

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

<p>ELIZABETH YOUNGLOVE,</p> <p style="padding-left: 100px;">Plaintiff,</p> <p>v.</p> <p>DOLGEN MIDWEST, LLC,</p> <p style="padding-left: 100px;">Defendant.</p>	<p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p>	<p>CASE NO. 1:14-CV-1029</p> <p>OPINION & ORDER [Resolving Doc. Nos. 8 & 9]</p>
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JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

In this case about Plaintiff’s skin rash and Defendant’s termination of her employment that was removed from state court, Plaintiff Elizabeth Younglove moves the Court to remand the case.^{1/} Defendant Dolgen Midwest, LLC opposes.^{2/} For the following reasons, the Court **DENIES** Plaintiff’s motion for remand.

I. Background

On April 10, 2014, Plaintiff Younglove sued Defendant Dolgen Midwest in the Court of Common Pleas in Medina County, Ohio, making three claims: (1) wrongful termination in violation of Ohio public policy; (2) disability discrimination under Ohio state law; and (3) slander.^{3/}

On May 12, 2014, Defendant Dolgen Midwest removed the action to this Court based on

^{1/} Doc. [8](#).
^{2/} Doc. [9](#).
^{3/} Doc. [1-3](#).

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diversity jurisdiction.^{4/} In doing so, Dolgen Midwest said that it was “more likely than not” that the amount in controversy exceeded \$75,000 due to Plaintiff’s claims for economic and non-economic compensatory damages and punitive damages.^{5/}

Plaintiff Younglove now moves the court to remand, saying that the amount in controversy requirement is not met.^{6/} She says that her damages do not exceed \$74, 999, and attaches to her motion an affidavit from her attorney saying that Plaintiff does not seek more than \$75,000.^{7/}

Defendant Dolgen Midwest opposes the motion.^{8/} The motion is ripe.

II. Legal Standard

“The district courts of the United States ... are courts of limited jurisdiction. They possess only that power authorized by Constitution and by statute.”^{9/} A defendant may remove a civil action filed in a state court to a United States district court having original jurisdiction over the action.^{10/} Diversity of citizenship, the basis of federal subject matter jurisdiction in this action, is satisfied when the amount in controversy in an action between citizens of different states exceeds \$75,000.^{11/}

The removing party bears the burden of establishing federal subject matter jurisdiction^{12/}.

^{4/} Doc. [1](#).

^{5/} *Id.* at 3.

^{6/} Doc. [8](#).

^{7/} *Id.*; Doc. [8-2](#).

^{8/} Doc. [9](#).

^{9/} [Exxon Mobil Corp. v. Allapattah Servs.](#), 545 U.S. 546, 552 (2005) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)).

^{10/} [28 U.S.C. § 1441\(a\)](#).

^{11/} [28 U.S.C. § 1332\(a\)](#).

^{12/} [Jerome-Duncan Inc. v. Auto-By-Tel, L.L.C.](#), 176 F.3d 904, 907 (6th Cir.1999).

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Jurisdiction is determined as of the time of removal.^{13/} “If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”^{14/}

Where the plaintiff seeks to recover an unspecified amount that is not clearly greater or less than \$75,000, the removing defendant has the burden to show by the preponderance of the evidence that the jurisdictional amount has been met.^{15/} Though clarification that damages do not exceed \$75,000 may defeat jurisdiction and require remand in certain circumstances,^{16/} a plaintiff statement that the plaintiff will not seek more than \$75,000 is insufficient to divest the Court’s jurisdiction.^{17/}

III. Analysis

Plaintiff says that the amount of controversy requirement is not met, since her potential damages do not exceed \$75,000.^{18/} In support of her position, she has submitted an affidavit from her attorney stating that Plaintiff “does not seek damages in excess of \$75,000,” had “served a demand on Defendant in the amount of \$74,999,” “would accept settlement in an amount less than \$74,999,” and believes “the instant matter does not have a value in excess of \$74,999.”^{19/}

Defendant Dolgen Midwest responds that such a stipulation now does not defeat jurisdiction.^{20/} It says that at the time of removal, Plaintiff’s alleged damages were “more likely than not” to be over \$75,000.^{21/} And it says that the affidavit from Plaintiff’s attorney cannot reduce the

^{13/} [Ahearn v. Charter Twp. of Bloomfield](#), 100 F.3d 451, 453 (6th Cir.1996).

^{14/} [28 U.S.C. § 1447\(c\)](#).

^{15/} [Gafford v. Gen. Elec. Co.](#), 997 F.2d 150, 158 (6th Cir.1993).

^{16/} [See Egan v. Premier Scales & Sys.](#), 237 F.Supp.2d 774, 778 (W.D. Ky. 2002).

^{17/} [Rogers v. Wal-Mart Stores, Inc.](#), 230 F.3d 868, 872 (6th Cir. 2000) (“[A] post-removal stipulation reducing the amount in controversy to below the jurisdictional limit does not require remand to state court.”).

^{18/} Doc. [8](#).

^{19/} Doc. [8-2](#).

^{20/} Doc. [9](#).

^{21/} *Id.*

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amount in controversy to avoid litigating in federal court.

The Court agrees. At the time of removal, Plaintiff had alleged economic compensatory damages of approximately \$20,000; noneconomic damages that, under Ohio law, could be up to \$250,000; and punitive damages.^{22/}

Post-removal, Plaintiff tries to say that her damages do not exceed \$74,999 and says she “does not seek damages in excess of \$75,000.”^{23/} Notably, Plaintiff does not indicate that she would not accept more than \$75,000 in damages. But more important, this Court looks to the original complaint when deciding if the amount in controversy is more than \$75,000. Any reduction after removal, including the reduced claim in the amended complaint, does not destroy jurisdiction.^{24/}

III. Conclusion

For the reasons set forth above, the Court **DENIES** Plaintiff’s motion to remand.

IT IS SO ORDERED.

Dated: July 7, 2014

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

^{22/}See Doc. [1](#).

^{23/} Doc. [8-2](#).

^{24/}See [Rogers, 230 F.3d at 872](#).