

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAMERON HOSPITAL ASSOCIATION, a)
California Non-Profit) 2:10-cv-03396-GEB-JFM
Association,)
Plaintiff,) ORDER DENYING MOTION TO
v.) REMAND
STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY; and DOES 1)
through 100, inclusive,)
Defendants.)

Plaintiff seeks to remand this case to the state court from which Defendant removed it, arguing that removal was improper because the Court lacks subject matter jurisdiction under 28 U.S.C. § 1332 ("§ 1332"). § 1332 prescribes: "The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States." 28 U.S.C. § 1332(a)(1). Plaintiff argues Defendant has failed to satisfy its burden of showing the amount in controversy exceeds \$75,000.

"[T]he defendant always has the burden of establishing that removal is proper. Normally, this burden is satisfied if the plaintiff claims a sum greater than the jurisdictional requirement." Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). However, "[w]here it is

1 not facially evident from the complaint that more than \$75,000 is in
2 controversy, the removing party must prove, by a preponderance of the
3 evidence, that the amount in controversy meets the jurisdictional
4 threshold." Matheson v. Progressive Specialty Ins., 319 F.3d 1089, 1090
5 (9th Cir. 2003). When determining whether a defendant satisfies this
6 burden, the Court may consider "facts presented in the removal petition
7 as well as any summary-judgement-type evidence relevant to the amount in
8 controversy at the time of removal." Id. (internal quotation marks
9 omitted).

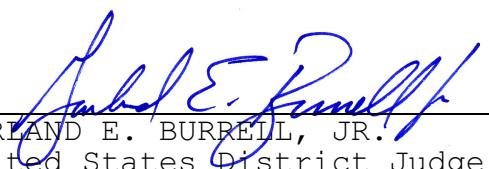
10 It is undisputed that Plaintiff seeks \$61,049.84 in damages
11 based on alleged amounts of unpaid patient accounts which have been
12 assigned to Plaintiff. However, the parties dispute whether the
13 attorneys' fees Plaintiff seeks in its claim alleged under California
14 Business and Professions Code section 17200, et seq. ("section 17200")
15 is considered when determining whether the amount in controversy exceeds
16 \$75,000.00. Plaintiff's section 17200 claim includes the allegation that
17 it "is entitled to an award of attorney's fees under [California] Code
18 of Civil Procedure section 1021.5 [("section 1021.5")]." (Compl. ¶ 39.)
19 Section 1021.5 prescribes:

20 Upon motion, a court may award attorneys' fees to a
21 successful party against one or more opposing
22 parties in any action which has resulted in the
23 enforcement of an important right affecting the
24 public interest if: (a) a significant benefit,
25 whether pecuniary or nonpecuniary, has been
26 conferred on the general public or a large class of
27 persons, (b) the necessity and financial burden of
28 private enforcement, or of enforcement by one
public entity against another public entity, are
such as to make the award appropriate, and (c) such
fees should not in the interest of justice be paid
out of the recovery, if any.

27 CAL. CIV. PROC. CODE § 1021.5.
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1 "[W]here an underlying statute authorizes an award of
2 attorneys' fees, either with mandatory or discretionary language, such
3 fees may be included in the amount in controversy." Galt G/S v. JSS
4 Scandinavia, 142 F.3d 1150, 1156 (9th Cir. 1998). Here, the information
5 in the removal petition shows that the amount of attorneys' fees
6 Plaintiff seeks, combined with Plaintiff's alleged damages, satisfy the
7 minimum jurisdictional amount in controversy. Therefore, Plaintiff's
8 remand motion is denied.

9 Dated: April 21, 2011

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11 Garland E. Burrell, Jr.
12 United States District Judge

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