

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

MICHAEL BROWN, RHONDA BROWN
AND CHARLES BROWN,

Plaintiffs,

v.

CROP PRODUCTION SERVICES, INC.
AND NUTRIEN AG SOLUTIONS, INC.,

Defendants.

Civil Action No. 9:20-cv-143

DEFENDANTS' NOTICE OF REMOVAL

This Notice of Removal is filed on behalf of Defendants Nutrien Ag Solutions, Inc. (f/k/a Crop Production Services, Inc.) and Crop Production Services, Inc. (collectively, "Nutrien"),¹ pursuant to 28 U.S.C. §§ 1332, 1441(a), 1446, and 1447. As grounds for removal, Nutrien states as follows:

1. Plaintiffs Michael Brown, Rhonda Brown, and Charles Brown (collectively, "Plaintiffs") filed a Petition (the "Petition") in the Third Judicial District Court in Houston County, Texas, Case Number 20-0081, on June 2, 2020. A copy of the state court record is attached as Exhibit A.

2. Plaintiffs served the summons and Complaint on Nutrien on or about June 4, 2020. This Notice of Removal is timely filed pursuant to 28 U.S.C. §§ 1441 and 1446.

3. Removal to this Court is proper under 28 U.S.C. § 1441(a) and 1332(a) because

¹ As set forth in the corporate disclosure statement filed contemporaneously herewith pursuant to Fed. R. Civ. P. 7.1(a), Crop Production Services, Inc. changed its name to Nutrien Ag Solutions, Inc. on or about July 1, 2018. They are one in the same entity.

this Court has original jurisdiction, Nutrien meets the requirements to remove this action, and the Lufkin Division of this Court embraces the county in which the state court action is now pending.

4. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a). There is diversity of citizenship between Plaintiffs and Nutrien, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. For purposes of removal, “a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business” *See* 28 U.S.C. § 1332(c)(1).

6. Plaintiffs are citizens of the State of Texas. *See* Complaint at Exhibit A(2), ¶¶ 3A, 3B, and 3C.

7. Nutrien (formerly known as Crop Production Services, Inc.) is a Delaware corporation with its principal place of business located in Loveland, Colorado. *Id.* at ¶¶ 3D and 3E (identifying Nutrien as a “foreign corporation”).

8. This is an action to recover damages allegedly suffered by Plaintiffs as a result of Nutrien’s alleged conduct. Plaintiffs seek monetary relief “over \$1,000,000,” as well as reimbursement of costs and attorneys’ fees to bring the litigation. *See id.* at ¶¶ 2, 7, 11.

9. The amount in controversy is therefore at least \$1,000,000. *See Roberts v. Exxon Mobil Corp.*, 814 F.3d 236, 240 (5th Cir. 2015) (“A removing defendant can meet its burden of demonstrating the amount in controversy by showing that the amount is ‘facially apparent’ from the plaintiffs’ pleadings alone.”); *see also Carter v. Triple P Trans., Inc.*, No. 6:13-CV-408, 2013 WL 12155257, at *1-2 (E.D. Tex. Dec. 17, 2013) (removal appropriate because “[i]t is still facially apparent from Plaintiff’s claimed damages that the amount in controversy exceeded \$75,000 when the notice of removal was filed.”).

10. Nutrien therefore satisfies all requirements, including minimal diversity and amount in controversy requirements, for removal under 28 U.S.C. §§ 1332(a) and 1441(a).

11. 28 U.S.C. § 1441(a) permits Nutrien to remove this action “to the district court of the United States for the district and division embracing the place where such action is pending.” The United States District Court for the Eastern District of Texas – Lufkin Division embraces the county in which the state court action is now pending. *See* 28 U.S.C. § 124(c)(6). Therefore, this action is properly removed to the Eastern District of Texas – Lufkin Division pursuant to 28 U.S.C. §§ 124(c)(6) and 1441(a).

12. Pursuant to 28 U.S.C. §§ 1446(d), Nutrien is filing a written notice of the removal and a copy of this Notice of Removal with the clerk of the Third Judicial District Court in Houston County, Texas, the state court in which this action is currently pending, and will serve a copy of this notice on all parties to the removed action.

WHEREFORE, Defendants Nutrien Ag Solutions, Inc. (f/k/a Crop Production Services, Inc.) and Crop Production Services, Inc. respectfully remove this action from the Third Judicial District Court in Houston County, Texas, Case Number 20-0081, to this Court pursuant to 28 U.S.C. §§ 1332, 1441(a), 1446, and 1447.

Dated: June 26, 2020

Respectfully submitted,

By: /s/ Tricia W. Macaluso

Tricia W. Macaluso

Attorney-in-charge

TX Bar No. 24013773

BRYAN CAVE LEIGHTON PAISNER LLP

2200 Ross Avenue, Suite 3300

Dallas, TX 75201-7965

Direct: 214-721-8150

Fax: 214-220-6759

Email: tricia.macaluso@bclplaw.com

*Counsel for Defendants Nutrien Ag Solutions, Inc.
(f/k/a Crop Production Services, Inc.) and Crop
Production Services, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on June 26, 2020, a copy of the foregoing document was served to each of the following parties in compliance with the Federal Rules of Civil Procedure:

William R Pemberton
William R. Pemberton, P.C.
P.O. Box 1112
Crockett, Texas 75835
bill@pembertontriallaw.net
Counsel for Plaintiffs

/s/ Tricia W. Macaluso

Tricia W. Macaluso