

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Abelardo Martinez, Jr.,
Plaintiff,
v.
CotN Wash, Inc.,
Defendant.

2:20-cv-09327-VAP-AGRx

**Order GRANTING Motion to
Remand (Dkt. 11)**

United States District Court
Central District of California

Before the Court is Plaintiff Abelardo Martinez, Jr.’s (“Plaintiff”) Motion to Remand (“Motion”). (Dkt. 11). After considering all the papers filed in support of, and in opposition to, the Motion, the Court deems this matter appropriate for resolution without a hearing pursuant to Local Rule 7-15. The Court GRANTS the Motion.

I. BACKGROUND

Plaintiff is permanently blind and uses screen readers in order to access the internet and read website content. (Dkt. 1-4, (“Compl.”), ¶ 7). Plaintiff claims that “despite several attempts to use and navigate [Defendant’s] Website, Plaintiff was denied the full use and enjoyment of the facilities and services of the Website as a result of accessibility barriers” (*Id.*)

On August 31, 2020, Plaintiff filed suit against Defendant Cot’n Wash, Inc. d/b/a Dropps (“Dropps” or “Defendant”) in the California Superior Court

1 for the County of Los Angeles. (Dkt. 1-4). Plaintiff asserts one claim for
2 violation of California’s Unruh Civil Rights Act due to the alleged
3 accessibility barriers on Defendant’s Website. (*Id.*) Defendant removed the
4 case to this Court on October 8, 2020 based on diversity jurisdiction,
5 contending that the amount in controversy exceeds \$75,000. (Dkt. 1).
6 Plaintiff timely seeks to remand the case arguing that Plaintiff’s express
7 limitation of the amount in controversy in the Complaint thwarts a finding of
8 diversity jurisdiction. (Dkt. 11). Defendant filed an Opposition on November
9 2, 2020 (Dkt. 13), and Plaintiff replied on November 9, 2020 (Dkt. 15).

11 II. LEGAL STANDARD

12 Under 28 U.S.C. § 1441(a), a civil action may be removed to the district
13 court where the action is pending if the district court has original jurisdiction
14 over the action. A district court has diversity jurisdiction over any civil action
15 between citizens of different states if the amount in controversy exceeds
16 \$75,000, excluding interest and costs. 28 U.S.C. § 1332. “[T]he amount in
17 controversy includes damages (compensatory, punitive, or otherwise), the
18 costs of complying with an injunction, and attorneys’ fees awarded under
19 fee-shifting statutes or contract.” *Fritsch v. Swift Transp. Co. of Ariz., LLC*,
20 899 F.3d 785, 793 (9th Cir. 2018).

21
22 “The burden of establishing federal jurisdiction is on the party seeking
23 removal, and the removal statute is strictly construed against removal
24 jurisdiction.” *Prize Frize, Inc. v. Matrix (U.S.) Inc.*, 167 F.3d 1261, 1265 (9th
25 Cir. 1999), superseded by statute on other grounds as stated in *Abrego*
26 *Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 681 (9th Cir. 2006). There is

1 a strong presumption against removal jurisdiction, and federal jurisdiction
 2 “must be rejected if there is any doubt as to the right of removal in the first
 3 instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citation
 4 omitted). A “defendant always has the burden of establishing that removal
 5 is proper.” (*Id.*) “If at any time before final judgment it appears that the
 6 district court lacks subject matter jurisdiction, the case shall be remanded.”
 7 28 U.S.C. § 1447(c).

8
 9 “[F]ederal courts permit individual plaintiffs, who are the masters of their
 10 complaints, to avoid removal to federal court, and to obtain a remand to
 11 state court, by stipulating to amounts at issue that fall below the federal
 12 jurisdictional requirement.” *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588,
 13 595 (2013). “Some courts have required that these affidavits or stipulations
 14 be executed prior to the notice of removal as a sign of their bona fides[.]”
 15 *Patel v. Nike Retail Servs., Inc.*, 58 F. Supp. 3d 1032, 1038 (N.D. Cal. 2014)
 16 (citation omitted). “Notwithstanding this, district courts within this circuit have
 17 remanded actions on the condition that a plaintiff stipulate to seeking less
 18 than the jurisdictional minimum or submitting an affidavit binding him or her
 19 not to accept any amount meeting the jurisdictional minimum.” (*Id.* at 1038–
 20 39) (collecting cases).

21
 22 **III. DISCUSSION**

23 The sole issue is whether Defendant has met its burden to show that the
 24 amount in controversy exceeds \$75,000. Plaintiff asserts that Defendant
 25 has failed to meet its burden of proving by a preponderance of evidence that
 26 the amount in controversy meets this jurisdictional threshold. Defendant

1 argues that the combination of statutory damages, injunctive relief, and
2 attorneys' fees sought by Plaintiff will exceed the jurisdictional threshold.
3 The Court agrees with Plaintiff.
4

5 **A. Statutory Damages**

6 Cal. Civil Code § 52(a) permits an award of statutory damages "in no
7 case less than \$4,000" for violations of the Unruh Act. Here, the Complaint
8 seeks \$4,000 in statutory damages and no actual damages. Defendant fails
9 to provide sufficient evidence countering Plaintiff's estimate of statutory
10 damages. Thus, the Court finds that the statutory damages are likely to be
11 no more than \$4,000.
12

13 **B. Injunctive Relief**

14 When the plaintiff seeks injunctive relief, the cost of complying with the
15 injunction is included in the amount in controversy. See *Chavez v.*
16 *JPMorgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018). "Under the
17 'either viewpoint' rule, the test for determining the amount in controversy is
18 the pecuniary result to either party which the judgment would directly
19 produce." *In re Ford Motor Co./Citibank (S.D.), N.A.*, 264 F.3d 952, 958 (9th
20 Cir. 2001). "In other words, where the value of plaintiff's recovery ... is
21 below the jurisdictional amount, but the potential cost to the defendant of
22 complying with the injunction exceeds that amount, it is the latter that
23 represents the amount in controversy for jurisdictional purposes." (*Id.*)
24

25 Plaintiff argues that his allegation that "the injunctive relief [would]
26 require that Defendant expend no more than \$20,000" is a binding

1 stipulation that must be honored by the Court. (Dkt. 11, at 3-6). Plaintiff is
2 incorrect. Although a plaintiff reserves the right to limit his monetary
3 damages in the complaint, Courts in this district have ruled that a plaintiff
4 cannot expressly limit the cost of injunctive relief, and this Court agrees.
5 *See Martinez v. Johnson & Johnson Consumer Inc.*, No. 2:20-CV-04316-
6 RGK (PDx), 2020 WL 3820392, at *2 (C.D. Cal. July 8, 2020) (*citing*
7 *Martinez v. Epic Games, Inc.*, No. CV 19-10878-CJC (PJWx), 2020 WL
8 1164951, at *3 (C.D. Cal. Mar. 10, 2020)) (explaining that the court was
9 “highly skeptical that Plaintiff’s disclaimer would have any effect at all.
10 Defendant would have no choice but to comply with the injunction ordering it
11 to change its website, regardless of whether the cost of doing so would
12 exceed Plaintiff's self-imposed \$20,000 ceiling.”).

13
14 Nevertheless, the Defendant must carry its burden to show by a
15 preponderance of evidence that the injunctive relief will cost enough to carry
16 the amount in controversy over the jurisdictional threshold. Both parties
17 have submitted evidence of the estimated cost of injunctive relief in this
18 case. Defendant argues that in response to the instant lawsuit, “Dropps
19 hired AudioEye, Inc. at a price of \$17,000 per year to ensure the Website’s
20 compliance and to perform continuous monitoring to ensure future
21 compliance with all accessibility guidelines.” (Dkt. 13, at 10). Thus,
22 according to Defendant, “the \$17,000 annual cost to Dropps of complying
23 with the injunctive relief Plaintiff seeks, assuming no price increase, would
24 cause Dropps to exceed the \$75,000 threshold in about four-and-a-half
25 years.” (*Id.*, at 11). Defendant’s argument lacks merit.
26

1 As Plaintiff points out, Defendant's estimates do not consider the
2 specific access barriers that would need to be changed on Defendant's
3 website to make it accessible to the blind. Indeed, the Agreement that
4 Defendant entered into with AudioEye, Inc. fails to mention the specific
5 access barriers alleged in the Complaint. Rather, the Agreement provides
6 estimates for remediating "certain common issues of accessibility" among
7 other general services. Notably, the Agreement appears over-inclusive of
8 what is needed to remediate the issues that Plaintiff complains of. Given
9 the breadth of the Agreement, the actual cost of making the website more
10 accessible to visually impaired individuals may only account for a small
11 portion of the total cost. Plaintiff, in contrast, produced a declaration from a
12 website remediation vendor estimating the total cost of the initial and
13 ongoing maintenance for the exact changes sought by Plaintiff at \$14,300.
14 (Declaration of Vashaun Jones, Dkts. 11-2, 11-3). Without more substantive
15 evidence that the cost of the injunctive relief sought in this case will exceed
16 \$14,300, the Court credits Plaintiff's Complaint, as supported by the Motion
17 to Remand and the Jones Declaration, that the injunctive relief will cost no
18 more than \$20,000. See *Martinez*, 2020 WL 3820392, at *3.

19 20 **C. Attorneys' Fees**

21 The court must include future attorneys' fees recoverable by statute
22 when assessing whether the amount in controversy requirement is met.
23 *Fritsch*, 899 F.3d at 794.

24
25 Here, the Complaint expressly limits Plaintiff's recovery such that the
26 combined total of the injunctive relief, statutory damages, and attorneys'

1 fees does not exceed \$74,999. Thus, if Plaintiff is seeking \$4,000 in
2 damages and \$20,000 in injunctive relief, it follows that the Complaint
3 attempts to expressly limit Plaintiff's recovery of attorneys' fees to no more
4 than \$50,999.

5
6 Defendant contends that Plaintiff cannot limit the amount he recovers in
7 attorneys' fees and argues that, even under the most conservative
8 estimates, Plaintiff's attorneys' fees alone will exceed \$75,000. In support of
9 this argument, the Defendant asserts that Plaintiff's counsel requested fees
10 exceeding \$75,000 in two cases involving similar claims as those here.
11 (Dkt. 13, at 17-18). Plaintiff, on the other hand, contends that Defendant's
12 calculation is excessive and too speculative to carry its burden of proof, and
13 furthermore, that Plaintiff's express limitation on the amount of recovery
14 operates as a binding stipulation preventing him from later seeking more in
15 attorneys' fees. The Court agrees with Plaintiff.

16
17 It is proper for the Plaintiff to expressly limit his recovery of attorneys'
18 fees as his express limitation operates as a stipulation preventing him from
19 later seeking more in fees. *See Martinez*, 2020 WL 3820392, at *3 (citing
20 *Martinez*, 2020 WL 1164951, at *2–3; *see also Rios v. Wirepath Home*
21 *Systems, LLC*, No. 8:19-cv-01921-JLS (KESx), 2019 WL 6715044, at *2
22 (C.D. Cal. Dec. 10, 2019) (holding “taken together, Plaintiff’s Complaint and
23 his reaffirmation of the recovery cap in his papers approximate a binding
24 stipulation, especially because Plaintiff’s assertions would ‘judicially estop[]
25 [him] from arguing for more than \$75,000 in damages.’”)).

1 Defendant has not cited to any authority directly holding that it is
2 improper for Plaintiff to stipulate to a limitation on attorneys' fees. In the
3 absence of such authority, the Court is inclined to agree with the two
4 *Martinez* cases and *Rios* in finding that Plaintiff's express limitation in the
5 Complaint (and his reaffirmation of that limitation in the Motion to Remand)
6 constitutes a binding stipulation that Plaintiff will not seek additional
7 attorneys' fees beyond the amount stipulated. See *Martinez*, 2020 WL
8 3820392, at *4.

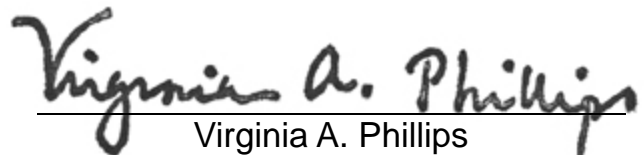
9
10 In sum, Defendant has not shown by a preponderance of the evidence
11 that the combined cost of injunctive relief, attorneys' fees, and statutory
12 damages will exceed \$75,000. Accordingly, the Court finds that it lacks
13 subject matter jurisdiction over this case and remands this action to state
14 court for all future proceedings.

15
16 **IV. CONCLUSION**

17 The Court therefore GRANTS Plaintiff's Motion and REMANDS this
18 case to the California Superior Court for the County of Los Angeles.

19
20 **IT IS SO ORDERED.**

21
22 Dated: 11/18/20

23 
24 Virginia A. Phillips
25 United States District Judge
26