

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

VENUS M. BOBADILLA, individually and as  
Guardian ad Litem of ZAVANNAH  
BOBADILLA, a minor, and FLOREMLISA N.  
MONTANO,

Plaintiffs,

v.

ROBERT W. SORENSEN; L&N  
TRANSPORT, INC.; DOES 1 through 5, and  
ROE BUSINESS ENTITIES 1 through 5,  
inclusive,

Defendants.

Case No. 2:14-cv-866-APG-PAL

**ORDER REMANDING CASE TO STATE  
COURT**

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

Defendants ROBERT SORENSEN and L&N TRANSPORT, INC. (collectively, “Defendants”) removed this case to federal court on June 3, 2014. On June 4, 2014, I ordered Defendants to show cause, in writing, as to why this action should not be dismissed for lack of subject matter jurisdiction and remanded to the state court. On June 20, 2014, Defendants responded to my Order by asserting that they value the potential exposure in excess of \$75,000 based on their belief that plaintiffs will require on-going medical treatment through December 17, 2015. (Dkt. #8 at 3:15-19.) That believe apparently is based upon the “Authorization to Disclose Health Information and Other Records” that plaintiffs’ counsel provided to Defendants’ counsel. (Dkt. #8-1 at p. 4.) But that Authorization does confirm plaintiffs will need treatment through 2015; rather, it simply authorizes the release of records should they come into existence.

24  
25  
26  
27  
28

The removing party has the burden of proving that removal is proper, and that this court may properly assert jurisdiction over the parties and dispute. If removal is sought based on diversity of citizenship, “the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy.” 28 U.S.C. § 1446(c)(2). If the initial pleading seeks nonmonetary relief or “a money judgment, but the State practice either does not permit demand

1 for a specific sum or permits recovery of damages in excess of the amount demanded,” then “the  
2 notice of removal may assert the amount in controversy,” but only “if the district court finds, by  
3 the preponderance of the evidence, that the amount in controversy exceeds the amount specified  
4 in section 1332(a).” 28 U.S.C. § 1446(c)(2).

5 Courts “strictly construe the removal statute against removal jurisdiction.” *Gaus v. Miles*,  
6 980 F.2d 564, 566 (9th Cir. 1992) (per curiam). “Federal jurisdiction must be rejected if there is  
7 any doubt as to the right of removal in the first instance.” *Id.* “The ‘strong presumption’ against  
8 removal jurisdiction means that the defendant always has the burden of establishing that removal  
9 is proper.” *Id.* “Normally, this burden is satisfied if the plaintiff claims a sum greater than the  
10 jurisdictional requirement,” but where “it is unclear what amount of damages the plaintiff has  
11 sought,” as with claims governed by Nevada Rule of Civil Procedure 8(a), “then the defendant  
12 bears the burden of actually proving the facts to support jurisdiction, including the jurisdictional  
13 amount.” *Id.*

14 In *Gaus*, the Ninth Circuit vacated the district court’s grant of summary judgment because  
15 the federal court lacked subject matter jurisdiction; the Ninth Circuit remanded with instructions  
16 to remand the case to the state court. 980 F.2d at 565, 567. The plaintiff had filed suit in Nevada  
17 state court, seeking damages “in excess of \$10,000.” Upon removal, the removing defendant  
18 alleged that “the matter in current controversy . . . exceeds the sum of \$50,000.” *Id.* at 565. The  
19 Ninth Circuit found that the removing defendant “offered no facts whatsoever to support the  
20 court’s exercise of jurisdiction,” and held that “[t]his allegation, although attempting to recite  
21 some ‘magical incantation,’ neither overcomes the ‘strong presumption’ against removal  
22 jurisdiction, nor satisfies [the removing defendant]’s burden of setting forth, in the removal  
23 petition itself, the underlying facts supporting its assertion that the amount in controversy exceeds  
24 \$50,000.” *Id.* at 567.

25 Here, Defendants have offered no medical records or other evidence that the damages in  
26 this case will exceed \$75,000. Accordingly, I cannot find that I may exercise subject matter  
27 jurisdiction in this action.

28

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

**IT IS THEREFORE ORDERED** that this case is remanded to the state court from where it was removed.

Dated: June 25, 2014.



---

ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE