24 authorized by Constitution and statute, which is not to be expanded by judicial decree.”  
25 Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). “The basic statutory  
26 grants of federal-court subject-matter jurisdiction are contained in 28 U.S.C. §§ 1331 and  
27 1332.” Arbaugh v. Y&H Corp., 546 U.S. 500, 513 (2006). Section 1331 confers federal  
28 question jurisdiction in “all civil actions arising under the Constitution, laws, or treaties of the

1 United States.” 28 U.S.C. § 1331. Under § 1332, district courts have diversity jurisdiction  
2 over all civil actions “where the matter in controversy exceeds the sum or value of \$75,000,  
3 exclusive of interest and costs, and is between ... citizens of different States.” 28 U.S.C.  
4 § 1332(a).

5 In a removal predicated on diversity jurisdiction, the amount in controversy is  
6 determined by the amount of damages or the value of the property that is the subject matter of  
7 the action. Hunt v. Wash. State Apple Advertising Comm’n, 432 U.S. 433 (1977). This  
8 amount excludes costs, but includes attorney’s fees. Guglielmino v. McKee Foods Corp., 506  
9 F.3d 696, 700 (9th Cir. 2007). “[S]eparate and distinct claims of two or more plaintiffs cannot  
10 be aggregated in order to satisfy the jurisdictional amount requirement.” Snyder v. Harris, 394  
11 U.S. 332, 335 (1969). “Where the complaint does not specify the amount of damages sought,  
12 the removing defendant must prove by a preponderance of the evidence that the amount in  
13 controversy requirement has been met.” Abrego Abrego v. The Dow Chem. Co., 443 F.3d  
14 676, 683 (9th Cir. 2006). “Under this burden, the defendant must provide evidence that it is  
15 ‘more likely than not’ that the amount in controversy” satisfies the jurisdictional amount  
16 requirement. Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 404 (9th Cir. 1996). Any  
17 doubts regarding whether the jurisdictional threshold has been met must be construed in favor  
18 of remanding the action. Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1091 (9th  
19 Cir. 2003).

20 Here, based on the allegations in the Complaint and Defendants’ conclusory assertions  
21 in their Notice of Removal, the Court cannot conclude that it is more likely than not that the  
22 amount in controversy exceeds the jurisdictional amount. See id. (“conclusory allegations as to  
23 the amount in controversy are insufficient”). Accordingly,


24 IT IS HEREBY ORDERED THAT the parties are directed to show cause why the  
25 instant action should not be remanded to state court for lack of removal jurisdiction. The  
26 parties may respond to this Order by submitting a memorandum, not to exceed ten (10) pages,  
27 by no later than March 28, 2011. Defendants’ Motion to Dismiss (Dkt. 6) is DENIED without  
28 prejudice, and the March 15, 2011 hearing date on Defendants’ motion and the April 6, 2011

1 case management conference are VACATED. The deadline for Defendants to file a response  
2 to the Complaint is held in abeyance pending resolution of the instant Order to Show Cause.

3 This Order terminates Docket 6.

4 IT IS SO ORDERED.

5 Dated: March 11, 2011

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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