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3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 BRUCE COLEMAN,

8 Plaintiff,

9 v.

10 AMERICAN COMMERCE
11 INSURANCE COMPANY,

12 Defendant.

CASE NO. C16-5096 BHS

ORDER GRANTING
PLAINTIFF'S MOTION TO
REMAND FOR LACK OF
SUBJECT MATTER
JURISDICTION

13 This matter comes before the Court on Plaintiff Bruce Coleman's ("Coleman")
14 motion to remand for lack of subject matter jurisdiction (Dkt. 7). The Court has
15 considered the pleadings filed in support of and in opposition to the motion and the
16 remainder of the file and hereby grants the motion for the reasons stated herein.

17 **I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

18 On July 14, 2010, Coleman allegedly suffered injuries in a car accident that
19 eventually required him to have shoulder surgery. Dkt. 1-4 at 3.

20 In January 2012, Coleman filed a claim to recover his medical costs from his car
21 insurance provider, Defendant American Commerce Insurance Company ("American
22 Commerce"). *See id.* at 3-4. Initially, American Commerce denied Coleman's claim for

1 his medical costs. *Id.* Coleman contends this denial delayed his shoulder surgery, but
2 American Commerce eventually approved Coleman’s claim. *Id.* at 4.

3 On November 8, 2011, Coleman had shoulder surgery. *Id.* On March 6, 2013,
4 more than 14 months after Coleman’s claim request, American Commerce paid Coleman
5 \$8,361.37 for his medical costs. *Id.* Coleman contends American Commerce delayed
6 payment because it failed to either investigate within the WAC 284-30-380 deadlines, or
7 follow certain procedures if it could not investigate within those deadlines. *Id.* at 4.

8 On January 14, 2016, Coleman sued American Commerce in Superior Court of
9 Washington for Clark County alleging four claims: 1) breach of good faith; 2) violation
10 of the Consumer Protection Act (“CPA”); 3) violation of the Insurance Fair Conduct Act
11 (“IFCA”); and 4) breach of fiduciary duty. *Id.* at 4. For these claims, Coleman seeks
12 compensatory, punitive, ancillary, and coercive remedies including but not limited to
13 costs and expenses, exemplary damages, attorneys’ fees, prejudgment interest, and
14 injunctive relief. *Id.* at 6. In addition, Coleman seeks any other compensatory remedies or
15 exemplary damages that the jury finds just. *Id.* Lastly, Coleman seeks to treble his
16 damages. *Id.*

17 On February 8, 2016, American Commerce removed the suit to this Court based
18 on diversity jurisdiction. Dkt. 1. According to American Commerce’s notice of removal,
19 Coleman is a Washington citizen and American Commerce is a resident of, and is
20 incorporated in, Massachusetts. *Id.* at 2; Dkt. 1-1 at 1. On March 8, 2016, Coleman filed a
21 motion to remand to state court. Dkt. 7. On March 28, 2016, American Commerce
22 responded. Dkt. 9. Coleman did not reply.

1 **II. DISCUSSION**

2 **A. Removal Standard**

3 28 U.S.C. § 1441(a) allows a defendant to remove a case from state court to
4 district court if the district court would have original jurisdiction over the case. In such a
5 case, the defendant must file a notice of removal “containing a short and plain statement
6 of the grounds for removal” 28 U.S.C. § 1446(a). However, pursuant to 28 U.S.C. §
7 1447(c), the Court must remand any case that it lacks subject matter jurisdiction over.
8 The Court strictly construes “the removal statute against removal jurisdiction.” *Gaus v.*
9 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). This strong presumption requires the
10 defendant to always show removal to the district court was proper. *Id.* The Court must
11 reject federal jurisdiction if it doubts the defendant’s right of removal jurisdiction. *Id.*

12 **B. Diversity Jurisdiction**

13 Under § 1332(a)(1), a district court has diversity jurisdiction when the parties are
14 citizens of different states and the amount in controversy exceeds \$75,000 excluding
15 interest and costs. Thus, American Commerce must show the parties are diverse and the
16 amount in controversy exceeds \$75,000. The parties only dispute whether the amount in
17 controversy exceeds the jurisdictional threshold. Dkt. 7 at 1; Dkt. 9 at 1.¹

18 _____
19 ¹ Although neither party disputes whether the parties are diverse, Federal Rule of Civil
20 Procedure 12(h)(3) allows the Court to “raise the question of subject matter jurisdiction, *sua*
21 *sponte*, at any time during the pendency of the action” *Snell v. Cleveland, Inc.*, 316 F.3d
22 822, 826 (9th Cir. 2002). “Diversity jurisdiction requires complete diversity between the parties .
21” *In re Digimarc Corp. Derivative Litig.*, 549 F.3d 1223, 1234 (9th Cir. 2008). A party’s
22 residence is insufficient to establish that party’s citizenship. *Kanter v. Warner-Lambert Co.*, 265
F.3d 854, 857 (9th Cir. 2001). “[A] corporation shall be deemed to be a citizen of every State . . .
by which it has been incorporated and of the State . . . where it has its principal place of business

1 When the complaint does not disclose the amount in controversy, the removing
2 defendant must show, by a preponderance of the evidence, the amount meets the
3 jurisdictional requirement. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th
4 Cir. 1996). Initially, the Court reviews the complaint to determine the amount in
5 controversy. *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015).
6 In addition, the Court may consider any evidence submitted by the parties “including
7 affidavits or declarations, or other [relevant] summary-judgment-type evidence.” *Id.*
8 (citing *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997)).

9 In attempting to satisfy this burden, the defendant cannot show the amount in
10 controversy is met “by mere speculation and conjecture, with unreasonable assumptions.”
11 *Id.* Further, a defendant’s “[c]onclusory allegations as to the amount in controversy are
12 insufficient.” *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090–91 (9th
13 Cir. 2003). Instead, the defendant must prove that the amount in controversy “more likely
14 than not” exceeds the jurisdictional threshold. *Guglielmino v. McKee Foods Corp.*, 506
15 F.3d 696, 699 (9th Cir. 2007). The amount in controversy includes attorneys’ fees
16 authorized by statute or contract, *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th
17 Cir. 1998), and punitive damages, see *Bell v. Preferred Life Assur. Soc. of Montgomery,*
18 *Ala.*, 320 U.S. 238, 240 (1943).

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20
21” 28 U.S.C. § 1332 (c)(1). Here, although American Commerce asserts it is incorporated in
22 Massachusetts, it omits its principal place of business. Dkt. 1 at 2. Thus, American Commerce
failed to conclusively show that the parties are citizens of different states.

1 In alleging that the amount in controversy is greater than \$75,000, American
2 Commerce relies only on Coleman’s complaint, without submitting any additional
3 evidence.² Dkt. 9 at 1. Thus, to determine whether American Commerce satisfied its
4 burden to show that the amount in controversy exceeds the threshold, the Court only
5 looks to Coleman’s complaint. Like many complaints, Coleman’s complaint is silent on
6 the amount of damages sought. Instead, in the complaint’s “Relief Sought” section,
7 Coleman seeks the following remedies: 1) “all compensatory and exemplary damages for
8 any injury, harm, economic and non-economic damages or losses”; 2) “treble damages,
9 attorney[s’] fees, costs, expenses . . . and other compensatory or exemplary damages the
10 jury feels is just”; 3) an injunction prohibiting similar wrongful conduct; and 4) “such
11 other relief as the Court or jury may deem appropriate” *Id.* at 6–7. Coleman seeks
12 these remedies because American Commerce allegedly breached its duty of good faith
13 and fiduciary duty, and violated the CPA and the IFCA. *Id.* at 4.

14 The IFCA allows a first-party claimant who prevails to recover treble damages and
15 attorneys’ fees. RCW 48.30.015(1)-(3). The CPA allows a party who prevails to recover
16 the same. RCW 19.86.090. As a result, Coleman may recover treble damages and his
17 attorneys’ fees. In addition, Coleman may recover all non-economic damages for his

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19 ² Although American Commerce had sufficient time to submit any additional evidence
20 when it filed its response to Coleman’s motion to remand, it failed to do so. Thus, the Court is
21 satisfied that American Commerce had an opportunity to present any additional proof relevant to
22 the amount in controversy. *See Ibarra*, 775 F.3d at 1200 n.5 (noting that “[t]he district court may
hold such further proceedings as it thinks appropriate to permit the parties to submit their
evidence and arguments for and against propriety of removal”).

1 | breach of good faith claim. *Anderson v. State Farm Mut. Ins. Co.*, 101 Wn. App. 323, 333
2 | (2000). Likewise, American Commerce contends it is reasonable to conclude that
3 | Coleman may seek pain and suffering for allegedly delaying his shoulder surgery. Dkt. 9
4 | at 5. Taking into account all these damages, American Commerce asserts the amount in
5 | controversy exceeds the jurisdictional threshold. *Id.* at 5–6.

6 | Although the CPA and IFCA allow treble damages for some of Coleman’s claims,
7 | the complaint does not disclose facts that show the amount of the underlying damages.³
8 | For instance, the complaint does not state what, if any, pain and suffering Coleman
9 | sustained due to allegedly delaying his shoulder surgery. Nor does the complaint disclose
10 | whether the injury worsened as a result of the delay, or if Coleman missed any work due
11 | to the delay. Thus, the Court rejects American Commerce’s argument that the complaint
12 | alone shows the amount in controversy exceeds the jurisdictional threshold. Because the
13 | complaint alone does not show the amount in controversy, American Commerce must
14 | show its estimated amount relied on reasonable assumptions.

15 | However, American Commerce did not provide any additional evidence that the
16 | amount in controversy was met. For example, American Commerce failed to submit any
17 | evidence showing the amount of attorneys’ fees, and it ignored Coleman’s injunction
18 | remedy in its response without asserting its potential damage value. Instead, American
19 | Commerce mistakenly relied on mostly conclusory allegations that the amount in
20 |

21 | ³ Coleman implies it will seek interest damages because American Commerce allegedly
22 | delayed paying \$8,361.37 over a 14-month period. *See* Dkt. 3 at 3–4. American Commerce
concedes this amount alone does not exceed \$75,000. Dkt. 9 at 4.

1 controversy exceeds the jurisdictional threshold. *Matheson*, 319 F.3d at 1090–91.
2 Accordingly, the complaint is unclear and does not disclose the amount in controversy,
3 and American Commerce attempted to unreasonably speculate this amount. In summary,
4 American Commerce failed to show that the Court has diversity jurisdiction because it
5 failed to show, by a preponderance of the evidence, that the amount in controversy meets
6 the jurisdictional requirement.⁴ Therefore, because the Court lacks subject matter
7 jurisdiction under § 1332(a)(1), the Court grants Coleman’s motion to remand.⁵

8 **C. Attorneys’ Fees**

9 Coleman requests an award of attorneys’ fees pursuant to 28 U.S.C. § 1447(c).
10 When the Court remands a case to state court, § 1447(c) allows the Court to award “just
11 costs and any actual expenses, including attorney fees, incurred as a result of the
12

13 ⁴ Instead of remanding to state court, American Commerce requests, in the interest of
14 justice, the Court to implement “some . . . mechanism” to determine if the amount in controversy
15 exceeds \$75,000. Dkt. 9 at 9. The Court declines because it must strictly construe the removal
16 statute and American Commerce may conduct discovery in state court to determine the amount
17 in controversy.

18 ⁵ The parties further dispute whether the Court should remand the case solely because
19 American Commerce violated LCR 101(b) by failing to file the following documents: 1) the state
20 court’s case information cover sheet, 2) its state court filing notice that it removed the case to
21 federal court; and 3) its verification that it included true and complete copies of all state records
22 and proceedings. Dkt. 7 at 7; Dkt. 9 at 6. The Ninth Circuit has emphasized that when a
removing party erroneously omits state court documents, a court may allow the removing party
to submit those documents. *See W. Chance No. 2, Inc. v. KFC Corp.*, 957 F.2d 1538, 1544 n.3
(9th Cir. 1992). On the other hand, district courts within this district are split on this issue.
Compare Nicholson v. Thrifty Payless, Inc., C12-1121RSL, 2012 WL 4320785, at *1 (W.D.
Wash. Sept. 20, 2012) (rejecting to remand a case despite the defendant’s procedural defect
because defendant easily cured defect without impacting the court’s ability to adjudicate the
case) *with, Stanphill v. State Farm Mutual Automobile Ins. Co.*, C09-0235JCC, at *4–5 (W.D.
Wash. June 26, 2009) (concluding that the court could remand a case solely because the
defendant omitted the case information cover sheet). In any event, remanding this case will allow
American Commerce to correct any procedural defects if it removes the case again.

1 removal.” “Absent unusual circumstances, courts may award attorney[s’] fees under §
2 1447(c) only where the removing party lacked an objectively reasonable basis for seeking
3 removal. *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). In contrast, when
4 the party had an objectively reasonable basis, a court should deny the award. *Id.*

5 Here, American Commerce had an objectively reasonable basis for removal
6 because Coleman sought numerous remedies where the CPA and the IFCA authorized
7 attorneys’ fees and treble damages. Thus, the Court denies Coleman’s request to award
8 attorneys’ fees.

9 **III. ORDER**

10 Therefore, it is hereby **ORDERED** that Coleman’s motion to remand (Dkt. 7) is
11 **GRANTED**. The Clerk is directed to **REMAND** this case to Superior Court of
12 Washington for Clark County.

13 Dated this 5th day of May, 2016.

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BENJAMIN H. SETTLE
16 United States District Judge