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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON  
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8 CHYANNE HURST and KEVIN HURST,

9 Plaintiffs,

10 v.

11 OHIO SECURITY INSURANCE CO.,

12 Defendant.

NO. 1:16-cv-03222-SAB

**ORDER DENYING**

**PLAINTIFF'S MOTION FOR  
13 REMAND**

14 Before the Court is Plaintiff's Motion to Remand, ECF No. 10. The motion  
15 was heard without oral argument. Plaintiffs Chyanne and Kevin Hurst are  
16 represented by Brian Anderson and Net Stratton. Defendant Ohio Security  
17 Insurance Co. is represented by John Silk and Sarah Eversole.

18 This case was originally filed in November, 2016 in Yakima County  
19 Superior Court. Plaintiffs owned a small restaurant located in Grandview,  
20 Washington. A fire burned down the restaurant in November, 2013. The  
21 Complaint alleges that Defendant, Plaintiffs' insurer, "did not pay out benefits due  
22 under the policy for Plaintiffs' damages; commenced an investigation and  
23 unreasonably prolonged its investigation, and has continued its investigation  
24 without accepting or denying coverage for Plaintiffs' claim." ECF No. 1, Ex. 2.  
25 Plaintiffs allege they suffered substantial damages in the structure fire, including  
26 loss of the building structure, loss of equipment, and loss of income.

27 In their Complaint Plaintiffs are bringing claims for: (1) breach of contract;  
28 (2) violation of Insurance Fair Conduct Act; and (3) violation of the Consumer

**ORDER DENYING PLAINTIFFS' MOTION FOR REMAND ~ 1**

1 Protection Act and breach of duty. Plaintiffs are seeking actual damages, treble  
2 damages, general damages and reasonable attorneys' fees.

3 Defendant removed the case to the Eastern District of Washington in  
4 December, 2016. In its notice of removal, Defendant asserted that the parties were  
5 diverse, given that Plaintiffs were residents of Yakima, and Defendant was a  
6 foreign corporation. ECF No. 1. It also asserted the amount of controversy was in  
7 excess of \$75,000, exclusive of interest and costs. Defendant indicated the  
8 estimated cost of building repairs are in excess of the \$120,000 insurance policy  
9 for building coverage and also relied on the fact that Plaintiffs are seeking actual  
10 damages under the CPA, treble damages under the CPA and IFCA, and attorney  
11 fees.

### 12 **Motion Standard**

13 A defendant may remove an action that has been filed in state court to the  
14 district court, if the district court has original jurisdiction over the action.

15 28 U.S.C. § 1441. District courts have original jurisdiction over civil actions  
16 where the matter in controversy (1) exceeds the sum or value of \$75,000,  
17 exclusive of interest and costs and (2) is between citizens of different States.

18 28 U.S.C. § 1332. For purposes of §§ 1332 and 1441, a corporation is deemed to  
19 be a citizen of every State and foreign state by which it has been incorporated and  
20 of the State or foreign state where it has its principal place of business. §

21 1332(c)(1).

22 The dispute between the parties is whether the matter in controversy  
23 exceeds the \$75,000 threshold amount.

### 24 **Amount in Controversy**

25 If the complaint does not specify a total amount in controversy, the  
26 removing defendant bears the burden of establishing, by a preponderance of the  
27 evidence, that the amount in controversy exceeds the jurisdictional amount.

28 *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007). Said

1 another way, the defendant must provide evidence establishing that it is “more  
2 likely than not” that the amount in controversy exceeds the \$75,000 amount. Id.

3 The amount in controversy is determined at the time of removal. 28 U.S.C. §  
4 1441. Post-removal declarations, stipulations, or other events that reduce the  
5 amount recoverable, whether beyond a plaintiff’s control or the result of a  
6 plaintiff’s own volition, do not distinguish a court’s jurisdiction once it has  
7 attached. *St. Paul Mercury Indem. Co. v. Red Cab. Co.*, 303 U.S. 283, 289-90, 292  
8 (1938) (“Events occurring subsequent to the institution of suit which reduce the  
9 amount recoverable below the statutory limit do not oust jurisdiction . . . And  
10 though, as here, the plaintiff after removal, by stipulation, by affidavit, or by  
11 amendment of his pleadings, reduces the claim below the requisite amount, this  
12 does not deprive the district court of jurisdiction.”); *Burke Family Living Trust v.*  
13 *Metropolitan Life Ins. Co.*, 2009 WL 2947196 (W.D. Wash. 2009).

#### 14 **Analysis**

15 Here, Defendant has met its burden of establishing that the amount in  
16 controversy meets or exceeds the \$75,000 threshold amount for federal subject  
17 matter jurisdiction. In addition to their breach of contract claim, Plaintiffs are  
18 bringing claims under the Washington Consumer Protection Act (CPA) and the  
19 Washington Insurance Fair Conduct Act (IFCA). Both authorize treble damages  
20 and recovery of attorneys’ fees. The CPA permits a treble damage award not to  
21 exceed \$25,000. Wash. Rev. Code § 19.86.090. The Insurance Fair Conduct Act  
22 creates a private cause of action to first-party claimant who has been unreasonably  
23 denied insurance coverage and provides for treble damage and an attorney fee  
24 award. Wash. Rev. Code 48.30.015(1)-(3). A simple mathematical equation  
25 demonstrates that Defendant has met its burden. See *Burke Family Living Trust*  
26 *2009 WL 2947196 at \*3*. Plaintiffs are seeking \$45,186 in contract damages.  
27 Potential treble damages include the \$25,000 cap for the CPA claims and  
28 \$135,558 for the IFCA claims (\$45,186 x 3): \$45,186 (breach of contract +

1 \$25,000 (CPA) + \$135,558 (IFCA) = \$205,744.

2 Although Plaintiffs argue that damages under the IFCA are speculative, for  
3 purposes of deciding Plaintiff's motion to remand, the Court accepts the  
4 allegations of the complaint as true. *Swipe & Bite, Inc. v. Chow*, 147 F.Supp.924,  
5 927 (N.D. Calif. 2015).

6 Accordingly, **IT IS ORDERED:**

7 1. Plaintiff's Motion to Remand, ECF No. 10, is **DENIED**.

8 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
9 this Order and to provide copies to counsel.

10 **DATED** this 8th day of May 2017.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive style and is positioned to the right of the court seal.

16 Stanley A. Bastian  
17 United States District Judge  
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