

JS-6

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

ASHOT AGDAYAN,

Plaintiff,

v.

**TRAVELERS COMMERCIAL
INSURANCE COMPANY AND DOES
1-100, INCLUSIVE,**

Defendants.

Case No.: SACV 17-01503-CJC(JDEx)

**ORDER REMANDING CASE TO
STATE COURT**

I. INTRODUCTION

On July 28, 2017, Plaintiff Ashot Agdayan filed this action in state court against Defendant Travelers Commercial Insurance Company (“Travelers”) and Does 1-100, inclusive, for tortuous breach of insurance contract. (Dkt. 1 Ex. 1 [Complaint, hereinafter

1 “Compl.”].) On August 31, 2017, Travelers removed the action to this Court, invoking
2 diversity jurisdiction. (Dkt. 1 [Notice of Removal].) On September 28, 2017, the Court
3 ordered the parties to show cause why the case should not be remanded for lack of
4 subject matter jurisdiction. (Dkt. 12.) Travelers and Plaintiff have filed responses to the
5 Court’s order to show cause. (Dkt. 13 [Travelers’ Response, hereinafter “Def.’s Resp.”];
6 Dkt. 14 [Plaintiff’s Response, hereinafter “Pl.’s Resp.”].) For the following reasons, the
7 case is REMANDED to Orange County Superior Court.

8 9 **II. BACKGROUND**

10
11 Plaintiff alleges that he purchased a homeowner’s insurance policy from Travelers
12 for his home located at 2904 Paper Lane, Newport Beach, California. (Compl. ¶ 1.) This
13 insurance policy was in effect from August 1, 2015, to August 1, 2016. (*Id.* ¶ 6.) On
14 August 8, 2015, “Plaintiff suffered a massive and sudden water leak which ruined most of
15 his kitchen, and constituted a loss covered by” Travelers. (*Id.* ¶ 7.)

16
17 Plaintiff claims that Travelers retained a contractor to repair his damaged kitchen
18 cabinets. (*Id.* ¶ 10.) Travelers allegedly refused to allow the contractor to remove the
19 granite counter tops that were on top of the cabinets and, as a result, the granite counter
20 tops broke when the cabinets were being replaced. (*Id.* ¶¶ 10–11.) Plaintiff alleges that
21 Travelers has refused to pay him the \$7,125 that it cost to replace the counter tops. (*Id.* ¶
22 12.) Plaintiff further alleges that as a result of Travelers’ conduct, he “has or will incur
23 incidental expenses of at least \$10,000.” (*Id.* ¶ 15.) The Complaint’s prayer for relief
24 does not specify any amount in damages, but lists special damages, general damages,
25 attorneys’ fees, exemplary damages, interest, costs of suit, and “such other and further
26 relief as the court deems just and proper.” (*Id.* at 4.)

1 Travelers admits that Plaintiff does not plead in his complaint any specific
2 damages beyond the \$7,125 to repair the counter tops and the \$10,000 in incidental
3 damages. (Def.'s Resp. at 2.) Yet, Travelers asserts that the \$75,000 amount in
4 controversy for diversity jurisdiction is satisfied because Plaintiff served on Defendants a
5 "Statement of Damages," that seeks \$15,000 in property damages, \$75,000 in emotional
6 distress damages, and \$500,000 in punitive damages. (*Id.*) Under California law, a
7 "Statement of Damages" is a form that a plaintiff in a personal injury or wrongful death
8 action must serve on the defendant upon request. Cal. Civ. Proc. Code § 425.11(b). The
9 form "set[s] forth the nature and amount of damages being sought." *Id.* A "Statement of
10 Damages" is not required in an insurance dispute, but Plaintiff nevertheless served one on
11 Defendant in this case.

12
13 Plaintiff argues that the amount in controversy requirement has not been met. He
14 claims that when he filed this action in July 2017, "he was under the impression that it
15 would cost in excess of \$25,000.00 to install new, granite counters." (Pl.'s Resp. at 1.)
16 He claims that "it has since turned out that it only cost \$9,740.00 to replace the counters."
17 (*Id.* at 2.) It is unclear why Plaintiff now represents that it cost \$9,740 to replace his
18 counter tops when he alleges in his Complaint that it cost \$7,125 to repair the counter
19 tops. In any event, Plaintiff states that "this case has evolved into more of a garden
20 variety poor workmanship case that it not [sic] likely to result in an award anywhere near
21 \$75,000.00." (*Id.* at 2.)

22 23 **III. LEGAL STANDARD**

24
25 A civil action brought in a state court, but over which a federal court may exercise
26 original jurisdiction, may be removed by the defendant to a federal district court. 28
27 U.S.C. § 1441(a). The burden of establishing subject matter jurisdiction falls on the
28 defendant, and the removal statute is strictly construed against removal jurisdiction.

1 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (“Federal jurisdiction must be
2 rejected if there is any doubt as to the right of removal in the first instance.”).

3
4 A federal court has diversity jurisdiction over a civil action between citizens of
5 different states, so long as the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332.
6 If at any time before final judgment, the court determines that it is without subject matter
7 jurisdiction, the action shall be remanded to state court. 28 U.S.C. § 1447(c).

8
9 When a defendant invokes diversity jurisdiction and “the complaint does not
10 contain any specific amount of damages sought, the [defendant] bears the burden of
11 showing, by a preponderance of the evidence, that the amount in controversy exceeds the
12 statutory amount.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 397 (9th Cir. 2010).
13 “This traditional rule of burden allocation to determine removal jurisdiction comports
14 with the Supreme Court’s view that ‘the dominant note in the successive enactments of
15 Congress relating to diversity jurisdiction is one of jealous restriction, of avoiding offense
16 to state sensitiveness, and of relieving the federal courts of the overwhelming burden of
17 business that intrinsically belongs to the state courts in order to keep them free for their
18 distinctive federal business.’” *Id.* at 399 (quotation omitted) (citing *Indianapolis v.*
19 *Chase Nat’l Bank*, 314 U.S. 63, 76 (1941)).

20 21 **IV. DISCUSSION**

22
23 Travelers argues that the amount in controversy exceeds \$75,000 because Plaintiff
24 served Travelers with a “Statement of Damages” form, claiming that Plaintiff was
25 seeking “\$15,000 in property damage [sic], \$75,000 in emotional distress damages, and
26 \$500,000 in punitive damages.” (Def.’s Resp. at 2.)

1 In *Surber v. Reliance Nat. Indem. Co.*, 110 F. Supp. 2d 1227 (N.D. Cal. 2000), the
2 district court found that a plaintiff's "Statement of Damages" is not conclusive to show
3 the amount in controversy has been met. There, plaintiff sued her automobile insurance
4 company after it declined to repair her car that had been damaged in an accident. *Id.* In
5 her "Statement of Damages," plaintiff sought general damages of \$210,040 and punitive
6 damages of \$1,000,000. *Id.* at 1230. The court held that these amounts were not to be
7 credited for two reasons. First, a "Statement of Damages" is required only in cases
8 involving personal injury or wrongful death, and should be afforded far less weight in an
9 insurance case. *Id.* at 1231 (citing Cal. Civ. Proc. Code § 425.11(b)). Second, the court
10 found no support for the amounts included in the "Statement of Damages" in either the
11 plaintiff's complaint or the defendant's Notice of Removal. *Id.*

12
13 The analysis set forth in *Surber* is directly applicable in this case. This case is also
14 a dispute arising under an insurance contract and is clearly not a personal injury or
15 wrongful death case. Further, neither the Complaint nor the Notice of Removal includes
16 any evidence to support the amounts Plaintiff listed in his "Statement of Damages."

17
18 At bottom, Plaintiff's Complaint seeks the \$7,125 he paid to replace his granite
19 counter tops. The Court is leery of the extreme discrepancy between the \$7,125 price tag
20 for the granite counter tops and the \$75,000 Plaintiff seeks in emotional distress damages.
21 Travelers provides no evidence that Plaintiff in fact suffered emotional distress or sought
22 treatment for his alleged distress. In fact, Travelers offers no evidence on this issue
23 beyond Plaintiff's "Statement of Damages." Travelers therefore fails to show it is more
24 likely than not that Plaintiff will recover \$75,000 in emotional distress damages. Because
25 Travelers has not met its burden of persuasion, Plaintiff's claimed emotional distress
26 damages in his "Statement of Damages" cannot be credited to satisfy the amount in
27 controversy requirement. *Id.* at 1231–32.

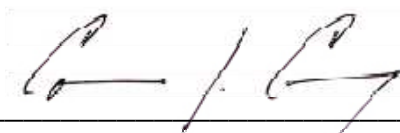
1 The Court is also not persuaded that Plaintiff will recover \$500,000 in punitive
2 damages. Travelers seems to admit as much. Travelers states that “the amount alleged in
3 connection with punitive damages should be viewed with scrutiny.” (Def.’s Resp. at 2.)
4 Travelers offers no additional argument or evidence regarding the claimed punitive
5 damages, and therefore concedes that \$500,000 is not a plausible estimate of punitive
6 damages. Further, nothing in the record suggests that the \$500,000 in punitive damages
7 Plaintiff listed in his “Statement of Damages” is “anything but a bold and optimistic
8 prediction.” *Surber*, 110 F. Supp. 2d at 1232. This “bold and optimistic” estimate of
9 damages is unsupported, and nothing offered by Defendant, or even Plaintiff, indicates
10 the amount is a good faith claim.

11
12 Travelers has failed to meet its burden of establishing that the amount in
13 controversy exceeds \$75,000. According to the record, Plaintiff has made a good faith
14 claim of \$7,125 in compensatory damages, and approximately \$10,000 in incidental
15 damages. “A federal court should not and cannot adjudicate such minor claims.”
16 *Christensen v. Nw. Airlines, Inc.*, 633 F.2d 529, 531 (9th Cir. 1980)

17 18 **V. CONCLUSION**

19
20 For the foregoing reasons, the Court hereby REMANDS the case to Orange
21 County Superior Court.

22
23
24
25 DATED: October 24, 2017



26
27 CORMAC J. CARNEY

28 UNITED STATES DISTRICT JUDGE