

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**WILTEW,**

:

**Plaintiff,**

:

**vs.**

:

**CIVIL ACTION 09-518-CG-M**

:

**JIMMY PARKER,**

:

**Defendant.**

:

:

**ORDER**

After due and proper consideration of all pleadings in this file, and a de novo determination of those portions of the Recommendation to which objection is made, the Recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) is adopted as the opinion of this Court.

The court agrees with the defendant that his declaration may be considered in determining whether the court had jurisdiction at the time the case was removed. However, even if the court accepts as true the amounts of the bids in question asserted by the defendant, those amounts, while no doubt relevant to determining the ultimate amount of damages, do no help the court to determine by a preponderance of the evidence what the measure of damages will actually be in this case, as the complaint does not specify what types of damages the plaintiff is seeking beyond the generic catagories of “compensatory,” “consequential” and “punitive”. Accordingly, the information before the court is too speculative to make such a finding.

It is **ORDERED** that Plaintiff’s Motion to Remand be **GRANTED** (Doc. 5) and that this action be **REMANDED** to the Mobile County Circuit Court for all further proceedings.

**DONE and ORDERED** this 30<sup>th</sup> day of October, 2009.

/s/ Callie V. S. Granade  
CHIEF UNITED STATES DISTRICT JUDGE