

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANNA MOHLER and DAN REDDING,

Plaintiffs,

V.

C21-1357 TSZ

NATIONWIDE GENERAL INSURANCE COMPANY,

MINUTE ORDER

Defendant.

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Plaintiffs' motion to remand, docket no. 11, is GRANTED. At issue is whether the amount in controversy exceeds \$75,000 for purposes of conferring diversity jurisdiction on the Court. See 28 U.S.C. § 1332(a). In removing the case, defendant Nationwide General Insurance Company ("Nationwide") relied on a settlement demand letter sent by plaintiffs' counsel on September 14, 2021.¹ See Ex. D to Hanson Decl.

¹ Contrary to plaintiffs' assertion, Nationwide timely filed its Notice of Removal, docket no. 1, within thirty (30) days after receiving "an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." See 28 U.S.C. § 1446(b)(3). Plaintiffs' initial pleading did not allege a claim under the Insurance Fair Conduct Act ("IFCA"), see Compl. (docket no. 1-2), and in the absence of an IFCA claim, the maximum amount that plaintiffs sought to recover was less than \$75,000. Although the IFCA claim appeared in plaintiffs' Amended Complaint, docket no. 1-10, Nationwide first learned of it upon receiving the settlement demand letter, which arrived via email before service of the Amended Complaint was effectuated. See McLean Decl. at ¶¶ 3-5 (docket no. 13).

1 (docket no. 11-1). The settlement demand letter included the following summary of
 2 damages:

Items in Demand Letter	Amounts
Unpaid Food Costs	\$8,000 ²
Withheld Depreciation	\$2,826.91 ²
Appraisal Fee	\$7,500
Enhanced Damages under the CPA	\$49,390.66 ³
Enhanced Damages under the IFCA	\$49,390.66
Emotional Damages for Insurance Bad Faith	\$40,000
Attorney Fees and Litigation Costs ⁴	\$18,350
Total	\$175,458.23

5 For purposes of plaintiffs' settlement demand, enhanced damages were computed on the
 6 basis of the following components:

7 \$14,248.14 Additional Living Expenses ("ALE"), which Nationwide paid
 8 on July 22, 2021, before being served with the original
 9 Complaint; see Ex. A to Hanson Decl. (docket no. 11-1);

10 \$ 2,947.19 "accounting errors," which Nationwide paid on August 31,
 11 2021, and as to which plaintiffs were unaware and had made
 12 no claim; see Plas.' Mot. at 3 (docket no. 11); and

13 \$ 7,500.00 unpaid appraisal fees;

14 \$24,695.33 resulting total, which if trebled would result in an increase of
 15 \$49,390.66.

16

17 ² According to plaintiffs, the \$8,000 in unpaid food costs, as described in the demand letter, has
 18 not been incurred or tendered to Nationwide, and is not currently in dispute. See Plas.' Mot. at 4
 19 (docket no. 11). In addition, the amount of withheld depreciation (\$2,826.91) is not yet owed,
 20 but has already been paid, and was decided by an appraisal award that Nationwide has agreed to
 21 honor. See id. at 3-4 & n.2. Thus, these sums cannot be considered in determining the amount
 22 in controversy.

23 ³ This assessment is contrary to law; treble damages under Washington's Consumer Protection
 24 Act ("CPA") are capped at \$25,000. See RCW 19.86.090.

25 ⁴ Costs may not be considered in calculating the jurisdictional amount. See 28 U.S.C. § 1332(a).

1 The Court need not accept the figures set forth in the settlement demand if they do not
 2 reflect a “*reasonable* estimate” concerning plaintiffs’ claims. *See Keodalah v. Allstate*
 3 *Ins. Co.*, No. C15-1412, 2016 WL 4543200, at *3 (W.D. Wash. Mar. 25, 2016) (emphasis
 4 in original, quoting *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002)). In this
 5 matter, plaintiffs’ calculations are not consistent with the standards governing IFCA
 6 claims. To award treble damages under IFCA, a court must find that the insurer “acted
 7 unreasonably in denying a claim for coverage or payment of benefits” or has violated an
 8 enumerated rule. *See* RCW 48.30.015(2). With respect to two of the three items on
 9 which “enhanced damages” were premised, namely ALE and “accounting errors,”
 10 Nationwide provided the benefits either before learning of this litigation or in advance of
 11 plaintiffs asserting any deficiency in payments, and inclusion of those amounts in
 12 estimating “enhanced damages” is unsupported by IFCA itself. Rather, to the extent that
 13 plaintiffs may recover treble damages under both the CPA and IFCA, which the Court
 14 assumes for purposes of this jurisdictional analysis, *see Barnes v. Foremost Ins. Co.*,
 15 No. C11-1302, 2011 WL 13229076, at *2 n.2 (W.D. Wash. Oct. 3, 2011), the most they
 16 might receive would be \$22,500 (\$7,500 x 3) per statute. Another significant component
 17 of plaintiffs’ settlement demand was \$40,000 in emotional damages, which purportedly
 18 reflected 200 days of delay in repairing plaintiffs’ kitchen, at a rate of \$100 per plaintiff
 19 per day. Ex. D to Hanson Decl. (docket no. 11-1). Plaintiffs’ counsel now characterizes
 20 this figure as an “optimistic guess” or a “bold and optimistic prediction” intended merely
 21 to “initiate bargaining” with a defendant that was likely starting from a position of
 22 offering no money to settle this case. *See* Plas.’ Mot. at 4, 5, & 9 (docket no. 11).
 23 When, as here, a plaintiff disavows a settlement demand, such estimate of damages is
 24 insufficient, standing alone, to establish that the jurisdictional threshold has been met.
 25 *See Briest v. Knot Standard LLC*, No. CV 20-2519, 2020 WL 2572457, at *2 (C.D. Cal.
 26 May 20, 2020). With only \$7,500 in actual damages, attorney fees of less than \$18,350,
 27 and, at most, \$37,500 in “enhanced damages” (treble damages of \$45,000 minus \$7,500
 28 to avoid duplicative recovery) in dispute, the Court concludes that it lacks subject matter
 29 jurisdiction.

16 (2) This matter is REMANDED to the King County Superior Court, effective
 17 fourteen (14) days from the date of this Minute Order. The Court declines to award any
 18 attorney fees or costs incurred as a result of the removal of this action.

19 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of
 20 record.

21 Dated this 18th day of November, 2021.

22 Ravi Subramanian
 23 Clerk

24 s/Gail Glass
 25 Deputy Clerk