

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

LARRY TROVER PRODUCE, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
NUTRIEN AG SOLUTIONS, INC.,)	
NUTRIEN, LTD., OMNILYTICS, INC.,)	
AND CERTIS USA, INC.,)	
)	
Defendants.)	

NOTICE OF REMOVAL

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS:

PLEASE TAKE NOTICE that Defendant Certis U.S.A. L.L.C. (“Certis”),¹ by and through its undersigned counsel and pursuant to 28 U.S.C. §§ 1441 and 1446, hereby removes this action from the Circuit Court of Johnson County, Illinois, to the United States District Court for the Southern District of Illinois. In further support of this Notice, Certis states as follows:

State Court Action

1. On or about July 2, 2021, Plaintiff Larry Trover Produce, Inc. (“Plaintiff”) commenced an action against Defendants Certis, Nutrien AG Solutions, Inc. (“Nutrien AG”), Nutrien, Ltd. (“Nutrien”) and Omnilytics, Inc. (“Omnilytics”; together, “Defendants”) in the Circuit Court of Johnson County, Illinois, Case No. 2021-L-7 (the “State Court Action”). (*See* Complete State Court Docket, attached as **Exhibit A.**)

¹ The Complaint incorrectly named “Certis USA, Inc.,” a nonexistent entity. Plaintiff’s allegations elsewhere in the Complaint indicate that it intended to name Certis U.S.A. L.L.C. (*See* Cmplt. ¶ 7 (alleging that “Certis” as used in the Complaint means “Certis USA, LLC”).)

2. Plaintiff's Complaint and Summons were first received by Certis on or after July 21, 2021. (**Exhibit B**, Summons with Complaint). However, two pages of the Complaint were missing from the version of the Complaint that Certis received. (*See id.*) A true and complete copy of the Complaint filed in the State Court Action is attached as **Exhibit C**. Certis has not been served any additional documents filed in the State Court Action.

3. Certis removes this action to the United States District Court for the Southern District of Illinois under the provisions of 28 U.S.C. § 1441(a), on the grounds that this Court has original jurisdiction under 28 U.S.C. § 1332(a), as there is diversity of citizenship between Plaintiff and Defendants, and the amount in controversy in excess of \$75,000.

4. This Notice of Removal is timely because 30 days have not elapsed since Certis received the Summons and Complaint, and the Notice is being filed within one year of the commencement of the State Court Action. 28 U.S.C. § 1446(b)-(c).

5. All other Defendants who have been properly joined and served in the State Court Action consent to the removal of this action to this Court. The signed consent of Nutrien AG and Nutrien is attached hereto as **Exhibit D**, and the signed consent of Omnilytics is attached hereto as **Exhibit E**. *See Air Energy Glob., Inc. v. Grier*, No. 12-CV-875-DRH-SCW, 2013 WL 12191888, at *2 (S.D. Ill. Mar. 1, 2013) (Herndon, J.); 28 U.S.C. § 1446(b)(2).

6. The District Court for the Southern District of Illinois includes Johnson County, where the State Court Action was filed.

Citizenship of the Parties

7. In the following discussion, the statement as to the citizenship of each party includes the party's citizenship on the date of this Notice and at the time the State Court Action was brought.

8. Plaintiff Larry Trover Produce, Inc. is a Florida corporation with its principal place of business in Illinois. (*See* Cmplt. ¶ 1.) Thus, for purposes of diversity jurisdiction under 28 U.S.C. § 1332, Plaintiff is a citizen of Florida and Illinois. *See* 28 U.S.C.A. § 1332(c)(1).

9. Defendant Certis U.S.A. L.L.C. is a Delaware-registered limited liability company with its principal place of business in Maryland. The members of Certis are Mitsui & Co., Ltd. and Mitsui & Co. (U.S.A.), Inc. Mitsui & Co., Ltd. is a Japanese corporation with its principal place of business in Japan, and is therefore a citizen of Japan for purposes of diversity jurisdiction. Mitsui & Co. (U.S.A.), Inc. is a New York corporation with its principal place of business in New York, and is therefore a citizen of New York for purposes of diversity jurisdiction. Accordingly, for purposes of diversity jurisdiction under 28 U.S.C. § 1332, Certis is a citizen of New York and Japan. *See Camico Mut. Ins. Co. v. Citizens Bank*, 474 F.3d 989, 992 (7th Cir. 2007) (“For diversity jurisdiction purposes, the citizenship of an LLC is the citizenship of each of its members.”).

10. Defendant Nutrien AG Solutions, Inc. is a Delaware corporation with its principal place of business in Colorado. (*See* Cmplt. ¶ 4.) Thus, for purposes of diversity jurisdiction under 28 U.S.C. § 1332, Nutrien AG is a citizen of Delaware and Colorado.

11. Defendant Nutrien, Ltd. is a Canadian corporation with its principal place of business in Canada. (*See* Cmplt. ¶ 6.) Thus, for purposes of diversity jurisdiction under 28 U.S.C. § 1332, Nutrien AG is a citizen of Canada.

12. Defendant Omnilytics, Inc. is a Utah corporation with its principal place of business in Utah. (*See* Cmplt. ¶ 5.) Thus, for purposes of diversity jurisdiction under 28 U.S.C. § 1332, Omnilytics is a citizen of Utah.

13. Accordingly, this action is, as of both the time the State Court Action was brought and as of the instant Notice of Removal, between citizens of different states, as well as citizens of foreign states, under 28 U.S.C. § 1332(a)(3).

Amount in Controversy

14. The amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

15. The Complaint purports to state seven causes of action against the Defendants:

A) Count I: claim against all Defendants for breach of express warranty under Illinois law, expressly seeking over \$300,000 in damages;

B) Count II: claim against all Defendants for breach of implied warranty of merchantability under Illinois law, expressly seeking over \$300,000 in damages;

C) Count III: claim against all Defendants for common law fraudulent misrepresentation, apparently seeking at least \$300,000 in damages;

D) Count IV: claim against all Defendants for statutory consumer fraud and/or deceptive business practices under Illinois law, expressly seeking at least \$300,000 in damages;

E) Count V: claim against all Defendants for common law negligence, apparently seeking at least \$300,000 in damages;

F) Count VI: claim against all Defendants for breach of contract, expressly seeking over \$300,000 in damages; and

G) Count VII: claim against all Defendants for breach of implied warranty of fitness for particular purpose under Illinois law, expressly seeking over \$300,000 in damages.

16. In the Complaint, Plaintiff claims that Defendants are responsible for providing Plaintiff certain Agriphage-brand products that were allegedly defective in preventing the spread of bacterial canker, causing substantial damages to Plaintiff's tomato crops and leading to over \$300,000 in financial losses to Plaintiff. (Cmplt. ¶¶ 58, 70, 47*, 47**.)²

17. Because Plaintiff's citizenship is completely diverse from the citizenship of Defendants, and because the amount-in-controversy exceeds \$75,000, this Court has subject matter jurisdiction under 28 U.S.C. § 1332(a).

18. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal is being forwarded to counsel for Plaintiff, and this Notice of Removal will be filed with the Clerk of the Circuit Court of Johnson County, Illinois.

19. By filing this Notice of Removal, Certis expressly reserves, and does not waive, any and all defenses Certis has or may have to Plaintiff's claims asserted in the Complaint, and Certis does not concede any of the allegations in Plaintiff's Complaint.

WHEREFORE, Defendant Certis U.S.A. L.L.C. respectfully requests that the above action now pending against it in the Circuit Court of Johnson County, Illinois be removed to this Court.

² The numbering of paragraphs in the Complaint is garbled, with the same paragraph numbers sometimes repeating in different counts. Certis uses an asterisk (*) to denote the second appearance of a paragraph number and a double-asterisk (**) to denote the third appearance of a paragraph number.

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