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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

SONYA RENEE WHITE,	)	
	)	
Plaintiff,	)	3:14-CV-00497-LRH-WGC
	)	
v.	)	
	)	<u>ORDER</u>
JOSE H. OROZCO-MUNOZ, individually	)	
and dba SAN JUAN OROZCO TRUCKING;	)	
<i>et al.</i> ,	)	
	)	
Defendant.	)	

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Before the court is Defendants Jose H. Orozco and San Juan Orozco Trucking’s (“Defendants”) notice of removal. Doc. #1.<sup>1</sup> Plaintiff Sonya Renee White (“Plaintiff”) initiated the present action against Defendants on July 31, 2014, in the Fourth Judicial District Court for Elko County, Nevada. On September 24, 2014, Defendants removed this action to federal court on the basis of diversity jurisdiction. Doc. #1.

On September 26, 2014, the Court reviewed the removal petition and held that it was not clear from the Complaint that the amount in controversy had been met. Doc. #6. The Court granted Defendants twenty days to establish the amount in controversy by submitting summary judgment type evidence to the court. *Id.* Thereafter, Defendants filed a response to the Court’s Order to show cause. Doc. #9. Plaintiff subsequently filed a response to the order to show cause. Doc. #10.

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<sup>1</sup> Refers to the Court’s docket entry number.

1           **A. Legal Standard**

2           Federal district courts have “original jurisdiction” where there is diversity of jurisdiction  
3 between the parties and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). “[A]ny  
4 civil action brought in a state court of which the district courts of the United States have original  
5 jurisdiction, may be removed by the defendant . . . to the district court of the United States for any  
6 district . . . where such action is pending.” 28 U.S.C. § 1441(a). If the district court determines  
7 that it lacks jurisdiction, the case must be remanded to state court. 28 U.S.C. § 1332. “Federal  
8 jurisdiction must be rejected if there is any doubt as to the right or removal in the first instance.”  
9 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The removal statute is construed  
10 restrictively and in favor of remanding a case to state court. *See Shamrock Oil & Gas Corp. v.*  
11 *Sheets*, 313 U.S. 100, 108-09 (1941). The amount in controversy requirement cannot be met by a  
12 “mere averment” of the removing party. *Gaus*, 980 F.2d at 566 (quoting *McNutt v. General Motors*  
13 *Acceptance Corp.*, 298 U.S. 178, 189 (1936)). “When the amount is not facially apparent from the  
14 complaint, the court may consider facts in the removal petition and may require parties to submit  
15 summary-judgment-type evidence relevant to the amount in controversy at the time of removal.”  
16 *Kroske v. U.S. Bank Corp.*, 432 F.2d 976, 980 (9th Cir. 2006). In a diversity case, “the removing  
17 defendant bears the burden of establishing, by a preponderance of the evidence, that the amount in  
18 controversy exceeds \$[75],000.00.” *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th  
19 Cir. 1996).

20           **B. Discussion**

21           Defendants argue that the case should not be remanded because Plaintiff’s Complaint, filed  
22 in state court, claimed emotional and personal injury damages in excess of \$10,000, and special  
23 damages for medical expenses, lost earning capacity, lost income, and lost schooling opportunities.  
24 Doc. #9 at 2. Defendants note that past medical expenses have so far reached \$7,934.92, and that  
25 Plaintiff may have already incurred additional medical expenses. *Id.* However, the amount sought  
26 in Plaintiff’s Complaint, and the amount spent on medical expenses, is below the threshold amount

1 of controversy required for diversity jurisdiction. Additionally, the mere possibility of additional  
2 medical expenses, lost earning capacity, lost income, and lost schooling opportunities is insufficient  
3 to prove that the amount in controversy has been met. Rather, Defendants must submit evidence of  
4 special damages to establish that the amount in controversy has been. *See Cicero v. Target Corp.*,  
5 No. 2:13-cv-0619, 2013 WL 3270559, at \*2 (D. Nev. June 26, 2013) (remanding when defendant  
6 claimed total damages of \$375,000 because defendant did not submit any evidence to support the  
7 figure); *Gaus*, 980 F.2d at 567.

8 Here, Defendants have not submitted any evidence to support their claim that the case more  
9 likely than not meets the \$75,000 amount in controversy threshold. Accordingly, the Court finds  
10 that Defendants have failed to meet their burden, and that this case must be remanded to the Fourth  
11 Judicial District Court for Elko County, Nevada.

12 Defendants allege further that the Court should order that the Plaintiff be estopped from  
13 seeking damages in excess of \$75,000, claiming that Plaintiff's refusal to stipulate to refrain from  
14 seeking damages larger than \$75,000 "is further evidence that the amount in controversy exceeds  
15 \$75,000." Doc. #9 at 2. Plaintiff states that while she "has no objection whatsoever stipulating to  
16 remand this matter back to State Court, she will not agree, nor should she be required to agree, to  
17 limit the potential value of her claims." Doc. #10 at 4. As discussed above, the Court does not  
18 have jurisdiction and cannot rule on this matter.

19 **C. Conclusion**

20 IT IS THEREFORE ORDERED that the present action, case no. 3:14-cv-00497-LRH-  
21 WGC, is REMANDED to the Fourth Judicial District Court for Elko County, Nevada.

22 IT IS SO ORDERED.

23 DATED this 30th day of October, 2014.

24   
25 LARRY R. HICKS  
26 UNITED STATES DISTRICT JUDGE