

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

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DR. NORRIS HOLLIE,  
Plaintiff,

No. C 10-5197 PJH

v.

**ORDER TO SHOW CAUSE**

CONCENTRA HEALTH SERVICES,  
INC.,  
Defendant.

TO DEFENDANT CONCENTRA HEALTH SERVICES, INC.: YOU ARE HEREBY ORDERED TO SHOW CAUSE IN WRITING no later than December 17, 2010, why this case should not be remanded for lack of subject matter jurisdiction.

In the notice of removal, defendant asserts jurisdiction under 28 U.S.C. § 1332, and alleges that while plaintiff “does not plead with specificity the exact amount of damages he seeks . . . it is facially apparent from the complaint that the claims are likely to exceed \$75,000. To support this claim that the amount in controversy is “facially apparent,” defendant lists the various components of damages that plaintiff seeks in the complaint, and cites legal authority allowing those types of damages (as well as attorney’s fees) to be considered in calculating the amount in controversy. However, nowhere does defendant specify an amount in controversy or provide any facts showing why the court should find that the amount in controversy in this case exceeds \$75,000.

Federal courts are courts of limited jurisdiction, having subject matter jurisdiction only over matters authorized by the Constitution and Congress. See, e.g., Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994). A suit filed in state court may be removed to federal court if the federal court would have had original jurisdiction over the

**United States District Court**  
For the Northern District of California

1 suit. 28 U.S.C. § 1441(a). However, a removed action must be remanded to state court if  
2 the federal court lacks subject matter jurisdiction. 28 U.S.C. § 1447(c). “The burden of  
3 establishing federal jurisdiction is on the party seeking removal, and the removal statute is  
4 strictly construed against removal jurisdiction.” Prize Frize, Inc. v. Matrix (U.S.) Inc., 167  
5 F.3d 1261, 1265 (9th Cir. 1999).

6 When the amount of damages plaintiff seeks is unclear from the complaint, the  
7 removing defendant bears the burden of proving facts by a preponderance of the evidence  
8 to support a finding that the amount in controversy exceeds \$75,000. Abrego Abrego v.  
9 The Dow Chem. Co., 443 F.3d 676, 683 (9th Cir. 2006). That is, the removing defendant  
10 “must provide evidence that it is ‘more likely than not’ that the amount in controversy”  
11 satisfies the jurisdictional amount requirement. Sanchez v. Monumental Life Ins. Co., 102  
12 F.3d 398, 404 (9th Cir. 1996). A “mere averment” that the amount in controversy exceeds  
13 \$75,000 is insufficient. Gaus v. Miles, Inc., 980 F.2d 564, 567 (9th Cir. 1992).

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IT IS SO ORDERED.**

Dated: December 9, 2010



---

PHYLLIS J. HAMILTON  
United States District Judge