UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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| ODILIA GOMEZ, | Case No. 2:14-cv-884-APG-VCF |
| Plaintiff, | **ORDER REMANDING CASE TO STATE COURT** |
| v. | |
| STATE FARM MUTUAL AUTOMOBILE INSURANCE CO., | (Dkt. #7) |
| Defendant. | |

Defendant State Farm Mutual Automobile Insurance Company ("State Farm") removed this case to federal court on June 6, 2014. On June 12, 2014, plaintiff Odilia Gomez filed a motion to remand the case back to state court. (Dkt. #7.) For the reasons set forth below, I grant that motion.

The removing party has the burden of proving that removal is proper, and that this court may properly assert jurisdiction over the parties and dispute. If removal is sought based on diversity of citizenship, "the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy." 28 U.S.C. § 1446(c)(2). If the initial pleading seeks nonmonetary relief or "a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded," then "the notice of removal may assert the amount in controversy," but only "if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a)." 28 U.S.C. § 1446(c)(2).

Courts "strictly construe the removal statute against removal jurisdiction." *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992) (per curiam). "Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." *Id.* "The 'strong presumption' against removal jurisdiction means that the defendant always has the burden of establishing that removal

is proper." *Id.* "Normally, this burden is satisfied if the plaintiff claims a sum greater than the jurisdictional requirement," but where "it is unclear what amount of damages the plaintiff has sought," as with claims governed by Nevada Rule of Civil Procedure 8(a), "then the defendant bears the burden of actually proving the facts to support jurisdiction, including the jurisdictional amount." *Id.*

In *Gaus*, the Ninth Circuit vacated the district court's grant of summary judgment because the federal court lacked subject matter jurisdiction; the Ninth Circuit remanded with instructions to remand the case to the state court. 980 F.2d at 565, 567. The plaintiff had filed suit in Nevada state court, seeking damages "in excess of $10,000." Upon removal, the removing defendant alleged that "the matter in current controversy . . . exceeds the sum of $50,000." *Id.* at 565. The Ninth Circuit found that the removing defendant "offered no facts whatsoever to support the court's exercise of jurisdiction," and held that "[t]his allegation, although attempting to recite some 'magical incantation,' neither overcomes the 'strong presumption' against removal jurisdiction, nor satisfies [the removing defendant]'s burden of setting forth, in the removal petition itself, the underlying facts supporting its assertion that the amount in controversy exceeds $50,000." *Id.* at 567.

Here, plaintiff specifically stated in her complaint that "[t]he matter in controversy [is] not to exceed a value of $74,500." (Dkt. #1 at p. 14 (p. 7 of complaint).) Plaintiff is the master of her complaint, and specifically drafted it to keep the case out of federal court. Plaintiff confirmed the amount in controversy in her motion (Dkt. # 7 at pp. 4-5) and in her reply (Dkt. #10 at pp. 2-4). State Farm has offered no medical records or other evidence to rebut those admissions by plaintiff, or to show that the amount in controversy in this case exceeds $75,000. Accordingly, I cannot exercise jurisdiction over this action.

IT IS THEREFORE ORDERED that this case is remanded to the state court from where it was removed.

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IT IS FURTHER ORDERED that plaintiff's request for an award of her fees and costs is denied.

Dated: June 27, 2014.

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ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE