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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**

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13 **ANIA KARWAN,**

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15 **Plaintiff,**

16 **v.**

17 **POLISH NATIONAL ALLIANCE OF**
18 **THE UNITED STATES OF NORTH**
19 **AMERICA, et al.**

20 **Defendants.**
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} **Case No.: SACV 18-01495-CJC(KESx)**

} **ORDER GRANTING PLAINTIFF'S**
} **MOTION TO REMAND TO STATE**
} **COURT [Dkt. 11]**

23
24 **I. INTRODUCTION**
25

26 Plaintiff Ania Karwan brings this wage-and-hour dispute against Defendant Polish
27 National Alliance of the United States of North America (“PNA”). (Dkt. 1-4 [Second
28 Amended Complaint, hereinafter “SAC”].) Plaintiff alleges that Defendant misclassified

1 her as an independent contractor and seeks recovery for unpaid wages, unpaid overtime,
2 meal and rest period penalties, and necessary expenditures. (*See generally id.*) Plaintiff
3 also asserts claims for retaliation, unfair business practices, and defamation. (*See*
4 *generally id.*)

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6 Before the Court is Plaintiff’s motion to remand. (Dkt. 11 [hereinafter “Mot.”].)
7 For the following reasons, the motion is **GRANTED**.¹

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9 **II. BACKGROUND**

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11 Plaintiff originally filed this action in Orange County Superior Court on May 1,
12 2017 against PNA, an Illinois corporation, and Polish National Alliance Lodge 3193, Inc.
13 (“Lodge”), a California corporation. (Dkt. 1-2.) On July 24, 2017, Plaintiff offered to
14 settle for a sum of \$12,000, plus attorneys’ fees. (Dkt. 11-1 [Declaration of Omar S.
15 Anorga, hereinafter “Anorga Decl.”] Ex. A.) The offer expired after thirty days. (*Id.*)
16 On November 7, 2017, Plaintiff voluntarily dismissed Defendant Lodge, creating
17 complete diversity. (Dkt. 13-7 Ex. B.)² At that time, Plaintiff did not respond to
18 Defendant’s request for a statement of damages. (Dkt. 13-1 [Declaration of Heather B.
19 Dillion, hereinafter “Dillon Decl.”] ¶ 2.)

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21 On December 5, 2017, Defendant removed this matter to federal court for the first
22 time. (Dkt. 13-8 Ex. C.) Plaintiff moved to remand, arguing that Defendant failed to

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25 ¹ Having read and considered the papers presented by the parties, the Court finds this matter appropriate
26 for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set
27 for November 5, 2018, at 1:30 p.m. is hereby vacated and off calendar.

28 ² Defendant requests the Court take judicial notice of court filings from this dispute in state court and on
the first removal to federal court. (Dkt. 13-5.) These documents are the proper subject of judicial
notice, as courts may take judicial notice of court filings and other matters of public record. *Reyn’s*
Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006). Defendant’s request for
judicial notice is GRANTED.

1 prove the amount-in-controversy was more than \$75,000. (Dkt. 13-9 Ex. D.) Plaintiff
2 refused to stipulate that she would not seek damages in excess of \$75,000. (Dillon Decl.
3 ¶ 3.) The District Court granted Plaintiff’s motion to remand on February 8, 2018.
4

5 The parties were scheduled to start trial in state court on September 17, 2018.
6 (Anorga Decl. Ex. B.) On July 24, 2018, Plaintiff offered to settle for \$105,000. (Dillon
7 Decl. ¶ 4.) Shortly afterwards, the state court denied Defendant’s request for a
8 continuance of trial. (Mot. at 3.) On August 22, 2018, Defendant removed the case to
9 federal court for the second time. (Dkt. 1.)
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11 **III. DISCUSSION**

13 **A. Removal**

15 In general, a defendant may remove a case over which the federal courts have
16 original jurisdiction. 28 U.S.C. § 1441(a). Federal courts have diversity jurisdiction
17 where there is complete diversity between the parties and the amount-in-controversy
18 exceeds \$75,000. 28 U.S.C. § 1332(a). If a case is not removable under the initial
19 complaint, a notice of removal may be filed within 30 days “from which it may first be
20 ascertained that the case is one which is or has become removable.” 28 U.S.C. §
21 1446(b)(3). However, a case may not be removed on the basis of diversity jurisdiction
22 more than one year after commencement of the action, “unless the district court finds that
23 the plaintiff has acted in bad faith in order to prevent a defendant from removing the
24 action.” *Id.* § 1446(c)(1). Here, the one-year deadline applies because Defendant filed its
25 notice of removal on August 22, 2018, more than one year after the action was filed on
26 May 1, 2017.
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1 The Ninth Circuit has not addressed the standard necessary to find “bad faith”
2 under section 1446, but lower courts have concluded this requirement “sets a high
3 threshold.” *NKD Diversified Elecs., Inc. v. First Mercury Ins. Co.*, 2014 WL 1671659, at
4 *3 (N.D. Cal. Apr. 28, 2014); *Hamilton San Diego Apartments, LP v. RBC Capital Mkts.,*
5 *LLC*, 2014 WL 7175598, at *3 (S.D. Cal. Dec. 11, 2014). In a different context, the
6 Ninth Circuit has said that “[a] finding of bad faith is warranted where an attorney
7 ‘knowingly or recklessly raises a frivolous argument, or argues a meritorious claim for
8 the purpose of harassing an opponent.’” *Primus Auto. Fin. Servs., Inc. v. Batarse*, 115
9 F.3d 644, 649 (9th Cir. 1997) (quoting *In re Keegan Mgmt. Co. Sec. Litig.*, 78 F.3d 431,
10 436 (9th Cir. 1996)). A party may also demonstrate bad faith by “delaying or disrupting
11 the litigation or hampering enforcement of a court order.” *Primus*, 115 F.3d at 649
12 (quoting *Hutto v. Finney*, 437 U.S. 678, 689 n.14 (1978)). As the removing party,
13 Defendant bears the burden of establishing federal subject matter jurisdiction. *Gaus v.*
14 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

15
16 Here, Defendant has failed to prove that Plaintiff acted in bad faith to prevent
17 removal of the action. Indeed, Plaintiff made an early, good-faith offer to settle for an
18 amount well below the amount-in-controversy requirement. On July 24, 2017, Plaintiff
19 made an offer to compromise for \$12,000, plus attorneys’ fees, pursuant to California
20 Civil Procedure Code § 998, which provided Defendant thirty days to accept the offer.
21 Given this early offer, the Court is not convinced Plaintiff acted in bad faith by
22 previously moving to remand and refusing to stipulate that she sought damages of less
23 than \$75,000. *See Bolton v. U.S. Nursing Corp.*, 2012 WL 5269738, at *5 (N.D. Cal.
24 Oct. 23, 2012) (“[A] plaintiff’s refusal to stipulate to damages less than the amount in
25 controversy is not evidence of bad faith forum shopping.”).

26
27 The fact that, just weeks before trial, Plaintiff’s settlement offer exceeded the
28 amount-in-controversy does not mean that Plaintiff acted in bad faith to prevent removal.

1 There is no evidence that Plaintiff recklessly raised a frivolous argument, intended to
2 harass Defendant, or delayed or disrupted litigation. *Cf. Primus*, 115 F.3d at 649.
3 Plaintiff sent the demand letter after the completion of discovery and in the lead-up to
4 trial. She explains that \$75,000 of her \$105,000 demand comes from attorneys' fees, due
5 to Defendant's "overwhelming litigation" of this matter. (Dkt. 19 [Reply] at 4.)
6 Contrary to Defendant's assertion, this is not a situation where the Plaintiff suddenly
7 values her claims far above the amount-in-controversy. *Cf. Cameron v. Teeberry*
8 *Logistics, LLC*, 920 F. Supp. 2d 1309, 1311, 1315–16 (N.D. Ga. 2013) (plaintiff
9 expressly represented that her claims did not exceed \$50,000, then sent a demand letter
10 for \$575,000 just four days after the one-year removal deadline); *Mitchell v. Amica Mut.*
11 *Ins. Co.*, 2015 U.S. Dist. LEXIS 47186, at *6–8 (E.D. La. Apr. 10, 2015) (plaintiff
12 refused to itemize her claims until after the one-year deadline). Rather, Plaintiff
13 continues to estimate her damages at \$30,000. Defendant has failed to meet its burden
14 that Plaintiff acted in bad faith.

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16 **B. Attorneys' Fees**

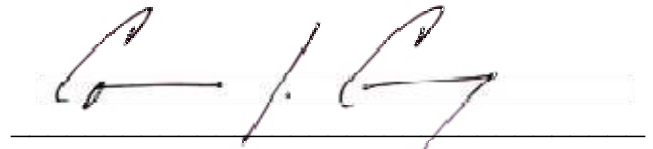
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18 Plaintiff also seeks reasonable costs and attorneys' fees associated with the case's
19 removal to federal court. A court may, at its discretion, award reasonable costs and
20 attorneys' fees incurred as a result of removal. 28 U.S.C. § 1447(c). "[A]bsent unusual
21 circumstances, attorney's fees should not be awarded when the removing party has an
22 objectively reasonable basis for removal." *Martin v. Franklin Capital Corp.*, 546 U.S.
23 132, 136 (2005). The Court declines to exercise its discretion to award attorneys' fees.
24 Here, Plaintiff's \$105,000 demand letter and her earlier refusal to stipulate to recovery
25 below the amount-in-controversy provided an objectively reasonable basis for Defendant
26 to believe that the amount-in-controversy requirement was met and Plaintiff was not
27 acting in good faith.

1 **IV. CONCLUSION**

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3 For the foregoing reasons, Plaintiff's motion to remand is **GRANTED**. Plaintiff's
4 request for attorneys' fees is **DENIED**.

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8 DATED: October 31, 2018

A handwritten signature in black ink, appearing to read "Cormac J. Carney", is written over a horizontal line.

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10 CORMAC J. CARNEY
11 UNITED STATES DISTRICT JUDGE
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