

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

PATRICIA SUSAN KELLAR, REGINA)	
LANE, and SANDRA KELLAR,)	
)	
Plaintiffs,)	
v.)	
)	1:20CV402
1 st CAPITAL FINANCE OF SOUTH)	
CAROLINA, INC.,)	
)	
Defendant.)	
)	

MEMORANDUM ORDER

This matter is before the Court on a Motion to Remand [Doc. #12] by Plaintiffs Patricia Susan Kellar, Regina Lane, and Sandra Kellar. For the reasons below, Plaintiffs’ motion is granted.

I.

Plaintiffs Patricia Susan Kellar (“Patricia”), Regina Lane (“Regina”), and Sandra Kellar (“Sandra”) (collectively “Plaintiffs”) originally brought this action against Defendant 1st Capital Finance of South Carolina, Inc. (“Defendant”) in the Guilford County Superior Court on April 27, 2020, alleging violations of the North Carolina Consumer Finance Act. (Am. Compl. [Doc. #3].) Patricia, a North Carolina resident, contacted Defendant, a South Carolina corporation providing consumer car title loans, (*id.* ¶ 6), and ultimately obtained eleven such loans. (Aff. of Wesley Harden, Ex. 2, Pet. for Removal [Doc. #1-2] ¶ 6.) However, Patricia was unable to make the loan payments on her own, allegedly due to Defendants’ “unlawful rate

of interest,” and Sandra and Regina—Patricia’s mother and sister, respectively—
“sought to rescue Patricia from this cycle of debt” by also making payments to
Defendant on her behalf. (Am. Compl. ¶ 16.)

After Patricia, Sandra, and Regina made payments on the loans for several
years, Patricia filed a Complaint against Defendant, (Compl. [Doc. #2]), which she
later amended to include her mother and sister as plaintiffs, (see Am. Compl.). In
the Amended Complaint, Plaintiffs seek to recover compensatory and treble
damages for Defendant’s alleged violations of the North Carolina Consumer
Finance Act, N.C. Gen. Stat. § 53-165 et seq, which they argue also constitute
unfair and deceptive trade practices under N.C. Gen. Stat. § 75.1-1. (Am. Compl.
¶¶ 27-32, 33-39.) Plaintiffs allege that the violations stem from Defendant’s car
title loans’ exceeding the maximum rate of interest allowed in North Carolina. (Id. ¶
27.) In the alternative, Plaintiffs seek to collect damages for violations of the
North Carolina usury statutes, N.C. Gen. Stat. § 24-1.1. (Id. ¶¶ 46-47.)
Defendant removed the action to this Court on May 5, 2020 pursuant to 28 U.S.C.
§ 1332, 1441(b), and 1446, (Pet. for Removal [Doc. #1]), and Plaintiffs have
moved to remand.

Plaintiffs contend that while diversity of citizenship exists between the
parties, Defendant cannot demonstrate by a preponderance of the evidence that
the amount in controversy exceeds \$75,000 because Plaintiffs stipulated in their
Amended Complaint that they will neither seek nor accept damages in excess of
\$75,000. (Pls.’ Br. in Supp. of Mot. to Remand [Doc. #13] at 5-12; Am. Compl.

¶ 48.) However, Defendant challenges the “competen[cy]” of Plaintiffs’ evidence in support of their motion and the effectiveness of their stipulation in the Amended Complaint. (Resp. to Mot. to Remand [Doc. #15] at 2.) In turn, Plaintiffs challenge Defendant’s damages evidence used to support removal. (Pls.’ Reply in Supp. of Mot. to Remand [Doc. #18] at 2-4.) Plaintiffs also attach individual declarations affirming their stipulation that they will neither seek nor accept damages in excess of \$75,000. (Decl. of Sandra Kellar, Ex. 1, Pls.’ Reply in Supp. of Mot. to Remand [Doc. #18-1] ¶ 2; Second Decl. of Regina Lane, Ex. 3, Pls.’ Reply in Supp. of Mot. to Remand [Doc. #18-3] ¶ 2; Decl. of Patricia Kellar, Ex. 4, Pls.’ Reply in Supp. of Mot. to Remand [Doc. #18-4] ¶ 2.)

II.

Under 28 U.S.C. §§ 1332(a) and 1441, a party “may remove a civil action brought in state court where the matter involves an amount in controversy that ‘exceeds the sum or value or \$75,000, exclusive of interest and costs, and is between . . . citizens of different States.’” Cannon v. AutoMoney, Inc., No. 1:19-cv-00877, 2020 WL 3105183, at *2 (M.D.N.C. May 12, 2020) (quoting 28 U.S.C. § 1332(a)); see also Dash v. FirstPlus Home Loan Owner Tr. 1996-2, 248 F. Supp. 2d 489, 495 (M.D.N.C. 2003). When a case has been removed from state to federal court, the party seeking removal has the burden of demonstrating jurisdiction, see Straw v. AT&T Mobility, LLC, 530 F.3d 293, 296 (4th Cir 2008), and may not aggregate “separate claims of multiple plaintiffs against a single defendant . . . to meet the jurisdictional requirements,” Clark v. State Farm Mut.

Auto Ins. Co., 473 F.3d 708, 711 (7th Cir. 2007); see also Viriden v. Altria Grp., Inc., 304 F. Supp. 2d 832, 847 (N.D.W. Va. 2004) (quoting Clark v. Paul Gray, Inc., 306 U.S. 583, 589 (1939)). “Because removal . . . raises significant federalism concerns, [courts] must strictly construe removal jurisdiction” and remand in instances when “federal jurisdiction is doubtful.” Mulcahey v. Columbia Organic Chems. Co., 29 F.3d 148, 151 (4th Cir. 1994).

Where the amount in controversy “is clearly and unambiguously set forth in good faith on the face of the complaint, that amount should control.” Burdick v. Teal, No. 1:02-CV-727, 2003 WL 1937118, at *1 (M.D.N.C. Apr. 22, 2003) (citing Gwyn v. Wal-Mart Stores, Inc., 955 F. Supp. 44, 45 (M.D.N.C. 1997)). However, where “uncertainty still remains about the amount in controversy after examination of the complaint,” the court may consider a “post-removal stipulation of damages” to resolve the uncertainty. Burdick, 2003 WL 1937118, at *2 (citing Gwyn, 955 F. Supp. at 46); see also Lawson v. Tyco Elec. Corp., 286 F. Supp. 2d 639, 642 (M.D.N.C. 2003) (crediting plaintiff’s affidavit submitted with motion to remand stating that value of damages sought did not exceed \$75,000 where amount in controversy was “indeterminate from the face of the complaint”). To ensure a party does not receive more than \$75,000 after using an artificially low ad damnum clause or stipulation to avoid removal, a court may look to whether the stipulation is binding and specifies that the plaintiffs will not only not seek, but also “will not accept more than \$75,000 if the court awards it.” Aikens v.

Microsoft Corp., 159 F. App'x 471, 476 (4th Cir. 2005) (unpublished) (emphasis in original).

Here, Plaintiffs did not specify the exact amount of damages sought in their Amended Complaint but included an ad damnum clause stating that they would neither seek nor accept damages exceeding \$75,000. Defendant objected that the stipulation in this form was improper, so Plaintiffs included individual declarations with their Reply stating, "I expressly authorized my attorneys to include the stipulation in paragraph 48 of the Amended Complaint (DN 3) that I do not seek and will not accept damages in excess of \$75,000. I again affirm that stipulation." It is determined that Plaintiffs' declarations—with the inclusion of affirmative language that they will not accept over \$75,000—is sufficient to defeat federal jurisdiction.

III.

For the reasons stated in this Memorandum, IT IS HEREBY ORDERED that the Motion to Remand [Doc. #12] by Plaintiffs Patricia Susan Kellar, Regina Lane, and Sandra Kellar is GRANTED and this action is REMANDED to the General Court of Justice of North Carolina, Guilford County Superior Court.

This the 30th day of March, 2021.

/s/ N. Carlton Tilley, Jr.
Senior United States District Judge