

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

KENNETH RAYMOND, JR.

CIVIL ACTION

VERSUS

NO. 17-1773-BAJ-EWD

RED FROG EVENTS, LLC, ET AL.

NOTICE AND ORDER

Plaintiff, Kenneth Raymond (“Plaintiff”), filed a Petition for Damages (the “Petition”) against Red Frog Events, LLC (“Red Frog”); Peterson Builders Framing Contractors, LLC; North South Renovations, Inc.; First Specialty Insurance Corporation; and Auto-Owners Insurance Company in state court for damages allegedly arising out of injuries Plaintiff sustained when a doom shaped obstacle Plaintiff was climbing as part of the “Warrior Dash” collapsed.

Per his Petition, Plaintiff alleges that he sustained “injuries to his back, ribs, right ankle, right knee, and right elbow.”¹ Plaintiff alleges that he “was examined at the on-site medical tent but was not sent to the hospital” but that upon returning home, his “pain intensified, and...he made an emergency appointment with Pontchartrain Orthopedics & Sports Medicine....”² Plaintiff contends that he “has experienced significant pain as a result of his injuries,” including pain in his rib cage and back.³ He alleges that he “has been diagnosed with facet joint injury, which injury will require imaging studies as well as physical therapy two times a week for the foreseeable future.”⁴ He alleges that as a result of his injuries, “he is hampered in performing his typical daily

¹ R. Doc. 1-2, ¶ 29.

² R. Doc. 1-2, ¶ 29.

³ R. Doc. 1-2, ¶¶ 29-30.

⁴ R. Doc. 1-2, ¶ 31. Red Frog states in its Notice of Removal that a facet joint injury is “a type of back injury commonly associated with soft tissue injuries.” R. Doc. 1, ¶ 21.

activities, and cannot exercise or participate in sports to the extent he did prior to his injury”⁵ and seeks damages for (1) pain and suffering; (2) past and future medical, rehabilitation, and pharmacy expenses; (3) lost wages; (4) loss of earning capacity; (5) loss of enjoyment of life; and (6) mental anguish and emotional distress.⁶

On December 14, 2017, Red Frog removed this suit on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332. Although the parties appear to be completely diverse, it is not apparent from the face of Plaintiff’s Petition that the claims are likely to exceed \$75,000.00. In the Petition, there is no information regarding claimed medical expenses or Plaintiff’s lost wages. In its Notice of Removal, Red Frog provides citations to various cases purporting to set forth damage awards; however, there is no way for the court to determine whether Plaintiff herein suffered similar injuries.⁷ Red Frog further avers that it “reached out to Plaintiff, through his counsel of record to further discuss injuries. Plaintiff characterized his alleged injuries as severe soft tissue injuries, and reported that he allegedly suffers daily ‘sever pain’ in his back, particularly in the mornings. Plaintiff alleges that his back ‘locks up’ in the morning, and that his treating physicians claim that his injures were ‘worse than they originally thought.’”⁸ Red Frog further avers that “Plaintiff was not in a position to stipulate that his damages were less than \$75,000.00” when Red Frog spoke to Plaintiff’s counsel on December 14, 2017.⁹

⁵ R. Doc. 1-2, ¶ 32.

⁶ R. Doc. 1-2, ¶ 34.

⁷ R. Doc. 1, ¶ 23, n. 17.

⁸ R. Doc. 1, ¶ 22.

⁹ R. Doc. 1, ¶ 22. This court has previously explained that the failure to execute a stipulation is but one factor for the court to consider in its amount in controversy analysis. See, *Cole v. Mesilla Valley Transportation*, Civil Action No. 16-841, 2017 WL 1682561, at * 5 (M.D. La. March 14, 2017).

Based on the allegations set forth in the Petition, as well as the information asserted in the Notice of Removal, the court sua sponte raises the issue of whether it may exercise diversity jurisdiction in this matter, specifically, whether the amount in controversy requirement has been met.

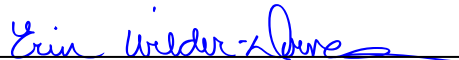
Accordingly,

IT IS ORDERED that Red Frog Events, LLC shall file a memorandum and supporting evidence concerning subject matter jurisdiction, specifically whether the amount in controversy requirement of 28 U.S.C. § 1332 is met, within ten (10) days of this Notice and Order.

IT IS FURTHER ORDERED that Plaintiff shall file either: (1) a memorandum and supporting evidence concerning the court's subject matter jurisdiction, specifically, whether the amount in controversy requirement of 28 U.S.C. § 1332 is met; or (2) a Motion to Remand, within ten (10) days after the filing of Red Frog Events, LLC's memorandum.

The case will be allowed to proceed if jurisdiction is adequately established.

Signed in Baton Rouge, Louisiana, on December 21, 2017.



ERIN WILDER-DOOMES
UNITED STATES MAGISTRATE JUDGE