

vs.

NUTRIEN AG SOLUTIONS &

AERIAL SPECIALISTS, INC.,

Defendants.

) CIVIL ACTION NO.: 3:2020CV00133  
)  
)  
)  
)  
)  
)

**PLAINTIFF'S MOTION FOR REMAND & STIPULATION OF DAMAGES**

COMES NOW, **DIANE CARTEY**, Plaintiff in the above-styled action (hereinafter referred to as Plaintiff **CARTEY**), and files this Motion for Remand to the Superior Court of Morgan County, along with the accompanying Stipulation of Damages and the supplemental brief in support thereof, and shows this Honorable Court as follows:

1. On August 19, 2020, Plaintiff **CARTEY** filed a Complaint in the Superior Court of Morgan County, Civil Action File No. 2020-SU-CA-182, regarding the destruction of her blueberry garden due to an aerial misapplication of herbicidal compounds then under the control of Defendant **NUTRIEN AG SOLUTIONS** and **AERIAL SPECIALISTS, INC.**, alleging a number of state law claims, including those arising from O.C.G.A. § 51-2-5(2) (employer liability for contractors in inherently dangerous activities); and O.C.G.A. § 51-9-9 (aerial trespass).
2. On October 30, 2020, Plaintiff **CARTEY** submitted an Amended Complaint that clarified the element of punitive damages included in this amount. The punitive damages were intended for inclusion in the original complaint, but were absent from its form as filed with

3. On December 3, 2020, Defendant filed its Notice of Removal to remove the case to this Honorable Court based on diversity of citizenship.
4. For diversity jurisdiction to be proper, not only must all parties to the suit be completely diverse in citizenship, but Defendant must also prove that the amount in controversy exceeds the jurisdictional threshold of **\$75,000.00**.
5. As originally stated in the Complaint filed August 19, 2020, the damages arising in connection with this present matter fail to meet that figure, as they are **\$74,999.00** or less. As restated in the Amended Complaint filed October 30, 2020, the figure—which was clarified as including a punitive element—remained unchanged at **\$74,999.00** or less.
6. Defendant's Notice of Removal, which contains no factual allegations of any kind, failed to meet its burden to show that the amount in controversy properly situates this case in the jurisdiction of this Honorable Court by exceeding the **\$75,000.00** threshold. Defendant's Notice of Removal includes either a mistaken belief or an intentional attempt to mislead by stating that the Amended Complaint references punitive damages *separately* from the expenses and damages initially alleged (despite the fact that ¶ 9 of the Amended Complaint lists the statute providing for punitive damages in the exact same list as the other statutory authorities for the damages sought). Other than this patently false assertion, the only backing for Defendant's claims in the Notice of Removal is found in the conclusory and entirely unsubstantiated statement that this Honorable Court can "exercise its judicial

amount exceeds the sum sought. Because Defendant did not furnish any evidence to the contrary, there are no specific points for Plaintiff CARTEY to refute in so doing. To this end, Plaintiff CARTEY offers the stipulation below as a good-faith indication of the damages award sought:

#### STIPULATION OF DAMAGES

*As stated in the originally filed complaint for the ongoing matter, Plaintiff Diane Cartey has suffered no damages beyond \$74,999.00. Accordingly, Plaintiff Cartey will neither seek nor accept any damages award in excess thereof. Even if a jury award were to be made that exceeded this amount upon the case's remand to the Superior Court of Morgan County, any amount in excess thereof would not be accepted by Plaintiff Cartey.*

and refuses to grant the sought removal of the ongoing proceeding; and

- b) That this Honorable Court, in full recognition of the above Stipulation of Damages, remand this proceeding to the Superior Court of Morgan County.

Respectfully submitted this 21st day of December, 2020.

[SIGNATURE PAGE FOLLOWS]

525 Gaines School Road  
Athens, Georgia 30605  
Phone: (706) 546-0854  
Fax: (706) 546-0864