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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Colin Barceloux,
Plaintiff
v.
The Light Group, LLC, et al.
Defendants

2:15-cv-02448-JAD-NJK

**Order Dismissing Case for
Lack of Jurisdiction
(Amount in Controversy Not Met)**

[ECF Nos. 74, 81]

Introduction

Colin Barceloux claims he was injured at the Bank Nightclub in the Bellagio Hotel & Casino in Las Vegas, Nevada, when he bumped a glass in the hand of another patron and it shattered in his face.¹ He sued the Bellagio, added claims against glass manufacturer Libbey Glass, Inc., and has moved to add claims against the glassware supplier.²

As I was preparing for the hearing on that latest motion to amend, it occurred to me that this tort case—which was filed in this court based on diversity jurisdiction, 28 U.S.C. § 1332—may not satisfy the statutorily required \$75,000 amount in controversy. So I ordered the parties to show cause why this case should not be dismissed for lack of subject matter jurisdiction.³ The remaining active parties have responded.⁴ I find that this case does not meet the threshold amount in controversy, and I dismiss it without prejudice to its refiling in state court.

¹ ECF No. 1 at 2.

² ECF No. 81.

³ ECF No. 88 (minute order).

⁴ ECF Nos. 89, 90.

1 **Discussion**

2 “If the court determines at any time that it lacks subject-matter jurisdiction, the court must
3 dismiss the action.”⁵ “Jurisdiction founded on 28 U.S.C. § 1332 requires that the parties be in
4 complete diversity and the amount in controversy exceed \$75,000.”⁶ Cases filed in federal court
5 should be dismissed when it “appear[s] to a legal certainty” that the value of the plaintiff’s claim is
6 less than \$75,000.⁷ “The district court is not obliged to accept the plaintiff’s allegations regarding
7 subject matter jurisdiction.”⁸ “Thus, when challenged by the court or the defendant, in all cases
8 originally commenced in a federal court, the plaintiff bears the initial burden of showing that it does
9 not appear to a legal certainty that the claim for relief is for less than the statutorily prescribed
10 jurisdictional amount; it must do so with competent proof.”⁹

11 Although plaintiff offers the conclusory allegation in his complaint that “The amount in
12 controversy exceeds \$75,000,”¹⁰ other statements in the complaint undermine that conclusion. He
13 alleges that he had incurred medical expenses “in excess of \$18,000” and that his future medical
14 treatment is estimated at “approximately \$25,000,” for a total of just \$43,000.¹¹ In his response to
15 the order to show cause, plaintiff offers no proof and just baldly claims that his general damages will
16 obviously exceed the additional \$32,000 needed to reach the \$75,000 threshold.¹² Defendant Libbey
17

18 ⁵ Fed. R. Civ. P. 12(h)(3). *See also Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir.
19 1983) (“the court is under a continuing duty to dismiss an action whenever it appears that the court
20 lacks jurisdiction.”).

21 ⁶ *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003).

22 ⁷ *Id.* (quoting *St. Paul Mercury Indemn. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)).

23 ⁸ *The Allocation of Burdens in Determining the Amount in Controversy*, 14AA Fed. Prac. & Proc.
24 Juris. § 3702.2 (4th ed.).

25 ⁹ *Id.*

26 ¹⁰ ECF No. 1 at ¶ 4.

27 ¹¹ *Id.* at ¶¶ 12, 13.

28 ¹² ECF No. 89.

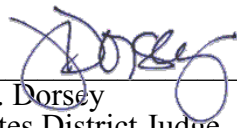
1 Glass, Inc. contends that this case falls short of the amount-in-controversy mark and should be
2 dismissed.¹³ Libbey adds that even the \$25,000 in future medical expenses are “dubious” because
3 the incident occurred more than three years ago and the plaintiff has not sought treatment since.¹⁴

4 Even if I disregard Libbey’s discussion of the “dubious” nature of plaintiff’s future medical
5 expenses, I find that plaintiff has not met his burden. He has offered nothing to show that he can
6 expect to recover “general” damages for pain, suffering, or anything else sufficient to bridge the
7 \$32,000 span between his claimed past and future damages and the jurisdictional threshold. He
8 includes no discussion of the pain and suffering that he claims he incurred as a result of any
9 defendant’s action, and he has not suggested a legal basis for an award of statutory damages or
10 attorney’s fees.¹⁵

11 Because it appears to me to a legal certainty that the value of this case is less than \$75,000, I
12 find that this court lacks jurisdiction to hear it. Accordingly,

13 **IT IS THEREFORE ORDERED that this case is DISMISSED** without prejudice to its
14 refiling in state court. All pending motions [**ECF Nos. 74, 81**] are **DENIED** without prejudice. The
15 Clerk of Court is directed to **CLOSE THIS CASE.**

16 Dated this 22nd day of June, 2017.

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19 _____
20 Jennifer A. Dorsey
21 United States District Judge
22
23

24 _____
25 ¹³ ECF No. 90.

26 ¹⁴ *Id.* at 2–3.

27 ¹⁵ “Nevada follows the American rule that attorney fees may not be awarded absent a statute, rule,
28 or contract authorizing such award.” *Thomas v. City of N. Las Vegas*, 127 P.3d 1057, 1063 (Nev.
2006).