

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Michael A. Johnson, et al.,
9 Plaintiffs,

No. CV15-00202-PHX-DGC

ORDER

10 vs.

11 Twin City Fire Insurance Company, et al.,
12 Defendants.
13
14

15 Plaintiffs have filed a motion to remand this case to state court. Doc. 14. The
16 motion is fully briefed. For reasons that follow, the Court will grant the motion.¹

17 **I. Removal and Remand Standards.**

18 Pursuant to the removal statute, 28 U.S.C. § 1441, any civil action over which the
19 federal district courts have original jurisdiction may be removed from state court to the
20 federal court for the district where the action is pending. 28 U.S.C. § 1441(a). Courts
21 strictly construe the statute against removal jurisdiction. *Gaus v. Miles, Inc.*,
22 980 F.2d 564, 566 (9th Cir. 1992). Indeed, there is a “strong presumption” against
23 removal and “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of
24 removal in the first instance.” *Id.* This strong presumption “means that the defendant
25 always has the burden of establishing that removal is proper.” *Id.* “If at any time before
26

27 ¹ The request for oral argument is denied because the issues have been fully
28 briefed, the law is clear, and oral argument will not aid the Court’s decision. *See* Fed. R.
Civ. P. 78(b); *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

1 final judgment it appears that the district court lacks subject matter jurisdiction, the case
2 shall be remanded.” 28 U.S.C. § 1447(c).

3 **II. Motion to Remand.**

4 The Court has jurisdiction over cases in which the parties are diverse and the
5 amount in controversy exceeds \$75,000. 28 U.S.C. § 1332. Plaintiffs’ motion to remand
6 argues that the amount in controversy is not met in this case. Doc. 14 at 1.

7 Plaintiffs sue their automobile insurer, Twin City Fire Insurance Company (“Twin
8 City”), for failing to pay the full amount of damage allegedly done to their 2004 GMC
9 Yukon Denali XL in an auto accident. Doc. 1-1 at 6. Plaintiffs assert breach of contract
10 and bad faith claims, and their prayer for relief seeks to recover compensatory damages,
11 special damages, punitive damages, and attorneys’ fees. *Id.* at 6-10. No dollar amount is
12 specified. *Id.*

13 Under established Ninth Circuit law, Twin City “bears the burden of establishing,
14 by a preponderance of the evidence, that the amount in controversy exceeds [\$75,000].”
15 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). To meet this
16 burden, Twin City “must provide evidence establishing that it is ‘more likely than not’
17 that the amount in controversy” requirement is satisfied. *Id.*; *see Gaus*, 980 F.2d at 566-
18 67 (“If it is *unclear* what amount of damages the plaintiff has sought, . . . then the
19 defendant bears the burden of actually proving the facts to support jurisdiction, including
20 the jurisdictional amount.”) (emphasis in original).

21 Twin City’s notice of removal alleges, upon information and belief, that this Court
22 has original jurisdiction because “the matter in controversy exceeds the sum or value of
23 \$75,000 exclusive of interest and costs.” Doc. 1 at 2. In response to Plaintiffs’ motion to
24 remand, however, Twin City presents no evidence to support this assertion. Twin City
25 notes that Plaintiffs’ state-court certificate regarding compulsory arbitration claimed that
26 the amount of damages exceeds \$50,000, but provides no other evidence to support its
27 valuation of the case. Twin City instead argues that a recent Supreme Court decision,
28 *Dart Cherokee Basin Operating Co., LLC v. Owens*, ___ U.S. ___, 135 S.Ct. 547 (2014),

1 requires that the motion to remand be denied. The Court does not agree, and will address
2 *Dart* in the next section.

3 Although Plaintiffs' certificate regarding compulsory arbitration establishes that
4 Plaintiffs seek an award in excess of \$50,000, whether punitive damages and attorneys'
5 fees would push the amount in controversy above \$75,000 is speculative. Removal is
6 proper only if the Court finds, "*by the preponderance of the evidence*, that the amount in
7 controversy exceeds the amount specified in section 1332(a)." 28 U.S.C. § 1446(c)(2)(B)
8 (emphasis added). No evidence in this case shows that Plaintiffs' auto-damage claim
9 exceeds \$75,000. The Court accordingly will remand this case to state court. *See*
10 28 U.S.C. § 1447(c); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1118 (9th Cir. 2004) ("If
11 the district court determines that it is sufficiently doubtful that the amount-in-controversy
12 requirement has been met and thus that federal subject matter jurisdiction is lacking, the
13 district court should . . . remand to state court."); *Matheson v. Progressive Specialty Ins.*
14 *Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) ("Where doubt regarding the right to removal
15 exists, a case should be remanded to state court.").

16 **III. The *Dart* Decision.**

17 In *Dart*, the Supreme Court considered a single question: "To assert the amount in
18 controversy adequately *in the removal notice*, does it suffice to allege the requisite
19 amount plausibly, or must the defendant incorporate *into the notice of removal* evidence
20 supporting the allegation?" 135 S.Ct. at 551 (emphasis added). The Supreme Court held
21 that the notice of removal "need not contain evidentiary submissions." *Id.* A "short and
22 plain" statement is sufficient. *Id.*; *see* 28 U.S.C. § 1446(a).

23 Twin City argues that *Dart* worked a significant change in removal jurisprudence.
24 Twin City appears to suggest that a defendant may now remove a diversity case to federal
25 court merely by plausibly alleging that the amount in controversy exceeds \$75,000, and
26 that no further proof is needed, even in response to a motion to remand. This argument is
27 clearly incorrect. *Dart* addressed the required contents of the removal notice, not the
28 procedure to be followed when removal is challenged in a motion to remand. In fact,

1 *Dart* made clear that evidentiary proof is still required when the amount in controversy is
2 contested. “In such a case,” *Dart* explained, “both sides submit proof and the court
3 decides, by a preponderance of the evidence, whether the amount-in-controversy
4 requirement has been satisfied.” *Id.* at 554. As the Supreme Court summarized:

5 In sum, as specified in § 1446(a), a defendant’s *notice of removal* need
6 include only a plausible allegation that the amount in controversy exceeds
7 the jurisdictional threshold. *Evidence establishing the amount is required*
8 by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions,
9 the defendant’s allegations allegation.

10 *Id.* (emphasis added).

11 Given this clear holding, the Court does not agree with Twin City’s argument that
12 the Ninth Circuit remand cases cited above – recognizing a presumption against removal
13 and placing on defendants the burden of showing that the amount in controversy is
14 satisfied – are “no longer good law.” Doc. 13 at 3. *Dart* did not overturn these cases.²

15 Nor can the Court agree with Twin City’s argument that Plaintiffs in this case
16 challenged only the sufficiency of Twin City’s notice of removal. The motion to remand
17 asserts that Twin City “cannot meet its burden of proof regarding the jurisdictional
18 amount required for this Court to exercise diversity jurisdiction pursuant to 28 U.S.C.
19 § 1332.” Doc. 14 at 1. Because the motion plainly contests Twin City’s valuation of this
20 case, and Twin City has provided no evidence from which the Court could conclude that
21 the amount in controversy exceeds \$75,000, the motion to remand will be granted.

22 **IT IS ORDERED:**

- 23 1. Plaintiffs’ motion to remand (Doc. 14) is **granted**.
24 2. The Rule 16 Case Management Conference set for March 27, 2015 at 4:30
25 p.m. is **vacated**.

26 ² In addition to observing that an evidentiary inquiry is still required when the
27 amount in controversy is challenged, *Dart*, which addressed removal of class actions
28 under the Class Action Fairness Act, specifically stated that it was not altering
presumptions in ordinary removal cases: “We need not here decide whether such a
presumption is proper in mine-run diversity cases.” *Id.* at 554.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. The Clerk shall **remand** this case to Maricopa County Superior Court.
Dated this 27th day of March, 2015.



David G. Campbell
United States District Judge