

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION**

ROBYNE NEWELL,)	
)	CASE NO.: _____
Plaintiff,)	
)	
vs.)	
)	
PETSMART, INC., a Foreign For-Profit)	
Corporation)	NOTICE OF REMOVAL
)	
Defendant.)	
_____)	

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446, Defendant PetSmart, Inc. (“PetSmart”) hereby gives notice of removal of the above-entitled action, and all claims and causes of action therein, currently pending in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida (the “State Court Action”). Defendant PetSmart appears for the purposes of removal only, reserves all defenses and rights available to it, and as grounds for removal states as follows:

NOTICE OF REMOVAL

1. Plaintiff filed the above-entitled action on April 28, 2020 against PetSmart in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida. Plaintiff served PetSmart’s registered agent with a copy of the Complaint via process server on May 7, 2020. A copy of the receipt of service of process from PetSmart’s registered agent is attached hereto as Exhibit A.

2. Service of Process on May 7, 2020 constituted PetSmart’s first receipt of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based. This Notice of Removal is being filed within 30 days of the same, and is therefore timely under 28 U.S.C. § 1446(b)(1).

3. Pursuant to 28 U.S.C. § 1446(d), PetSmart will file a copy of this Notice of Removal with the Clerk of the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, and will serve a copy of this Notice of Removal on Plaintiff to properly effect removal of this action to this Court.

4. A true and correct copy of the Complaint is attached hereto as Exhibit B. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all other process, pleadings, and orders served upon PetSmart in the State Court Action is attached hereto as Exhibit C. A copy of the docket in the State Court Action is attached as Exhibit D. No substantive motions have been filed in the State Court Action.

5. In submitting this Notice of Removal, PetSmart reserves all rights and defenses, including as to venue, personal jurisdiction, the legal sufficiency of the claims alleged in Plaintiff's complaint, and all other objections and defenses.

FEDERAL QUESTION JURISDICTION OF THIS COURT

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1441(a) because this action necessarily raises substantial and disputed federal issues. *See Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005). Suits alleging only state-law causes of action nevertheless "arise under" federal law if the "state-law claim[s] necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Grable*, 545 U.S. at 314. Applying this test "calls for a 'common-sense accommodation of judgment to the kaleidoscopic situations' that present a federal issue." *Id.* at 313.

7. The Eleventh Circuit has explained that “[t]he substantiality inquiry under *Grable* looks to the importance of the issue to the federal system as a whole,’ and the Supreme Court has identified three factors to assist in this inquiry. First, a pure question of law is more likely to be a substantial federal question. Second, a question that will control many other cases is more likely to be a substantial federal question. Third, a question that the government has a strong interest in litigating in a federal forum is more likely to be a substantial federal question.” *MDS (Can.), Inc. v. RAD Source Techs., Inc.*, 720 F.3d 833, 842 (11th Cir. 2013).

8. This District has likewise followed the test set out by the Supreme Court in *Grable*, and also underscored that “[i]n making this determination, ‘the removing court looks to the substance of the complaint, not the labels used in it.’” *Edwards v. Deloitte & Touche, LLP*, No. 16-21221-Civ-Scola, 2017 U.S. Dist. LEXIS 221984, at *10 (S.D. Fla. Jan. 18, 2017) (finding federal question jurisdiction over exclusively state law causes of action). This District has also made clear that, “even if it appears from the complaint that only state-law causes of action are actually pleaded, a federal question will be inferred where ‘the vindication of a right under state law necessarily turns on some construction of federal law.’” *MSPA Claims 1, LLC v. Allstate Prop. & Cas. Ins. Co.*, No. 16-20443-Civ-Scola, 2016 U.S. Dist. LEXIS 92958, at *5-6 (S.D. Fla. June 29, 2016); *see also Korman v. IRS*, No. 06-81294-Civ-Marra, 2007 U.S. Dist. LEXIS 91046, at *10 (S.D. Fla. Feb. 20, 2007) (“That Plaintiff chose to cast his challenge to the propriety of the federal tax lien in state law terms is of no consequence. Under the artful pleading doctrine, federal courts may take jurisdiction over a complaint removed from state court where the plaintiff, although framing his action under state law, in actuality raises an essential federal question.”) (denying motion to remand state law claim).

9. Federal jurisdiction is also proper under the *Grable* framework “where federal law completely preempts the state law claims” or “where the plaintiff has attempted to defeat removal by ‘artful pleading,’ *i.e.* by failing to plead a necessary federal question in his complaint.” *Quepasa Corp. v. Valdez*, No. 10-80698-Civ-Hurley, 2010 U.S. Dist. LEXIS 153817, at *13 (S.D. Fla. Nov. 19, 2010) (citations omitted). Under the “artful pleading” doctrine specifically, “[r]emoval will be held proper when the plaintiff has concealed a legitimate ground of removal by inadvertence, or artful pleading. The plaintiff may be said to have engaged in ‘artful pleading’ in particular when he pleads a state cause of action the merits of which turn on an important federal question.” *Ayres v. GMC*, 234 F.3d 514, 518 n.7 (11th Cir. 2000) (quoting 14B Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction § 3732, at 333 (3d ed. 1998) (emphasis added); *see also* 15A Moore’s Federal Practice - Civil § 103.43; (“A plaintiff cannot avoid federal court simply by omitting a necessary federal question in the complaint; in such a case the necessary federal question will be deemed to be alleged in the complaint. This is a corollary to the well-pleaded complaint rule, sometimes called the ‘artful pleading’ exception, that a plaintiff may not frame the action solely under state law by omitting federal questions that are essential to recovery.”); 15A Moore’s Federal Practice - Civil § 107.73.

A. The Legal Issue in This Case Depends Exclusively On Federal Law Interpretation.

10. In this case, although Plaintiff pleads only a single state law cause of action, for violation of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla. Stat. § 501.201 *et seq.*, her allegations derive *exclusively* from the claim that the Only Natural Pet Hemp Calming Support Soft Chews product sold by PetSmart (hereinafter, the “Product”) violates the Federal Food Drug & Cosmetics Act (“FD&C Act”) because it is an unapproved “new animal drug” under that law and is therefore “unsafe” and “adulterated.” *See* Ex. B ¶¶ 17-25. Specifically,

Plaintiff alleges that the product “is not approved by the FDA or indexed and therefore the Product is considered unsafe under section 512(a) of the FD&C Act, 21 U.S.C. 360b(a), and adulterated under section 501(a)(5) of the FD&C Act, 21 U.S.C. 351(a)(5),” and as such, “the Product is an unapproved new animal drug and cannot lawfully be sold.” (Compl., Ex. B ¶¶ 20, 23).

11. Plaintiff makes no other claims whatsoever regarding the efficacy of the Product or the truthfulness of the Product’s advertised claims – her grievance is exclusively a matter of regulatory compliance under federal law. Plaintiff makes no claims, for example, regarding any alleged problems or deficiencies with the Product. Instead, the Complaint merely alleges that these alleged regulatory violations make the product “worthless” as a matter of law because it cannot lawfully be sold. *Id.* ¶¶ 23-25.¹ Accordingly, this Court has subject matter jurisdiction under *Grable* and the applications of *Grable*’s principles in this Circuit and District, because the Complaint “necessarily raise a stated federal issue” that is “actually disputed and substantial.”

12. A federal forum may entertain the issues presented in this case without disturbing any congressionally approved balance of federal and state judicial responsibilities because it impacts only the interpretation of federal FDA law, with the state FDUTPA statute serving as nothing more than a vehicle for a challenge premised solely on alleged violations of federal law. Indeed, there is greater federal interest in this case, because its outcome depends entirely on the interpretation of federal law.

13. The federal government has a strong interest in questions regarding the interpretation and application of the FD&C Act being litigated in a federal forum, so that these

¹ For the avoidance of doubt, even if such additional claims were made, this would not impact the Court’s jurisdiction because the federal law claims would still be essential to Plaintiff’s Complaint.

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