

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

CLIFTON REESE,

Plaintiff,

vs.

TYSON FOODS, INC.,

Defendant.

Case No. 3:21-cv-05087

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, 1442, and 1446, Defendant Tyson Foods, Inc. (“Tyson Foods”) hereby removes to the United States District Court for the Western District of Missouri the action styled *Clifton Reese v. Tyson Foods, Inc.*, Case No. 21BR-CC00091, currently pending in the Circuit Court of Barry County, Missouri (the “Circuit Court Action”). Tyson Foods removes this action based on diversity of citizenship because (1) the amount in controversy exceeds \$75,000, and (2) there is complete diversity of citizenship between Plaintiff and Defendant. Alternatively, removal is also proper pursuant to federal officer removal under 28 U.S.C. § 1442(a)(1). In support of its Notice of Removal, Tyson Foods states the following:

I. THE CIRCUIT COURT ACTION

1. Plaintiff Clifton Reese commenced the Circuit Court Action on October 26, 2021, in the Circuit Court of Barry County, Missouri, by filing his Petition for Injunctive and Declaratory Relief in the case styled *Clifton Reese v. Tyson Foods, Inc.*, Case No. 21BR-CC00091. Tyson Foods was served with a copy of the Petition today, October 28, 2021.

2. The Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) because it is filed within thirty days of service.

3. Pursuant to 28 U.S.C. § 1446(a), copies of all papers filed in the Circuit Court Action are attached as Exhibit A, which includes any and all process, pleadings, and orders served upon Tyson Foods. The Civil Cover Sheet is filed contemporaneously herewith.

4. Plaintiff's Petition purports to allege state law claims against Tyson Foods for violation of public policy, assault, breach of contract, invasion of privacy, and religious discrimination under the Missouri Human Rights Act.

5. By removing this action, Tyson Foods does not waive any defenses or objections that they may have.

II. VENUE

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1446 as the United States District Court for the Western District of Missouri geographically embraces the state court in Barry County, Missouri, in which Plaintiff filed his state court action.

III. DIVERSITY JURISDICTION

7. As discussed more fully below, this is a civil action over which this Court has original jurisdiction because there is complete diversity between the parties, and the amount in controversy exceeds \$75,000.

A. Diversity of Citizenship Exists.

8. For diversity jurisdiction, there must be complete diversity between the parties, which means no plaintiff may be a citizen of the same state as any defendant. 28 U.S.C. § 1332(a)(1). *See Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005); *Junk v. Terminix Int'l Co.* 628 F.3d 439, 445 (8th Cir. 2010).

9. For diversity purposes, "the terms 'domicile' and 'citizenship' are synonymous" and mean the State where an individual is physically present and intends to make his or her home indefinitely. *Yeldell v. Tutt*, 913 F.2d 533, 537 (8th Cir. 1990). "The place where a [person] lives

is properly taken to be [the] domicile until facts adduced establish the contrary.” *Dist. Of Columbia v. Murphy*, 314 U.S. 441, 455 (1941).

10. In his Petition, Plaintiff states he is a resident of Barry County, Missouri. *See* Petition (Exhibit A) at ¶ 7. Accordingly, Plaintiff is a Missouri citizen for purposes of diversity jurisdiction.

11. A corporation “shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and the state containing its principal place of business.” *Brody v. Ocwen Loan Servicing, LLC*, No. 15-0740-CV-W-ODS, 2015 WL 9581784, at *1 (W.D. Mo. Dec. 30, 2015) (citing 28 U.S.C. § 1332(c)(1)).

12. Tyson Foods is a Delaware corporation with its principal place of business in Springdale, Arkansas. (Exhibit B, Declaration of Brett Worlow at ¶¶ 3–4). Thus, it is a citizen of those two states, not Missouri, meaning complete diversity exists. *See* 28 U.S.C. § 1332(c)(1).

B. The Amount in Controversy Exceeds \$75,000.

13. Diversity jurisdiction also requires that the amount in controversy “exceeds the sum or value of \$75,000.00, exclusive of interest and costs.” 28 U.S.C. § 1332(a).

14. The standard for determining whether a plaintiff’s claim meets the amount in controversy is “whether a fact finder might legally conclude” that the plaintiff’s damages are greater than \$75,000. *Quinn v. Kimble*, 228 F. Supp. 2d 1038, 1040 (E.D. Mo. 2002). Tyson Foods need only establish by a preponderance of the evidence that Plaintiff could stand to recover over \$75,000 if he were to prevail, not that Plaintiff would definitely be awarded more than that amount. *See Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002); *see also Schubert v. Auto Owners Ins. Co.*, 649 F.3d 817, 822-23 (8th Cir. 2011). Once Tyson Foods has satisfied this burden, Plaintiff may defeat federal jurisdiction only if it appears to “a legal certainty” that the claim is really for less than the jurisdictional amount. *Larkin v. Brown*, 41 F.3d 387, 388 (8th Cir. 1994); *Kopp*, 280

F.3dat 885; *see also Schubert*, 649 F.3d at 822-23.

15. Courts consider economic and non-economic compensatory damages, punitive damages, and attorneys' fees in determining whether the amount in controversy exceeds \$75,000. *See Allison v. Sec. Benefit Life Ins. Co.*, 980 F.2d 1213, 1215 (8th Cir. 1992).

16. Here, Plaintiff seeks "lost wages, lost bonus, loss in health coverage for himself and his family, loss of benefits, and physical, emotional, and mental anguish as injuries." *See* Exhibit A, ¶ 149. He alleges (and swears under oath) that his current base salary is \$113,907.75 per year, plus benefits. *Id.*, ¶ 19. He claims he will be placed on a one-year unpaid leave of absence and someone else will fill his position beginning November 1, 2021. *Id.*, ¶¶ 3, 14, 33.

17. Plaintiff also expressly seeks punitive damages "in the sum not less than \$100,000.00." *Id.*, ¶ 150.

18. With Plaintiff's other claimed damages, specifically attorneys' fees, the amount in controversy easily exceeds \$75,000. *See Capitol Indem. Corp. v. Miles*, 978 F.2d 437, 438 (8th Cir. 1992) (considering attorneys' fee claims in determining the amount in controversy); *Pleasant v. Noble Fin. Corp.*, 54 F. Supp. 3d 1071, 1080 (W.D. Mo. 2014) ("Defendant is correct that punitive damages and statutory attorney fees may be considered in calculating the amount in controversy").

19. In addition, Plaintiff seeks declaratory and injunctive relief. The Eighth Circuit has found that the value of the declaratory or injunctive relief is based on "the value of the object of the litigation." *James Neff Kramper Family Farm P'ship v. IBP, Inc.*, 393 F.3d 828, 831 (8th Cir. 2005). The value of the injunctive relief sought by Plaintiff in the Petition, if granted, would exceed \$75,000 because Plaintiff seeks to avoid "a forced leave of absence without pay" as well as compensation and benefits for at least one year, Petition, ¶¶ 3, 33-35, when his annual salary

exceeds \$100,000. *See Burns v. Mass. Mut. Life Ins. Co.*, 820 F.2d 246, 248 (8th Cir. 1987) (“The amount in controversy in a suit for injunctive relief is measured by the value to the plaintiff of the right sought to be enforced.”).

20. Considering the combination of Plaintiff’s own admissions and his claims for lost wages, compensatory damages, punitive damages, attorneys’ fees, and declaratory/injunctive relief, it is clear a fact finder might legally conclude Plaintiff’s damages exceed \$75,000. Accordingly, Tyson Foods has demonstrated that the amount in controversy exceeds \$75,000.

IV. FEDERAL OFFICER REMOVAL

21. While removal under 28 U.S.C. § 1332 is alone sufficient to remove this matter to this Court, removal is also proper pursuant to federal officer removal, 28 U.S.C. § 1442(a)(1).

22. Under 28 U.S.C. § 1442(a)(1), a civil action may be removed to federal court if the action is asserted against a person acting under the direction of a federal officer:

A civil action . . . that is against or directed to any of the following may be removed . . . :

(1) The United States or any agency thereof or any officer (*or any person acting under that officer*) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office.

28 U.S.C. § 1442(a)(1) (emphasis added).

23. “Unlike the general removal statute, the federal officer removal statute is to be ‘broadly construed’ in favor of a federal forum.” *Papp v. Fore-Kast Sales Co.*, 842 F.3d 805, 811 (3d Cir. 2016) (quoting *In re Commonwealth’s Motion to Appoint Counsel. Against or Directed to Def. Ass’n of Philadelphia*, 790 F.3d 457, 466 (3d Cir. 2015), *amended* (June 16, 2015)).

24. Federal officer removal is proper because: (1) Tyson Foods is a “person” within the meaning of the statute who “acted under the direction of a federal officer”; (2) Tyson Foods’ actions were for or related to acts performed under color of federal office; and (3) Tyson Foods

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