

United States District Court  
Eastern District of Virginia  
Alexandria Division

1:23-cv-00809  
03/27/2023

PAUL SHAO,  
Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,  
Defendant.

Civil Action No. 1:23-cv-00809

Circuit Court for County of Fairfax, Case No.  
2023-7310

**PLAINTIFF'S MOTION TO REMAND**

Plaintiff Paul Shao ("Shao"), *Pro Se*, respectfully moves this Court to enter an order remanding this case back to the County Circuit Court of Fairfax, from which it was removed.

**Factual Background and Procedural History**

1. Plaintiff Shao filed the *Complaint after Nonsuit* with twelve causes of action at the Fairfax Circuit Court on 5/12/23. The first two causes of the said complaint are the same as the two and only two causes of action in the original *Complaint and Request for Trial by Jury* (Case No.: 2021-03802; Civil Action No: 1:20-cv-00482-AJT-TCB), which was removed by Allstate counsels Mr. J. Scott Humphrey et. al. of Seyfarth Shaw LLP on 4/20/2021 to this Court by adding \$30,000 plus sum to the total compensatory damages of \$70,313.33 and Plaintiff Shao remanded the case back to the Circuit Court after a lengthy communication between him and Mr. Humphrey, who agreed that the compensatory damage sum was indeed \$70,313.33 then.

Mr. Humphrey of Benesch, Friedlander, Coplan & Aronoff LLP has not challenged the compensatory damages sum in his present filing of the *Notice of Removal*. Both the Plaintiff and the Defendant agree that the compensatory damage has not exceeded the threshold of \$75,000 for removal.

2. The Defendant has added the punitive damages of \$350,00, which Plaintiff Shao alleges in his *Complaint after Nonsuit* he is entitled to, to the compensatory damages to make the sum exceed the threshold of \$75,000. Mr. Humphrey and Shao had an email exchange on 6/20/23 about adding punitive to compensatory damages, which will be made into Exhibit I. Shao asked Mr. Humphrey, "Could you cite a diversity Jurisdiction rule which adds punitive damages to compensatory claims?" The latter did not reply. Here in this *Notice of Removal*, he cites four cases to support his action. Shao shall discuss these four cases under *The Relevance of the Four Cases Cited by the Defendant in Adding Punitive to Compensatory Damages* below.

3. Paragraph 5 of the *Notice of Removal* states, "Removal of this matter is proper under 28 U.S.C. §§ 1331 and 144(a) because this Court has original jurisdiction of this action," because Plaintiff Shao alleges Federal Title VII of the Civil Rights Act of 1964, ADA, and ADEA claims. Shao admits his mistakes by omitting the inclusion of the Virginia Human Rights Act (VHRA) in his *Complaint after Nonsuit* to Mr. Humphrey in the same email exchange of 6/20/23, mentioned above. Shao will file a *Declaration of Paul Shao in Support of His Motion to Remand* to promise to make an amended complaint which will add and incorporate the VHRA in Shao's claims for violations of his human right due to discrimination.

**The Relevance of the Four Cases Cited by the Defendant in Adding Punitive  
to Compensatory Damages**

4. The Defendant cites four cases to support his assertion that one could add punitive to compensatory damages to exceed the threshold of \$75,000 for removing a case from the local to the federal court. They are *Bell v. Preferred Life Assurance Society*, 320 U.S. 328, 64 S.Ct. 5, 88 L. Ed. 15, *Church Hill Place Investments, LLC v. MDA Lending Solutions, Inc.* No. 3:10CV288, 2011 WL 976458, at \*2 (E.D. Va Feb. 25, 2011), *Johnson v. Xerox Educ. Sols. LLC*, No. GJH-14-CV-15422, 2014 WL 5361302, at \*5 (D. Md. Oct. 20, 2014), and *Steven v. U.S. Bank Nat. Ass'n*, No. Civ. A. DKC15-1780, 2015 WL 5201578, at \*2 (D. Md. Sept. 4, 2015). Below Shao provides brief summaries of the cases and explain how they are **Not** applicable to our situation.

5. *Bell v. Preferred Life Assurance Society*, 320 U.S. 328, 64 S. Ct. 5, 88 L. Ed. 15 is a Supreme Court case that was decided in 1943. Here is a summary of the case:

- a. The case involved an insurance policy issued by Preferred Life Assurance Society to the plaintiff, Bell. The policy had a provision that excluded liability for death caused by war or military service. Bell's husband, who was insured under the policy, died while serving in the military during World War II. Bell filed a claim with the insurance company for the death benefit, but the company denied the claim based on the war exclusion provision.
- b. Bell brought a lawsuit in federal district court, alleging that the war exclusion provision was in violation of the Soldiers' and Sailors' Civil Relief Act of 1940 (now known as the Servicemembers Civil Relief Act), which provided certain protections to individuals in the military. The district court ruled in favor of the insurance company, and Bell appealed the decision to the Supreme Court.
- c. The Supreme Court affirmed the district court's decision and held that the war exclusion provision in the insurance policy was valid and enforceable. The Court reasoned that the

insurance policy was a private contract between the parties, and absent any specific provision in the Soldiers' and Sailors' Civil Relief Act that rendered such exclusion invalid, the provision stood. The Court emphasized the principle of freedom of contract and noted that insurance companies had the right to limit their liability through reasonable policy provisions.

- d. The case is significant in clarifying the enforceability of exclusion provisions in insurance policies and affirming the principle of freedom of contract in insurance law. It recognized the ability of insurance companies to include reasonable limitations and exclusions in their policies, as long as they are not prohibited by applicable laws.
- e. The statement “punitive and actual damages can be aggregated to meet amount in controversy requirement” stated by the Defendant under Paragraph 7 is referred to the awarding of claims rather than the removal of a complaint from the local to the federal court in swelling up the sum of compensatory damage claims.

6. The case *Church Hill Place Investments, LLC v. MDA Lending Solutions, Inc.* No.

3:10CV288 has arisen because of a dispute over a property title search report that Plaintiff allegedly ordered from Defendant. Here is a summary of the case:

- a. Plaintiff has pursued the action against Defendant, for breach of warranty and breach of contract. The Complaint was originally filed in the Circuit Court for the City of Richmond, Virginia and subsequently removed to the Federal Court because of diversity jurisdiction.
- b. Plaintiff is engaged in the business of financing small businesses utilizing a lease structure, and purports to be an affiliate of United Leasing Corporation (“ULC”), a

Virginia corporation which is not a party to this case. On or about November 22, 2006, TransUnion Settlement Services, Inc., a predecessor-in-interest to Defendant, entered into a Real Estate Settlement Services Purchase Agreement with ULC. In or about August 2008, Plaintiff alleges that it “engaged the services of [Defendant] to perform a title search” on a property in the state of Georgia, which said Title Report Defendant provided on or about September 2, 2008. Plaintiff further alleges that it relied on the Title Report in entering into an equipment lease agreement with a third party, and that a default subsequently occurred under the terms of the lease with the third-party lessee. The accelerated balance due under the lease is \$1,576,834.01 (**which is definitely not a punitive damage claim**), plus late charges, costs, and attorney fees. Plaintiff subsequently filed this action claiming breach of contract and breach of warranty regarding alleged deficiencies in the Title Report.

- c. Judge Dennis W. Dohnal denied the remanding back to the local court by stating, “Throughout Plaintiff’s numerous filings with the Court, it has repeated its claim that the amount in controversy is the amount originally plead in the Complaint, or \$1,576,834.01 in addition to costs, late charges, and attorney fees.” The case does not support the Defendant’s claim of adding punitive damages to the compensatory to exceed the threshold of \$75,000.

7. As to the case *Johnson v. Xerox Educ. Sols. LLC*, No. GJH-14-CV-15422, The United States District Court for the District of Columbia has summarized the background of Johnson's claims:

- a. Johnson was indicted for larceny and burglary on February 16, 1993, and given a suspended sentence on April 21, 1993. That same year he enrolled at the University of

Maryland University College (UMUC). He obtained federally guaranteed loans, including Federal Family Education Loans, for the Fall 1993, Spring 1994, Fall 1994, Spring 1995, and Spring 1996 semesters. The loan application form did not ask about Johnson's criminal history, and he did not tell. While enrolled, Johnson took several courses offered by UMUC's paralegal studies program. On April 29, 1996, Johnson withdrew from UMUC because he was incarcerated, this time for forgery. In 2004, after his release from prison, Johnson consolidated his loans under the William D. Ford Federal Direct Loan Program [administered by the United States Department of Education].

- b. *Johnson v. U.S. Dep't of Educ.*, 580 F. Supp. 2d 154, 155 (D.D.C. 2008) (internal citations omitted). In efforts to avoid repaying his student loans, Johnson has sued everyone involved under every conceivable theory. This suit is just the most recent installment.
- c. This particular iteration was filed against a collection of loan service companies, including Affiliated Computer Services ("ACS"), in the District Court of Maryland for Prince George's County. Johnson claimed that his debts were discharged when ACS cashed his check in the amount of \$12,390 with its memo marked: "Payment in Full, Accord and Satisfaction of Account #[Redact]361." Johnson considered this payment in full of his student debt, which at that time totaled approximately \$35,556.58.
- d. ACS removed the case to the Circuit Court for Prince George's County. The parties filed cross motions for summary judgment, which required the trial court to determine whether there had been an accord and satisfaction. Finding there was no accord and satisfaction, the court denied Johnson's motion and granted ACS's. Johnson noted this appeal.

- e. That issue—to the extent it ever existed—had already been resolved by the District Court of Maryland for Prince George's County in Johnson's 2012 suit against Xerox.
  - f. The relevancy of this case to the Defendant's assertion that punitive damages should be added the compensatory to exceed the threshold of \$75,000 is truly questionable.
8. The case *Steven v. U.S. Bank Nat. Ass'n*, No. Civ.A. DKC15-1780, 2015 WL 5201578 is summarized as follows:

- a. Plaintiffs commenced this action on April 6, 2015, by filing a complaint in the Circuit Court for Prince George's County against Defendants U.S. Bank National Association ("U.S. Bank") and USAA Federal Savings Bank ("USAA") (collectively the "Defendants"). (ECF No. 7). The complaint alleges that, in October 2006, Plaintiffs obtained a mortgage loan from USAA, and the subsequently made multiple monthly payments to USAA. (ECF No. 7 ¶ 7-9). On September 12, 2013, USAA assigned Plaintiffs' mortgage to U.S. Bank. (ECF No. 7-7, at 2). Plaintiffs allege that they did not receive notice from USAA or U.S. Bank indicating that that USAA would stop accepting mortgage payments. (ECF No. 7 ¶ 11). The complaint asserts that on June 23, 2014, USAA began returning Plaintiffs' mortgage payments. (*Id.* ¶ 13). It is not completely clear how Plaintiffs allege USAA and U.S. Bank exactly handled their payments. It appears that they contend that USAA returned the payments to Plaintiffs. "U.S. Bank would then apply the payments to the mortgage" but then also return the payments. (*Id.* ¶ 14-16). U.S. Bank has noted the mortgage was in default as of March 2, 2014. (ECF No. 8, at 2). U.S. Bank sent Plaintiffs a Notice of Intent to Foreclose asserting that Plaintiffs are in default by \$20,949.30. (ECF No. 7-8).

- b. Plaintiffs' complaint purports to raise causes of action for breach of contract (Count I) and negligence (Count II). Plaintiffs allege that Defendants were contractually required to accept Plaintiffs' mortgage payments and were negligent in not ensuring the appropriate entity received the payments Plaintiffs submitted to USAA. (ECF No. 7, at 5-7). For these counts, Plaintiffs seek \$75,000.00 in compensatory economic and emotional damages. (*Id.*). Plaintiffs also seek declaratory judgment (Count III) and an injunction (Count IV) declaring that Defendants must apply Plaintiffs payments to the mortgage balance and enjoining Defendants from foreclosing on the property. (*Id.* at 7-8).
- c. Defendant U.S. Bank timely removed to this court, citing diversity of citizenship as the jurisdictional basis. (ECF No. 6). U.S. Bank filed an amended notice of removal noting that USAA consents to removal. (ECF No. 9). Plaintiffs then filed the pending motion to remand. (ECF No. 18). Defendant U.S. Bank filed an opposition (ECF No. 19), and Plaintiffs did not reply.
- d. Federal Judge Deborah K. Chasanow denied Plaintiffs' remand back to the local court, stating, "Plaintiffs are seeking 'an injunction prohibiting Defendants from pursuing foreclosure.'" (ECF No. 7, at 8). In similar cases, courts often look at the value of the mortgage to determine the amount in controversy. [...] Here, the amount of the underlying mortgage is \$288,000. (ECF No. 7-3, at 2). The current value of the property is unknown, but it is surely at least one penny. Plaintiffs' sought after relief would provide them with the continued value of the property and would deprive Defendants of the ability to foreclose on the property. At the very least, Plaintiffs' complaint seeks

to prevent Defendants from using foreclosure to collect the default amount of \$20,949.39, which is more than sufficient to satisfy diversity jurisdiction.”

- e. Here again it is not the punitive damages increases the compensatory damages but the “seeking an injunction” on foreclosure of a property which adds up to the sum to exceed the threshold of \$75,000. The citation of this case by the Defendant is again irrelevant to the assertion that punitive damages should be added to exceed the threshold of \$75,000.

### **Memorandum of Law**

9. It is well-settled that the removing party bears the burden of proving proper removal. See, e.g., *Mulcahey v. Columbia Organic Chems. Co.*, 29 F.3d 148, 151 (4th Cir. 1994). “The removal statutes are to be strictly construed, and all doubts are to be resolved against removal.” *Green v. HR Block*, 981 F. Supp. 951, 953 (D.Md. 1997). As to the burden faced by a removing party, Judge Young of this Court has explained: The removal jurisdiction of the federal courts is to be “scrupulously confined,” and “[i]f federal [removal] jurisdiction is doubtful, a remand is necessary.” This strict policy against removal and for remand protects the sovereignty of state governments and state judicial power. The party seeking removal bears the burden of stating facts in its notice of removal demonstrating an entitlement to removal. *Egle Nursing Home v. Erie Insurance Group*, 981 F. Supp. 932, 933 (D.Md. 1997) (internal citations omitted).

10. The Defendant has not met the burden of proving proper removal. The four cases cited by him in his assertion that punitive damages should be added to compensatory damages to

make the sum exceed the threshold of \$75,000 are irrelevant and arbitrary to this assertion, as shown under Paragraph 4 – 8. Neither does the Defendant cite a diversity jurisdiction rule which adds punitive damages to compensatory claims to exceed the threshold of \$75,000, as Shao requested in the 6-20-23 email, which will be made into Exhibit I.

11. The Plaintiff acknowledges the error of omission of VHRA in the original *Complaint after Nonsuit*, and he is filing simultaneously a *Declaration of Paul Shao in Support of His Motion to Remand* to promise to make an amended complaint which will add and incorporate the VHRA in Shao's claims for violations of his human right due to discrimination. Shao asks the Court's remand decision to be considered based on this error of omission identified, so that the sovereignty of state governments and state judicial power be protected.

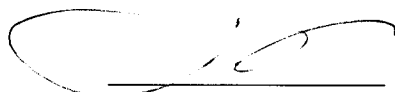
### **Conclusion**

12. Plaintiff's pleading is clear. The compensatory damages are below \$75,000, which the Defendant agrees to. The Defendant has not provided relevant authorities to support the assertion that punitive damages should be added to compensatory damages to make the sum exceed the threshold of \$75,000. The Plaintiff will repair the error of omitting the VHRA in his original *Complaint after Nonsuit*. WHEREFORE, plaintiff Shao respectfully requests this Honorable Court to enter an Order to remand this action to the Circuit Court for the County of Fairfax, Virginia.

**DATED: June 27, 2023**

**PAUL SHAO,**

*Pro Se* Litigant



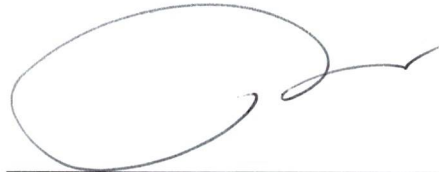
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Lorton, Virginia 22079  
(202) 290-6300 Telephone  
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## CERTIFICATE OF SERVICE

I certified that on June 27, 2023, a copy of the foregoing Declaration of Paul Shao was filed with the clerk's office of the Court, emailed, and mailed to Defendant at the following address:

J. Scott Humphrey  
Katie M. Burnett  
Laura Seferian  
**Benesch, Friedlander, Coplan & Aronoff LLP**  
71 South Wacker Drive, Suite 1600  
Chicago, Illinois 60606-4637  
[shumphrey@beneschlaw.com](mailto:shumphrey@beneschlaw.com)  
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Paul Shao

# Exhibit I



Paul Shao &lt;paulyshao@gmail.com&gt;

1 of 2

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**Allstate**

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**Humphrey, J. Scott** <shumphrey@beneschlaw.com>  
To: Paul Shao <paulyshao@gmail.com>  
Cc: "Burnett, Katie" <KBurnett@beneschlaw.com>

Tue, Jun 20, 2023 at 8:49 AM

Paul:

I hope you had a nice weekend. My apologies but I did not initially realize that you allege Federal ADA and ADEA claims in your new Complaint. Since these are Federal claims, we will remove the case to Federal court. In addition, your \$350k+ punitive damages claim and your \$75k compensatory claims exceed the Federal jurisdiction threshold.

Again, apologies for the confusion.

Scott



vCard Bio

J. Scott Humphrey  
Partner | Litigation  
Chair, Trade Secrets, Restrictive Covenant and Unfair Competition Group  
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Confidentiality Notice to Incorrect Addressee: [www.beneschlaw.com/confidentialitynotice](http://www.beneschlaw.com/confidentialitynotice)

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2 of 2

Paul Shao <paulyshao@gmail.com>

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**Allstate**

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**Paul Shao** <paulyshao@gmail.com>

Tue, Jun 20, 2023 at 11:11 AM

To: "Humphrey, J. Scott" <shumphrey@beneschlaw.com>

Scott,

I am amused that a seasoned attorney like you would miss the mistakes I made by not citing the Virginia Human Rights Act (VHRA). I stand corrected. Will use it to remand back to the Circuit Court.

Could you cite a diversity jurisdiction rule which adds punitive damages to compensatory claims?

Paul

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