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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Pamela Dragos,

Plaintiff,

v.

First American Property & Casualty
Insurance Company, et al.,

Defendants.

No. CV17-01564-PHX-DGC

ORDER

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Defendant First American removed this case on the basis of diversity jurisdiction. Plaintiff filed a motion for remand, which is fully briefed. No party requests oral argument.

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The appraised loss amount in this case was over \$90,000, but Defendant tendered payment of approximately \$76,000 shortly before the case was removed. Defense counsel assert that they were not informed that their client had tendered payment before they filed the removal papers.

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For a federal court to exercise removal jurisdiction under 28 U.S.C. § 1446, the amount in controversy must “exceed[] the sum or value of \$75,000, exclusive of interest and costs.” 28 U.S.C. § 1332(a). Courts “strictly construe the removal statute against removal jurisdiction.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). “The strong presumption against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper.” *Id.*

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1 A removing defendant “must provide evidence establishing that it is more likely
2 than not that the amount in controversy exceeds [\$75,000].” *Sanchez v. Monumental Life*
3 *Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996) (quotation marks omitted). A defendant
4 cannot establish removal jurisdiction by speculation and conjecture. *Ibarra v. Manheim*
5 *Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015). Defendant agrees that some \$76,000 of
6 the appraisal amount has been paid.

7 The mere possibility of a punitive damages award is insufficient to prove that the
8 amount in controversy requirement has been met. *Burk v. Med. Sav. Ins. Co.*, 348 F.
9 Supp. 2d 1063, 1069 (D. Ariz. 2004). Plaintiff’s complaint does not specify an amount of
10 punitive damages sought, and Plaintiff’s counsel asserts that he has made an overall
11 settlement demand of \$65,000. The Court concludes that the claim for punitive damages
12 does not satisfy the amount in controversy requirement.

13 Attorneys’ fees are part of the amount in controversy “if authorized by statute or
14 contract,” *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005), but the ultimate
15 amount of recoverable fees in this case is speculative, and such speculation cannot
16 establish the jurisdiction of this Court. *See Ibarra*, 775 F.3d at 1197.

17 The Court will not award attorneys’ fees for the removal and remand. The Court
18 concludes that remand could have been accomplished through a reasonable conference
19 between the attorneys after the checks had been received and the removal papers had
20 been filed. The motion to remand and related briefing were entirely unnecessary.

21 **IT IS ORDERED** that this case is remanded to Maricopa County Superior Court.

22 Dated this 25th day of July, 2017.

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27 David G. Campbell
28 United States District Judge