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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CRAIG CLEVELAND and
MARIANNA CLEVELAND,

Plaintiffs,

v.

WEST RIDGE ACADEMY, CHILDREN
AND YOUTH SERVICES, INC., and DOES
1-10,

Defendants.

Case No. 1:14-cv-00977-SKO

ORDER REMANDING CASE TO
FRESNO COUNTY SUPERIOR COURT
FOR LACK OF SUBJECT MATTER
JURISDICTION

(Doc. 6)

I. INTRODUCTION

Plaintiffs Craig Cleveland and Marianna Cleveland (“Plaintiffs”) filed a civil suit against Defendants West Ridge Academy, Children and Youth Services, Inc., and Does 1-10 (“Defendants”) on March 12, 2014, in Fresno County Superior Court. (Doc. 1, Notice of Removal, Ex. A.) On June 19, 2014, Defendants filed a Notice of Removal to this Court based on diversity jurisdiction. 28 U.S.C. § 1332. (Doc. 1.)

Plaintiffs filed a Motion to Remand on July 16, 2014, and Defendants filed an Opposition on August 18, 2014. (Docs. 6, 14.) The Court has reviewed the Motion, Opposition, and supporting documents, and determined that this matter is suitable for decision without oral argument pursuant to the Local Rules of the United States District Court, Eastern District of

1 California, Rule 230(g). For the reasons set forth below, this action is REMANDED to Fresno
2 County Superior Court.

3 **II. BACKGROUND**

4 In 2011 and 2012, Plaintiffs sent their minor daughter to Defendant West Ridge Academy,
5 a resident care facility licensed by the State of Utah as a youth treatment and residential services
6 program for counseling, mental health therapy, and remedial training of youth. Defendant West
7 Ridge Academy is owned and operated by Defendant Children and Youth Services, Inc. Plaintiffs
8 allege that Defendant West Ridge's agents behaved inappropriately toward their daughter, causing
9 her to be set back emotionally and mentally; and that Defendants are vicariously liable for their
10 agents' behavior, as the behavior fell within the scope of their agents' employment. Plaintiffs
11 further allege that Defendants failed to adequately provide the mandatory "aftercare" component
12 of the treatment program, for which Plaintiffs were required to pre-pay, and without which
13 Defendants asserted the treatment program would be wasted.

14 Plaintiffs brought suit against Defendants on March 12, 2014, in Fresno County Superior
15 Court, asserting California state law claims for breach of contract, general negligence, bad faith
16 breach of contract, negligence per se, professional negligence, intentional infliction of emotional
17 distress, negligent infliction of emotional distress, false promise, breach of fiduciary duty,
18 economic interference, and violation of deceptive practice law. Plaintiffs seek money damages
19 plus interest, attorneys' fees, punitive damages, costs of suit, and other relief as the court deems
20 fair, just, and equitable. The Complaint alleges that the amount in controversy exceeds \$25,000,
21 according to proof, but does not state the specific amount in controversy.

22 On April 30, 2014, Defendants filed a Motion to Quash Summons based on forum
23 selection, or in the alternative, a Motion to Stay or Dismiss the Action for Forum Non-
24 Conveniens. The Superior Court denied Defendants' motion on June 10, 2014, and Defendants
25 thereafter removed the matter to this Court on June 19, 2014, based on federal diversity
26 jurisdiction. 28 U.S.C. § 1332. Defendants subsequently filed an Answer to Plaintiffs' Complaint
27 on June 26, 2014, denying each of Plaintiffs' eleven claims and setting forth fifteen affirmative
28 defenses.

1 On July 16, 2014, Plaintiffs filed the Motion to Remand currently pending before the
2 Court. Plaintiffs seek remand on the ground that Defendants' Notice of Removal was untimely
3 because it was not filed within thirty days of formal service of the Summons and Complaint. 28
4 U.S.C. 1446(b). (Doc. 6.)

5 III. DISCUSSION

6 A. Legal Standard Governing Removal Jurisdiction

7 When a case is filed in state court, removal is proper if there is a federal question or where,
8 at issue here, there is diversity of citizenship between the parties and the amount in controversy
9 exceeds \$75,000. 28 U.S.C. §§ 1331, 1332(a). It is presumed, however, ““that a cause lies outside
10 [the] limited jurisdiction [of the federal courts] and the burden of establishing the contrary rests
11 upon the party asserting jurisdiction.”” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th
12 Cir. 2009) (quoting *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006) (per
13 curiam) (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)) (alterations
14 in original).

15 A motion to remand is the proper procedure for challenging removal, *Babasa v.*
16 *LensCrafters, Inc.*, 498 F.3d 972, 974 (9th Cir. 2007), and “[a] motion to remand the case on the
17 basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after
18 the filing of the notice of removal under section 1446(a),” 28 U.S.C. § 1447(c). Where doubt
19 regarding the right to removal exists, a case should be remanded to state court. *Matheson v.*
20 *Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (per curiam). However, a
21 district court lacks discretion to remand a case to the state court if the case was properly removed.
22 *Carpenters S. Cal. Admin. Corp. v. Majestic Hous.*, 743 F.2d 1341, 1343 (9th Cir. 1984),
23 *abrogated in part on other grounds, Southern Cal. IBEW-NECA Trust Funds v. Standard Indus.*
24 *Elec. Co.*, 247 F.3d 920, 924 n.6 (9th Cir. 2001).

25 Plaintiffs move to remand on the basis that Defendants failed to timely remove the case.
26 28 U.S.C. § 1446(b). A defendant must file a notice of removal within thirty days of receiving a
27 copy of the complaint, or if the matter is not removable based on the contents of the complaint,
28 within thirty days of receiving another pleading or “other paper” from which removability is

1 apparent. 28 U.S.C. § 1446(b). Thus, Section 1446(b) provides two potential thirty-day windows
2 during which removal is proper.

3 The first thirty-day window is triggered by a defendant’s receipt of an “initial pleading”
4 that reveals a basis for removal. 28 U.S.C. § 1446(b)(1). This first thirty-day period for removal
5 only applies if the case stated by the initial pleading is removable on its face, and removability is
6 determined by the contents of the four corners of applicable pleadings, not through subjective
7 knowledge or a “duty to make further inquiry.” *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689,
8 694 (9th Cir. 2005).

9 If no ground for removal is evident in the initial pleading, the second thirty-day window to
10 remove an action commences when the defendant receives “an amended pleading, motion, order
11 or other paper” from which it can be ascertained from the face of the document that removal is
12 proper. 28 U.S.C. § 1446(b)(3); *Harris*, 425 F.3d at 694.

13 In any event, removal based on diversity jurisdiction must commence within one year after
14 the case is filed. 28 U.S.C. § 1446(c)(1).

15 **B. Timeliness of Removal Notice**

16 **1. Summary of Parties’ Positions**

17 Plaintiffs seek to remand this case because the Notice of Removal was not filed within
18 thirty days after Defendants were formally served with the Summons and Complaint. (Doc. 6,
19 Motion to Remand, p. 2, Ins. 6-9.) Plaintiffs argue that Defendants filed their Motion to Quash or
20 Stay in Superior Court on April 30, 2014, thereby confirming formal service of the Summons and
21 Complaint occurred prior to that date.¹ (*Id.*, p. 3, Ins. 7-11.) As a result, the Notice of Removal
22 had to have been filed by May 30, 2014, at the latest. Although Plaintiffs concede that the
23 Complaint did not specifically plead a matter in controversy exceeding \$75,000.00, they argue that
24 Defendants’ inclusion of their settlement demand letter for \$340,000.00 with the Notice of
25 Removal evidences Defendants’ knowledge on or before April 30, 2014, of a sufficient amount in
26 controversy to invoke federal diversity jurisdiction. (*Id.*, p. 3, Ins. 11-14.)

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¹ The date of formal service is not in the record.

1 Defendants respond that the Complaint did not allege an amount in controversy exceeding
2 \$75,000.00, and Plaintiffs' settlement demand letter dated May 3, 2013, does not cure that
3 deficiency because it was sent prior to the filing of the Complaint. (Doc. 14, Opp., p. 4, Ins. 11-16
4 & p. 5, Ins. 18-24.) Defendants argue that given the requisite amount in controversy was not
5 evident from the face of the Complaint, the first thirty-day period for removal did not begin when
6 the Complaint was served; and that the pre-complaint settlement demand letter does not qualify as
7 an "other paper" triggering the second thirty-day removal period. (*Id.*, p. 5, Ins. 3-17.)
8 Alternatively, Defendants argue that because Plaintiffs failed to file a proof of service as required
9 by California law, and in the absence of evidence of formal service, the clock for removal never
10 started running in any event. (*Id.*, § C.)

11 Finally, Defendants argue that they did not submit to state court jurisdiction when they
12 made a limited appearance to file the Motion to Quash or Stay, and they did not waive any right to
13 assert federal jurisdiction. (*Id.*, § D.)

14 **2. Pre-Complaint Settlement Demand Letter and Initial Pleading**

15 **a. Removal within Thirty-Day Statutory Removal Period**

16 Plaintiffs argue that their settlement demand letter, which Defendants attached to the
17 Notice of Removal, gave Defendants all the information they needed to ascertain removability. 28
18 U.S.C. § 1446(c)(3); *Carvalho v. Equifax Inf. Serv. LLC*, 629 F.3d 876, 885 (9th Cir. 2010).

19 However, with respect to the first thirty-day removal period, Plaintiffs' Complaint states
20 only that the amount in controversy exceeds \$25,000.00, and because it lacked any indication of
21 the amount in controversy, it did not trigger the removal period. 28 U.S.C. § 1446(b)(1); *see*
22 *Carvalho*, 629 F.3d at 885 (superior court complaint indicating an amount demanded exceeding
23 \$25,000.00 did not suffice to indicate amount in controversy).

24 With respect to the second thirty-day removal period, Plaintiffs' settlement demand letter,
25 dated May 3, 2013, was sent approximately ten months before Plaintiffs filed their Complaint in
26 Superior Court, and Plaintiffs did not dispute Defendants' contention that there was no post-
27 complaint settlement demand letter. (Doc. 1, Notice of Removal, Ex. D; Doc. 14, Opp., p. 5, Ins.
28 11-13.) It is axiomatic that a document received *prior* to service of an initial pleading cannot

1 trigger the second thirty-day removal period, which is intended to apply to documents received
2 *after* service of the initial pleading. *Carvalho*, 629 F.3d at 885. Thus, the term “other paper” does
3 not embrace “any document received prior to receipt of the initial pleading,” including Plaintiffs’
4 settlement demand letter from May 2013. *Kuxhausen v. BMW Fin. Servs. NA LLC*, 707 F.3d
5 1136, 1142 (9th Cir. 2013) (citing *Carvalho*, 629 F.3d at 885-86). Irrespective of whether
6 Plaintiffs’ \$340,000.00 demand was a reasonable estimate of their claims or not, it did not and
7 could not trigger the second thirty-day period for removal because it was mailed to Defendants
8 prior to the service of the initial pleading in this matter.²

9 Furthermore, the Ninth Circuit has rejected the argument “that a pre-complaint document
10 containing a jurisdictional clue can operate in tandem with an indeterminate initial pleading to
11 trigger some kind of hybrid of the first and second removal periods.” *Carvalho*, 629 F.3d at 886.
12 Rather, “the first thirty-day removal period comes into play only if removability is ascertainable
13 from the four corners of the applicable pleading.” *Id.* (citing *Harris*, 425 F.3d at 694) (internal
14 quotation marks omitted). This “bright-line approach” was adopted “to avoid the spectre of
15 inevitable collateral litigation over whether defendant had subjective knowledge or whether
16 defendant conducted sufficient inquiry.” *Id.* (citing *Harris*, 425 F.3d at 6974) (internal quotation
17 marks omitted). *Id.* Thus, Plaintiffs’ pre-complaint demand letter may not be paired with
18 Plaintiffs’ initial Complaint to trigger the thirty-day removal period. *Id.*

19 Accordingly, the Court finds that neither the first thirty-day removal period nor the second
20 thirty-day removal period was triggered, and Plaintiffs’ motion to remand for failure to remove
21 within thirty days of formal service of the Summons and Complaint is denied. 28 U.S.C. §

22
23 ² Defendants represent that no discovery was conducted in state court, there were no filed documents specifying the
24 amount in controversy, and there was no post-settlement demand letter from Plaintiffs. As a result, there was no
25 “other paper” commencing the second thirty-day removal period.

26 In their Notice of Removal, Defendants asserted that removal was timely because it occurred within thirty
27 days of the Superior Court’s tentative ruling and the hearing on their Motion to Quash or Stay, which occurred on
28 June 9, 2014, and June 10, 2014, respectively. (Doc. 1, Notice of Removal, § 5.) This argument was not revisited in
the Opposition to Plaintiff’s Motion to Remand, but the Court notes that the Superior Court’s tentative ruling and the
hearing do not appear to have involved any issue which might have apprised Defendants for the first time of
removability and triggered the second thirty-day removal period. *See* 28 U.S.C. § 1446(b)(3) (notice of removal must
be filed within thirty days of receipt of “order or other paper” from which removability may be ascertained). (Doc.
14, Opp., p. 5, Ins. 10-17.)

1 1446(b). This does not end the inquiry, however, because Defendants nonetheless relied on the
2 pre-complaint demand letter as evidence of removability.

3 **b. Removal Based on Demand Letter Following Investigation by Defendants**

4 The Ninth Circuit has held that “a defendant can remove outside the two thirty-day periods
5 on the basis of its own information, provided that it does not run afoul of either of the thirty day
6 deadlines.” *Roth v. CHA Hollywood Med. Ctr., L.P.*, 720 F.3d 1121, 1125 (9th Cir. 2013). “[A]s
7 long as the complaint or an amended pleading, motion, order or other paper does not reveal that
8 the case is removable, the 30-day time period never starts to run and the defendant may remove at
9 any time.” *Rea v. Michaels Stores Inc.*, 742 F.3d 1234, 1238 (9th Cir. 2014) (per curiam) (citing
10 *Roth*, 720 F.3d at 1125) (internal quotation marks omitted). Thus, a defendant might, through its
11 own investigation, discover a case is removable even though it was not required to investigate.
12 *Roth*, 720 F.3d at 1125.

13 Here, Defendants removed the case in reliance on the pre-complaint demand letter and
14 their reference to the eleven causes of action set forth by Plaintiffs in their initial pleading, which
15 they asserted “could realistically surpass the \$75,000.00, amount of possible damages, as required
16 by 28 U.S.C. § 1332(a).” (Doc. 1, Notice of Removal, § IV.) A pre-complaint demand letter
17 uncovered by defendants during the course of an internal investigation might allow for a
18 determination of removability. *See Roth*, 720 F.3d at 1125; *Cohn v. Petsmart, Inc.*, 281 F.3d 837,
19 840 (9th Cir. 2002) (per curiam). Here, however, Plaintiffs’ very general demand letter is not
20 sufficiently specific to constitute a “reasonable estimate” of Plaintiffs’ claims and the letter
21 coupled with Defendants’ mere citation to the eleven causes of action in the initial pleading do not
22 establish removability by a preponderance of the evidence. *See Cohn*, 281 F.3d at 840 (demand
23 letter in trademark case where mark was asserted to be worth more than \$100,000.00 sufficed as
24 evidence of amount in controversy); *Smith v. Smith’s Food & Drug Cntrs., Inc.*, No. 2:14-CV-
25 00681-APG-NJK, 2014 WL 3734363, at *1 (D.Nev. Jul. 29, 2014) (pre-complaint demand letter
26 supported by statements regarding medical expenses incurred, lost wages, and future surgery, and
27 by medical records, sufficed as evidence of amount in controversy); *Ornelas v. Costco Warehouse*
28 *Corp.*, No. CV 14-4759 FMO (PJWx), 2014 WL 3406435, at *2-3 (C.D.Cal. Jul. 9, 2014)

1 (reliance on speculative demands for emotional distress damages and unspecified punitive
2 damages unpersuasive); *Moreno v. Ignite Restaurant Grp.*, No. C 13-05091 SI, 2014 WL
3 1154063, at *7 (N.D.Cal. Mar. 20, 2014) (where emotional distress and punitive damages
4 unsupported by evidence, courts will not speculate as to damages potentially embodied in
5 plaintiffs' vague request) (citation and quotation marks omitted); *Owens v. Westwood Coll. Inc.*,
6 No. CV 13-4334-CAS-(FFMx), 2013 WL 4083624, at *2-4 (C.D.Cal. Aug. 12, 2013) (arbitrary
7 settlement demand letter with no showing of how figure was calculated not sufficient).

8 The Court is required to remand a case “[i]f at any time before final judgment it appears
9 that the district court lacks subject matter jurisdiction,” 28 U.S.C. § 1447(c), and where doubt
10 exists, the case should be remanded, *Matheson*, 319 F.3d at 1090. Accordingly, this case shall be
11 remanded to Fresno County Superior Court.³

12 IV. CONCLUSION AND ORDER

13 In conclusion, Plaintiffs' indeterminate Complaint does not provide notice of removability
14 with respect to the amount in controversy, thereby triggering the first thirty-day removal period,
15 nor was there any “other paper” triggering the second thirty-day removal period. *Kuxhausen*, 707
16 F.3d at 1141; *Carvalho*, 629 F.3d at 885-86; *Harris*, 425 F.3d at 694. Furthermore, the pre-
17 complaint settlement demand letter located by Defendants through investigation and the
18 Complaint, paired together, do not suffice to demonstrate removability by a preponderance of the
19 evidence. *Roth*, 720 F.3d at 1125. Therefore, this action must be remanded for lack of subject
20 matter jurisdiction.⁴ 28 U.S.C. § 1447(c); *Hunter*, 582 F.3d at 1042; *Gaus v. Miles, Inc.*, 980 F.3d
21 564, 566 (9th Cir. 1992) (per curiam).

22 For the reasons above, IT IS HEREBY ORDERED that:

- 23 1. Plaintiffs' Motion to Remand on procedural grounds, filed on July 16, 2014, is
24 DENIED;
- 25 2. This action is REMANDED to the Fresno County Superior Court for lack of
26 subject matter jurisdiction; and

27 ³ Defendant is not precluded from obtaining information that would establish the amount in controversy by a
28 preponderance of the evidence.

⁴ In light of these findings, the Court does not reach the parties' other arguments.

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3. The Clerk of the Court is DIRECTED to serve a copy of this remand order on Fresno County Superior Court.

IT IS SO ORDERED.

Dated: September 16, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE