

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JEREMIAH DAVIS,

Case No. 2:17-CV-1161 JCM (VCF)

Plaintiff(s),

ORDER

V.

NATIONWIDE AFFINITY INSURANCE
COMPANY OF AMERICA,

Defendant(s).

Presently before the court is plaintiff Jeremiah Davis's motion to remand to state court. (ECF No. 8). Defendant Nationwide Affinity Insurance Company of America filed a statement regarding removal. (ECF No. 9). Defendant also filed an opposition to plaintiff's motion to remand (ECF No. 10), to which plaintiff replied (ECF No. 11).

I. Facts

This is a breach of insurance contract action. (ECF No. 1 at 9–10). Plaintiff alleges that “[d]efendant was obligated to indemnify [p]laintiff for any harm caused to [p]laintiff for which coverage might reasonably be provided under the [p]olicy.” (Id. at 10). Plaintiff further alleges that defendant breached this duty when it refused to indemnify plaintiff after an uninsured motorist crashed into the rear of his rental car while stopped at a traffic light. (Id.).

Plaintiff originally filed the complaint in state court on March 17, 2017. (ECF No. 1 at 9). The complaint alleges three causes of action: (1) breach of contract, (2) bad faith, and (3) unfair settlement practices. (Id. at 9–16). Plaintiff pleads actual damages—which encompass medical payments coverage, uninsured motorists’ coverage, and emotional distress—totaling exactly

1 \$75,000. (Id. at 16). Plaintiff also requests punitive damages and “such further relief as the court
2 deems just” in its prayer for relief. (Id. at 16).

3 Defendant removed the action to federal court on April 26, 2017, pursuant to 28 U.S.C. §
4 1332. (See id.).

5 In the instant motion, plaintiff moves to remand the action to state court. (ECF No. 8).

6 **II. Legal Standard**

7 Pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the
8 district courts of the United States have original jurisdiction, may be removed by the defendant or
9 the defendants, to the district court of the United States for the district and division embracing the
10 place where such action is pending.” 28 U.S.C. § 1441(a).

11 For a United States district court to have diversity jurisdiction under 28 U.S.C. § 1332, the
12 parties must be completely diverse and the amount in controversy must exceed \$75,000, exclusive
13 of interest and costs. 28 U.S.C. § 1332(a); *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d
14 1098 (9th Cir. 2003). A removing defendant has the burden to prove by a preponderance of the
15 evidence that the jurisdictional amount is met. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d
16 398, 403–04 (9th Cir. 1996). “Where both actual and punitive damages are recoverable under a
17 complaint each must be considered to the extent claimed in determining jurisdictional amount.”
18 *Bell v. Preferred Life Assur. Soc. of Montgomery, Ala.*, 320 U.S. 238, 240 (1943); see also *Gibson*
19 v. *Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001) (“It is well established that punitive damages
20 are part of the amount in controversy in a civil action”).

21 Procedurally, a defendant has thirty (30) days upon notice of removability to remove a case
22 to federal court. *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006) (citing
23 28 U.S.C. § 1446(b)(2)). Defendants are not charged with notice of removability “until they’ve
24 received a paper that gives them enough information to remove.” *Id.* at 1251.

25 A plaintiff may challenge removal by timely filing a motion to remand. 28 U.S.C. §
26 1447(c). Remand to state court is proper if the district court lacks jurisdiction. *Id.* On a motion
27 to remand, the removing defendant faces a strong presumption against removal, and bears the
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1 burden of establishing that removal is proper. Sanchez 102 F.3d at 403–04; Gaus v. Miles, Inc.,
2 980 F.2d 564, 566–67 (9th Cir. 1992).

3 **III. Discussion**

4 In its statement of removal, defendant argues that it has properly removed the case to
5 federal court, that complete diversity exists between the parties, and that the amount-in-
6 controversy exceeds \$75,000, exclusive of interest and costs. (ECF No. 1).

7 Plaintiff does not dispute that, procedurally, the case has been properly removed. (See ECF
8 Nos. 8, 11). Further, neither party argues that complete diversity is not met. (See ECF Nos. 8, 9,
9 10, 11). Instead, plaintiff’s argument is that the amount-in-controversy is exactly \$75,000 and, as
10 a result, the case must be remanded to state court. (ECF No. 8). The court disagrees.

11 Here, the complaint “filed in state court alleges on its face an amount in controversy
12 sufficient to meet the federal jurisdictional threshold.” Guglielmino v. McKee Foods Corp., 506
13 F.3d 696, 699 (9th Cir. 2007). The court finds that the instant action, which concerns defendant’s
14 alleged breach of insurance contract and bad faith, falls squarely within the purview of the Nevada
15 Revised Statute authorizing punitive damages. Nev. Rev. Stat. § 42.005(2)(b). Moreover,
16 plaintiff’s complaint specifically requests punitive damage be imposed. (ECF No. 1 at 16).
17 Consequently, punitive damages must be included in the total amount-in-controversy. Bell, 320
18 U.S. at 240.

19 The allegation of actual damages in the amount of \$75,000 on the face of the complaint
20 coupled with the request for punitive damages presumptively satisfies the amount-in-controversy
21 requirement of 28 U.S.C. § 1332. See *id.* Having pleaded exactly \$75,000 in actual damages, the
22 amount-in-controversy requirement is satisfied because plaintiff has pleaded punitive damages in
23 some amount. Further, it does not appear “to a ‘legal certainty’ that the plaintiff cannot actually
24 recover that amount.” *Id.* Defendant has met its burden of showing, by a preponderance of the
25 evidence, that removal is proper. See Sanchez, 102 F.3d at 403–04. As a result, plaintiff’s motion
26 to remand is denied.

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IV. Conclusion

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff's motion to remand to state court (ECF No. 8) be, and the same hereby is, DENIED.

DATED August 15, 2017.

Xenos C. Mahan
UNITED STATES DISTRICT JUDGE