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

SYED NAWAB,

No C 08-05750 VRW

Plaintiff,

ORDER

v

MARKEL INSURANCE COMPANY; and  
DOES 1 to 5, inclusive,

Defendant.

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On or about December 1, 2008, plaintiff commenced an action in superior court entitled Syed Nawab v Markel Insurance Company, case no RG08420587. On December 24, 2008, plaintiff timely removed the action to this court on the basis of diversity jurisdiction pursuant to 28 USC section 1441(a). Doc #1. On January 21, 2009, plaintiff filed motion to remand the action to state court, arguing that the Markel did not and cannot establish that the amount in controversy exceeds \$75,000 as required by 28 USC section 1332. Doc #11. This motion was withdrawn on March 31,

1 2009, when the parties stipulated to keep the case in federal  
2 court. Doc #16.

3 It is well established that a "defendant bears the burden  
4 of actually proving the facts to support jurisdiction, including  
5 the jurisdictional amount." Gaus v Miles, Inc, 980 F2d 564, 566-67  
6 (9th Cir 1992). "Federal jurisdiction must be rejected if there is  
7 any doubt as to the right of removal in the first instance." Id at  
8 566. There is a "strong presumption" against removal jurisdiction.  
9 Id. Where the complaint does not specify a precise monetary  
10 amount, the court can also make its own independent appraisal of  
11 the value of the claim sua sponte. See Valdez v Allstate Ins Co,  
12 372 F3d 1115, 1116 (9th Cir 2004).

13 If the plaintiff's state court complaint does not specify  
14 a particular amount of damages, "the removing defendant bears the  
15 burden of establishing, by a preponderance of the evidence, that  
16 the amount in controversy exceeds \$50,000 [now \$75,000]." Sanchez  
17 v Monumental Life Insurance Co, 102 F3d 398, 404 (9th Cir 1996).  
18 To satisfy this burden, "the defendant must provide evidence  
19 establishing that it is more likely than not that the amount in  
20 controversy exceeds that amount." Id.

21 Plaintiff's motion to remand opened a can of worms that  
22 this type of stipulation cannot close. The stipulation by the  
23 plaintiff to withdraw his motion for remand has no effect on  
24 whether this case is properly before the court. The court  
25 therefore deems it appropriate to take a closer look at diversity  
26 jurisdiction in this matter, and in doing so makes the following  
27 observations.

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1 First, plaintiff's complaint is silent on the amount in  
2 controversy. Doc #1, Exh A.

3 Second, after reviewing the register of actions in the  
4 state court action, the court is unable to conclude that the amount  
5 in controversy is significantly greater than the \$23,853.26 Markel  
6 already paid to the plaintiff for reimbursement of legal fees. Doc  
7 #11 at 7.

8 Third, the letter dated February 8, 2008 sent by Jack D  
9 Eskridge ("Eskridge") to Markel (Doc #1, Exh B) may not reflect a  
10 reasonable estimate of the plaintiff's claims. See Cohn v  
11 Petsmart, Inc, 281 F3d 837, 840 (9th Cir 2002) ("A settlement  
12 letter is relevant evidence of the amount in controversy if it  
13 appears to reflect a reasonable estimate of the plaintiff's  
14 claim."). Although courts may rely upon settlement letters as  
15 evidence of the amount of controversy, see *id* at 840, the  
16 settlement value claimed in such letters may not reflect the  
17 precise value of the claim. As one district court has explained,  
18 "[i]n trying to settle a claim, counsel naturally will try to  
19 inflate its value." Gwyn v Wal-Mart Stores, Inc, 955 F Supp 44, 46  
20 (MD NC 1997). The court is concerned that such "puffing" occurred  
21 here.

22 As an initial matter, the letter was sent on February 8,  
23 2008, while the plaintiff's initial complaint was filed in state  
24 court on December 1, 2008. Doc #1, Exh B. In the intervening ten  
25 months, plaintiff may have gained a better grasp of the actual  
26 amount at issue. Eskridge's letter also noted that the process of  
27 identifying legal billings covered by the Markel's policies was  
28 still ongoing and "will consume more time than available to end

1 this entirety of this matter." Id at 2. It is unclear whether the  
2 information provided in the Eskridge letter was accurate or if so,  
3 remains up-to-date. Secondly, Eskridge, who sent the letter, is  
4 not the plaintiff's attorney of record in this matter but rather an  
5 insurance attorney retained by the plaintiff for advice on how to  
6 handle insurance issues. Doc #11 at 6, 9. Plaintiff's counsel in  
7 this action may therefore see plaintiff's potential relief in a  
8 different light from Eskridge. Plaintiff's counsel indicated as  
9 such in a declaration to this court that the letter was not a  
10 settlement demand. Doc #11 at 9. Finally, the letter offered to  
11 release "all claims arising from this lawsuit and counterclaims as  
12 well as any bad faith or tort claims". Doc #1, Exh B at 2. Since  
13 the proposed settlement amount of \$125,000 includes the release of  
14 claims not named in the instant action, the letter's guidance on  
15 the actual amount in controversy is limited. For these reasons,  
16 the Eskridge letter, standing alone, may not be plaintiff's  
17 reasonable estimate of the amount in controversy at the time the  
18 initial pleading was filed.

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1                   In light of the above discussion, Markel is ORDERED to  
2 SHOW CAUSE in writing on or before October 30, 2009 why this case  
3 should not be remanded to state court for lack of diversity  
4 jurisdiction. Failure to respond timely to this order shall be  
5 deemed grounds for remand.

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7                   IT IS SO ORDERED.

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12 VAUGHN R WALKER  
13 United States District Chief Judge  
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