

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALBERT M. KUN, on his own behalf)	Case No. 09-4414 SC
and on behalf of those similarly)	
situated,)	ORDER DENYING
)	PLAINTIFF'S AMENDED
Plaintiff,)	<u>MOTION TO REMAND</u>
)	
v.)	
)	
PAUL REVERE LIFE INSURANCE COMPANY,)	
PAULA M. KRAGER, UNUM PROVIDENT)	
CORPORATION, and DOES 1 to 50,)	
inclusive,)	
)	
Defendants.)	
_____)	

I. INTRODUCTION

This matter comes before the Court on the Amended Motion to Remand ("Motion") filed by Plaintiff Albert M. Kun ("Plaintiff" or "Kun"). Docket No. 12. Defendants The Paul Revere Life Insurance Company and Unum Group ("Defendants") filed an Opposition and Plaintiff submitted a Reply. Docket Nos. 16, 17. For the following reasons, Plaintiff's Motion is DENIED.

II. BACKGROUND

On or about July 26, 1978, Plaintiff purchased a disability insurance policy from The Paul Revere Life Insurance Company. Kun

1 Decl. ¶ 3.¹ On or about April 25, 2009, Plaintiff was involved in
2 an automobile accident resulting in multiple bone fractures. Id.
3 ¶ 7. On or about May 11, 2009, Plaintiff applied for benefits
4 under his insurance policy in the amount of \$2000 per month. Id.
5 ¶ 8. According to Plaintiff, the claims adjuster told him that
6 because he was over seventy years old, the benefits would be
7 limited to a two-year period. Id. ¶ 9. On or around August 5,
8 2009, Unum sent Plaintiff a check for \$333.33. Notice of Removal,
9 Docket No. 1, Ex. A ("Compl.").²

10 On August 14, 2009, Plaintiff filed a Complaint in the
11 Superior Court of California, County of San Francisco, alleging
12 causes of action against Defendants for breach of contract, breach
13 of the covenant of good faith and fair dealing, fraud, restitution
14 under California Business and Professions Code § 17200 et seq.,
15 negligence, and violation of the Consumer Legal Remedies Act
16 ("CLRA"), California Civil Code §§ 1750-1784. See Compl.
17 Defendants removed the action to this Court. See Notice of
18 Removal. Plaintiff seeks to remand this action contending that
19 the amount in controversy does not exceed \$75,000. Mot. at 1.
20

21 III. LEGAL STANDARD

22 Any civil action brought in a state court may be removed to
23 this Court where there is complete diversity of citizenship and
24

25 ¹ Albert M. Kun is representing himself in this litigation,
26 and he filed a declaration in support of his Motion to Remand.
Docket No. 13.

27 ² A copy of the Unum check is attached as Exhibit B to
28 Plaintiff's Complaint.

1 where the amount in controversy exceeds \$75,000. 28 U.S.C. §§
2 1332, 1441. The Court strictly construes the removal statute
3 against removal jurisdiction, and therefore the defendant always
4 has the burden of establishing that removal is proper. Gaus v.
5 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). "Normally, this
6 burden is satisfied if the plaintiff claims a sum greater than the
7 jurisdictional requirement." Id. (citing St. Paul Mercury Indem.
8 Co. v. Red Cab Co., 303 U.S. 283, 288-89 (1938). "[W]hen a
9 complaint filed in state court alleges on its face an amount in
10 controversy sufficient to meet the federal jurisdictional
11 threshold, such requirement is presumptively satisfied"
12 Guglielmino v. McKee Foods Corp., 506 F.3d 696, 699 (9th Cir.
13 2007). If the state-court complaint is unclear, then the
14 defendant must provide evidence establishing that it is more
15 likely than not that the amount in controversy exceeds the
16 jurisdictional threshold. Sanchez v. Monumental Life Ins. Co.,
17 102 F.3d 398, 404 (9th Cir. 1996).

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19 **IV. DISCUSSION**

20 Plaintiff contends that the maximum amount of contract
21 damages in this case is \$24,000. Mot. at 2. However, the Court's
22 review of the Complaint filed in state court, as well as the
23 declaration filed in support of his Amended Motion to Remand,
24 indicates that Kun is claiming an entitlement to disability
25 benefits of \$2000 per month for twenty-four months, which totals
26 \$48,000. See Compl. ¶ BC-2, ¶ FR-2; Kun Decl. ¶ 9. In his fourth
27 cause of action, Plaintiff seeks restitution of all his premium

1 payments since 1978, which amounts to \$39,710.28. See Compl.; Kun
2 Decl. ¶ 6. Based on these claims alone, and without even
3 considering Kun's other requests for relief, it is clear that
4 Plaintiff is claiming a sum greater than the jurisdictional
5 requirement of \$75,000.

6 Relying on Guglielmino, Plaintiff contends that the damages
7 for each of his causes of action must be examined separately and
8 cannot be added. Reply at 1. This contention is incorrect. See
9 Guglielmino, 506 F.3d at 701 (affirming district court's
10 determination that amount in controversy exceeded jurisdictional
11 threshold based on combination of requested economic damages,
12 attorneys' fees, and punitive damages). Since Plaintiff's
13 Complaint alleges an amount in controversy sufficient to meet the
14 federal jurisdictional threshold, Defendants' decision to remove
15 this case was not improper.

16
17 **V. CONCLUSION**

18 For the reasons stated above, the Court DENIES Plaintiff's
19 Amended Motion to Remand.

20
21 IT IS SO ORDERED.

22
23 Dated: January 20, 2010

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25 UNITED STATES DISTRICT JUDGE