

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ANTONIO DIAZ,

Plaintiff,

v.

GEOVERA SPECIALTY INSURANCE COMPANY,

Defendant.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION H-19-3932

MEMORANDUM OPINION AND ORDER

Pending before this court is Plaintiff Antonio Diaz’s motion to remand (Dkt. 4) and Defendant GeoVera Specialty Insurance Company’s response (Dkt. 6). 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 22, 2019, in the 80th Judicial District Court of Harris County, Texas, under Cause No. 2019-58620. *See* Dkt. 1-3, Ex. C (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.* ¶¶ 17–28. Defendant timely removed the action to this court on October 10, 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 \$27,863.24[] 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 Plaintiff’s “bare allegations of jurisdictional facts that the amount in controversy is ‘less than \$74,000’ are insufficient to defeat federal jurisdiction” because Plaintiff cannot “demonstrate ‘to a legal certainty that the claim really is for less than the jurisdictional amount.’” Dkt. 6 at 2 (quoting *St. Paul*, 134 F.3d at 1253). Defendant also points out that Plaintiff’s binding stipulation was executed *after* removal, and therefore cannot defeat federal jurisdiction.

The court begins by looking at the face of the petition. *Allen*, 63 F.3d at 1336. Plaintiff does not plead a specific amount of damages. Instead, the petition states that “Plaintiff seeks monetary relief under \$100,000.00, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney’s fees. Tex. R. Civ. P. 47(c)(1). Further, Plaintiff specifies that he seeks a maximum amount of damages that does not exceed the sum or value of \$74,000, exclusive of interest and costs.” Pet. ¶ 2. However, Plaintiff’s bad faith claim includes a claim to “exemplary and/or treble damages.” *Id.* ¶ 25. Moreover, Plaintiff does not state that he will not *accept* more than \$74,000.00, only that he does not *seek* more than that. Should Plaintiff be awarded his pre-suit demand of \$27,863.24, treble damages alone would exceed the jurisdictional threshold. Thus, Defendant has


shown by a preponderance that the amount in controversy exceeds the jurisdictional amount. *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 on November 5, 2019 (Dkt. 4-2 at 2), *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 he 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 December 31, 2019.



Gray H. Miller
Senior United States District Judge