

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Action No.: 5:20-cv-479**

**MAXWELL FOODS, LLC,**

**Plaintiff,**

**v.**

**SMITHFIELD FOODS, INC.,**

**Defendant.**

**NOTICE OF REMOVAL PURSUANT TO  
28 U.S.C. §§ 1332, 1441, AND 1446**

**PLEASE TAKE NOTICE** that Defendant Smithfield Foods, Inc. (“Smithfield”), through counsel and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby removes Case No. 20-CVS-1430 from the General Court of Justice, Superior Court Division for Wayne County, North Carolina (the “State Court”) to the United States District Court for the Eastern District of North Carolina, Western Division, being the district and division in which this case is pending. In support of this removal, Smithfield states the following:

1. On August 13, 2020, Plaintiff Maxwell Foods, LLC (“Maxwell”) filed a Complaint against Defendant Smithfield in the State Court, captioned *Maxwell Foods, LLC v. Smithfield Foods, Inc.*, which was assigned Case No. 20-CVS-1430. Smithfield attaches to this Notice all process, pleadings, orders, and other documents that have been served on Smithfield in the State Court action, excluding discovery, as Exhibits A through D, as required by 28 U.S.C. § 1446(a) and Local Civil Rule 5.3(a)(1).

2. Smithfield was served with Maxwell’s Civil Summons, Civil Action Cover Sheet, and Complaint on August 14, 2020. The Complaint is the initial pleading setting forth the claims for relief upon which this action is based. Thirty days have not yet elapsed from service of process.

Removal is therefore timely under 28 U.S.C. § 1446(b).

3. This is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332(a) because complete diversity exists between the parties to this litigation and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

4. Plaintiff Maxwell is a limited liability company organized and existing under the laws of North Carolina. Compl. ¶ 1. For purposes of diversity jurisdiction, Maxwell's citizenship is determined by the citizenship of its members. *See Cent. W. Va. Energy Co. v. Mountain State Carbon, LLC*, 636 F.3d 101, 103 (4th Cir. 2011) ("For purposes of diversity jurisdiction, the citizenship of a limited liability company . . . is determined by the citizenship of all of its members.").

5. Maxwell's three members are J L Maxwell III, Jere Walter Pelletier III, and Thomas (Tom) Howell. J L Maxwell III is a citizen of the United States and is domiciled within the State of North Carolina. Jere Walter Pelletier III is a citizen of the United States and is domiciled within the State of North Carolina. Thomas (Tom) Howell is a citizen of the United States and is domiciled within the State of North Carolina. Accordingly, J L Maxwell III, Jere Walter Pelletier III, and Thomas (Tom) Howell is each a citizen of the State of North Carolina for diversity jurisdiction purposes.

6. Maxwell is thus a citizen of North Carolina. *See Cent. W. Va. Energy Co.*, 636 F.3d at 103.

7. Defendant Smithfield is a corporation organized and incorporated under the laws of Virginia. Smithfield's principal place of business is located in Smithfield, Virginia, where Smithfield maintains its corporate headquarters. Smithfield is thus a citizen of Virginia.

8. Complete diversity therefore exists between the parties to this litigation, as required

by 28 U.S.C. § 1332(a).

9. This case also satisfies the amount in controversy requirement of 28 U.S.C. § 1332(a).

10. Specifically, Maxwell alleges three claims for breach of contract and one claim for breach of duty of good faith and fair dealing related to an alleged agreement between Maxwell and Smithfield for the purchase and sale of swine. Compl. ¶¶ 82–112. With regard to the breach of contract claims, Maxwell alleges that Smithfield has breached (i) obligations related to a “most-favored-nation provision,” Compl. ¶¶ 82–90; (ii) a duty to negotiate, Compl. ¶¶ 91–100; and (iii) an “output” provision of the agreement whereby Smithfield would purchase “all” of the “Market Swine” produced by Maxwell up to a cap of 155,000 per month, Compl. ¶¶ 101–108.

11. Maxwell alleges that Smithfield’s breach of the “most-favored-nation provision” of the alleged agreement has “caused Maxwell damages totaling tens of millions of dollars.” Compl. ¶ 89. Maxwell further alleges that Smithfield’s breach of the “output” provision of the alleged agreement “has cost Maxwell in excess of \$1 million.” Compl. ¶ 107.

12. Additionally, the Complaint demands that Smithfield be ordered to “purchase all Market Swine actually produced by Maxwell and any Affiliate of Maxwell up to a maximum of one hundred fifty-five thousand (155,000) head of Market Swine per month.” Compl. p. 22, ¶ 2. “In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation.” *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 347 (1977). According to Maxwell’s allegations, the value of its requested injunctive relief substantially exceeds \$75,000. This is evidenced by the Complaint’s allegations that Smithfield’s failure “to purchase all of Maxwell’s production” up to the 155,000 cap between April 2020 and August 2020, a span of four and a half months at most, “has cost

Maxwell in excess of \$1 million, with additional . . . damages accruing each month.” Compl. ¶¶ 64, 66–68, 107.

13. Based upon these allegations in the Complaint, the amount in controversy exceeds the \$75,000 threshold established by 28 U.S.C. § 1332(a), exclusive of interests and costs. *See JTH Tax, Inc. v. Frashier*, 624 F.3d 635, 638 (4th Cir. 2010) (“Courts generally determine the amount in controversy by reference to the plaintiff’s complaint.”).

14. Therefore, this is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332(a). Smithfield may thus remove this civil action pursuant to 28 U.S.C. §§ 1441(a) and 1446.

15. The State Court is located within this judicial district. 28 U.S.C. § 113(a). Venue is therefore proper under 28 U.S.C. § 1441(a).

16. The State Court is located within the Western Division of this judicial district. Local Civil Rule 40.1(b). Assignment to this division is therefore proper. Local Civil Rule 40.1(c)(1).

17. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice is being filed with the clerk of the State Court, and Smithfield will provide written notice of the filing of this Notice to Maxwell through its counsel of record. A copy of all documents filed with this Court shall be served on Maxwell pursuant to Federal Rule of Civil Procedure 5 and Local Civil Rule 5.1(e).

18. Smithfield reserves the right to file additional support for this Notice by way of declarations, deposition testimony, expert testimony, discovery responses, supplemental memoranda, and/or legal argument.

19. By filing this Notice, Smithfield does not waive any defenses that may be available to it.

Based on the foregoing, Defendant Smithfield hereby removes this action from the North Carolina General Court of Justice, Superior Court Division for Wayne County to the United States District Court for the Eastern District of North Carolina, Western Division.

This 11th day of September, 2020.

/s/ Robert E. Harrington

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