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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CONCORDE CONSULTING GROUP,
INC. *et al.*,

Plaintiffs,

v.

BEAZLEY INSURANCE COMPANY,
INC.,

Defendant.

Civil No. 10cv83-L(JMA)

**ORDER REMANDING ACTION TO
STATE COURT**

On January 12, 2010 Defendant filed a notice of removal, removing this insurance action from State court. The notice of removal is based on diversity jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441. Because the court lacks subject matter jurisdiction, the action is **REMANDED** to State court.

“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution or a statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction and the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *see also Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006). “Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the

1 United States for the district and division embracing the place where such action is pending." 28
2 U.S.C. §1441(a).

3 Consistent with the limited jurisdiction of federal courts, the removal statute is strictly
4 construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992);
5 *see also Sygenta Crop Prot. v. Henson*, 537 U.S. 28, 32 (2002); *O’Halloran v. University of*
6 *Wash.*, 856 F.2d 1375, 1380 (9th Cir. 1988). “Federal jurisdiction must be rejected if there is
7 any doubt as to the right of removal in the first instance.” *Gaus*, 980 F.2d at 566. “The strong
8 presumption against removal jurisdiction means that the defendant always has the burden of
9 establishing that removal is proper.” *Id.*; *see also Nishimoto v. Federman-Bachrach & Assoc.*,
10 903 F.2d 709, 712 n.3 (9th Cir. 1990); *O’Halloran*, 856 F.2d at 1380. “The traditional rule of
11 burden allocation in determining removal jurisdiction was meant to comport with what the
12 Supreme Court has termed ‘[t]he dominant note in the successive enactments of Congress
13 relating to diversity jurisdiction,’ that is, ‘jealous restriction, of avoiding offense to state
14 sensitiveness, and of relieving the federal courts of the overwhelming burden of business that
15 intrinsically belongs to the state courts in order to keep them free for their distinctive federal
16 business.’” *Abrego Abrego*, 443 at 685, quoting *Indianapolis v. Chase Nat’l Bank*, 314 U.S. 63,
17 76 (1941).

18 Defendant removed this action based on diversity jurisdiction under 28 U.S.C. Section
19 1332(a). Original jurisdiction exists in cases of complete diversity, where each of the plaintiffs
20 is a citizen of a different state than each of the defendants, and the amount in controversy
21 exceeds \$ 75,000, excluding interest and costs. 28 U.S.C. §1332(a); *Caterpillar Inc. v. Lewis*,
22 519 U.S. 61, 68 (1996).

23 To determine whether the amount in controversy has been met on removal, “[t]he district
24 court may consider whether it is ‘facially apparent’ from the complaint that the jurisdictional
25 amount is in controversy.” *Singer v. State Farm Mutual Auto Ins. Co.*, 116 F.3d 373, 377 (9th
26 Cir. 1997). Plaintiffs purchased a professional liability insurance policy from Defendant. When
27 they were sued for negligently performing professional services, they tendered the defense to
28 Defendant, but Defendant denied the tender. Plaintiffs sued Defendant for breach of contract,

1 breach of the implied covenant of good faith and fair dealing, and violation of California
2 Business and Professions Code Section 17200. All causes of action are alleged under California
3 law. Plaintiffs seek damages, punitive damages, restitution, injunctive relief, and attorney’s fees.
4 The complaint does not specify the amount of damages sought.

5 “Where the complaint does not specify the amount of damages sought, the removing
6 defendant must prove by a preponderance of the evidence that the amount in controversy
7 requirement has been met.” *Abrego Abrego*, 443 F.3d at 683. “Under this burden, the defendant
8 must provide evidence that it is more likely than not that the amount in controversy satisfies the
9 federal diversity jurisdictional amount requirement.” *Sanchez v. Monumental Life Ins. Co.*, 102
10 F.3d 398, 404 (9th Cir. 1996).

11 Defendants point to two related complaints pending in State court to argue that the
12 jurisdictional amount is met in this case. The court takes judicial notice of the related
13 complaints. First, in *Speights v. City of Oceanside et al.*, Mr. Speights filed a complaint for
14 inverse condemnation against the City of Oceanside (“City”) and various City departments and
15 officials, seeking \$12 million in damages. (Decl. of Thomas H. Prouty, Ex. B.) Mr. Speights
16 was developing an apartment project adjacent to a school district property. He claims that the
17 City unlawfully demanded, as a condition for the necessary permits and certificate of occupancy,
18 that he make significant and expensive improvements to the school district’s storm water
19 drainage facilities. He claims that the City was motivated to delay and escalate the cost of his
20 project because it wanted to acquire it at a favorable price for low-income housing. In the end,
21 Mr. Speights was forced to sell the project at a distressed price.

22 Second, in *City of Oceanside v. Tait et al.*, the City filed a cross-complaint against five
23 defendants, including Plaintiffs in this action, for indemnity, apportionment of fault, declaratory
24 relief, breach of a contractual indemnity provision and negligence. (Compl. Ex. B.) The City
25 did not specify the amount of damages it sought from the cross-defendants.

26 Third, in the instant action, Plaintiffs sued their insurer for failing to defend them against
27 the City’s cross-complaint. Plaintiffs base their action on the City’s negligence claim. (*See*
28 Compl. at 3.) The City alleged that the cross-defendants, including Plaintiffs, were negligent in

1 performing storm water drainage engineering work for Mr. Speights. (Compl. Ex. B at 5.)

2 In support of the amount of controversy, Defendant offers a conclusory statement that,
3 based on the underlying actions, it is apparent that the amount in controversy in this action
4 exceeds \$75,000. (Notice of Removal at 5.) Defendant offers no evidence, factual allegations or
5 argument about the value of relief sought in this case or, specifically, the cost of defense and
6 indemnity against the negligence claim. It has therefore not satisfied its burden of showing that
7 it is more likely than not that the jurisdictional amount is met in this case.

8 The facts and arguments presented in the notice of removal do not meet the burden of
9 establishing removal jurisdiction. "If at any time before final judgment it appears that the
10 district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C.
11 § 1447(c). Accordingly, this action is **REMANDED** to the Superior Court of the State of
12 California for the County of San Diego.

13 **IT IS SO ORDERED.**

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15 DATED: February 1, 2010

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17 M. James Lorenz
18 United States District Court Judge
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