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

JUDITH WALLS, by and through her)	
guardian ad litem, MARGOT WALLS,)	2:13-cv-00813-GEB-EFB
)	
Plaintiff,)	
)	<u>ORDER GRANTING MOTION TO</u>
v.)	<u>REMAND</u>
)	
EMERITUS CORPORATION, dba)	
EMERITUS AT LAGUNA CREEK,)	
EMERITUS MANAGEMENT, LLC,)	
EMERITUS SENIOR LIVING CORP.,)	
and DOES 1 through 50,)	
inclusive,)	
)	
Defendants.)	
)	

Plaintiff moves for an order remanding this case to the state court from which it was removed, arguing, *inter alia*, that Defendants' assertion in the notice of removal that diversity removal jurisdiction supports removal is untimely made and is unsupported. Plaintiff cites and quotes Harris v. Bankers Life & Casualty Co., 425 F.3d 689, 694 (9th Cir. 2005), in support of her position, arguing that "[D]efendants had to demonstrate that they removed the case within thirty days of receiving a 'paper' . . . that revealed the case was removable." Id. The "paper" on which Defendants rely as justification for removal is referenced in the Notice of Removal, which was filed April 25, 2013, in Defendants' following contentions:

Plaintiff's complaint does not state the amount of alleged damages in controversy for this case[; however, o]n April 10, 2013, Defendants' counsel wrote to Plaintiff's counsel requesting that Plaintiff stipulate by April 17, 2013 that she

1 seeks damages less than \$75,000. Plaintiff's
2 counsel never responded to the letter, so
3 Defendants filed this notice of removal within
thirty days of ascertaining that the amount in
controversy exceeds \$75,000

4 (Not. of Removal ¶ 6, ECF No. 2.) The referenced April 10, 2013 letter
5 ("April 10 letter"), states in pertinent part:

6 Please be advised that we are currently assessing
7 the above-referenced matter and would like to reach
8 a stipulation with regard to damages. . . . [W]e
9 would like to stipulate with you that damages in
10 this matter do not exceed \$75,000. Please respond
11 by written correspondence with regard to whether
12 you are amenable to such a stipulation on or before
April 17, 2013. If you are willing to stipulate, we
are willing to coordinate ADR with a mediator that
is mutually acceptable. If you are not amenable and
you believe that this matter has value greater than
\$75,000, please let me know.

13 (Not. of Removal, York Decl., Ex. B.).

14 I. LEGAL STANDARD

15 Removal based on diversity jurisdiction is only proper when
16 a case originally filed in state court is between citizens of different
17 states and the amount in controversy exceeds \$75,000. See 28 U.S.C.
18 § 1332(a). "The removal statute is strictly construed against removal
19 jurisdiction[, and] [t]he defendant bears the burden of establishing
20 that removal is proper." Provincial Gov't of Marinduque v. Placer Dome,
21 Inc., 582 F.3d 1083, 1087 (9th Cir. 2009) (citations omitted) (citing
22 Syngenta Crop Prot., Inc. v. Henson, 537 U.S. 28, 32 (2002)); Cal. ex
23 rel. Lockyer v. Dyneqy, Inc., 375 F.3d 831, 838 (9th Cir. 2004)). "Where
24 doubt regarding the right to removal exists, a case should be remanded
25 to state court." Matheson v. Progressive Specialty Ins. Co., 319 F.3d
26 1089, 1090 (9th Cir. 2003) (per curiam).

27 The removant "must show that 'the matter in controversy
28 exceeds the sum or value of \$75,000, exclusive of interest and costs.'"

1 Valdez v. Allstate Ins. Co., 372 F.3d 1115, 1116 (9th Cir. 2004)
2 (quoting 28 U.S.C. § 1332(a)) (citing Matheson v. Progressive Specialty
3 Ins. Co., 319 F.3d 1089, 1090 (9th Cir. 2003) (per curiam); Sanchez v.
4 Monumental Life Ins. Co., 102 F.3d 398, 403-04 (9th Cir. 1996)).

5 [I]f the case stated by the initial pleading is not
6 removable, a notice of removal may be filed within
7 30 days after receipt by the defendant, through
8 service or otherwise, of a copy of an amended
pleading, motion, order or other paper from which
it may first be ascertained that the case is one
which is or has become removable.

9 28 U.S.C. § 1446(b) (3). Further, "when the complaint does not contain
10 any specific amount of damages sought, the party seeking removal under
11 diversity bears the burden of showing, by a preponderance of the
12 evidence, that the amount in controversy exceeds the statutory amount."
13 Lewis v. Verizon Comm'cns, Inc., 627 F.3d 395, 397 (9th Cir. 2010)
14 (citing Guglielmino v. McKee Foods Corp., 506 F.3d 696, 699 (9th Cir.
15 2007)).

16 **II. DISCUSSION**

17 Plaintiff argues, *inter alia*, that "[b]ecause Defendant[s]
18 failed to meet [their] burden regarding the amount in controversy
19 . . . , remand is proper." (Pl.'s Mem. of Pts. & Auth. in Supp. of Pl.'s
20 Mot. to Remand 4:11-12, ECF No. 8.) Defendants counter that the amount
21 in controversy requirement is met since "Plaintiff's counsel never
22 responded to [the April 10 letter and that] Defendants filed [a] notice
23 of removal within thirty days of ascertaining that the amount in
24 controversy exceeds \$75,000." (Not. of Removal ¶ 6.)

25 Since Plaintiff's complaint "does not contain any specific
26 amount of damages sought," Defendants have "the burden of showing, by a
27 preponderance of the evidence, that the amount in controversy exceeds
28 the statutory amount." Lewis, 627 F.3d at 397. Defendants argue that the

1 amount in controversy requirement is satisfied by any of the following:

2 (1) Plaintiff failed to respond to Defendants' April 10 letter, which
3 provides sufficient evidence that the amount in controversy exceeds
4 \$75,000; (2) Plaintiff's special damages for medical expenses, general
5 damages for pain and suffering, and punitive damages exceed \$75,000; or
6 (3) Plaintiff's claim for restitution (which Defendants calculate to be
7 \$34,535) coupled with her attorney's fees (which Defendants estimate
8 will be at least \$40,000) exceed \$75,000.

9 Only Defendants' removal argument based on the April 10 letter
10 is addressed since Defendants failed to provide evidence that the
11 remainder of their removal arguments were timely made under 28 U.S.C.
12 § 1446(b). "[S]ection 1446(b) identifies two thirty-day periods for
13 removing a case. The first thirty-day removal period is triggered 'if
14 the case stated by the initial pleading is removable on its face.'" Carvalho v. Equifax Info. Servs., LLC, 629 F.3d 876, 885 (9th Cir. 2010)
15 (quoting Harris, 425 F.3d at 694). "The second thirty-day removal period
16 is triggered if the initial pleading does not indicate that the case is
17 removable, and the defendant receives 'a copy of an amended pleading,
18 motion, order or other paper' from which removability may first be
19 ascertained." Id. (quoting 28 U.S.C. § 1446(b)).

21 Defendants argue since they "offered to mediate [in the April
22 10 letter] if [Plaintiff] agreed that any settlement would not exceed
23 \$75,000 [and Plaintiff] refused, [there] is clear evidence that the
24 amount in controversy exceeds \$75,000." (Defs.' Opp'n to Pl.'s Mot.
25 1:28-2:1, ECF No. 15.)

26 Plaintiff counters that "Defendants' own observation that
27 Plaintiff declined to respond to the proposed stipulation is unavailing
28 since a declination to respond does not constitute a pleading or paper

