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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAVEN DUNCAN,

Plaintiffs,

v.

STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY, et al.,

Defendants.

No. 2:18-cv-01174-KJM AC

ORDER

In this insurance coverage case, plaintiff moves to remand on the basis that the amount in controversy does not meet the jurisdictional minimum. For the reasons below, the court DENIES the motion.

I. LEGAL STANDARD

A motion to remand is the proper procedure to challenge a removal based on lack of jurisdiction. *See* 28 U.S.C. § 1447(c).<sup>1</sup> Removal is only proper when (1) the case presents a

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<sup>1</sup> “A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. . . .”

1 federal question or (2) there is diversity of citizenship between the parties and the amount in  
2 controversy exceeds \$75,000. *See* 28 U.S.C. §§ 1331, 1332(a).

3           The amount in controversy is an “estimate of the total amount in dispute.” *Lewis*  
4 *v. Verizon Communications, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (citation omitted). In this  
5 circuit, when the amount of damages is unspecified, the removing party must show by a  
6 preponderance of the evidence that the amount in controversy exceeds the jurisdictional  
7 threshold. *Id.* at 397; *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996)  
8 (“Under this burden, the defendant must provide evidence establishing that it is ‘more likely than  
9 not’ that the amount in controversy exceeds [the jurisdictional amount].”). To determine if the  
10 amount in controversy is met, the district court considers the complaint, allegations in the  
11 removal petition, and “summary-judgment-type evidence relevant to the amount in controversy,”  
12 *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005) (citation omitted); *see also Fritsch*  
13 *v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 788 (9th Cir. 2018) (clarifying  
14 amount in controversy not limited to amount at time of removal, at least with respect to future  
15 attorneys’ fees), as well as evidence filed in opposition to the motion to remand, *Lenau v. Bank of*  
16 *Am., N.A.*, 131 F. Supp. 3d 1003, 1005 (E.D. Cal. 2015) (citing *Cohn v. Petsmart, Inc.*, 281 F.3d  
17 837, 840 n.1 (9th Cir. 2002) (per curiam)). Ultimately, “[w]here doubt regarding the right to  
18 removal exists, a case should be remanded to state court.” *Matheson v. Progressive Specialty Ins.*  
19 *Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (citation omitted).

## 20 II. DISCUSSION

21           Plaintiff, Raven Duncan, does not specify an amount of damages in her complaint.  
22 Compl, ECF No. 1, at 12. Therefore, defendant must show it is more likely than not that the total  
23 amount in dispute exceeds \$75,000.

24           In the complaint, plaintiff alleges defendant breached the parties’ contract and the  
25 covenant of good faith and fair dealing when it denied plaintiff’s insurance claim after her vehicle  
26 was stolen. *Id.* ¶¶ 18–37. Plaintiff alleges the value of her vehicle was \$33,000. *Id.* ¶ 21. In  
27 addition to compensatory damages, plaintiff asks for punitive damages, emotional and mental  
28 distress damages, and attorneys’ fees. *Id.* at 12.

1           A.     Punitive Damages

2           Defendant argues plaintiff’s claim for emotional distress and punitive damages  
3 causes the amount in controversy to exceed \$75,000. ECF No. 14 at 6. Punitive damages may be  
4 considered in amount in controversy calculations if they are recoverable under state law. *Gibson*  
5 *v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001) (citing, *inter alia*, *Bell v. Preferred Life*  
6 *Assur. Society*, 320 U.S. 238, 240 (1943)). In California, punitive damages are recoverable for  
7 implied breach of covenant claims, such as plaintiff’s second claim for violation of the covenant  
8 of good faith and fair dealing. *Campbell v. Hartford Life Ins. Co.*, 825 F. Supp. 2d 1005, 1008  
9 (E.D. Cal. 2011) (citing Cal. Civ. Code § 3294).

10           “When assessing the probable amount of unspecified punitive damages for  
11 jurisdictional purposes, courts may look to verdicts in analogous cases as a reasonable  
12 approximation.” *Id.* (citing *Simmons v. PCR Technology*, 209 F. Supp. 2d 1029, 1033 (N.D. Cal.  
13 2002)). Defendant has identified only one similar case decided by a district court in the Ninth  
14 Circuit in which plaintiff’s breach of contract damages were relatively small, and a jury awarded  
15 punitive damages in excess of the jurisdictional minimum. Opp’n at 9–10 (citing, *inter alia*,  
16 *McCoy v. Progressive West Insurance Company*, 2007 WL 2068578 (Mar. 29, 2007) (jury  
17 awarded \$17,175 on breach of contract and \$100,000 in punitive damages)). The other cases  
18 defendant cites either do not involve punitive damages or do not contain enough information to  
19 determine what portion of the judgment was for punitive damages specifically. *See* Ellingson  
20 Decl., Ex. 2–7. Moreover, defendant has not articulated why the “*particular facts* that are alleged  
21 in the instant case might warrant extraordinary damages.” *Scalzo v. Allied Prop. & Cas. Ins. Co.*,  
22 No. 1:11-CV-00612 LJO, 2011 WL 2709001, at \*3 (E.D. Cal. July 11, 2011) (emphasis in  
23 original) (citation omitted), *report and recommendation adopted*, 2011 WL 3418806 (E.D. Cal.  
24 July 27, 2011). The record here is insufficient for the court to find that the amount in controversy  
25 is met by a preponderance of the evidence based on punitive damages.

26           B.     Emotional Distress Damages

27           To establish the requisite amount in controversy through emotional distress  
28 damages, the defendant bears the same burden as above for punitive damages. *Cain v. Hartford*

1 *Life & Acc. Ins. Co.*, 890 F. Supp. 2d 1246, 1250 (2012) (defendant may show emotional distress  
2 damages will satisfy jurisdictional threshold by preponderance of evidence by analogizing to  
3 verdicts in other similar cases). When sufficiently analogous to the case at hand, “settlements and  
4 jury verdicts in similar cases can provide evidence of the amount in controversy.” *Mireles v.*  
5 *Wells Fargo Bank, N.A.*, 845 F. Supp. 2d 1034, 1055 (C.D. Cal. 2012) (citations omitted).

6 Of the cases defendant cites, two involve jury awards in which emotional distress  
7 damages were independently quantified. Opp’n at 9–10 (citing *White v. Geico Indemnity Co.*, 13  
8 Trials Digest 17th 17, 2014 WL 1394317 (Cal. Super. Ct. Mar. 18, 2014); *Martinez v. Mercury*  
9 *Ins. Co.*, 30 Trials Digest 17th 28, 2014 WL 3845738 (Cal. Super. Ct., June 16, 2014)). One of  
10 those awards was overturned on appeal, *Martinez v. Mercury Ins. Co.*, No. B261003, 2016 WL  
11 4446576, at \*6–7 (Cal. Ct. App., Aug. 24, 2016) (unpublished) (reversing award of \$600,000 for  
12 emotional distress damages). The court looks to the remaining case, *White*, as well as an additional  
13 case defendant cites in which plaintiff’s claim for the value of his 2001 Dodge Ram pickup truck and  
14 emotional distress damages was settled for \$190,000. *Cortez vs. Farmers Insurance Exchange*, 15  
15 Trials Digest 10th 8, 2007 WL 968427, at \*1–2 (Cal. Super. Ct. Jan. 3, 2007); *see also White v. Geico*  
16 *Indemnity Co.*, 2014 WL 1394317, at \*1–2 (Cal. Super. Ct. Mar. 18, 2014) (\$326,000 in emotional  
17 distress damages awarded where plaintiff’s small claim for vehicle damage wrongfully denied and  
18 plaintiff sought treatment for emotional distress). These cases, in which defendants denied insurance  
19 claims for vehicle-related loss based on the allegedly erroneous conclusion plaintiff made material  
20 misrepresentations, are adequately analogous to the case at hand to signal that emotional distress  
21 damages are likely to exceed \$42,000 if plaintiff is successful here. *See Cain v. Hartford Life & Acc.*  
22 *Ins. Co.*, 890 F. Supp. 2d 1246, 1250 (C.D. Cal. 2012) (finding three somewhat analogous cases  
23 showing emotional distress damages sufficient to meet preponderance of the evidence standard for  
24 amount in controversy). Accordingly, defendant has shown by a preponderance of the evidence that  
25 the amount in controversy exceeds \$75,000, including \$33,000 for compensatory damages and more  
26 than \$42,000 for emotional distress damages.

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C. Attorneys' Fees

Because the court has determined the amount in controversy meets the jurisdictional minimum on the basis of plaintiff's potential emotional distress damages, the court need not reach the question whether plaintiff's prospective attorney's fees would also be sufficient.

III. JUDICIAL ADMISSION

Defendant also argues the court should deny the motion to remand, because plaintiff signed the Joint Status Report, which stated the amount in controversy is over \$75,000. Mot. at 1; JSR, ECF No. 3, at 3, 5. The court also need not reach this issue, because it denies the motion to remand for the reasons stated above.

IV. CONCLUSION

The motion to remand is DENIED. This order resolves ECF No. 8.

IT IS SO ORDERED.

DATED: November 20, 2019.

  
UNITED STATES DISTRICT JUDGE