

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION**

WILLIAM M. WINDSOR,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:13-CV-00778
)	
ALLIE LORAIN YAGER)	
OVERSTREET,)	
And)	
JOHN DOES 1-1000,)	
)	
Defendants,)	
)	

**SUGGESTIONS IN SUPPORT OF DEFENDANT’S RESPONSE TO
PLAINTIFF’S MOTION TO REMAND**

Comes now Defendant Allie Overstreet (hereinafter referred to as Defendant Overstreet) by and through her attorney, Matthew J. O’Connor and offers her Suggestion in Support of her Response to Plaintiff’s Motion to Remand:

I. FACTUAL BACKGROUND:

Defendant incorporates by reference her Notice of Removal, Section 1. Nature of the Action, Subpart A Factual Background, Paragraphs 7-21. Defendant Overstreet would like to reiterate the domiciles of the Plaintiff, Box Elder, South Dakota, previously of Georgia and Defendant Overstreet, Higginsville, Missouri.

II. LEGAL ARGUMENT

A. Removal to District Court is Appropriate Jurisdictionally in this Action.

Federal District Courts have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different

states. 28 U.S.C. § 1332(a). The present action is between a Plaintiff from South Dakota, a Defendant from Missouri and 1000 John Doe Defendants who's whereabouts are unknown. Diversity of citizenship is clear. The Plaintiff in this action is seeking damages in excess of \$10,025,000. The amount in controversy requirement of § 1332 is clearly met as well.

Plaintiff argues that this Court does not have jurisdiction because his action does not invoke a federal question. This is correct. However, Federal Court Jurisdiction extends beyond Federal Questions, see U.S.C. § 1332.

Plaintiff next argues that removal is inappropriate as per U.S.C §1441, which states in relevant part that a civil action “may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441 (b)(2). Plaintiff argues that this statute serves as a jurisdictional defect in Defendant’s Notice of Removal. However, remand is not required when the Court has proper subject matter jurisdiction. *Casey v. F.D.I.C.*, 583 F.3d 586, 590 (8th Cir., 2009). This Court has proper subject matter jurisdiction as per 28 U.S.C. § 1332, which states in relevant part: “(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—(1) citizens of different States.” Subject matter jurisdiction is met in the case because the Plaintiff and Defendant are from different states, and the matter in controversy exceeds \$75,000. If the subject matter of the case or controversy is within the scope of the jurisdiction of this Court, then it does not matter how the case or controversy was brought to this court. *Baggs v. Martin, supra*, 179 U.S. 206 (1900) cited in *Handley-Mack Co. v. Godchaux Sugar Co.*, 2 F.2d 435, 437

(6th Cir. 1924). 28 U.S.C. § 1441 (b)(2), is non-jurisdictional and is instead procedural in nature, this allows this Court to have sole discretion on whether or not this case should or should not be remanded to state court. *Hurley v. Motor Coach Indus., Inc.*, 222 F.3d 377, 380 (7th Cir. 2000). Finally, Any case in which a United States District Court has original jurisdiction can be removed from state court. *Gore v. Trans World Airlines*, 210 F.3d 944, 948 (8th Cir. 2000).

Remand is also inappropriate because it violates two elements of the Constitution for the United States of America. The first element that it violates is Article 3 Section 2 of the United States Constitution. Article 3 Section 2 states in relevant part that:

“The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;”

28 U.S.C. § 1441, divests the Federal Court of original jurisdiction given to them by the Constitution, by divesting them of jurisdiction over controversies between citizens of different states.

Removal in this case is also unconstitutional because it deprives Defendant Overstreet from equal protection under the law. To establish an equal protection claim Defendant Overstreet must prove that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.

Village of Willowbrook v. Olech, 528 U.S. 562, 564, 120 S.Ct. 1073, 1074 (2000).

Additionally, an equal protection claim can be brought on the behalf of a single individual. *Id.* Defendant Overstreet would suffer an unequal protection of the law in

this situation, because she would not have the benefit and the protection of the Federal District Court for the Western District of Missouri. There is no rational basis for the legislature or this court to exclude Defendant Overstreet from having her defense be heard in this Court. Furthermore, the statute Plaintiff is advancing as the authority behind his motion, *28 U.S.C. 1441(b)(2)*, creates safe havens for this Plaintiff and like Plaintiffs, while disabling Defendant Overstreet and like Defendants ability to seek refuge in Federal Court when they meet the jurisdictional requirements of *28 U.S.C. § 1332(a)*. *28 U.S.C. 1441(b)(2)* allows Plaintiffs to pick and chose the court of their choice and require the Defendant to defend the case in the jurisdiction of Plaintiff's Choice. Finally, the 1,000 John Doe Defendants in this action would also suffer from unequal protection under the law, because they who would have no recourse to seek protection of this Court and might suffer from discrimination as an out of state defendant in a state court, the exact object that the diversity statutes have been attempting to stymie.

In Plaintiff's Motion, he makes several allegations that are invalid. Specifically:

Paragraph 9: Plaintiff is incorrect. This case should and could have been brought in front of the Federal Court, the jurisdictional elements were present at the time this case was filed, and the only question then would have been the amount in controversy, which Plaintiff arbitrarily amended to \$10,025,000, in his amended petition. It is the opinion of Defendant Overstreet that Plaintiff only did this to avoid federal court by amending after the 30-day time limit, as outlined by *28 U.S.C. § 1446*, had expired.

Paragraph 10 & 11: Defendant Overstreet has asserted grounds for subject matter jurisdiction. Those grounds are diversity, which is a valid source of jurisdiction for this court.

Paragraph 12 & 13: Plaintiff makes the claim that Defendant Overstreet has not met the requirements of diversity jurisdiction. However, Plaintiff does not explain this allegation. Defendant Overstreet has clearly shown how diversity jurisdiction has been established in this case. This is a case or controversy between citizens of different states and the amount in controversy exceeds \$75,000, which are the only two requirements of diversity jurisdiction.

Paragraph 15-19: Federal questions or federal issues are not the only basis for a case to be heard in federal court. Plaintiff's pleading clearly shows a repeated misunderstanding of this legal principle, as a result of this misunderstanding Defendant Overstreet would ask that the court encourage Plaintiff to seek legal counsel to help reconcile his confusion, rather than waste the courts time with repetitive and incorrect pleadings.

B. The Notice of Removal is Procedurally Sound

Plaintiff advances two defects with the procedures in which Defendant Overstreet took to file the notice of removal. His first complaint is that Defendant Overstreet failed to provide a plain statement of the grounds for removal. Again this has been covered multiple times, Defendant Overstreet's grounds for removal are based on the diversity of parties and the amount in controversy. His second defect states that Defendant Overstreet failed to provide the court with the State Court Summons issued to Defendant Overstreet or Former Defendant Supanich, and that Defendant Overstreet failed to provide the Federal Court with a number of other motions and the discovery presented to the State Court. First, Defendant Overstreet did include the summons that was sent to her, it was attachment three with Defendant Overstreet's Notice of Removal. Second Defendant Overstreet did not provide the court with the summons of Defendant Supanich, because

Defendant Overstreet never received a copy, nor would Defendant Overstreet have received a copy of the summons sent to Mr. Supanich. Plaintiff failed to identify which motions that were not provided to this Court, nor did Plaintiff identify any issue or burden this placed on this Court. The motions that Defendant Overstreet chose not to include were motions that had already been disposed of by the State Court. Additionally, Defendant Overstreet did not include any of the disposed motions or discovery on the advice of the Clerk of this Court, who stated that it was unnecessary for our office to overburden the clerks office by filing each and every pleading, which at this point is over 50 pleadings which amount to over 1500 pages worth of information, most of which were long-winded, palaverous affidavits of sworn testimony that Plaintiff had unnecessarily filed with the State Court.

III. PLAINTIFF'S AMENDMENT TO THEIR NOTICE OF REMOVAL

A. 28 U.S.C. 1332(c)(1) provides this Court with jurisdiction.

Removal Jurisdiction may also be founded based on *28 U.S.C. § 1332(c)(1)*, which states:

“(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of—

(A) every State and foreign state of which the insured is a citizen;

(B) every State and foreign state by which the insurer has been incorporated;
and

(C) the State or foreign state where the insurer has its principal place of business;”

This section of *§1332* must apply in this situation. The basis and majority of Plaintiff's injuries and damages are based on the damage that is done to his business or

occupation, Lawless America Association. Plaintiff has constructively filed this lawsuit on the behalf of Lawless America Association, which Plaintiff has stated is a non-profit 501(c)(3). *See Exhibit A*. Defendant Overstreet is unaware of the State where Plaintiff created the 501(c)(3) in, but it is strongly presumed that it wasn't in Missouri.

Furthermore, as the Plaintiff is the leader of the Lawless America Association, and is a resident of South Dakota, it is well within the assumption of Defendant Overstreet, that the Plaintiff has the principal place of business in South Dakota, and at the very least not in Missouri. Plaintiff has referenced the damage done to his business contracts or occupation, which is Lawless America Association, in the following paragraphs of his Amended Petition: 49, 53, 63-69, and 78. Because Plaintiff has filed this action on the behalf of his corporation, a corporation whose locale is diverse to that of Defendant Overstreet, and because the amount in controversy exceeds \$75,000, federal court jurisdiction is appropriate.

B. Acts outside of Missouri.

Jurisdiction in this court is also appropriate because a large portion of the acts that Plaintiff is alleging did not occur in the State of Missouri. A portion of the allegations in Plaintiff's Petition cites actions that were taken online by "stalkers" and not Plaintiff. Plaintiff has not established the whereabouts of these "stalkers" but Defendant Overstreet believes that these "stalkers" were not residents of Missouri and therefore those out of state "stalkers" would be subject to laws other than Missouri's. It would be extremely unfair and prejudicial for a Missouri State Court to apply another States tort law in a Missouri Court. Additionally, it is within the best interest of the Plaintiff for this action to be in Federal Court, so that he may obtain jurisdiction over the out of state defendants

that he plans to bring into this lawsuit. If Plaintiff is successful in the removal of this action to State Court then a majority of the claims Plaintiff has asserted against Defendant Overstreet will be dismissed, as she wasn't a party to those acts.

C. Amendments to a notice of removal are not waived.

“The notice of removal required by Section 1446(b) may be amended freely by the defendant prior to the expiration of the thirty-day period for seeking removal.” 14C Charles A. Wright, Arthur R. Miller & Edward Cooper, *Federal Practice and Procedure* § 3733 at 357-361 (3d ed. 1998) cited in *Whitehead v. The Nautilus Grp., Inc.*, 428 F. Supp. 2d 923, 929 (W.D. Ark. 2006). Plaintiff cites two cases that he claims support his contention that amendment is disallowed. The first case is *Nichols v. Harbor Venture*, however, this case literally makes no mention to an amendment or waiver of jurisdictional bases when attempting to remove a case from state court to federal court. I urge Plaintiff to point out where in this case he believes that argument is made. The second case he cites is *ING USA Annuity and Life Insurance Co. v. J.P. Morgan Securities, Inc.*, however not only does this case come from a different district, the case misquotes the law. The Court in *ING USA* cites 28 U.S.C. §1446 (c)(2) as the authority for stating: “The initial notice of removal must include all grounds for removal or they are waived.” *ING USA Annuity & Life Ins. Co. v. J.P. Morgan Sec., Inc.*, 1:08-CV-1748-TWT, 2008 WL 4495705 (N.D. Ga. Sept. 30, 2008). However, 28 U.S.C. §1446 (c)(2) states:

(c) Requirements; removal based on diversity of citizenship.--(1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that—

(A) the notice of removal may assert the amount in controversy if the initial pleading seeks—

(i) nonmonetary relief; or

(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

28 U.S.C.A. § 1446 (West).

As you can see nothing in this statute states that an amendment or additional bases for jurisdiction are not waived. Additionally, subject matter jurisdiction cannot be waived and therefore Defendant could argue that there were additional bases for jurisdiction.

United States v. Cotton, 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 860 cited in *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 501, 126 S. Ct. 1235, 1237, 163 L. Ed. 2d 1097 (2006).

III. CONCLUSION

Wherefore Defendant Overstreet requests that this Court deny Plaintiff's Motion to Remand and grant any other relief this court deems just and proper.

Respectfully Submitted,

THE O'CONNOR LAW FIRM, P.C.

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on August 15, 2013 a true and correct copy of the above and foregoing document was forwarded via email and United States Mail, postage prepaid to:

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