UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

OLGA RODRIGUEZ,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION H-19-3728
	§	
STATE FARM LLOYDS,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER

Pending before this court is Plaintiff Olga Rodriguez's motion to remand (Dkt. 4) and Defendant State Farm Lloyd's response (Dkt. 5). Plaintiff did not file a reply to Defendant's response. Having considered the motion, response, and applicable law, the court finds that Plaintiff's motion should be **DENIED**.

I. BACKGROUND

Plaintiff sued Defendant on August 23, 2019, in the 164th Judicial District Court of Harris County, Texas, under Cause No. 2019-59536. *See* Dkt. 1-3, Ex. B-2 (Plaintiff's Original Petition) ("Pet."). Plaintiff alleges that "Defendant improperly denied and/or underpaid the claim." Pet. ¶ 13. Plaintiff brings claims of breach of contract and various violations of the Texas Insurance Code—including prompt payment of claims and bad faith—seeking actual damages and attorney fees. *Id.* ¶¶ 17–33. Defendant timely removed the action to this court on September 27, 2019. Dkt. 1. Plaintiff timely seeks remand to state court. Dkt. 4.

II. LEGAL STANDARD

Federal courts have original jurisdiction over all civil actions between citizens of different states where the amount in controversy exceeds $75,000, exclusive of interest and costs. 28

U.S.C. § 1332(a)(1). "The party seeking to assert federal jurisdiction, in this case [Defendant], has the burden of proving by a preponderance of the evidence that subject matter jurisdiction exists." *New Orleans & Gulf Coast Ry Co. v. Barrois*, 533 F.3d 321, 327 (5th Cir. 2008). "Any ambiguities are construed against removal because the removal statute should be strictly construed in favor of remand." *Manguno v. Prudential Prop. and Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002) (citing *Acuna v. Brown & Root, Inc.*, 200 F.3d 335, 339 (5th Cir. 2000)).

However, courts must "remain[] vigilant to the potential for manipulation by the plaintiff who prays for damages below the jurisdictional amount even though he knows that his claim is actually worth more." *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1254 (5th Cir. 1998). "The court looks to the face of the plaintiff's original petition to evaluate the amount in controversy." *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1336 (5th Cir. 1995). "When the plaintiff's complaint does not allege a specific amount of damages, the removing defendant must prove by a preponderance of the evidence that the amount in controversy exceeds [the jurisdictional amount]." *De Aguilar v. Boeing Co. (De Aguilar I)*, 11 F.3d 55, 58 (5th Cir. 1993) (citations omitted). "[I]f a defendant can show that the amount in controversy actually exceeds the jurisdictional amount, the plaintiff must be able to show that, as a matter of law, it is certain that he will not be able to recover more than the damages for which he has prayed . . . ." *De Aguilar v. Boeing Co. (De Aguilar II)*, 47 F.3d 1404, 1411 (5th Cir. 1995).

The amount in controversy is determined at the time of removal. *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996). "'Litigants who want to prevent removal must file a binding stipulation or affidavit with their complaints; once a defendant has removed the case, *St. Paul* makes later filings irrelevant.'" *De Aguilar II*, 47 F.3d at 1412 (quoting *In re Shell Oil Co.*, 970

F.2d 355, 356 (7th Cir. 1992) (per curiam) (quoting *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288, 58 S.Ct. 586, 590, 82 L.Ed. 845 (1938))).

III. ANALYSIS

Plaintiff does not dispute that the parties are diverse. Dkt. 4. Instead, Plaintiff argues that remand is proper because, the "[pre-suit] demand was for $38,306.82 and it made clear that the insured would never demand an amount greater than $75,000.00," and because "Plaintiff executed a binding stipulation to ensure that the amount in controversy in this lawsuit could not and would never exceed $75,000.00." *Id.* at 1. *See also* Dkt. 4-1 (Plaintiff's Demand Letter); Dkt. 4-2 (Plaintiff's Binding Stipulation). Defendant argues that "the amount in controversy requirement was satisfied at the time . . . of removal" because "Plaintiff's petition expressly seeks damages of an amount over $200,000 but not more than $1,000,000." Dkt. 5 ¶¶ 1–2. Defendant also points out that Plaintiff's binding stipulation was executed on October 20, 2019, *after* removal, and therefore cannot defeat federal jurisdiction. *Id.* ¶ 3.

The court begins by looking at the face of the petition. *Allen*, 63 F.3d at 1336. The Petition states that "Plaintiff seeks monetary relief over $200[,]000 but not more than $1,000,000.00. Tex. R. Civ. P. 47(c)(4)." Pet. ¶ 2. This is the only portion of the petition that discusses any dollar amount. "District courts in this circuit [are] divided on whether a complaint pled under the Texas Rules of Civil Procedure may now demand a specific amount in damages." *Morales v. Allstate Texas Lloyds*, No. 5:19-CV-56, 2019 WL 4733604, at *3–4 (S.D. Tex. Sept. 19, 2019) (discussing the history of Rule 47 and finding that a specific demand would not violate the rule). Whether or not Plaintiff could have pled a specific amount of damages, Plaintiff could have cited to Rule 47(c)(2), which states that Plaintiff seeks "monetary relief of $100,000 or less." Tex. R. Civ. P. 47(c)(2). Of course, this subsection "'does not map precisely onto the $75,000 federal diversity threshold.'" *Morales*,

2019 WL 4733604, at *3 (quoting *Solares v. Allstate Vehicle & Prop. Ins. Co.*, 19-CV-27, 2019 WL 3253072, at *1 (S.D. Tex. June 11, 2019)). However, Plaintiff's election to cite a subsection providing a range of damages that even at the low end is within the federal diversity threshold, if not proof positive, is certainly proof "by a preponderance of the evidence that the amount in controversy exceeds [the jurisdictional amount]." *De Aguilar I*, 11 F.3d at 58. Were there any doubt about Plaintiff's ability to recover more than $75,000, the court notes that Plaintiff's bad faith claim includes a claim to "exemplary and/or treble damages." Pet. ¶ 24. *See Lewis v. State Farm Lloyds*, 205 F. Supp. 2d 706, 708 (S.D. Tex. 2002) (Kent, J.) (finding that defendant proved the propriety of removal even though Plaintiff only sought $48,890.26 in property damages, because plaintiff also sought exemplary and treble damages).

Thus, to defeat federal diversity jurisdiction, "plaintiff must be able to show that, as a matter of law, it is certain that he will not be able to recover more than the damages for which he has prayed . . . ." *De Aguilar II*, 47 F.3d at 1411. Because Plaintiff's binding stipulation was executed *after* removal, it has no legal effect. *Id.* at 1412. Moreover, Plaintiff's demand letter, although relevant, is insufficient to prove "as a matter of law" that she cannot recover damages in excess of $75,000. *Id.* at 1411. Accordingly, Plaintiff's motion must be denied.

IV. CONCLUSION

For the reasons stated above, Plaintiff's motion to remand (Dkt. 4) is **DENIED**.

Signed at Houston, Texas on November 27, 2019.

Gray H. Miller
Senior United States District Judge