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10 Attorneys for Defendant, LOWE'S
 11 HOME CENTERS, LLC

FILED

MAR -6 2015

CLERK, U.S. DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA
 BY JMS
 DEPUTY CLERK

12 UNITED STATES DISTRICT COURT
 13 EASTERN DISTRICT OF CALIFORNIA

BRADLEY & GMELICH

14 DONALD DUBE, SR., an individual,
 15 Plaintiff,
 16 vs.
 17 LOWE'S HOME CENTERS, LLC, a
 18 North Carolina Corp., dba LOWE'S
 19 HOME CENTER STORE #2278,
 20 Defendants.

CASE NO.: 1:14-CV-01900-JAM-SAB
 (Tulare County Superior Court Case No.:
 257401)

**STIPULATION CAPPING
 PLAINTIFF'S DAMAGES/
 RECOVERY AT \$75,000; AND
 STIPULATION TO REMAND ACTION
 BACK TO STATE COURT**

1. Plaintiff DONALD DUBE, SR. ("Plaintiff"), a resident of California, brought the instant action against Defendant LOWE'S HOME CENTERS, LLC ("Defendant"), a North Carolina limited liability company, in the Superior Court of California, County of Tulare.
2. Plaintiff claims personal injuries arising out of negligence and premises liability causes of action which allegedly occurred on the premises of Defendant's retail store located in Porterville, California.
3. Plaintiff acknowledges that he originally claimed damages in excess of \$75,000.00.
4. Defendant removed this matter to the United States District Court for the Eastern District of California pursuant to 28 U.S.C. §§1332, 1441 and 1367.

STIPULATION CAPPING PLAINTIFF'S DAMAGES/RECOVERY AT \$75,000 AND STIPULATION TO REMAND MATTER BACK TO STATE COURT	DONALD DUBE, SR. v. LOWE'S, et al 1:14-CV-01900-SAB
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1 5. Plaintiff hereby wishes to enter into a Stipulation capping his damages
2 in this action at \$75,000.00.

3 6. Defendant enters into this Stipulation to remand this matter back to the
4 Superior Court of California, County of Tulare.

5 **THEREFORE, IT IS HEREBY STIPULATED** by the parties and their
6 respective counsel of record, that in consideration for Defendant's agreement to
7 stipulate to remand this matter to State Court and other consideration:

8 1. Plaintiff hereby agrees and stipulates that his damages, resulting from
9 the alleged incident that occurred on Defendant's premises on or about August 15,
10 2012, that are the subject of the within action (formerly Tulare County Superior
11 Court Case No.: 257401) (hereinafter "the litigation"), are hereby capped at
12 \$75,000.00.

13 2. Plaintiff hereby agrees and stipulates that if his damages should exceed
14 \$75,000.00, he hereby waives the right to claim such damages as a result of the
15 litigation.

16 3. Plaintiff hereby agrees and stipulates that his recovery of damages in
17 the litigation, including but not limited to economic damages and non-economic
18 damages, are hereby capped at \$75,000.00.

19 4. Plaintiff hereby agrees and stipulates that if his recovery of damages in
20 the litigation should exceed \$75,000.00, either by verdict or other means, he hereby
21 waives the right to recover any such damages in excess of \$75,000.00.

22 5. Plaintiff hereby agrees and stipulates that should any award or
23 judgment be rendered or entered against Defendant with damages in excess of
24 \$75,000.00, he will execute any necessary documents to reduce such award or
25 judgment to \$75,000.00 in damages, and will not execute on any award or judgment
26 in excess of \$75,000.00 in damages. The \$75,000 cap to recovery of damages does
27 not in any way limit the amount of attorneys' fees and costs that may be awarded to
28 and recovered by Plaintiff.

BRADLEY & GEMLICH

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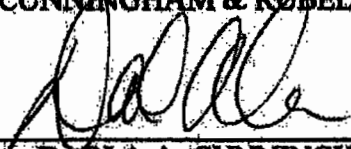
6. Plaintiff hereby expressly waives the right to avoid the terms of this stipulation or to modify the stipulation based on newly-discovered or unknown fact.

7. Defendant hereby agrees and stipulates that the matter may be remanded back to the Tulare County Superior Court, Case No.: 257401.

IT IS SO STIPULATED AND AGREED.

Dated: ^{March} ~~February~~ 5, 2015

LERNER, MOORE, SILVA,
CUNNINGHAM & RUBEL

By: 
DARLA A. CUNNINGHAM
Attorney for Plaintiff,
DONALD DUBE, SR.

Dated: ^{March} ~~February~~ 5, 2015

By: 
DONALD DUBE, SR.
Plaintiff

Dated: February __, 2015

BRADLEY & GEMLICH

By: _____
JONATHAN A. ROSS
LAURA M. LEFEUVRE
Attorneys for Defendant,
LOWE'S HOME CENTERS, LLC

1 6. Plaintiff hereby expressly waives the right to avoid the terms of this
2 stipulation or to modify the stipulation based on newly-discovered or unknown fact.

3 7. Defendant hereby agrees and stipulates that the matter may be
4 remanded back to the Tulare County Superior Court, Case No.: 257401.

5 **IT IS SO STIPULATED AND AGREED.**

6
7 Dated: February __, 2015

LERNER, MOORE, SILVA,
CUNNINGHAM & RUBEL

8
9
10 By: _____
11 DARLA A. CUNNINGHAM
12 Attorney for Plaintiff,
DONALD DUBE, SR.

13 Dated: February __, 2015

14
15 By: _____
16 DONALD DUBE, SR.
17 Plaintiff

18
19 Dated: ^{March} February 5, 2015

BRADLEY & GEMPLICH

20
21
22 By: Laura Lefevre
23 JONATHAN A. ROSS
24 LAURA M. LEFEUVRE
25 Attorneys for Defendant,
26 LOWE'S HOME CENTERS, LLC
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BRADLEY & GMELICH

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 700 North Brand Boulevard, 10th Floor, Glendale, California 91203.


On March 5, 2015, I served true copies of the following document(s) described as **STIPULATION CAPPING PLAINTIFF'S DAMAGES/RECOVERY AT \$75,000; AND STIPULATION TO REMAND ACTION BACK TO STATE COURT** on the interested parties in this action as follows:

Darla A. Cunningham, Esq.
Lerner, Moore, Silva, Cunningham & Rubel
141 North Arrowhead Avenue, Suite 1
San Bernardino, CA 92408
Telephone: (909) 889-1131
Facsimile: (909) 383-7761
E-Mail: dcunningham@injuryatwork.com
Attorney for Plaintiff, Donald Dube, Sr.

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 5, 2015, at Glendale, California.



Patricia J. Morse

1 Jonathan A. Ross, Esq., State Bar No. 146973
jross@bglawyers.com
2 Laura M. LeFeuvre, Esq., State Bar No. 291964
lfeuvre@bglawyers.com
3 BRADLEY & GMELICH
700 North Brand Boulevard, 10th Floor
4 Glendale, California 91203-1422
Telephone: (818) 243-5200
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6 Attorneys for Defendant, LOWE'S
HOME CENTERS, LLC
7

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10
11 DONALD DUBE, SR., an individual,
12 Plaintiff,

13 vs.

14 LOWE'S HOME CENTERS, LLC, a
North Carolina Corp., dba LOWE'S
15 HOME CENTER STORE #2278,
16 Defendants.

CASE NO.: 1:14-CV-01900-JAM-SAB
(Tulare County Superior Court Case No.:
257401)

JAM
~~PROPOSED~~ REMAND ORDER

17
18 **I. BACKGROUND**

19 On August 7, 2014, Plaintiff DONALD DUBE, SR. ("Plaintiff") commenced
20 the above-entitled civil action in the Superior Court for the County of Tulare by
21 filing a Complaint therein entitled *Donald Dube, Sr., an individual v. Lowe's Home*
22 *Centers, LLC, a North Carolina Corp., dba Lowe's Home Centers Store #2278, and*
23 *Does 1 to 100, inclusive*, Case No. 257401. Plaintiff's complaint for negligence and
24 premises liability arises from an alleged incident on August 15, 2012, at Defendant's
25 retail store in Porterville, California. On that date, Plaintiff alleges that he suffered
26 injury when he slipped and fell in the Garden Department of the subject store.
27 Plaintiff attributes his injuries to the alleged negligence of Defendant as he
28 maintains that Lowe's negligent conduct created a dangerous condition that resulted

1 in the slip and fall. Specifically, Plaintiff contends that Defendant had a pattern and
2 practice of over-watering its plants in the Garden Department, which created a
3 pooling of water that encroached into common walkways. Plaintiff further contends
4 that Defendant continuously over-watered its plants and unmonitored the pooling of
5 water, which created a gathering of moss and a stagnant substance on the walkway.
6 As a direct and legal result of Defendant's alleged negligence, Plaintiff claims that
7 he was substantially injured, incurring medical bills and sustain loss of earnings,
8 loss of earning capacity, and non-economic damages.

9 On November 7, 2014, Plaintiff filed his Statement of Damages on
10 Defendant. Plaintiff's Statement of Damages unequivocally stated that he sought
11 more than \$1,020,000.00 in combined special and general compensatory damages.
12 Based on this "other paper", Defendant determined that the amount in controversy
13 exceeded the \$75,000.00 statutory minimum. Accordingly, Defendant removed the
14 matter to Federal Court pursuant to 28 U.S.C. §§1332, 1441, and 1367.

15 The parties have now agreed and stipulate to limit any and all recovery of
16 damages by Plaintiff DONALD DUBE, SR. in this matter at \$75,000 or less, as
17 evidenced by the Stipulation Capping Plaintiff's Damages and Recovery at \$75,000,
18 executed by both Plaintiff DONALD DUBE, SR. and his counsel, Darla A.
19 Cunningham, Esq.

20 The parties have now agreed and stipulate to remand this case to the Tulare
21 County Superior Court, Case No. 257401.

22 II. ANALYSIS

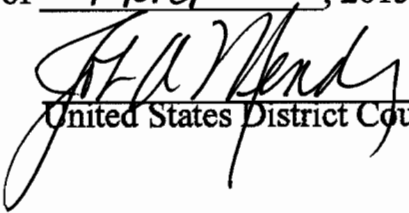
23 United States Code, Title 28, Section 1447(c), provides that "[i]f at any time
24 before final judgment it appears that the district court lacks subject matter
25 jurisdiction, the case *shall be remanded.*" (Emphasis added.) In light of the parties'
26 stipulation limiting any and all recovery by Plaintiff DONALD DUBE, SR. to
27 \$75,000 or less, this Court lacks subject matter jurisdiction and must, therefore,
28 remand the case to state court pursuant to 28 U.S.C. § 1447(c). *See Bruns v. NCUA*

1 122 F.3d 1251, 1257 (9th Cir. 1997) (“Section 1447(c) is mandatory, not
2 discretionary.”)

3 **III. CONCLUSION**


4 Because the amount in controversy does not exceed \$75,000, this Court lacks
5 subject matter jurisdiction in the present case. Accordingly, the case is
6 **REMANDED** to the Tulare County Superior Court, Case No. 257401.

7
8 **IT SO ORDERED** this 6th day of March, 2015.

9
10 
11 United States District Court Judge

12 Submitted by:

13 BRADLEY & GMELICH

14
15 By: 
16 Jonathan A. Ross
17 Laura M. LeFeuvre
18 Attorneys for Defendant,
19 LOWE'S HOME CENTERS, LLC
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