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NOT FOR PUBLICATION

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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
89 Bank of New York Mellon,  
10 Plaintiff,

No. CV-17-02772-PHX-JJT

**ORDER**

11 v.

12 Ivaylo Tsvetanov Dodev, *et al.*,  
13 Defendants.  
14

15 At issue is *pro se* Defendant Ivaylo Dodev's Notice of Removal (Doc. 1) and the  
16 parties' briefs in response to the Court's Order (Doc. 6) requiring the parties to  
17 demonstrate whether the amount in controversy does or does not meet the jurisdictional  
18 threshold. The Court will also resolve Plaintiff Bank of New York Mellon's Motion to  
19 Remand (Doc. 7) and Defendant's Motion to Strike (Doc. 8).

20 As the Court stated in its prior Order (Doc. 6), federal courts may exercise  
21 removal jurisdiction over a case only if subject matter jurisdiction exists. 28 U.S.C.  
22 § 1441(a); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004). The removing  
23 party bears the burden of providing a signed notice of removal that contains a short and  
24 plain statement of the grounds for removal. 28 U.S.C. § 1446(a).

25 Federal courts have diversity jurisdiction over actions between citizens of different  
26 states where the amount in controversy exceeds \$75,000, exclusive of interest and costs.  
27 28 U.S.C. § 1332(a). The Supreme Court has concluded that, under § 1446(a), "a  
28 defendant's notice of removal need include only a plausible allegation that the amount in

1 controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v.*  
2 *Owens*, 135 S. Ct. 547, 554 (2014). “Evidence establishing the amount is required by  
3 § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant’s  
4 allegation.” *Id.*

5 When a defendant’s assertion of the amount in controversy is challenged, then  
6 “both sides submit proof and the court decides, by a preponderance of the evidence,  
7 whether the amount-in-controversy requirement has been satisfied.” *Dart Cherokee*  
8 *Basin*, 135 S. Ct. at 554. The Ninth Circuit Court of Appeals has noted that the Supreme  
9 Court did not decide the procedure for each side to submit proof, leaving district courts to  
10 set such procedure. *See Ibarra v. Manheim Inv.*, 775 F.3d 1193, 1199-1200 (9th Cir.  
11 2015) (citing *Dart Cherokee Basin*, 135 S. Ct. at 554). “[E]vidence may be direct or  
12 circumstantial,” and “a damages assessment may require a chain of reasoning that  
13 includes assumptions.” *Id.* at 1199. “When this is so, those assumptions cannot be pulled  
14 from thin air but need some reasonable ground underlying them.” *Id.* For purposes of  
15 demonstrating the amount in controversy for removal jurisdiction purposes, the parties  
16 are limited to the claims they had raised at the moment Defendant attempted to remove  
17 the action. *See Strotek Corp. v. Air Transp. Ass’n of Am.*, 300 F.3d 1129, 1131 (9th Cir.  
18 2002) (stating that jurisdiction, including the amount in controversy, is determined at the  
19 moment of removal).

20 Defendant’s Notice of Removal did not meet the requirement of plausibly alleging  
21 that the amount in controversy exceeds the jurisdictional threshold of \$75,000. *See Dart*  
22 *Cherokee Basin*, 135 S. Ct. at 554. In its Complaint, Plaintiff alleges that it became the  
23 lawful owner of the property on which Defendant is living on February 8, 2016, and gave  
24 Defendant notice on June 30, 2017, to vacate the property by July 7, 2017. Plaintiff now  
25 seeks possession and the fair rental value of the property in a state law forcible entry and  
26 detainer action. Thus, the amount in controversy is not the “resale value of the home,” as  
27 Defendant alleges in the Notice of Removal; indeed, Plaintiff does not seek such relief in  
28 its Complaint, because it alleges it already owns the property. Instead, the amount in

1 controversy is the amount of rent Plaintiff could have collected if it had timely obtained  
2 possession of the property. Whether the Court considers the value of rent from  
3 February 8, 2016 or July 7, 2017 onward, it is not plausible that the amount in  
4 controversy is more than \$75,000.

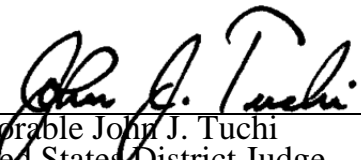
5 The briefs the parties submitted (Docs. 7, 8, 9, 10) do not provide the Court with  
6 any evidence demonstrating that the amount in controversy in this case is more than  
7 \$75,000—indeed, Plaintiff concedes that it is not. Nor is there federal question  
8 jurisdiction arising from the parties’ pleadings.<sup>1</sup> Because the Court lacks jurisdiction over  
9 this matter, the Court must remand this case to state court.

10 The Court agrees with Plaintiff that Defendant’s removal was also defective  
11 because, under 28 U.S.C. § 1441, a home state Defendant—one who is a citizen of the  
12 state in which the action is brought—may not remove an action based on diversity  
13 jurisdiction to federal court. (*See* Doc. 7.) This defect would also require the Court to  
14 remand this case to state court.

15 IT IS THEREFORE ORDERED that the Clerk of Court shall remand this matter  
16 to Maricopa County Superior Court without delay.

17 IT IS FURTHER ORDERED denying as moot Plaintiff’s Motion to Remand  
18 (Doc. 7) and Defendant’s Motion to Strike (Doc. 8) and directing the Clerk to close this  
19 matter.

20 Dated this 30th day of August, 2017.

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23 Honorable John J. Tuchi  
United States District Judge  
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28 <sup>1</sup> Defendant’s assertion that the Court would have federal question jurisdiction if  
he asserted a defense of *res judicata* under federal law against Plaintiff’s state law claim  
has no merit.