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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PATRICE GILLETTE, an individual,)	Case No. CV 13-03161 DDP (RZx)
)	
)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S MOTION TO REMAND
)	
v.)	
)	
PEERLESS INSURANCE COMPANY, a New Hampshire company qualified to do business in California.)	[Dkt. No. 10]
)	
)	
Defendant.)	
_____)	

Presently before the court is Plaintiff's Motion to Remand for Lack of Subject Matter Jurisdiction. Having considered the submissions of the parties, the court denies the motion and adopts the following order.

I. Background

Patrice Gillette ("Plaintiff"), a California resident, is an employee of Peerless Insurance Company ("Defendant"), a New Hampshire company qualified to do business in California. (Complaint at ¶ 4.) In March 2013, Plaintiff filed a complaint in the California Superior Court in Los Angeles County alleging that

1 Defendant failed to pay wages, overtime premiums, and meal and rest
2 break premiums. (Id.) The complaint does not specify the amount in
3 controversy. (Id. at ¶ 2.) Defendant calculated the damages to
4 exceed \$75,000.00. (Notice of Removal at 4.) On May 3, 2013,
5 Defendant timely removed the action to this Court pursuant to 28
6 U.S.C. §§ 1441(a) and 1446(b) and based on diversity jurisdiction
7 under 28 U.S.C. § 1332(a). (Id.) After removal, Plaintiff offered a
8 declaration limiting her recovery to \$74,999.00, subject to the
9 case being remanded to state court. (Declaration of Patrice
10 Gillette at 3.)¹ Plaintiff seeks to remand under 28 U.S.C. §
11 1447(c) on the grounds that her offer to cap recovery at \$74,999.00
12 defeats subject matter jurisdiction and that Defendant
13 miscalculated the amount in controversy (Id.)

14 **II. Legal Standard**

15 Federal courts have removal jurisdiction over suits filed in
16 state court if the federal court would have had original
17 jurisdiction over the suit. 28 U.S.C. § 1441(a). There is a strong
18 presumption against removal jurisdiction, and "[f]ederal
19 jurisdiction must be rejected if there is any doubt as to the right
20 of removal in the first instance." Gaus v. Miles, Inc., 980 F.2d
21 564, 566 (9th Cir. 1992); see Or. Bureau of Labor & Indus. Ex Rel
22 Richardson v. U.S. West Communs., Inc., 288 F.3d 414, 417 (9th Cir.
23 2002)(stating that federal courts must "strictly construe a removal
24 statute against removal jurisdiction"). Courts resolve doubts about
25 removability in favor of remand. Goldenberg Family Trust v.

26

27 ¹ Though the relevant page of Plaintiff's declaration is
28 numbered as page 3, it is the second page of the filed document and
the only page containing any substantive information.

1 Travelers Commercial Ins. Co., CV 11-04312 DDP JEDX, 2011 WL
2 3648490 (C.D. Cal. Aug. 18, 2011); see also, 28 U.S.C. § 1447(c).

3 Under 28 U.S.C. § 1441, a court has removal jurisdiction
4 pursuant to 28 U.S.C. § 1332(a) when there is complete diversity of
5 citizenship and the amount in controversy exceeds \$75,000. Where
6 the complaint does not include a particular damages figure, the
7 removing defendant must demonstrate, by a preponderance of the
8 evidence, that the amount in controversy exceeds \$75,000. Sanchez
9 v. Monumental Life Ins. Co., 102 F.3d 398, 404 (9th Cir.1996); see
10 Gaus, 980 F.2d at 567 (finding that the party seeking removal bears
11 the burden of establishing federal jurisdiction if the complaint
12 leaves the amount in controversy unclear or ambiguous).

13 A court "cannot base [its] jurisdiction on [a] defendant's
14 speculation and conjecture." Lowdermilk v. U.S. Bank Nat'l Ass'n.,
15 479 F.3d 994, 1002 (9th Cir.2007) (citing Galt G/S v. JSS
16 Scandinavia, 142 F.3d 1150, 1155-56 (9th Cir.1998)). A removing
17 defendant "may not meet [the] burden by simply reciting some
18 'magical incantation' to the effect that 'the matter in controversy
19 exceeds the sum of \$75,000,' but instead, must set forth in the
20 removal petition the underlying facts supporting its assertion that
21 the amount in controversy exceeds \$75,000." Id. A court may
22 consider "facts presented in the removal petition as well as any
23 summary-judgment-type evidence relevant to the amount in
24 controversy at the time of removal." Matheson v. Progressive
25 Specialty Ins. Co., 319 F.3d 1089, 1090 (9th Cir.2003).

26 **III. Analysis**

27 **A. Plaintiff's Post-Removal Declaration Does Not Deprive the** 28 **District Court of Jurisdiction**

1 In St. Paul Mercury Indem. Co. v. Red Cab Co., the Supreme
2 Court interpreted the removal statute to mean that if a "plaintiff
3 after removal, by stipulation, by affidavit, or by amendment of his
4 pleadings, reduces the claim below the requisite amount, [it will]
5 not deprive the district court of jurisdiction." 303 U.S. 283, 292
6 (1938). Plaintiff relies on Bailey v. Wal-Mart Stores, 981 F. Supp.
7 1415, 1416 (N.D. Ala. 1997), to argue that the 1988 Congressional
8 revision of 28 U.S.C. § 1447(c) overturns the longstanding rule
9 articulated in St. Paul Mercury. (Plaintiff's Reply at 4.) Prior
10 to 1988, subsection (c) read:

11 If at any time before final judgment it appears that the
12 case was removed improvidently and without jurisdiction,
13 the district court shall remand the case . . .

14 After the 1988 amendment, and currently, subsection (c) reads:

15 If at any time before final judgment it appears that the
16 district court lacks subject matter jurisdiction, the
17 case shall be remanded.

18 28 U.S.C. §1447(c).

19 Bailey held that the 1988 amendment of section 1447(c)
20 overturned the previous rule "that events occurring subsequent to
21 removal do not oust the district court's jurisdiction." Id. at 1416
22 (citing St. Paul Mercury, 303 U.S. at 592). Now, according to the
23 Bailey court, a plaintiff can, at any time before the receipt of a
24 jury verdict, amend its allegations in order to eliminate subject
25 matter jurisdiction, necessitating automatic remand. Id. at
26 1416-17. Bailey, however, is not the law of this circuit. Even
27 since the 1988 amendment, the Ninth Circuit has consistently held
28 that "post-removal amendments to a complaint cannot divest a court
of federal jurisdiction." Hamdy v. Guardsmark, LLC, CV 08-06807 R

1 PLAX, 2009 WL 961375 (C.D. Cal. Apr. 8, 2009; see also Guglielmino
2 v. Mckee Foods Corp., 506 F.3d 696, 705 (9th Cir. 2007)(stating
3 that a "party might file a binding stipulation, prior to removal,
4 that it will not seek more in recovery than the jurisdictional
5 threshold" (emphasis added)); Sparta Surgical Corp. v. Nat'l Ass'n
6 of Sec. Dealers, Inc., 159 F.3d 1209, 1213 (9th Cir. 1998) (finding
7 that jurisdiction must be analyzed on the basis of pleadings filed
8 at the time of removal); Williams v. Costco Wholesale Corp., 471
9 F.3d 975, 976 (9th Cir. 2006) (holding that "post-removal
10 amendments to the pleadings cannot affect whether a case is
11 removable, because the propriety of removal is determined solely on
12 the basis of the pleadings filed in state court").

13 Other circuits that have addressed this issue have also held
14 that "events occurring after removal which may reduce the damages
15 recoverable below the amount in controversy requirement do not oust
16 the district court's jurisdiction." Poore v. American-Amicable Life
17 Ins. Co. of Texas, 218 F.3d 1287, 1290-91 (11th Cir. 2000); see
18 also, Yong Qin Luo v. Mikel, 625 F.3d 772, 776 (2d Cir. 2010) (per
19 curiam)(holding that it is a "well-established rule that a district
20 court's subject matter jurisdiction, once established, is
21 unaffected by post-removal reductions in the amount in controversy"
22 (internal citations omitted)); Rogers v. Wal-Mart Stores, Inc., 230
23 F.3d 868, 870 (6th Cir. 2000); Hargis v. Access Capital Funding,
24 LLC, 647 F.3d 783, 789 (8th Cir. 2012).

25 Plaintiff further argues that the fact a federal court can, as
26 condition for remand, insist on a "binding affidavit or
27 stipulation," means that a stipulation limiting damages need not
28 necessarily "exist before removal." (Reply at 5(citing 14AAC.

1 Wright, A. Miller, & E. Cooper, Federal Practice and Procedure.))
2 Plaintiff claims that the Supreme Court adopted this reasoning in
3 Standard Fire Ins. Co. v. Knowles, 133 S. Ct. 1345 (2013). The
4 Court in Standard Fire adopted the reasoning by Wright and Miller,
5 stating that "a federal court, as a condition for remand, can
6 insist on a binding affidavit or stipulation that the plaintiff
7 will continue to claim less than the jurisdictional amount."
8 Standard Fire Ins. Co., 133 S.Ct at 1345 (citing 14AAC. Wright, A.
9 Miller, & E. Cooper, Federal Practice and Procedure). However, in
10 the same paragraph, Wright and Miller further explain that "courts
11 have required that these affidavits or stipulations be executed
12 prior to the notice of removal as a sign of their bona fides and
13 cannot await the motion to remand." § 3702.1 Determination of the
14 Amount in Controversy-Cases Removed from State Court, 14AA Fed.
15 Prac. & Proc. Juris. § 3702.1 (4th ed.)(emphasis added). Moreover,
16 Standard Fire Ins. Co. involved an allegation limiting class action
17 damages in the complaint itself, prior to removal. The Court in
18 Standard Fire did not have before it a post-removal stipulation,
19 nor did it purport to overrule its holding in St. Paul Mercury.

20 Neither the 1988 amendment of section 1447(c) nor Standard
21 Fire overturns the Supreme Court's interpretation of the removal
22 statute in St. Paul Mercury. A plaintiff may not wait until her
23 case has been removed to federal court to amend her complaint in
24 order to manipulate the basis upon which removal was granted. This
25 longstanding rule is based on the policy that judicial economy,
26 convenience, and fairness are sometimes best served when the
27 federal courts retain jurisdiction. See, e.g., Harrell v. 20th
28 Century Ins. Co., 934 F.2d 203, 205-06 (9th Cir. 1991). Any other

1 ruling would enable plaintiffs to, upon the realization that their
2 litigation has taken a sour turn in federal court, use a
3 post-removal damage stipulation to remand their case after the
4 parties and the court have invested extensive time and resources.
5 Thus, Plaintiff's post-removal stipulation to cap her recovery at
6 \$74,999.00 does not operate to divest the court of jurisdiction.

7 **2. Plaintiff's Declaration Does Not Clarify the Amount**
8 **in Controversy at the Time of Removal**

9 Plaintiff also argues that her willingness to stipulate to cap
10 her recovery at \$74,999.00 operates to clarify the amount of
11 controversy, rather than to reduce or change her initial demand for
12 damages. (Reply at 6.) While under St. Paul Mercury, a plaintiff
13 may not reduce or change her demand for damages by way of
14 stipulation to defeat diversity jurisdiction, the Court did not
15 prohibit post-removal stipulations in their entirety. St. Paul
16 Mercury only prohibits post-removal attempts to defeat federal
17 jurisdiction by stipulation where federal jurisdiction existed at
18 the time of removal. Thus, where a complaint is ambiguous as to the
19 amount in controversy, a plaintiff's post-removal declaration that
20 the amount in controversy was less than \$75,000 prior to removal
21 may be sufficient to show lack of jurisdiction. Baldori v. Delta
22 Air Lines, Inc., 1:11-CV-102, 2011 WL 1212069 (W.D. Mich. Mar. 29,
23 2011).

24 Courts consider stipulations that clarify the amount in
25 controversy in situations where (1) state pleading rules leave
26 plaintiffs with no other option but to specify an ambiguous amount
27 in controversy in the complaint, or (2) where the stipulation
28 indicates that the amount in controversy at the time of removal

1 fell below the jurisdiction limit. See, Allen v. R & H Oil & Gas
2 Co., 63 F.3d 1326, 1329-30 (5th Cir. 1995) (denying plaintiffs'
3 motion to "clarify" their complaint by amendment to seek less than
4 the requisite amount on the ground that the pre-removal damages met
5 the requisite amount); Brooks v. Pre-Paid Legal Services, Inc., 153
6 F. Supp. 2d 1299, 11301 (M.D. Ala. 2001)(remanding where
7 plaintiffs "submitted affidavits. . . showing that federal
8 jurisdiction has never properly attached."); Ryan v. Cerullo, 343
9 F. Supp. 2d 157, 160 (D. Conn. 2004) (finding that a plaintiff's
10 stipulation, "along with [plaintiff's] plausible explanation for
11 how he arrives at an amount in controversy of less than \$75,000,"
12 clarified his ambiguous statement of damages in accordance to state
13 pleading laws).

14 Here, Plaintiff's declaration does not arise under either of
15 these situations. Plaintiff was not bound by a state pleading law
16 that would prohibit a specific claim for damages in the complaint.
17 There are no pleading rules for a cause of action under California
18 Labor Code §§226.7, 510, 512, 1194, and 1198 or under California
19 Business and Professional Code §17200 *et. seq.* that would have
20 limited Plaintiff's ability to place a value on her damages in the
21 complaint. Nor does Plaintiff assert that her declaration
22 clarifies the value of her claims at the time of removal. Plaintiff
23 only claims that the declaration is a clarification "because there
24 was no value assigned to her claims in the complaint." (Reply at
25 3.) Plaintiff does not explain how she determined the amount in
26 controversy to be less than \$75,000.00, nor does she allege any
27 facts that show federal jurisdiction never attached to this case.

28 To the contrary, Plaintiff's willingness to enter into a

1 binding stipulation 'in exchange for remand' clearly reserves the
2 right to pursue more than \$74,999.00 if her case is not remanded to
3 state court. (Reply at 8; Gillette Decl. ¶ 2.) Therefore, her
4 declaration actually serves to clarify that the amount in
5 controversy exceeds the jurisdictional threshold. Plaintiff does
6 not claim, nor does she submit any evidence, to show that her
7 damages were actually less than \$75,000.00 at the time of removal.
8 Thus, her declaration does not clarify that the amount in
9 controversy was below the jurisdictional limit prior to removal.

10 **B. Defendant Meets its Burden to Establish that the Amount**
11 **in Controversy Exceeds the Jurisdictional Minimum**

12 Where a complaint is silent on the amount in controversy, the
13 defendant bears the burden of proof to establish, by a
14 preponderance of the evidence, that the amount in controversy
15 exceeds \$75,000.00. Sanchez v. Monumental Life Ins. Co., 102 F.3d
16 398, 404 (9th 1996.) Courts "consider facts presented in the
17 removal petition as well as any 'summary-judgment-type evidence
18 relevant to the amount in controversy at the time of removal.'"
19 Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1090
20 (9th Cir. 2003) (quoting Singer v. State Farm Mut. Auto. Ins. Co.,
21 116 F.3d 373, 377 (9th Cir. 1997)(emphasis added)).

22 Based on the allegations in the Complaint, Defendant found
23 that Plaintiff worked for more than eight hours a workday or more
24 than 40 hours a week. (Notice of Removal at 3.) Based on
25 Plaintiff's salary, Defendant estimated her approximate average
26 hourly rate to be \$43.31 per hour. (Id.) Defendant also estimated
27 that Plaintiff would recover approximately 15 hours of overtime per
28 week based on her previous workers compensation claim. (Id. at 4.)

1 Defendant concluded that Plaintiff's estimated damages total
2 \$121,274.40 for unpaid overtime and missed meal and rest
3 periods(not including costs or other penalties). (Id. at 4.)
4 Plaintiff never refutes the method of Defendant's calculations, but
5 argues that Defendant ceased to employ her as of December 2012, and
6 that any damages arising from her employment after that date are
7 not encompassed in this lawsuit against this Defendant. (Reply at
8 pg. 6.) This issue, however, is inconsequential. Even accounting
9 for Plaintiffs objections to the inclusion of the 2013 workweeks in
10 the damage calculations, Defendant still found that Plaintiff
11 worked 64 workweeks during the period of June 2011 through December
12 2012. (Id. at pg. 5.) Based on a \$43.31 per hour pay rate and her
13 asserted average work weeks per hour (neither of which plaintiff
14 disputes), Defendant estimated the damages to be worth \$97,026.12.
15 (Id.) Thus, Defendant's calculations show an amount in controversy
16 sufficient to invoke federal jurisdiction.

17 Plaintiff submits her post-removal declaration to cap her
18 damages bellow \$74,999.00 as "summary judgment type" evidence of
19 the amount in controversy. Plaintiff argues that this is the first
20 and only evidence of the amount in controversy. (Reply at 6.) As
21 discussed above, Plaintiff's declaration limiting her damages does
22 not suffice as evidence of the value of the damages at the time of
23 removal. The declaration only shows what Plaintiff will claim as
24 damages on the condition that the case is remanded. Plaintiff
25 alleges no further facts and fails to submit any evidence as to
26 value of her damages prior to removal.

27 Considering Defendant's calculations of the estimated value of
28 Plaintiff's damages, and the evidence that Plaintiff submitted in

1 her post-remand papers, including her damages declaration, as
2 "summary judgment type evidence" of the amount in controversy, the
3 court finds, by a preponderance of the evidence, the amount in
4 controversy exceeded the jurisdictional limit at the time of
5 removal.

6 **IV. Conclusion**

7 For the foregoing reasons, Plaintiff's post-removal offer to
8 stipulate to limit the amount in controversy does not deprive this
9 court of subject matter jurisdiction. Accordingly, Plaintiff's
10 motion for remand is DENIED.

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IT IS SO ORDERED.

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Dated: July 31, 2013

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DEAN D. PREGERSON

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United States District Judge

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