

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

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 2:20-CV-02505-AB-AGR

ROBERT WAYNE IVES,

Plaintiff,

v.

ALLSTATE INSURANCE
COMPANY, et al.,

Defendants.

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND**

Before the Court is Robert Wayne Ives' ("Plaintiff") Motion to Remand this proceeding to the Superior Court of California, Los Angeles County ("Motion to Remand," Dkt. No. 28). Allstate Northbrook Indemnity Company ("Defendant") filed an Opposition ("Opp'n," Dkt. No. 32) and Plaintiff filed a Reply. ("Reply," Dkt. No. 33). The Court deemed this matter appropriate for decision without oral arguments and vacated the hearing set for Friday, November 13, 2020 and took this matter under submission. For the reasons explained below, the Court **DENIES** the Motion to Remand.

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

I. BACKGROUND

This is an action arising from Defendant’s alleged bad faith for refusal to properly and timely pay uninsured motorist benefits under Plaintiff’s policy. (Dkt. No. 1-1, Exh. A, at ¶ 1). Plaintiff filed his complaint in the Los Angeles Superior Court on February 5, 2020. (Dkt. No. 1-1). Defendant thereafter filed its answer on March 13, 2020. (Dkt. No. 1-3). On March 16, 2020, after receiving two pre-litigation settlement demands in the amount of \$249,999, Defendant filed a Notice of Removal from the Los Angeles Superior Court. (Dkt. No. 1). On August 10, 2020, the parties engaged in arbitration and settled Plaintiff’s uninsured motorist claim. (Dkt. No. 22). On October 15, 2020 Plaintiff filed a Motion to Remand this case back to the Superior Court, (Dkt. No. 28), and Defendant filed its Opposition to Plaintiff’s Motion on October 23, 2020. (Dkt. No. 32). Finally, Plaintiff filed his Reply to Defendant’s Opposition on October 30, 2020. (Dkt. No. 33).

II. LEGAL STANDARD

Under 28 U.S.C. § 1441(a), a civil action may be removed to the district court where the action is pending if the district court has original jurisdiction over the action. Under 28 U.S.C. § 1332, a district court has original jurisdiction of a civil action where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and the dispute is between “citizens of different states.” Section 1332 requires complete diversity, i.e., that “the citizenship of each plaintiff is diverse from the citizenship of each defendant.” *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 67–68 (1996). “Where a plaintiff’s complaint does not specify the amount of damages being sought, the removing defendant bears the burden of demonstrating *by a preponderance of the evidence* that the amount in controversy requirement is satisfied. *Kenneth Rothschild Tr. v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (emphasis added). Further, as explained by the Ninth Circuit, “the amount-in-controversy inquiry in the removal context is not confined to the face of the

1 complaint.” *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004).

2 **III. DISCUSSION**

3 Plaintiff seeks an order remanding this action back to state court arguing that
4 Defendant has not established that the amount in controversy is greater than \$75,000,
5 as required for this Court to have subject-matter jurisdiction. (Dkt. No. 28, at 1:26–
6 2:4). Plaintiff alleges that Defendant merely speculates about the amount in
7 controversy and fails to meet the evidentiary burden required to support removal.
8 (Dkt. No. 28, at 2:2–4). The parties do not dispute their diversity of citizenship—they
9 agree Plaintiff is a citizen of California and Defendant is a citizen of Illinois. (Dkt.
10 No. 1, at ¶ 9). However, when the parties engaged in arbitration, Plaintiff’s uninsured
11 motorist claim was settled. (Dkt. No. 22, at ¶ 3). The only issue before the Court is
12 whether Defendant has shown, by a preponderance of the evidence, that the amount in
13 controversy *at the time of removal*—not at the time Plaintiff made a motion to
14 remand—exceeded \$75,000. *See Rea v. Michaels Stores Inc.*, 742 F.3d 1234, 1237
15 (9th Cir. 2014) (“The general rule is that the amount in controversy is determined
16 from the pleadings as they exist at the time a petition for removal is filed.”); *Sparta*
17 *Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc.*, 159 F.3d 1209, 1213 (9th Cir.
18 1998) (stating that jurisdiction must be analyzed on the basis of the pleadings filed at
19 the time of removal without reference to subsequent amendments).

20 **A. Defendant Meets the Preponderance of the Evidence Standard**

21 **Required to Prove The Amount In Controversy.**

22 “Where it is not facially evident from the complaint that more than \$75,000 is
23 in controversy, the removing party must prove, by a preponderance of the evidence,
24 that the amount in controversy meets the jurisdictional threshold.” *Matheson v.*
25 *Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). In removing this
26 case to federal court, Defendant used Plaintiff’s \$249,999 settlement demand as the
27 basis for establishing the amount in controversy. (Dkt. No. 1-1). Plaintiff made this
28 settlement demand prior to the start of litigation and several more times subsequently,

1 including *after* Defendant removed the case. (Dkt. No. 1, at 1:6–16). Defendant
2 relied on the settlement demand, not the remedy Plaintiff sought, because the
3 Complaint did not allege a definite amount—Plaintiff instead simply stated that
4 damages exceed \$25,000. (Dkt. No. 28, at 8:10–12). Defendant appropriately relies
5 on the settlement demand because courts in this jurisdiction and in the Ninth Circuit
6 have stated that a settlement demand can be relevant evidence of the amount in
7 controversy so long as it appears to reflect a reasonable estimate of the plaintiff’s
8 claim. *Briest v. Knot Standard LLC*, No. CV2002519CJCPVCX, 2020 WL 2572457,
9 at *2 (C.D. Cal. May 20, 2020); *see also Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840
10 (9th Cir. 2002) (allowing a case to stay in federal court based on plaintiff’s \$100,000
11 settlement demand).

12 And, while Plaintiff did not initially challenge this Court’s jurisdiction, Plaintiff
13 now argues that Defendant has not exceeded the jurisdictional threshold to a “legal
14 certainty,” and that remand is thus warranted. (Dkt. No. 28 at 8:15–23). Plaintiff
15 relies on the amount in controversy standard set forth in *Lowdermilk v. U.S. Bank*
16 *National Association*, 479 F.3d 994 (9th Cir. 2007); however, the Court notes that this
17 case has been overruled as it pertains to a defendant’s burden. (Dkt. No. 28, at 7:13–
18 20). *See Rodriguez v. AT & T Mobility Servs. LLC*, 728 F.3d 975, 977 (9th Cir. 2013)
19 (“Our reasoning there for imposing on defendants the burden to prove the amount in
20 controversy to a legal certainty, rather than the ordinary preponderance of the
21 evidence standard, is clearly irreconcilable with the Supreme Court’s reasoning in
22 *Standard Fire*. As a result, we hold that *Lowdermilk* has been effectively overruled,
23 and that the proper burden of proof imposed upon a defendant to establish the amount
24 in controversy is the preponderance of the evidence standard.”). Thus, Defendant is
25 required to show the amount in controversy at the time of the removal exceeds
26 \$75,000 only by a preponderance of the evidence.

27 In addition to citing to the \$249,999 settlement demand for a showing of
28 amount in controversy, Defendant also shows by a preponderance of the evidence that

1 the other damages Plaintiff seeks will amount to more than \$75,000. (Dkt. No. 32, at
2 ¶ 20). Defendant compares the emotional distress damages, punitive damages, and
3 attorneys' fees Plaintiff seeks in this case to relief sought in similar uninsured motorist
4 bad faith cases. (Dkt. No. 32, at 10:27–13:4). In response, Plaintiff argues that, here,
5 Defendant provides speculative and uncertain estimates for the amount in controversy.
6 (Dkt. No. 28, at 8:7–9:10). The Supreme Court has held that the party seeking
7 removal “need include only a plausible allegation that the amount in controversy
8 exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v.*
9 *Owens*, 574 U.S. 81, 89 (2014). By presenting case law supporting its argument that
10 damages in similar uninsured motorist bad faith claims significantly exceed \$75,000,
11 Defendant has done more than merely “speculate.” Defendant has made plausible
12 allegations that the damages here will exceed \$75,000. Therefore, whether through
13 Plaintiff's \$249,999 settlement demand, or through the emotional distress damages,
14 punitive damages, and attorneys' fees, or through a combination of both, Defendant
15 has shown *by a preponderance of the evidence* that the amount in controversy
16 requirement is met.

17 **B. Events Subsequent to Removal Do Not Alter the Previously**
18 **Determined Amount In Controversy.**

19 To the Court, it seems as though the crux of Plaintiff's argument is that because
20 the uninsured motorist claim was settled in arbitration, this Court no longer has
21 jurisdiction. Specifically, Plaintiff does not dispute making the \$249,999 settlement
22 demand, but contends that since the claim on which the demand rests (uninsured
23 motorist) was recently settled, the amount in controversy no longer meets the required
24 threshold. (Dkt. No. 33, at 2:19–22).

25 However, Plaintiff is mistaken in this argument. The United States Supreme
26 Court has long held that “events occurring subsequent to removal which reduce the
27 amount recoverable . . . do not oust the district court's jurisdiction once it has
28 attached.” *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 293 (1938).

1 Courts throughout the Ninth Circuit have applied this principle, and this Court is
2 therefore inclined to apply it as well. *See Hill v. Blind Indus. & Servs. of Maryland*,
3 179 F.3d 754, 757 (9th Cir. 1999) (“A federal court is not divested of jurisdiction . . .
4 if the amount in controversy subsequently drops below the minimum jurisdictional
5 level.”); *In re HP Inkjet Printer Litig.*, No. C 05-3580JF(PVT), 2009 WL 282051, at
6 *2 (N.D. Cal. Feb. 5, 2009) (“For example, changes in the amount in controversy after
7 the complaint has been removed would not subject a lawsuit to be remanded to state
8 court.”); *Barefield v. HSBC Holdings PLC*, 356 F. Supp. 3d 977, 986 (E.D. Cal. 2018)
9 (“The Court is persuaded that the dismissal of claims bringing the total amount in
10 controversy below \$75,000 did not dissolve the Court's original jurisdiction over the
11 suit.”). Therefore, up against Plaintiff’s argument that this Court has lost jurisdiction,
12 the case law prevails.

13 Further, even if Plaintiff were to make amendments to their complaint, this
14 Court would still maintain proper jurisdiction. *See Williams v. Costco Wholesale*
15 *Corp.*, 471 F.3d 975, 976 (9th Cir. 2006) (“Post-removal amendments to the pleadings
16 cannot affect whether a case is removable, because the propriety of removal is
17 determined solely on the basis of the pleadings filed in state court.”). Therefore,
18 Plaintiff’s arguments are not persuasive or legally grounded.

19 In summary, Defendant has more than met its burden of showing *by a*
20 *preponderance of the evidence* that the amount in controversy at the time of removal
21 met this Court’s jurisdiction threshold of \$75,000.

22 **IV. CONCLUSION**

23 For the foregoing reasons, the Court **DENIES** Plaintiff’s Motion to Remand
24 (Dkt. No. 32).

25 Dated: December 1, 2020



26 HONORABLE ANDRÉ BIROTTE JR.
27 UNITED STATES DISTRICT COURT JUDGE
28