10-CV-05194-ORD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

HAROLD JOHNSON,

Plaintiff,

vs.

TTI FLOOR CARE NORTH AMERICA d/b/a ROYAL APPLIANCE MFG. COMPANY, Ohio companies transacting business in Washington,

Defendant.

NO. 3:10-cv-05194RBL

ORDER GRANTING PLAINTIFF'S MOTION FOR REMAND

THIS MATTER is before the Court upon Plaintiff's Motion to Remand[Dkt. #9], based on Plaintiff's claim that the amount in controversy is less than the jurisdictional minimum $75,000.00. Under *Gaus v. Miles*, 980 F.2d 564, 567 (9th Cir.1992) and numerous other authorities, the party asserting federal jurisdiction has the burden of proof on a motion to remand to state court. *See also, for example, Conrad Associates v. Hartford Accident &*

Indemnity Co., 994 F. Supp. 1196 (N.D. Cal. 1998). The removal statute is strictly construed against removal jurisdiction. The strong presumption against removal jurisdiction means that the defendant has the burden of establishing removal is proper. *Conrad*, 994 F. Supp. At 1198. It is obligated to do so by a preponderance of the evidence. *Id.* at 1199; *see also Gaus v. Miles.* Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance. *Id.* At 566.

The Defendant's reliance on Plaintiff's initial settlement demand is insufficient to meet this burden, where the Complaint and subsequent statements undermine the claim that the amount in controversy is sufficient.

It is therefore **ORDERED** that, pursuant to 28 USC 1447, the Motion [Dkt. #9] is GRANTED this matter is hereby REMANDED to the Pierce County Superior Court. The Court will not award fees on this remand. The Clerk is directed to send uncertified copies of this Order to all counsel of record. The Clerk is further directed to send certified copies of this order to the Clerk of the Court for Pierce County Superior Court.

DATED this 10th day of May, 2010.

THE HONORABLE RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE