

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 Silver State Ford,

5 Plaintiff

6 v.

7 Key Insurance Company,

8 Defendant
9

Case No. 2:24-cv-01104-CDS-BNW

**Order Granting Plaintiff's
Motion to Remand**

[ECF No. 7]

10 Plaintiff Silver State Ford (“Silver State”) is seeking to recover against defendant Key
11 Insurance Company (“Key Insurance”) after its insured, Virginia Harrelson, was involved in a
12 crash that damaged one of Silver State’s vehicles. *See* Compl., ECF No. 1-2. This case was
13 initiated in Nevada state court and was removed to this court on June 13, 2024. ECF No. 1.
14 Subsequently, Silver State filed a motion to remand this action, arguing that Key Insurance failed
15 to establish complete diversity or that the amount in controversy exceeds \$75,000. ECF No. 7.
16 The motion is fully briefed, including a supplement filed by Key Insurance. ECF No. 11; ECF No.
17 12; ECF No. 16. For the reasons herein, I grant Silver State’s motion to remand.

18 **I. Background**

19 In the instant case, Silver State is suing Key Insurance for breach of contract, breach of
20 the implied covenant of good faith and fair dealing, tortious breach of the implied covenant of
21 good faith and fair dealing, and violation of the Nevada Unfair Claims Practices Act. *Id.* at 12–22.
22 Silver State previously filed suit against Harrelson in 2019 in Nevada state court, and now alleges
23 that “Key Insurance Company failed to defend its insured Virginia Harrelson by failing to serve
24 written discovery, failing to respond to written discovery, failing to take any depositions, failing
25 to retain experts, submitting its arbitration brief late, failing to file for trial de novo, and
26 allowing judgment to be entered against its insured in excess of her Key Insurance Company

1 policy limits.” See Lorelli Decl., ECF No. 7 at 3. Key Insurance filed a petition for removal on June
2 13, 2024. ECF No. 1. I issued a minute order on June 14, 2024, requiring Key Insurance to file a
3 statement regarding removal, including a summary of its evidence of the amount in controversy.
4 Min. Order, ECF No. 2 at 1. Key insurance timely filed its statement regarding removal,
5 indicating that the sole basis for removal was diversity jurisdiction. ECF No. 6 at ¶ 3.

6 Silver State argues that remand is appropriate because Key Insurance failed to meet the
7 requisite burden of proof to establish diversity jurisdiction. ECF No. 7. First, Silver State
8 contends that Key Insurance failed to provide evidence to demonstrate that the amount in
9 controversy in this case exceeds \$75,000. *Id.* at 8–9. It also argues that Key Insurance failed to
10 establish complete diversity of citizenship. *Id.* at 10–11. Key Insurance responds that Silver
11 State’s calculations do not accurately reflect the amount it seeks in its lawsuit. ECF No. 11 at 6–
12 11.

13 II. Legal standard

14 “Federal courts are courts of limited jurisdiction, possessing ‘only that power authorized
15 by Constitution and statute.’” See U.S. Const. art. III, § 2, cl. 1; *Gunn v. Minton*, 568 U.S. 251, 256
16 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). When initiating a
17 case, “[a] plaintiff is the master of [their] complaint, and has the choice of pleading claims for
18 relief under state or federal law (or both).” *Hansen v. Grp. Health Coop.*, 902 F.3d 1051, 1056 (9th Cir.
19 2018) (citing *Caterpillar Inc. v. Williams*, 482 U.S. 386, 389–99 (1987)). Generally, plaintiffs are
20 entitled to deference in their choice of forum. *Ayco Farms, Inc. v. Ochoa*, 862 F.3d 945, 949–50 (9th
21 Cir. 2017). However, Congress has enacted statutes that permit parties to remove cases
22 originally filed in state court to federal court. See 28 U.S.C. § 1441. Subject to certain
23 requirements and limitations, a defendant generally may remove a case from state court to
24 federal court where the case presents either diversity or federal question jurisdiction. 28 U.S.C.
25 §§ 1441(a)–(c). Relevant to this motion, diversity jurisdiction requires: (1) all plaintiffs be of
26 different citizenship than all defendants, and (2) the amount in controversy to exceed \$75,000.

1 See 28 U.S.C. § 1332(a). Once an action is removed to federal court, a plaintiff may challenge
2 removal by filing a motion to remand. 28 U.S.C. § 1447(c). To protect the jurisdiction of state
3 courts, the removal statute should be construed narrowly, against removal jurisdiction and in
4 favor of remand. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941).

5 III. Discussion

6 A. Local rules

7 As a threshold matter, the court first addresses the parties’ exhibits attached to their
8 pleadings. Local Rule IC 2-2(3) requires that exhibits and attachments “be attached as separate
9 files” not as part of the base document. LR IC 2-2(3)(A). Both parties simply incorporated their
10 exhibits directly in their filings. Additionally, “[d]ocuments filed electronically must be filed in a
11 searchable . . . PDF” file, not merely scanned. LR IA 10-1(b). See also LR IC 2-2(a)(1). These and
12 the other local rules exist to streamline court processes and preserve court resources, so I direct
13 the parties to follow them in the future in this case and any other litigation in this district.
14 Failing to follow the local rules may result in the court striking, or not considering, exhibits in
15 the future.

16 B. Amount in controversy

17 In determining the amount in controversy, courts first look to the complaint. *Ibarra v.*
18 *Manheim Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015). Generally, “the sum claimed by the plaintiff
19 controls if the claim is apparently made in good faith.” *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303
20 U.S. 283, 288 (1938) (footnote omitted). The \$75,000 threshold is satisfied if the plaintiff claims
21 a sum greater than the jurisdictional requirement. See *id.* at 288–89; *Pachinger v. MGM Grand Hotel-*
22 *Las Vegas, Inc.*, 802 F.2d 362, 363 (9th Cir. 1986). However, like in this case, when removal
23 jurisdiction is challenged by a plaintiff, evidence establishing the amount in controversy is
24 required. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 88 (2014). “In such a case,
25 both sides submit proof and the court decides, by a preponderance of the evidence, whether the
26 amount-in-controversy requirement has been satisfied.” *Id.* (citing 28 U.S.C. § 1446(c)(2)(B)). As

1 to the kind of evidence that may be considered, the Ninth Circuit has adopted the “practice of
2 considering facts presented in the removal petition as well as any ‘summary-judgment-type
3 evidence relevant to the amount in controversy at the time of removal.” *Matheson v. Progressive*
4 *Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (quoting *Singer v. State Farm Mut. Auto. Ins. Co.*,
5 116 F.3d 373, 377 (9th Cir. 1997)). Conclusory allegations are insufficient. *Id.* (citation omitted).
6 Removal is proper “if the district court finds, by a preponderance of the evidence, that the
7 amount in controversy exceeds’ the jurisdictional threshold.” *Dart Cherokee*, 574 U.S. at 88.

8 In its complaint, Silver State seeks the following:

9 Compensatory and/or expectation damages in an amount in excess of \$15,000.00;
10 Consequential damages in an amount in excess of \$15,000.00; The amount of the
11 Judgment against ASSIGNOR, to include all interest due and owing until such
12 judgment has been satisfied; Pre-judgment interest and post-judgment interest at
the legal statutory rate; Punitive and/or exemplary damages in an amount in excess
of \$15,000.00; Emotional distress, anxiety and inconvenience; Attorney’s fees and
costs of litigation; and For any other and further relief as is just and proper.

13 Compl., ECF No. 1-2 at 22–23. Key Insurance’s statement of removal calculates the “judgment
14 grand total” as \$22,606.11. Def.’s Statement of Removal, ECF No. 6 at 2.

15 Aggregating each of Silver State’s \$15,000 prayers for relief and the \$22,606.11 calculated
16 by Key Insurance, the total is only \$67,606.11. While this number could potentially surpass
17 \$75,000 when combined with other damages, depending on the outcome of the trial, it is simply
18 not clear from the face of the complaint that it will. And Key Insurance’s citation to punitive
19 damages received in other cases does not establish that the amount in controversy is met. ECF
20 No. 11 at 9–11. Key Insurance failed to demonstrate how the facts in those cases relate to the facts
21 here or show why a punitive damages award in those cases would result in a similar award of
22 punitive damages here. And mere speculative assertions of what Silver State’s attorney fees and
23 emotional damages may amount to do not satisfy the defendant’s burden. ECF No. 11 at 8. *See, e.g.*,
24 *Frankovich v. Home Depot United States, Inc.*, 2023 U.S. Dist. LEXIS 183182, at *5 (C.D. Cal. Oct. 11,
25 2023) (“To reach the jurisdictional threshold, Defendant includes attorneys’ fees, emotional
26

1 distress damages, and punitive damages. This Court, however, does not include these sorts of
2 speculative damages in the amount-in-controversy.”)

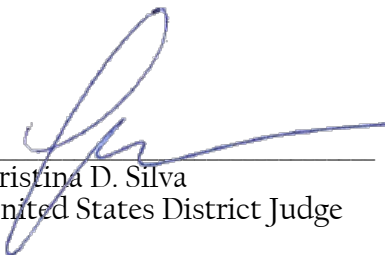
3 Additionally, contrary to Key Insurance’s contentions, ECF No. 11 at 11–13, settlement
4 negotiations can serve as relevant evidence to determine the amount in controversy.¹ *Cohn v.*
5 *Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (“A settlement letter is relevant evidence of the
6 amount in controversy if it appears to reflect a reasonable estimate of the plaintiff’s claim.”
7 (citations omitted)). Considering the settlement negotiations, I find that the amount in
8 controversy is not met because both parties’ offers of settlement in this case were below the
9 \$75,000 threshold. *See* ECF No. 7 at 4 (stating that plaintiff offered \$57,671.18 and defendant
10 offered \$2,000.00). Thus Key Insurance has not demonstrated evidence sufficient to overcome
11 its burden to prove by a preponderance of the evidence that Silver State’s claims are in excess of
12 the \$75,000 threshold required to establish diversity jurisdiction.²

13 **IV. Conclusion**

14 Therefore, Silver State’s motion to remand [ECF No. 7] is GRANTED.

15 The Clerk of Court is kindly directed to remand this case to the Eighth Judicial District
16 Court for the State of Nevada, Case No. A-24-893610-C, Department X, and to close this case.

17 Dated: August 29, 2024

18
19 
20 Cristina D. Silva
21 United States District Judge
22
23

24 ¹ Key Insurance writes at length in its response and supplement that these settlement negotiations were
25 improper. ECF No. 11 at 12. It further states that Silver State’s offer was not made in good faith, as it was
26 designed only to defeat diversity jurisdiction. *Id.* at 12–13. Still, even if I declined to consider the
settlement negotiations, my decision to remand would not change.

² The parties also argue about whether there is diversity of citizenship. Because there is an insufficient
amount in controversy, this argument need not be addressed.