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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SELWYN VOS,  
  
Plaintiff,  
  
v.  
  
USAA GENERAL INDEMNITY  
COMPANY, and DOES 1 through  
100, inclusive,  
  
Defendants.

No. 2:19-cv-01186-JAM-EFB

**ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND**

On December 28, 2018, Selwyn Vos filed a suit against USAA General Indemnity Company ("USAA GIC") in Sacramento County Superior Court alleging breach of contract, breach of the covenant of good faith and fair dealing, and elder financial abuse. Compl., ECF No. 1-1. Defendant removed the case to federal court. Notice of Removal, ECF No. 1. Arguing Defendant's removal was untimely, Plaintiff now moves to remand the case to state court. Mot., ECF No. 8. Defendant opposes Plaintiff's motion. Opp'n, ECF No. 11.

For the reasons set forth below, the Court GRANTS Plaintiff's motion to remand.<sup>1</sup>

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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for September 10, 2019

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 On June 15, 2016, Plaintiff renewed his USAA automobile  
3 insurance policy. First Amended Complaint ("FAC"), ECF No. 1-2  
4 ¶ 7. The policy ran through December 15, 2016. FAC ¶ 7. The  
5 policy included \$2,000 in extended benefits wage earner  
6 disability coverage per 30-day period. FAC ¶ 8. It also  
7 provided essential services disability coverage of \$45.00 per  
8 week. FAC ¶ 8. On July 2, a motorist rear-ended Plaintiff. FAC  
9 ¶ 9. At the time, Plaintiff operated a 40-acre vineyard. FAC  
10 ¶ 10. Plaintiff suffered injuries as a result of the accident  
11 that now prevent him from operating his vineyard. FAC ¶ 11.

12 Following the accident, Plaintiff filed a claim for benefits  
13 with USAA, but Defendant denied his claim, in part. FAC ¶ 12-25.  
14 Plaintiff now alleges that Defendant knowingly deprived him of  
15 benefits his policy afforded. FAC ¶ 26. Specifically, Defendant  
16 refused to pay any wage earner disability payments and only  
17 partially paid essential services disability payments. FAC ¶ 26.  
18 Plaintiff further alleges that Defendant's failure to timely pay  
19 his benefits prevented him from staying current on his mortgage  
20 payments for his vineyard. FAC ¶ 27. As a result, the bank  
21 foreclosed upon the property and sold it for less than its fair  
22 market value. FAC ¶ 27.

23 Plaintiff filed suit in December 2018. Complaint, ECF No.  
24 1-1. On June 24, 2019, Plaintiff served a California Code of  
25 Civil Procedure § 998 Offer to Compromise on USAA GIC seeking  
26 USAA GIC's agreement to take a judgment against it in exchange  
27 for \$250,000. Offer to Compromise, ECF No. 1-4. Two days later,  
28 Defendant removed the case to federal court, invoking the Court's

1 diversity jurisdiction. Notice of Removal, ECF No. 1. Defendant  
2 maintains the Offer to Compromise first put them on notice of the  
3 amount in controversy. Notice of Removal ¶¶ 22-26.

## 4 5 II. OPINION

6 Generally, when the United States courts have original  
7 jurisdiction over a civil action filed in state court, a  
8 defendant may remove the suit to the federal court in "the  
9 district and division embracing the place where [the suit] is  
10 pending." 28 U.S.C. § 1441(a). Removal of a state action "may  
11 be based on either diversity jurisdiction or federal question  
12 jurisdiction." Godoy v. Family Dollar, Inc., No. 1:16-cv-00969-  
13 DAD-JLT, 2016 WL 4925826, at \*1 (E.D. Cal. Sept 16, 2016) (citing  
14 City of Chicago v. Int'l Coll. Of Surgeons, 522 U.S. 156, 163  
15 (1997)). Defendants bear the burden of proving, by a  
16 preponderance of the evidence, the basis of the federal court's  
17 jurisdiction. Cohn v. Petsmart, Inc., 281 F.3d 837, 839 (9th  
18 Cir. 2002).

19 Here, Plaintiff argues the Court should remand this suit to  
20 Sacramento County Superior Court because Defendant's removal was  
21 untimely. Mot. at 6. Section 1446(b) creates two thirty-day  
22 windows for removing a case from state court. Godoy, 2016 WL  
23 4925826, at \*2. When the presence of federal jurisdiction is  
24 clear on the face of the complaint, defendants must file a notice  
25 of removal within thirty days of receiving the initial pleading.  
26 28 U.S.C. § 1446(b)(1). When the complaint does not set forth  
27 grounds for federal jurisdiction, defendants must file their  
28 notice of removal within thirty days of receiving "a copy of an

1 amended pleading, motion, order or other paper from which it may  
2 first be ascertained that the case . . . is or has become  
3 removable.” 28 U.S.C. § 1446(b) (3).

4 Plaintiff does not dispute that Section 1446(b) creates two  
5 distinct removal periods, nor does he contend his complaint put  
6 Defendant on notice of the amount in controversy. Rather, he  
7 argues that his April 15, 2019 discovery responses made clear he  
8 was seeking more than \$75,000, and thus, triggered Section 1446’s  
9 second removal window. Mot. at 4. When assessing removability,  
10 “defendants need not make extrapolations or engage in guesswork;  
11 yet the statute requires a defendant to apply a reasonable amount  
12 of intelligence” in conducting their analysis. Kuxhausen v. BMW  
13 Financial Services NA LLC, 707 F.3d 1136, 1140 (9th Cir. 2013)  
14 (internal quotations and citation omitted). Plaintiff maintains  
15 that the following was sufficient to put Defendant on notice:

16 1. Plaintiff’s response to Defendant’s Special  
17 Interrogatory No. 22, stating that, in regard to wage earner  
18 disability benefits owed to him, the amount owed was “[u]nknown  
19 at this time but at least \$24,000.00,” see Exh. D to Mot.;

20 2. Plaintiff’s attorney fee agreement establishing that he  
21 had entered into an agreement of 38.33 percent of the amount  
22 recovered at or before mediation or court-ordered settlement  
23 conference and 45 percent thereafter, see Exh. E to Mot.;

24 3. Plaintiff’s September 20, 2018 letter to Defendant  
25 stating that Plaintiff sought \$242,179.00 for damages caused by  
26 Defendant’s unreasonable failure to pay benefits due under the  
27 wage earner disability coverage and millions of dollars for  
28 financial elder abuse, see Exh. F to Mot.; and

1           4.     A bill for \$42,676.80 in caretaking services issued to  
2 Plaintiff and not paid by Defendant, see Exh. G to Mot.

3           This Court finds Plaintiff's September 20, 2018 letter  
4 sufficiently put Defendant on notice that the amount in  
5 controversy exceeded \$75,000. This letter plainly states that if  
6 the amount allegedly owed to Plaintiff under his policy was not  
7 paid by a specified date, Plaintiff would file suit for "the  
8 billed amount \$242,179.00." See Exh. F to Mot. No extrapolation  
9 or guesswork was necessary for Defendant to discern the potential  
10 amount in controversy.

11           Further, the fact that the letter was first sent to  
12 Defendant before litigation commenced is of no consequence. A  
13 document "received prior to the receipt of the initial pleading  
14 cannot trigger the second thirty-day removal period" under  
15 Section 1446(b). Carvalho v. Equifax Info. Servs., LLC, 629 F.3d  
16 876, 886 (9th Cir. 2010). But Plaintiff sent the letter to  
17 Defendant again after the suit began. Cf. id. at 885-86 (holding  
18 a demand letter received only prior to receipt of the initial  
19 pleading could not trigger the second thirty-day removal period).

20           Thus, the Court finds the letter, dated September 28, 2018,  
21 and disclosed in discovery, was by itself sufficient to put  
22 Defendant on notice of the case's removability. The Court need  
23 not analyze Plaintiff's other bases for putting Defendant on  
24 notice of the amount in controversy or address Plaintiff's  
25 argument that "substantial offensive or defensive action" in  
26 state court prior to removal warrants remanding the case. Given  
27 that Defendant received the letter on April 15, 2019, they had  
28 until May 15, 2019 to remove the case to federal court. See 28

1 U.S.C. § 1446(b)(3). Defendant failed to meet this deadline.  
2 The Court, therefore, finds Defendant's removal was not timely.

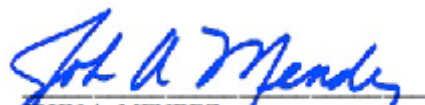
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III. ORDER

For the reasons set forth above, the Court GRANTS Plaintiff's motion to remand this case back to the Sacramento County Superior Court.

IT IS SO ORDERED.

Dated: October 8, 2019



JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE