

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN B. WILSON, LESLIE B. WILSON, and JOHN)
 B. WILSON, JR.,)
)
 Plaintiffs)
)
 v.)
)
 NETFLIX, INC., NETFLIX WORLDWIDE)
 ENTERTAINMENT, LLC, 241C FILMS, LLC,)
 LIBRARY FILMS, LLC, JON KARMEN, and CHRIS)
 SMITH,)
)
 Defendants.)

CIVIL ACTION
NO. 1:21-cv-10894

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants Netflix, Inc. (“Netflix”), Netflix Worldwide Entertainment, LLC (“NWE”), 241C Library Films, LLC (“241C”), Library Films, LLC (“LF”), Jon Karmen (“Karmen”), and Chris Smith (“Smith”) (collectively, “the Defendants”) hereby remove the above-captioned case, presently pending in the Superior Court of Essex County, Massachusetts and bearing Civil Action No. 2177CV00388, to the United States District Court for the District of Massachusetts.

Removal is authorized by 28 U.S.C. § 1441 because, but for the misjoined claims asserted by Plaintiff John B. Wilson, Jr. (“Wilson Jr.”), there is complete diversity of citizenship between the Plaintiffs and the Defendants, and the amount in controversy exceeds \$75,000 exclusive of interest and costs. In further support of this Notice, Defendants state as follows:

BACKGROUND

1. On April 6, 2021, Plaintiffs commenced this action in the Superior Court of Essex County, Massachusetts. *See* Exhibits 1 (Complaint), Exhibits 2-8 (Exhibits to Complaint).

2. The complaint alleges one count for defamation against all Defendants arising out of the Netflix documentary *Operation Varsity Blues: The College Admissions Scandal* (the “Film”).

3. On April 28, 2021, Defendants accepted service of process through undersigned counsel.

GROUND FOR REMOVAL

4. Section 1441(a) of Title 28 of the United States Code provides in relevant part that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

5. Federal district courts have original jurisdiction over all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states. *See* 28 U.S.C. § 1332.

A. Diversity Jurisdiction

6. This action may be removed to this Court in accordance with 28 U.S.C. § 1441 because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and because this is an action between citizens of different states (*see* 28 U.S.C. § 1332), excluding Plaintiff Wilson, Jr., who has been misjoined in this action. As a misjoined plaintiff, Wilson Jr.’s citizenship is immaterial to the diversity inquiry, for the reasons stated below.

i. Diversity of Citizenship and Misjoinder of Plaintiff Wilson, Jr.

7. Plaintiffs John B. Wilson, Sr. (“Wilson Sr.”) and Leslie B. Wilson (“Mrs. Wilson”) are residents of Lynnfield, Essex County, Massachusetts. *See* Complaint, Ex. 1, ¶¶ 4-5. Accordingly, Wilson Sr. and Mrs. Wilson are citizens of Massachusetts.

8. Defendant Netflix is a Delaware corporation with a principal place of business in California. *Id.* ¶ 7. Accordingly, Netflix is a citizen of Delaware and California. *See* 28 U.S.C. § 1332(c)(1).

9. Defendant NWE is a Delaware limited liability company with a principal place of business in the State of California. Complaint, Ex. 1, ¶ 8. Accordingly, NWE is a citizen of Delaware and California.

10. Defendant 241C is a California limited liability company with a principal place of business in the State of California. *Id.* ¶ 9. Accordingly, 241C is a citizen of California.

11. The Complaint alleges that Defendant LF is a California limited liability company with a principal place of business in the State of California. *Id.* ¶ 10. LF is in fact a limited liability company organized under the laws of Wisconsin.

12. Defendant Karmen is a resident of and therefore a citizen of California. *Id.* ¶ 11.

13. The Complaint alleges that Defendant Smith is a resident of California. *Id.* ¶ 12. He is in fact a resident of Wisconsin and therefore a citizen of Wisconsin.

14. The Complaint alleges that Wilson Jr. is a resident of Los Angeles, California and therefore a citizen of the California. *Id.* ¶ 6.

15. There would be complete diversity of citizenship between the Plaintiffs and all Defendants but for the joinder of Wilson Jr. as a plaintiff. Wilson Jr.'s citizenship is immaterial to the diversity analysis, however, because he has been improperly joined as a plaintiff to defeat diversity jurisdiction. *See Universal Truck & Equip. Co. v. Southworth–Milton, Inc.*, 765 F.3d 103, 108 (1st Cir. 2014) (“removal is not defeated by the joinder of a non-diverse defendant where there is no reasonable possibility that the state’s highest court would find that the complaint states a cause of action upon which relief may be granted against the non-diverse defendant”); *see also Antony v. Duty Free Americas, Inc.*, No. 09-10862-NMG, 2009 WL 10694418 at *2 (D. Mass. Dec. 3, 2009) (“A mere theoretical possibility of recovery under state law does not suffice to preclude removal.”) (citing *Badon v. RJR Nabisco, Inc.*, 236 F.3d 282, 286 n. 4 (5th Cir. 2005)); *Carey v. Bd. of Governors of Kernwood Country Club*, 337 F. Supp. 2d 339, 343 (D. Mass. 2004) (improper joinder found where plaintiff “failed to state a viable cause of action” against defendants); *Mills v. Allegiance Healthcare Corp.*, 178 F. Supp. 2d 1, 4 (D. Mass. 2001)

(“linchpin” of analysis is “whether the joinder of the nondiverse party has a reasonable basis in law and fact.”).

ii. Amount in Controversy

16. Plaintiffs allege that they have suffered, and continue to suffer, “substantial harm and damages” and claim entitlement to “significant monetary damages.” Complaint, Ex. 1, ¶ 46.

17. The amount in controversy in this action, exclusive of interest and costs, therefore exceeds the sum of \$75,000. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014) (holding that “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold”).

THE MISJOINDER OF WILSON JR.

18. Wilson Jr. has no viable claim of defamation against the Defendants for three independent reasons:

- (a) The Film does not contain any defamatory statements that are of and concerning Wilson Jr.;
- (b) The Film is a privileged fair report of court records and proceedings; and
- (c) Wilson Jr.’s claims are (i) governed by California law and (ii) barred by California’s anti-SLAPP statute, CAL. CODE OF CIV. PROC. § 425.16.

A. United States v. John B. Wilson, Sr.

19. On March 29, 2019, the United States Attorney’s Office announced that “[d]ozens of individuals involved in a nationwide conspiracy that facilitated cheating on college entrance exams and the admission of students to elite universities as purported athletic recruits were arrested by federal agents . . . and charged in federal court in Boston.”¹ Among those arrested was Plaintiff Wilson Sr., who was then charged with conspiracy to commit mail fraud and honest

¹ *See Arrests Made in Nationwide College Admissions Scam: Alleged Exam Cheating & Athletic Recruitment Scheme*, U.S. DOJ (Mar. 12, 2019), <https://www.justice.gov/usao-ma/pr/arrests-made-nationwide-college-admissions-scam-alleged-exam-cheating-athletic>.

services mail fraud.” *Id.* (The government later charged Wilson Sr. with eight additional offenses.)

20. In a Memorandum and Order dated November 25, 2020, the United States District Court Judge presiding over Wilson Sr.’s prosecution made the following findings:

Defendant John Wilson . . . has been charged, alongside 30 other parents, with conspiring with William “Rick” Singer (“Singer”) to have his children fraudulently admitted into an elite university by falsifying their athletic credentials and bribing university employees and athletic coaches.

In the spring of 2013, Wilson hired Singer to assist his son in his college application process. Wilson’s son played high school water polo but was not qualified to play on the varsity water polo team at the University of Southern California (“USC”). Singer, nonetheless, communicated with the water polo coach at USC, Jovan Vavic (“Vavic”), about having Wilson’s son accepted to USC as a “bench warmer side door” water polo recruit. Wilson, Singer and Vavic planned specifically to have Wilson’s son “recruited” as a walk-on in exchange for a “donation” to USC. In executing that plan, Singer embellished the athletic profile of Wilson’s son to include fabricated awards.

Wilson’s son was admitted to USC in March, 2014, after which Wilson “donated” approximately \$220,000 to USC via Singer’s charity, the Key Worldwide Foundation (“KWF”), and his for-profit consulting business, The Key. His son subsequently enrolled in the university and joined the water polo team which he quit after his first semester.

In the fall of 2018, Wilson contacted Singer again, this time inquiring about using the “side door” to improve the college opportunities for his twin daughters. Singer, who was cooperating with law enforcement by that time, explained to Wilson that his daughters could be recruited for the sailing or crew teams at Stanford and Harvard but would not actually have to participate on either team. Wilson subsequently wired multiple payments in the aggregate of \$1.5 million to Singer and his “foundation.”

With respect to Wilson specifically, the affidavit [of FBI Special Agent Laura Smith] asserts that he conspired with Singer 1) to bribe the water polo coach at USC to designate his son as a recruited USC water polo player in order to ensure his son’s admission into that school and 2) to bribe university employees at Stanford and Harvard to secure the admission of his daughters as recruited athletes in those schools.²

United States v. John Wilson, D. Mass. 1:19-cr-10080-NMG, Dkt. # 1649 at 1-4.

² Wilson Sr.’s daughters are not plaintiffs in this case.

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