

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

HERMANN GOLLNER;

**Plaintiff,**

V.

CONFORMIS, INC., a Delaware Corporation,

Defendant.

Case No. 3:17-cv-0479-LRH-(VPC)

## ORDER

16 Before the court is plaintiff Hermann Gollner's ("Gollner") motion to remand.

17 ECF No. 10. Defendant Conformis, Inc. (“Conformis”) filed an opposition (ECF No. 12) to  
18 which Gollner replied (ECF No. 13).

## 19 I. Facts and Procedural Background

20 This is a negligence and product warranty action brought by plaintiff Gollner against  
21 defendant Conformis, a company that designs customized medical implants. On October 8, 2016,  
22 Gollner underwent knee replacement surgery. Prior to that date, Gollner had utilized Conformis's  
23 particular design technology to create a knee implant specific to his unique body which was to be  
24 sent to his surgeon and used in his knee replacement. However, Gollner alleges that on the date  
25 of his surgery, Conformis had sent the custom implant for a different customer to his surgeon.  
26 Because the knee surgery was already underway, Gollner alleges that his surgeon had to use a  
27 traditional implant for his knee replacement, depriving Gollner of the benefit of his specifically  
28 customized Conformis implant.

On July 14, 2017, Gollner filed a complaint against Conformis in state court alleging three causes of action: (1) negligence; (2) breach of implied warranty; and (3) breach of express warranty. ECF No. 5, Ex. 2. In response, Conformis removed the action to federal court on the basis of diversity jurisdiction. ECF No. 1. Thereafter, Gollner filed the present motion to remand. ECF No. 10.

## II. Legal Standard

Under 28 U.S.C. § 1441, “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a). A district court has original jurisdiction over civil actions where the suit is between citizens of different states and the amount in controversy, exclusive of interests and costs, exceeds \$75,000.00. 28 U.S.C. § 1332(a). In a diversity case, if a complaint does not specify the amount of damages, “the removing defendant bears the burden of establishing, by a preponderance of the evidence, that the amount in controversy exceeds \$[75],000.00.” *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

Removal of a case to district court may be challenged by motion and a federal court must remand a matter if there is a lack of jurisdiction. See generally, 28 U.S.C. § 1441. Removal statutes are construed restrictively and in favor of remanding a case to state court. See *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-109 (1941); see also, *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

### III. Discussion

In his motion, Gollner concedes that the parties are diverse for diversity jurisdiction purposes, but argue that Conformis's notice of removal is insufficient to prove, by a preponderance of the evidence, that the amount in controversy exceeds \$75,000.00. See ECF No. 10. The court agrees.

In order to meet their burden for removal, a defendant must present evidence that the amount in controversy exceeds \$75,000. *McCaa v. Massachusetts Mutual Life Insurance*

1 Company, 330 F. Supp. 2d 1143, 1149 (D. Nev. 2004); see also, Gaus v. Miles, Inc., 980 F.2d  
2 564, 567 (9th Cir. 1992). In his complaint, Gollner requests damages in excess of \$10,000 in  
3 accordance with Nevada pleading requirements. Gollner's damages allegedly arise from the  
4 difference in value between the knee implant that he received and the knee implant that he  
5 purchased from Conformis as well as the difference in benefits between the two implants. See  
6 ECF No. 5, Ex. 2. Based on these allegations, Conformis contends that the amount in  
7 controversy has been met because Gollner has alleged the possibility of permanent injury and has  
8 claimed pain and suffering which is likely to lead to an award of more than \$75,000 if Gollner is  
9 ultimately successful on his claims. However, Gollner has not requested compensation for the  
10 knee surgery and is not seeking another surgery to replace his current implant. See ECF No. 10.  
11 Nor has Gollner alleged any damages except for the \$10,000 identified in his complaint. Further,  
12 in its petition for removal, Conformis has failed to present the court with any evidence  
13 concerning Gollner's injuries or any calculation of Gollner's damages. Instead, Conformis relies  
14 on Gollner's declining to stipulate to an amount of damages as a basis to establish that the  
15 amount in controversy exceeds \$75,000. Yet, “[e]vidence of failure to stipulate to the amount in  
16 controversy requirement is at best a factor in determining the amount, and at worst irrelevant to  
17 the determination.” Rindels v. Tyco Integrated Security, LLC, 2015 WL 469013, at \*4 (C.D. Cal.  
18 February 4, 2015). As such, the court finds that Conformis has failed to provide the court with  
19 sufficient evidence to establish that the amount in controversy is more likely than not to exceed  
20 \$75,000.00 and therefore, the court shall remand this action for lack of diversity jurisdiction.  
21

22 IT IS THEREFORE ORDERED that plaintiff's motion to remand (ECF No. 10) is  
23 GRANTED. This action, 3:17-cv-0479-LRH-(VPC), is REMANDED back to the Second  
24 Judicial District Court of the State of Nevada.

25 IT IS SO ORDERED.

26 DATED this 26th day of September, 2017.

27   
28 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE