

112673-7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

SUZETTE RODRIGUEZ,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION,

Defendant.
_____ /

DEFENDANT, COSTCO WHOLESALE CORPORATION'S NOTICE OF REMOVAL

Defendant, Costco Wholesale Corporation (“Costco” or “Defendant”), by and through its undersigned counsel, hereby files its Notice of Removal to this Court of the above-styled action pursuant to 28 U.S.C. sections 1441(b) and 1446(a), and 28 U.S.C. section 1332, and as support thereof, Costco states as follows:

Factual Background

1. Costco is the sole defendant in Plaintiff’s civil negligence action, which was filed on March 21, 2023, in the Seventeenth Judicial Circuit in and for Broward County, Florida, Case No. CACE-23-008639. (*See* Pl.’s Compl., attached hereto as Exhibit “A”).

2. Plaintiff alleges personal injuries following two purported slip and falls on a slippery substance at a Costco Warehouse located at 1890 S. University Drive, Davie, FL 33321 on or about May 31, 2022 and September 16, 2022 (hereinafter “subject incidents”). (*See id.* at ¶¶ 1, 6).

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3. Plaintiff served the Complaint on Costco's Registered Agent on July 3, 2023. (*See* Return of Service, attached hereto as Exhibit "B"). At the time of service, there was no basis on the face of the Complaint to remove this action, as the Complaint merely alleged the damages at issue exceed fifty thousand dollars. (*See* Compl. ¶ 1).

4. However, Costco's Notice of Removal is timely filed within thirty (30) days after receipt by Costco of Plaintiff's written discovery responses setting forth claimed damages in excess of the jurisdictional threshold for removal. (*See* 28 U.S.C. § 1446(b); *see also* Def.'s Req. for Admis. ¶¶ 1–3, dated Aug. 2, 2023, attached hereto as Exhibit "C"; Pl.'s Resp. to Def.'s Req. for Admis. ¶¶ 1, 4–8, Sept. 1, 2023, attached hereto as Exhibit "D"). No further state court proceedings have taken place as of the date of this Notice of Removal.

5. This is a civil action over which this Court has diversity jurisdiction pursuant to 28 U.S.C. section 1332. A defendant may remove a state court proceeding to federal court if: (1) the amount in controversy exceeds \$75,000.00, exclusive of interests and costs, and (2) the action is between a citizen of a State and a citizen of a foreign state. Both prongs are met here.

The Parties are Completely Diverse

6. Plaintiff resides in Broward County, Florida. (*See* Pl.'s Compl. at ¶ 2; Pl.'s Resp. to Def.'s Req. for Admis. at ¶ 1). To be a "citizen" of a state within the meaning of the diversity provision, a natural person must be both a citizen of the United States and a domiciliary of a state. *Jones v. Law Firm of Hill & Ponton*, 141 F. Supp. 2d 1349, 1355 (M.D. Fla. 2001). In determining domicile, a court should consider both positive evidence and presumptions. *Id.* One such presumption is that the state in which a person resides at any given time is also that person's domicile. *Id.* Therefore, Plaintiff's citizenship in the State of Florida is assumed for diversity

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purposes. *See McCormick v. Aderholt*, 293 F.3d 1254, 1257 (11th Cir. 2002) (explaining that “[c]itizenship is the equivalent to domicile for purposes of diversity jurisdiction.”).

7. Costco is a foreign corporation established under the laws of Washington with its principal place of business in the state of Washington (*See generally* Fla. Division of Corporations Detail by Entity Name). Accordingly, pursuant to 28 U.S.C. section 1332(c)(1), Costco is, and was at the time of the commencement of this action, a citizen of the State of Washington.

8. Therefore, complete diversity of citizenship exists between Plaintiff and Costco.

The Amount-in-Controversy Requirement is Satisfied

9. As to the amount-in-controversy requirement, Plaintiff’s Complaint merely alleged damages in excess of the \$50,000.00 requirement to satisfy the jurisdictional bar to Florida’s Circuit courts. (*See* Pl.’s Compl. at ¶ 1).

10. However, Plaintiff’s recent Response to Defendant’s Requests for Admission, dated September 1, 2023, demonstrates Plaintiff is now seeking in excess of \$75,000.00 in damages in this lawsuit.¹ (Pl.’s Resp. to Def.’s Req. for Admis. at ¶ 2).

11. Based on the representations made by Plaintiff concerning the total figures at issue, the amount-in-controversy requirement is established. *See Wilson v. Gen. Motors Corp.*, 888 F.2d 779, 782 (11th Cir. 1989) (“When Wilson responded to GMC’s Requests for Admission on January 23, 1986, she admitted that none of the fictitious defendants existed. By doing so, she triggered the 30 day period. The response was the ‘paper from which it [was] first ascertained that

¹ “Courts have held that responses to request for admissions, settlement offers, and other correspondence between parties can be ‘other paper’ under 28 U.S.C. § 1446(b).” *Wilson v. Target Corp.*, Case No. 10–CV–80451, 2010 WL 3632794, at *2 (S.D. Fla. Sept. 14, 2010) (citing *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1212 n.62 (11th Cir. 2007) (discussion of the judicial development of the term “other paper”).

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the case [was] one which is or has become removable.’” (citing 28 U.S.C. § 1446(b)); *Deabreu v. Higbee Co.*, No. 8:17-CV-2378-T-MAP, 2018 WL 3860227 (M.D. Fla. Feb. 6, 2018) (holding that a defendant’s reliance on plaintiff’s response to its Request for Admissions is appropriate and sufficient to meet the amount in controversy jurisdictional requirement). *Cf. Lambertson v. Go Fit, LLC*, 918 F. Supp. 2d 1283, 1286 (S.D. Fla. 2013) (“This Court finds that the proper triggering document in this case was Plaintiff’s response to Defendant’s request for admissions.”).

12. Consequently, this Court has original jurisdiction over the aforementioned matter pursuant to 28 U.S.C. section 1332(a), as this action involves: (1) citizens of different states, and (2) an amount in controversy in excess of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs.

The Procedural Requirements for Removal Have Been Completed by Costco

13. Simultaneous to the filing of this Notice of Removal, Costco has given written notice of the filing of this Notice to Plaintiff, as required by 28 U.S.C. section 1446(d).

14. A copy of this Notice has likewise been filed with the Clerk of the Circuit Court in and for Broward County, Florida (attached hereto as Exhibit “E”), in compliance with the requirements of 28 U.S.C. section 1446(d).

15. True and correct copies of all documents that were filed in the state action are attached hereto as Composite Exhibit “F”.

16. Pursuant to 28 U.S.C. section 1441(a), venue is proper in the Southern District of Florida as the state action was filed and pending within the jurisdictional boundaries of this District.

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Dated: September 29th, 2023

Respectfully submitted,

/s/ Jason A. Glusman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court using the CM/ECF system on September 29th, 2023, and the foregoing document is being served this day on all counsel or parties of record on the Service List below, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing.

/s/ Jason A. Glusman

Jason A. Glusman, Esquire

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