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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF ARIZONA**

10 Jane Doe,

11 v.
12 Plaintiff,

13 Travis Paul Grant and Mariel Lizette Grant,
14 husband and wife; Kyle David Grant and Jane
15 Doe Grant, husband and wife; and
16 XYZ Corporations,

17 Defendants.

18 No. 2:20-CV-02045-SPL

19 (formerly Maricopa County Superior
20 Court No.: CV2020-055202)

21 **MOTION TO REMAND**

22 **ASSIGNED TO THE HONORABLE
23 STEVEN P. LOGAN**

24 Plaintiffs, through counsel, pursuant to 28 U.S.C. § 1447, file this Motion to
25 Remand and requests the Court remand the action back to the Maricopa County Superior
26 Court.

27 Plaintiff stipulates that complete party diversity is present. However, as
28 acknowledged in the defendant's Notice of Removal, it is clear on the face of the
plaintiff's Complaint that she seeks no more than \$74,000 in total damages. Therefore,
the amount in controversy requirement for diversity jurisdiction under 28 U.S.C. §
1332(a)(1) does not exist. Because diversity jurisdiction is not present, this Court lacks
jurisdiction and this matter should be remanded pursuant to 28 U.S.C. § 1447(c).

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1 DATED: November 4, 2020.

2 ROSENSTEIN LAW GROUP, P.L.L.C.

3 /s/ Craig Rosenstein.

4 By: Craig J. Rosenstein, Esq.
5 Attorney for Plaintiff

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7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. Procedural Background**

9 This action arises out a claim for statutory damages and common law claims as a
10 result of the defendant's publication of the plaintiff's criminal justice information
11 directly for, and in solicitation of, pecuniary gain. Defendant Travis Grant and Mariel
12 Grant were served with the Summons, Complaint and Motion for Preliminary
13 Injunction, filed on September 24, 2020. Defendant Kyle Grant waived service though
14 counsel in the Supplemental Cover Letter of his Notice of Removal, which was filed on
15 October 23, 2020.

16 In the Complaint, the *ad damnum* clause claims a total range of damages between
17 \$50,000 and \$74,000. (Comp. ¶ 5). Following this, three counts are asserted in the
18 Complaint. In each count, it is reasserted that the total damages will not exceed \$74,000.
19 (Comp. ¶¶ 13, 17, 22). Concluding the Complaint is a "Prayer for Relief" section
20 describing specifically what relief the plaintiff is seeking from the defendants.
21 Specifically, in summation of the entire Complaint, plaintiff requests "[c]ompensatory
22 damages or statutory damages in an amount no less than \$50,000 and no more than
\$74,000."

23 **I. Law**

24 Federal courts are courts of limited jurisdiction and a presumption exists that a
25 cause lies outside of the federal court's limited jurisdiction. *Kokkonen v. Guardian Life*
26 *Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673 (1994). "The burden of establishing
27 the contrary rests upon the party asserting jurisdiction." *Id.* "This burden is particularly
28 stringent for removing defendants because the removal statute is strictly construed, and

1 *any doubt about the right of removal requires resolution in favor of remand.” Corral*
 2 *v. Select Portfolio Servicing Inc.*, 878 F.3d 770 (9th Cir. 2017) (“[w]here it is not facially
 3 evident from the complaint that more than \$75,000 is in controversy, the removing party
 4 must prove, by a preponderance of the evidence that the amount in controversy exceeds
 5 the jurisdictional threshold.”) (internal quotations and citations omitted) (emphasis
 6 added).

7 “When the amount in controversy is in dispute or unclear, ‘the Supreme Court has
 8 drawn a sharp distinction between original jurisdiction and removal jurisdiction.’” *Int'l*
Tech. Coatings, Inc. v. Trover, No. 2:12-CV-01007-JAT, 2012 WL 2301382, at *2
 9 (D. Ariz. June 18, 2012) (quoting *Gaus*, 980 F.2d at 566). “In a removed case, . . . the
 10 plaintiff chose a state rather than federal forum. Because the plaintiff instituted the case
 11 in state court, ‘there is a strong presumption that the plaintiff has not claimed a large
 12 amount in order to confer jurisdiction on a federal court[.]’” *Singer v. State Farm Mut.*
Auto. Ins. Co., 116 F.3d 373, 375 (9th Cir. 1997) (quoting *St. Paul Mercury Indem. Co. v.*
 14 *Red CabCo.*, 303 U.S. 283, 290 (1938)).

15 “[F]ederal courts permit individual plaintiffs, who are the masters of their
 16 complaints, to avoid removal to federal court, and to obtain a remand to state court, by
 17 stipulating to amounts at issue that fall below the federal jurisdictional requirement. That
 18 is so.” *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 595, 133 S.Ct. 1345, 1350
 19 (2013). However, despite the clear language in the plaintiff’s Complaint filed in state
 20 court, this Court may insist on a legally binding affidavit as a condition to remand. *Id.*
 21 Plaintiff will willingly submit a sworn affidavit to the Court vowing to not seek more
 22 than \$74,000 should the Court find it necessary as a condition to remand. However,
 23 plaintiff has already submitted a verified complaint seeking no more than \$74,000 total.

24 In determining whether the jurisdictional minimum has been met, the defendant
 25 must set forth facts sufficient to trigger federal removal jurisdiction. *Gaus*, 980 F.2d at
 26 567; accord *Turner v. Am. Hardware Mut. Ins. Co.*, 2009 WL 2259612 (D. Ariz. July
 27 29, 2009). The requirement that a removing party establish by a preponderance of the
 28 evidence that the amount in controversy exceeds \$75,000 is met if: “(1) it is apparent
 from the face of the petition that the claims are likely to exceed \$75,000.00, or,

1 alternatively, (2) the defendant sets forth summary judgment type evidence of facts in
 2 controversy that support a finding of the requisite amount.” *Bourne v. Wal-Mart Stores,*
 3 *Inc.*, 582 F. Supp. 2d 828, 839 (E.D. Tex. 2008).

4 **II. Argument**

5 The defendant’s claim of diversity jurisdiction is primarily based upon two
 6 notions. First, the defendant asserts that the claim under Arizona Revised Statute
 7 Annotated § 44-7901-02 provides a “*mandatory minimum*” amount which a plaintiff
 8 *must* sue for should they sue under Arizona’s mugshot statute. However, no such
 9 language exists in the statute nor in any rules cited by the defendant. While the
 10 defendant has inserted the language “[e]ach violation of this provision carries mandatory
 11 minimum statutory damages...” (Notice of Removal at p.2 ln.12) the language of the
 12 law precisely reads:

12 D. A person that violates subsection B of this section is liable for damages
 13 for each separate violation in an amount of at least:

14 1. \$100 per day during the first thirty days of the violation.
 15 2. \$200 per day during the subsequent thirty days of the violation.
 16 3. \$500 per day for each day thereafter.

17 A.R.S. § 44-7902(D). This damages clause specifically provides a floor of liability upon
 18 the entity or individuals violating the law; it does not by invocation force every plaintiff
 19 to sue for the full amount of damages that they are entitled to under the law. “If [a
 20 plaintiff] does not desire to try his case in the federal court he may resort to the
 21 expedient of suing for less than the jurisdictional amount, and though he would be justly
 22 entitled to more, the defendant cannot remove”. *St. Paul Mercury Indemnity Co. v. Red*
 23 *Cab Co.*, 303 U.S. 283, 294, 58 S.Ct. 586 (1938).

24 The defendant further argues that because Arizona law permits a plaintiff to
 25 amend their complaint, diversity jurisdiction exists. This assertion assumes that any time
 26 a cause of action has diverse parties and damages with so much as the *possibility* of
 27 amounting to \$75,000 or more, the federal court has diversity jurisdiction. This theory is

1 not supported by law and not inline with the policy behind the jurisdiction of state courts
2 nor the limited jurisdiction of the federal courts.

3 Second, the defendant's Notice of Removal asserts that the aggregate of the three
4 claims asserted would exceed the \$75,000 threshold, while noticing that Plaintiff has
5 clearly stated in the Complaint that she seeks no more than \$74,000 for the total
6 aggregation of the three claims. The United States Supreme Court has "long held that, in
7 determining whether the amount-in-controversy requirement has been satisfied, a single
8 plaintiff may aggregate two or more claims against a single defendant, even if the claims
9 are unrelated." *Exxon Mobil Corp. v. Allapattah Services Inc.*, 545 U.S. 546, 585, 125
10 S.Ct. 2611, 2635 (2005) citing *Edwards v. Bates County*, 163 U.S. 269, 273, 16 S.Ct.
11 967 (1896) (emphasis added). Here, the intention of the plaintiff to not have her suit
12 heard in federal court by seeking damages totaling less than \$74,000 have been
13 acknowledged as obvious by the defendant's counsel. (Notice of Removal at p.4 ln.1-7).
14 This is made apparent by clearly and unambiguously asserting jurisdictional limitations
15 in the Complaint to satisfy both the Arizona state Tier requirements and state/federal
court jurisdictional requirements.

16 The defendant has not proved that the test in *Bourne* has been met by a
17 preponderance of the evidence. It is not apparent from the face of the Complaint that the
18 claims are likely to exceed \$75,000.00. In fact, the exact opposite is true. The defendant
19 has purposely sought to limit damages to total \$74,000, and the defendant has
20 acknowledged this fact as true in their Motion to Remand (*Id.*). Additionally, the
21 defendant has not set forth summary judgment type evidence of facts in controversy that
22 support a finding of the requisite amount. While the defendant has pointed out that the
23 plaintiff has the legal possibility to claim an amount of damages in excess of \$75,000,
24 they have provided the Court with no evidence nor facts that would prove that the
25 plaintiff is seeking to claim in excess of \$75,000 in the Complaint. Instead, they have
26 drawn attention to and acknowledged that the plaintiff clearly states in her Complaint
27 that she is seeking no more than \$74,000 in total damages. It is clear by the face of the
Complaint that the amount in controversy is less than \$74,000.

As aforementioned, should the Court wish to secure a legally binding affidavit from the plaintiff stating that the plaintiff will seek no more than \$74,000 as a condition of remand, Plaintiff will willfully abide. This form of conditional remand is not unprecedented. *See Knowles*, 568 U.S. 588, *supra*.

III. Conclusion

Here, Defendant’s removal was improvident. Accordingly, the Court must remand to state court. *See* 28 U.S.C. § 1447; *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (“Where doubt regarding the right to removal exists, a case should be remanded to state court.”). A defendant “cannot establish removal jurisdiction by mere speculation and conjecture, with unreasonable assumptions.” *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015).

DATED: November 4, 2020.

ROSENSTEIN LAW GROUP, P.L.L.C.

/s/ Craig Rosenstein .

By: Craig J. Rosenstein, Esq.
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2020, I transmitted the attached document to the Clerk's Office for filing via ECF, and mailed a copy of the foregoing to:

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Attorney for Defendant

By: /s/ Craig Rosenstein

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