

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIAN CORNELL,
Plaintiff,
v.

No. C 13-02188 SI

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND**

COLUMBUS MCKINNON CORP., *et al.*,
Defendants.

Currently before the Court is plaintiff's motion to remand. Pursuant to Civil Local rule 7-1(b), the Court finds this matter suitable for disposition without oral argument and therefore VACATES the hearing currently scheduled for July 19, 2013. Having carefully considered the papers submitted, the Court DENIES plaintiff's motion to remand, for the reasons set forth below.

BACKGROUND

On February 11, 2013, plaintiff filed a complaint against Columbus McKinnon Corporation, American Lifts, Inc., Autoquip, and Does 1-200, claiming he was injured while performing his usual work duties for Federal Express at the Oakland Hub at Oakland International Airport. Compl. ¶ 3. Plaintiff alleges that on February 16, 2011, his foot was crushed while he used a scissor lift cargo moving system, and that the injury was caused by defects in the design and/or manufacture of the system. Compl. ¶ 12. Plaintiff alleges that his injury caused permanent damage to his person, body and health, "including but not limited to severe injuries to muscle, bone, tissue and nerves." Compl. ¶¶ 12, 19. Plaintiff alleges that as a result of defendants' conduct, plaintiff needed to employ the services of hospital, surgeons, physicians, and nurses, which led to medical, hospital, professional, and incidental expenses. Compl. ¶ 20. Plaintiff believes he will necessarily incur additional expenses for an indefinite

1 period into the future. *Id.* Plaintiff also claims to have suffered continuous chronic pain, suffering,
2 anxiety, and emotional distress. Compl ¶ 21. Finally, plaintiff claims he sustained a loss of earning
3 capacity because he is now prevented from attending to his usual occupation for an unforeseeable time
4 into the future. Compl. ¶ 22.

5 Plaintiff filed the complaint on February 11, 2013 in Alameda County Superior Court.
6 Defendants removed the case to this Court on May 13, 2013, based on diversity jurisdiction. Plaintiff
7 argues that the case should be remanded because there is no evidence to show the amount in controversy
8 is above \$75,000.

9
10 **LEGAL STANDARD**

11 A defendant may remove any civil action brought in a state court over which the district court
12 has original jurisdiction. 28 U.S.C. § 1441(a). Original federal jurisdiction embraces an action founded
13 on federal question jurisdiction under 28 U.S.C. § 1331 or diversity jurisdiction under 28 U.S.C. § 1332.
14 *See* 28 U.S.C. § 1441(a), (b). A defendant must remove within thirty days of receiving plaintiff’s initial
15 pleading or, where the case is not removable based on the initial pleading, within thirty days of receiving
16 an amended pleading, motion, order or other paper from which it may first be ascertained that the case
17 has become removable. 28 U.S.C. § 1446(b). Federal law expressly provides that a district court shall
18 remand any action in which subject-matter jurisdiction is lacking. 28 U.S.C. § 1447(c).

19 Because of the “Congressional purpose to restrict the jurisdiction of the federal courts on
20 removal,” courts must strictly construe the removal statute against removal jurisdiction. *Duncan v.*
21 *Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996) (quoting *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S.
22 100, 108 (1941)); *see also Petrie v. Pacific Stock Exch., Inc.*, 982 F. Supp. 1390, 1393 (N.D. Cal. 1997)
23 (“[T]he court must reject federal jurisdiction if there is any doubt as to whether removal was proper.”).

24 The burden of establishing grounds for federal jurisdiction rests on the removing party. *Emrich v.*
25 *Touche-Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988) (citations omitted); *see also Gaus v. Miles,*
26 *Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (“[T]he ‘strong presumption’ against removal jurisdiction means
27 that the defendant always has the burden of establishing that removal is proper.”).

28

1 continuing medical expenses, no discrete amount is alleged; thus, it is not facially evident that the
2 jurisdictional threshold has been met. Compl. ¶¶ 20-22.

3 Because the amount in controversy is not facially evident, the removing party must “prove, by
4 a preponderance of the evidence, that the amount in controversy meets the jurisdictional threshold.”
5 *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). Merely stating
6 conclusory allegations based upon “information and belief” that the amount in controversy exceeds
7 \$75,000 is not sufficient. *Valdez v. Indemnity Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004). The Court may
8 consider “any summary-judgment type evidence relevant to the amount in controversy at the time of the
9 removal and facts presented in the removal papers to decide if the burden is met.” *Id.*

10 The Court finds that defendants have satisfied their burden of proving by a preponderance of the
11 evidence that the amount in controversy requirement is met. Defendants argue that plaintiff’s own
12 allegations and list of damages show that the amount in controversy exceeds the jurisdictional minimum.
13 Defs.’ Opp’n 2.¹ Plaintiff seeks damage for past, present and future medical expenses, including the
14 cost of employing surgeons, physicians, and other medical professionals. Compl. ¶ 20. A Workers
15 Compensation Appeal Board Claim filed by the plaintiff shows that pain medicine charges from August
16 2011 to December 2012 alone totaled \$22,456. Defs.’ Opp’n Ex. B. Plaintiff also claims that he was
17 forced to miss work and that he is now prevented from engaging in his usual occupation, leading to past,
18 present, and future loss of earnings and loss of earning capacity. Compl. ¶ 21. The record shows that,
19 at the time of injury, the plaintiff was earning \$810 per week. Defs.’ Opp’n Ex. A. From February
20 2011, the time of injury, to February 2013, the time the complaint was filed, the plaintiff claims to have
21 been prevented from working for about 96 weeks, totaling about \$77,000 in lost wages. Thus,
22 considering only the pain medicine charges and current lost earnings, the amount in controversy totals
23 over \$100,000. Moreover, plaintiff also alleges that he suffers chronic pain, numbness, anxiety, and
24 emotional distress as a result of the accident. Compl. ¶ 21.

25
26
27
28 ¹ The court may consider defendants’ opposition and evidence in support thereof, as an
amendment to the defendants’ Notice of Removal. *Cohn, D.V.M. v. Petsmart, Inc.*, 281 F.3d 837, 839
(9th Cir. 2000).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


Considering the damages alleged in the complaint, the defendants' opposition, and the documents in support thereof, the Court finds that the preponderance of the evidence shows that the amount in controversy meets the jurisdictional threshold.

CONCLUSION

For the foregoing reasons and for good cause shown, the Court hereby DENIES plaintiff's motion to remand. This resolves Docket No. 20.

IT IS SO ORDERED.

Dated: July 18, 2013



SUSAN ILLSTON
United States District Judge