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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ANGELINA CARSON,

Plaintiff(s),

v.

TARGET CORPORATION,

Defendant(s).

Case No. 2:17-CV-669 JCM (VCF)

ORDER

Presently before the court is plaintiff Angelina Carson’s motion to remand to state court. (ECF No. 6). Defendant Target Corporation filed a response (ECF No. 8), to which plaintiff replied (ECF No. 9).

I. Facts

The instant action involves a slip-and-fall incident at defendant’s store, from which plaintiff incurred medical expenses and loss of wages. In particular, plaintiff alleges she suffered a right ankle/fibula fracture.

Plaintiff originally filed the complaint in state court on February 7, 2017. (ECF No. 1 at 5). The complaint alleges three claims for relief: (1) negligence; (2) negligence per se; and (3) negligent hiring, training, retention, and supervision. (ECF No. 1 at 5–9). Plaintiff seeks damages in excess of \$15,000.00. (ECF No. 1 at 9).

Defendant removed the action to federal court on March 6, 2017, pursuant to 28 U.S.C. § 1332. (ECF No. 1).

In the instant motion, plaintiff moves to remand the action to state court. (ECF No. 6).

II. Legal Standard

Pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the

1 district courts of the United States have original jurisdiction, may be removed by the defendant or
2 the defendants, to the district court of the United States for the district and division embracing the
3 place where such action is pending.” 28 U.S.C. § 1441(a).

4 For a United States district court to have diversity jurisdiction under 28 U.S.C. § 1332, the
5 parties must be completely diverse and the amount in controversy must exceed \$75,000.00,
6 exclusive of interest and costs. See 28 U.S.C. § 1332(a); Matheson v. Progressive Specialty Ins.
7 Co., 319 F.3d 1098 (9th Cir. 2003). A removing defendant has the burden to prove by a
8 preponderance of the evidence that the jurisdictional amount is met. See Sanchez v. Monumental
9 Life Ins. Co., 102 F.3d 398, 403–04 (9th Cir. 1996).

10 Procedurally, a defendant has thirty (30) days upon notice of removability to remove a case
11 to federal court. Durham v. Lockheed Martin Corp., 445 F.3d 1247, 1250 (9th Cir. 2006) (citing
12 28 U.S.C. § 1446(b)(2)). Defendants are not charged with notice of removability “until they’ve
13 received a paper that gives them enough information to remove.” Id. at 1251.

14 Specifically, “the ‘thirty day time period [for removal] . . . starts to run from defendant’s
15 receipt of the initial pleading only when that pleading affirmatively reveals on its face’ the facts
16 necessary for federal court jurisdiction.” Id. at 1250 (quoting Harris v. Bankers Life & Casualty
17 Co., 425 F.3d 689, 690–91 (9th Cir. 2005) (alterations in original)). “Otherwise, the thirty-day
18 clock doesn’t begin ticking until a defendant receives ‘a copy of an amended pleading, motion,
19 order or other paper’ from which it can determine that the case is removable. Id. (quoting 28
20 U.S.C. § 1446(b)(3)).

21 A plaintiff may challenge removal by timely filing a motion to remand. 28 U.S.C. §
22 1447(c). Remand to state court is proper if the district court lacks jurisdiction. Id. On a motion
23 to remand, the removing defendant faces a strong presumption against removal, and bears the
24 burden of establishing that removal is proper. Sanchez v. Monumental Life Ins. Co., 102 F.3d 398,
25 403–04 (9th Cir. 1996); Gaus v. Miles, Inc., 980 F.2d 564, 566–67 (9th Cir. 1992).

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1 **III. Discussion**

2 In the statement of removal, defendant states that plaintiff has alleged past medical
3 expenses of approximately \$25,500, wage loss of approximately \$8,500, and total damages of
4 approximately \$123,500. (ECF No. 5 at 2).

5 In the instant motion, plaintiff argues that remand is proper because she “is barred, as a
6 matter of law, from recovering more than \$50,000 in this matter due to the damages limitation
7 placed on the case by the Eighth Judicial District Court.” (ECF No. 6 at 3). In particular, plaintiff
8 asserts that because her counsel did not file a petition for exemption from arbitration while the
9 action was in state court, plaintiff is barred from seeking damages in excess of \$50,000 in state
10 court. (ECF No. 6 at 3–4). Plaintiff further asserts that she “is at a loss as to where [d]efendant
11 came up with the ‘123,500’ figure.” (ECF No. 6 at 2).

12 In response, defendant contends that the amount in controversy is based on a letter from
13 plaintiff’s counsel to defendant, dated November 10, 2016, wherein plaintiff’s counsel
14 supplements plaintiff’s demand in the amount of \$8,485.49, “for a total demand of \$123,485.49.”
15 (ECF No. 8 at 22). Defendant further contends that the time never began to run for plaintiff to
16 seek exemption from the arbitration program in state court because defendant removed the action
17 to federal court before filing its answer. (ECF No. 8 at 3). Defendant asserts that it offered to
18 stipulate to remand the matter to state court if plaintiff would stipulate to limit her potential
19 damages recovery to \$50,000, which plaintiff allegedly declined. (ECF No. 8 at 6).

20 In her reply, plaintiff asserts she “stipulates that, if this matter is remanded to state court,
21 it [sic] will not file a petition to exempt this case from the arbitration program.” (ECF No. 9 at 2).
22 Plaintiff states that remand is proper because she “will be barred as a matter of law from recovering
23 more than \$50,000.” (ECF No. 9 at 2).

24 Despite plaintiff’s assertion to the contrary, stipulating to nonbinding arbitration does not
25 bar plaintiff from recovering more than \$50,000.00 “as a matter of law.” “Under NRS
26 38.250(1)(a), civil actions for damages filed in district court that do not exceed \$50,000, as the
27 amount in controversy, must, subject to certain exceptions, first be submitted to **nonbinding**
28 arbitration.” *Zamora v. Price*, 213 P.3d 490, 492 (Nev. 2009) (emphasis added). Stipulating to

1 not file an exemption to nonbinding arbitration is not the same as stipulating to limiting potential
2 damages recovery to \$50,000.00. Plaintiff cites to no authority in support of her assertion and is
3 apparently unwilling to concede or stipulate to limiting her damages thereunder.

4 Based on the foregoing, the court finds that defendant has satisfied its burden of showing,
5 by a preponderance of the evidence, that the amount in controversy exceeds \$75,000.00. See
6 Sanchez, 102 F.3d at 404. Defendant provided a letter from plaintiff's counsel demanding
7 \$123,485.49 in damages for the subject incident. This amount exceeds the jurisdictional threshold.


8 Accordingly, plaintiff's motion to remand will be denied.

9 **IV. Conclusion**

10 Accordingly,

11 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff's motion to
12 remand to state court (ECF No. 6) be, and the same hereby is, DENIED.

13 DATED May 19, 2017.

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UNITED STATES DISTRICT JUDGE