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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ROSA TELLEZ-LAGUNAS, an
12 individual,
13 Plaintiff,
14 v.
15 HYATT CORPORATION dba Andaz San
16 Diego, a Delaware corporation doing
17 business in California; and DOES 1-10,
18 inclusive,
19 Defendant.

Case No.: 22cv1067-GPC(MDD)

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND**

[Dkt. No. 8.]

19 Before the Court is Plaintiff's motion to remand to state court. (Dkt. No. 8.)
20 Defendant filed an opposition and Plaintiff replied. (Dkt. Nos. 12, 13.) Based on the
21 reasoning below, the Court DENIES Plaintiff's motion to remand.
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23 **Background**

24 On July 21, 2022, the case was removed from state court. (Dkt. No. 1.)
25 On June 17, 2022, Plaintiff Rosa Tellez-Lagunas ("Plaintiff") filed a complaint in San
26 Diego Superior Court against Defendant Hyatt Corporation dba Andaz San Diego
27 ("Defendant") for 1) age discrimination under California's Fair Employment and
28 Housing Act ("FEHA"), California Government Code section 12940 *et seq.*; 2) failure to

1 prevent discrimination in violation of FEHA, California Government Code section 12940
2 *et seq.*; 3) wrongful termination in violation of public policy; 4) failure to recall a laid-off
3 employee under San Diego Municipal Code section 311.02; 5) failure to pay minimum
4 and regular wages in violation of California Labor Codes sections 223, 1182.12, 1194,
5 1194.2, 1197, 1197.1 and 1198; 6) failure to pay overtime wages under California Labor
6 Code sections 204.3, 510, 1194 and 1198; 7) failure to provide meal periods under
7 California Labor Code sections 226.7, 512, 1198; 8) failure to provide rest periods under
8 Cal. Labor Code sections 226.7 and 1198; 9) failure to provide and maintain accurate
9 payroll records under California Labor Code sections 226(a), (f), (h), 226.3, 1174(d) and
10 1198; 10) failure to timely pay wages due under Labor Code sections 201-04, and 210;
11 and 11) unfair business practices under California Business & Professions Code section
12 17200 *et seq.* (Dkt. No. 1-3, Compl.) She seeks economic damages, punitive damages,
13 emotional distress damages, attorney’ fees and costs, statutory civil penalties and
14 injunctive relief. (*Id.* ¶ 31; *id.* at p. 24-25.)

15 Plaintiff was employed by Defendant for 13 years and worked her way up to
16 Housekeeping Coordinator where she was employed for about five years at Andaz San
17 Diego (“Andaz”), a boutique hotel, until she was furloughed on March 20 or 21, 2020
18 due to the COVID-19 pandemic. (*Id.* ¶¶ 1, 2, 4, 13.) She was told that she would be
19 called back to her position once Andaz reopened. (*Id.* ¶ 13.) On June 18, 2020, Hyatt
20 informed Plaintiff that her furlough would become a layoff effective June 23, 2020 and
21 her employment would be terminated. (*Id.* ¶ 16.) As Andaz began to open up, Plaintiff
22 was not offered a position to return back and instead Defendant hired a significantly
23 younger and less qualified individual as Housekeeping Coordinator. (*Id.* ¶ 18.) Plaintiff
24 alleges Defendant used the stay-at-home order as a pretext and opportunity to unlawfully
25 discriminate against Plaintiff by terminating and replacing her with a substantially
26 younger and less qualified individual. (*Id.* ¶ 19.) Plaintiff also alleges a number of wage
27 and hour violations. (*Id.* ¶¶ 28-30; 76-111.)
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1 In the notice of removal, Defendant alleges diversity jurisdiction. (Dkt. No. 1, Not.
2 of Removal ¶ 4.) Defendant is informed and believes that Plaintiff is a citizen and
3 resident of California. (*Id.* ¶ 4(a).) Defendant is incorporated in the State of Delaware
4 with its principal place of business in the State of Illinois. (*Id.* ¶ 4(b).) The notice of
5 removal states that the amount in controversy exceeds \$75,000. (*Id.* ¶ 4(c).)

6 Discussion

7 A. Legal Standard on Removal

8 To remove a case from a state court to a federal court, a defendant must file a
9 notice of removal “containing a short and plain statement of the grounds for removal.”
10 28 U.S.C. § 1446(a). When removal is based on diversity of citizenship, the amount in
11 controversy must exceed \$75,000, and the parties must be diverse. 28 U.S.C. § 1332.
12 The party invoking the removal statute bears the burden of establishing that federal
13 subject-matter jurisdiction exists. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195
14 (9th Cir. 1988). Moreover, courts “strictly construe the removal statute against removal
15 jurisdiction.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citing *Boggs v.*
16 *Lewis*, 863 F.2d 662, 663 (9th Cir. 1988)). Therefore, “[f]ederal jurisdiction must be
17 rejected if there is any doubt as to the right of removal in the first instance.” *Gaus*, 980
18 F.2d at 566 (citing *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir.
19 1979)). The parties do not dispute that the parties are diverse and only dispute the
20 amount in controversy.

21 B. Amount in Controversy

22 Plaintiff moves to remand arguing that Defendant fails to meet the burden of
23 demonstrating by a preponderance of the evidence that the amount in controversy
24 exceeds \$75,000 because the notice of removal does not include any calculations or
25 estimations of the amount in controversy and includes unsupported speculations about
26 emotional distress, attorneys’ fees and punitive damages. (Dkt. No. 8 at 6.) Defendant
27 responds, in its opposition, it has met its burden of showing that the amount in
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1 controversy exceeds the jurisdictional threshold of \$75,000 by a preponderance of the
2 evidence. (Dkt. No. 12 at 5.)

3 “[W]hen a defendant seeks federal-court adjudication, the defendant’s amount-in-
4 controversy allegation should be accepted when not contested by the plaintiff or
5 questioned by the court.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S.
6 81, 87 (2014). “[A] removing defendant’s notice of removal ‘need not contain
7 evidentiary submissions’ but only plausible allegations of the jurisdictional elements”.
8 *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 922 (9th Cir. 2019) (quoting *Ibarra v.*
9 *Manheim Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015)). However, once a plaintiff
10 challenges the defendant’s assertions, the defendant must prove by the preponderance of
11 the evidence that the amount in controversy exceeds the jurisdictional threshold. *Dart*
12 *Cherokee*, 574 U.S. at 88. “Conclusory allegations as to the amount in controversy are
13 insufficient.” *Matheson v. Progressive Specialty Ins., Co.*, 319 F.3d 1089, 1090-91 (9th
14 Cir. 2003). “[A] defendant cannot establish removal jurisdiction by mere speculation and
15 conjecture, with unreasonable assumptions.” *Ibarra*, 775 F.3d at 1197. “Under this
16 burden, the defendant must provide evidence establishing that it is ‘more likely than not’
17 that the amount in controversy exceeds [\$75,000].” *Sanchez v. Monumental Life Ins. Co.*,
18 102 F.3d 398, 404 (9th Cir. 1996). The type of evidence the Court will consider include
19 “the facts presented in the removal petition as well as any ‘summary judgment-type
20 evidence’” *Valdez v. Allstate, Inc.*, 372 F.3d 1115, 1117 (9th Cir. 2004) (quoting
21 *Matheson*, 319 F.3d at 1090). “[W]hen a defendant’s assertion of the amount in
22 controversy is challenged . . . both sides submit proof and the court decides, by a
23 preponderance of the evidence, whether the amount-in-controversy requirement has been
24 satisfied.” *Dart*, 574 U.S. at 88.

25 “The amount in controversy is simply an estimate of the total amount in dispute,
26 not a prospective assessment of defendant’s liability”, *Arias*, 963 F.3d at 927 (quoting
27 *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010)), and reflects the
28 maximum recovery the plaintiff could reasonably recover. *See Chavez v. JPMorgan*

1 *Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018) (explaining that the amount in
2 controversy includes all amounts “at stake” in the litigation at the time of removal,
3 “whatever the likelihood that [the plaintiff] will actually recover them”).

4 In determining the amount in controversy, the Court must assume that the
5 allegations in the complaint are true and that a jury will return a verdict in the plaintiff's
6 favor on all of the claims in the complaint. *Kenneth Rothschild Tr. v. Morgan Stanley*
7 *Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002). “The ultimate inquiry is what
8 amount is put ‘in controversy’ by the plaintiff's complaint, not what a defendant will
9 actually owe.” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal.
10 2008) (emphasis in original); *see also Rippee v. Boston Market Corp.*, 408 F. Supp. 2d
11 982, 986 (S.D. Cal. 2005).

12 In the complaint, Plaintiff seeks economic damages, punitive damages, emotional
13 distress damages, attorney’ fees and costs, statutory civil penalties and injunctive relief.
14 (Dkt. No. 1-3, Compl. ¶ 31; *id.* at p. 24-25.)

15 **1. Stipulation to Remand**

16 To start, Defendant argues that Plaintiff’s refusal to stipulate that the total amount
17 of damages is less than \$75,000 in exchange for Defendant’s agreement to remand
18 supports federal court jurisdiction. (Dkt. No. 12 at 8.) Plaintiff disagrees. (Dkt. No. 13
19 at 2-4.)

20 The United States Supreme Court has held that a plaintiff may not “after removal,
21 by stipulation, by affidavit, or by amendment of his pleadings, reduce[] the claim below
22 the requisite amount.” *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 292-
23 93 (1938) (“Thus events occurring subsequent to removal which reduce the amount
24 recoverable, whether beyond the plaintiff's control or the result of his volition, do not
25 oust the district court's jurisdiction once it has attached.”); *Conrad Assocs. v. Hartford*
26 *Acc. & Indem. Co.*, 994 F. Supp. 1196, 1199 (N.D. Cal. 1998) (“[S]ince a defect in
27 subject matter jurisdiction cannot be stipulated to or waived, attempting to force the
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1 plaintiff to enter a stipulation regarding the potential amount of damages would serve no
2 effect in determining the actual amount in controversy at the time of removal.”).

3 Here, after removal of the case, Defendant sought Plaintiff’s stipulation to agree to
4 an amount of damages under \$75,000. (Dkt. No. 12-2, Hansen Decl. ¶¶ 3-5.) Therefore,
5 any stipulation made after removal has no effect on the Court’s jurisdiction, *see St. Paul*
6 *Mercury Indem. Co.*, 303 U.S. at 292-93, thus, the Defendant’s argument is without
7 merit.

8 **2. Economic Damages**

9 Defendant argues Plaintiff will likely seek lost wages from when she was
10 furloughed on March 20, 2020 to September 21, 2021 when she found new employment
11 and her lost wages would be \$43,308 or she may seek damages from when she was laid
12 off/terminated on June 23, 2020 to September 21, 2021 when she found new employment
13 and her lost wages would be \$57,970.¹ (Dkt. No. 12 at 9; Dkt. No. 1, Sullivan Decl. ¶¶ 4-
14 5; Dkt. No. 8-1, Tellez-Lagunas Decl. ¶ 3.) In reply, Plaintiff argues that Defendant will
15 likely argue that Plaintiff’s lost wages only began to accrue on September 18, 2020, the
16 formal termination date; therefore, lost wages for that period is no more than \$38,964.04.
17 (Dkt. No. 13 at 4-5.)

18 In determining the amount in controversy, the Court must assume that the
19 allegations in the complaint are true and “[t]he ultimate inquiry is what amount is put ‘in
20 controversy’ by the plaintiff’s complaint, not what a defendant will actually owe.” *See*
21 *Korn*, 536 F. Supp. 2d at 1205. Therefore, contrary to Plaintiff’s argument, the Court
22 looks at what the Plaintiff has put into controversy not what Defendant will argue. The
23 complaint alleges that Plaintiff was furloughed on March 20, 2020 due to COVID 19, and
24 laid off on June 23, 2020. (Dkt. No. 1-3, Compl. 16.) The complaint alleges she was
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28 ¹ Plaintiff does not challenge the amount of lost wages asserted by Defendant based on March 20, 2020
and June 23, 2020.

1 informed that her layoff would be effective on June 23, 2020 and Defendant paid out the
2 remaining of her unused accrued and earned paid time off through June 23, 2020. (*Id.*)

3 Therefore, because Plaintiff challenges her layoff, not the furlough, and defendant
4 paid her through June 23, 2020, damages for her lost wages would be around \$48,308.²
5 Therefore, Defendant need only show that the other damages Plaintiff seeks such as
6 emotional distress, punitive and attorneys' fees amount to more than \$31,692.

7 **3. Emotional Distress**

8 Defendant next contends that emotional distress damages Plaintiff seeks will likely
9 exceed the \$75,000 amount in controversy. (Dkt. No. 12 at 10-11.) Plaintiff responds
10 that Defendant has failed to bear its burden demonstrating the amount of emotional
11 distress damages by relying on cases that have no relationship with this case. (Dkt. No.
12 13 at 6-8.)

13 Emotional distress damages may be considered in assessing the amount in
14 controversy and courts may look to damages awarded in similar cases in the geographic
15 area. *See Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005) (“[T]he district
16 court properly considered . . . emotional distress damage awards in similar age
17 discrimination cases in Washington.”). In *Kroske*, the Ninth Circuit upheld the trial
18 court's finding that emotional distress damages would “at least add an additional \$25,000
19 to [the plaintiff's] claim” in an age discrimination case relying on the defendant's citation
20 awards in age discrimination cases and where lost wages amounted to at least \$55,000.
21 *Id.*; *see Kroske v. U.S. Bank Corp.*, Case No. 02cv439-RHW, Dkt. No. 14, at 3 (E.D.
22 Wash. June 2, 2003.); *see also Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1034 (N.D.
23 Cal. 2002) (finding that although the defendant's cited case was “not perfectly
24 analogous,” it still sufficiently “indicate[d] that emotional distress damages in a
25 successful employment discrimination case may be substantial).

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28 ² The lost wages is also exclusive of her claims for wage and hour violations which Defendant did not attempt to calculate.

1 Here, Defendant relies on three cases to support its estimate of emotional distress
2 damages but the Court finds *Hamner v. IAR Sys. Software, Inc.*, CV 528985 (San Mateo
3 Super. Ct. June 15, 2016) as the most analogous. (Dkt. No. 12 at 10-11.) In that case, the
4 plaintiff, 62-years old, had been employed by the defendant for about two and a half
5 years when he was terminated claiming that the defendant terminated him in order to
6 recruit younger people. (Dkt. No. 12-2, Hansen Decl., Ex. 2 at 12.) He alleged age
7 discrimination, failure to prevent discrimination, wrongful termination, and breach of
8 contract. (Dkt. No. 12-2, Hansen Decl., Ex. 2 at 11-12; Dkt. No. 13-1, P’s RJN, Ex. A.)
9 After a jury trial, the plaintiff was awarded, *inter alia*, lost wages of \$132,309.18 and
10 emotional distress damages of \$150,000. (Dkt. No. 12-2, Hansen Decl., Ex. 2 at 12.)

11 In this case, Plaintiff was employed with Defendant for a longer period of time of
12 13 years before she was terminated and alleges similar causes of action for age
13 discrimination, failure to prevent discrimination, wrongful termination as well as a
14 number of wage and hours violations. Plaintiff attempts to distinguish the *Hamner* case
15 because the complaint also alleged a hostile work environment, not alleged in this case.
16 However, the allegation of hostile environment was not a distinct cause of action but
17 alleged under the age discrimination cause of action. This distinction is not significant
18 enough to negate the amount of emotional distress to support jurisdiction in this case.
19 *See Simmons*, 209 F. Supp. 2d at 1034.

20 Therefore, to the extent Defendant need only demonstrate that emotional distress
21 damages exceed \$31,692 to support the amount in controversy, this amount has been
22 satisfied.

23 **4. Punitive Damages and Attorney’s Fees**

24 Defendant also claims that the request for punitive damages and attorney’s fees
25 further support the amount in controversy. (Dkt. No. 12 at 12-15.) Plaintiff disagrees.
26 (Dkt. No. 13 at 8-11.)

27 “It is well established that punitive damages are part of the amount in controversy
28 in a civil action.” *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001),

1 *superseded by statute on other grounds as stated in Berry v. Am. Express Publ'g Corp.*,
2 381 F. Supp. 2d 1118 (C.D. Cal. 2005). “Punitive damages are available under FEHA.”
3 *Haase v. Aerodynamics Inc.*, No. 2:09-CV-01751-MCE-GG, 2009 WL 3368519, at *4
4 (E.D. Cal. Oct. 19, 2009) (citing Cal. Gov't Code § 12940).

5 Moreover, where an underlying statute authorizes an award of attorneys' fees “such
6 future attorneys’ fees are at stake in the litigation and must be included in the amount in
7 controversy.” *Fritsch v. Swift Transp. Co. of Arizona, LLC*, 899 F.3d 785, 794 (9th Cir.
8 2018); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (holding that
9 “where an underlying statute authorizes an award of attorneys' fees, either with
10 mandatory or discretionary language, such fees may be included in the amount in
11 controversy.”). Attorneys' fees are recoverable as a matter of right to the prevailing party
12 under FEHA. Cal. Gov't Code § 12965; *see Nichols v. City of Taft*, 155 Cal. App. 4th
13 1233, 1239 (2007).

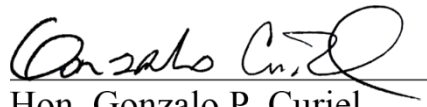
14 Because the combination of economic damages, and emotional distress damages
15 already support the amount in controversy, the addition of punitive damages and
16 attorney’s fees clearly demonstrate that the amount in controversy is more than satisfied.
17 Accordingly, the Court concludes that Defendant has demonstrated by a preponderance
18 of the evidence that the jurisdictional minimum has been met and the Court has subject
19 matter jurisdiction over the case.

20 **Conclusion**

21 Based on the above, the Court DENIES Plaintiff’s motion to remand the case to
22 state court. The hearing set on October 7, 2022 shall be **vacated**.

23 IT IS SO ORDERED.

24 Dated: October 4, 2022

25 
26 Hon. Gonzalo P. Curiel
27 United States District Judge
28