

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

CHARLOTTE MERRILL,

Plaintiff,

v.

MITSUBISHI TANABE PHARMA
AMERICA, INC.,

Defendant.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 3:21-CV-205

DEFENDANT'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1367, 1441, and 1446, Defendant Mitsubishi Tanabe Pharma America, Inc. ("Defendant" or "Mitsubishi") files this Notice of Removal in the above-caption action from the 212th Judicial District Court of Galveston County, Texas, to the United States District Court for the Southern District of Texas – Galveston Division based on the existence of diversity jurisdiction. In support of removal, Mitsubishi respectfully show the Court as follows:

I.
BACKGROUND

1. On July 1, 2021, Plaintiff Charlotte Merrill ("Plaintiff") filed her Original Petition in the 212th Judicial District Court of Galveston County, Texas, Cause No. 21-CV-0972 (the "State Court Action"). *See* Exhibit C-1.¹ In her Petition, Plaintiff brings three causes of action: (1) discriminatory discharge in violation of the Texas Commission on Human Rights Act,

¹ In accordance with LR 81(5), an index of all matters being filed is attached hereto as Exhibit A. The state court docket sheet is attached hereto as Exhibit B. True and correct copies of all process, pleadings, and orders served on or by Defendants in the State Court Action are attached hereto as Exhibit C. A separately signed List of Counsel of Record that complies with LR 81(6) is attached hereto as Exhibit D.

Chapter 21 of the Texas Labor Code,² (2) retaliatory discharge in violation of the TCHRA, and (3) failure to accommodate in violation of the TCHRA. *See* Exhibit C-1.

2. As explained more fully below, removal is proper because the parties are diverse and the amount in controversy exceeds \$75,000. Consequently, Mitsubishi files this Notice of Removal under 28 U.S.C. § 1332.

3. Defendant has timely filed this Notice of Removal. Defendant has 30 days to file a notice of removal after receipt of a copy of the initial pleading setting forth the claim upon which such action or proceeding is based. *See* 28 U.S.C. § 1446(b)(1). Defendant was served with a copy of Plaintiff's Original Petition on July 8, 2021. Therefore, the deadline for filing a notice of removal is Friday, August 6, 2021, and this Notice of Removal is timely.³

4. Venue is proper in the United States District Court for the Southern District of Texas, Galveston Division, under 28 U.S.C. §§ 1391(b) and 124(a)(4) because the Galveston Division includes Galveston County, where the State Action is pending.

5. As required by 28 U.S.C. § 1446(d), a Notice to State Court of Filing of Notice of Removal, along with a copy of this Notice of Removal, will be promptly filed with the clerk of the 212th Judicial District of Galveston County, Texas and served on Plaintiff. A copy of the Notice to State Court of Filing of Notice of Removal is attached hereto as Exhibit E.

6. By removing this action, Mitsubishi does not waive any defenses, objections, or motions available to it under state or federal law.

² Although the Texas Commission on Human Rights was abolished in 2004, *Little v. Tex. Dep't of Criminal Justice*, 148 S.W.3d 374, 377 (Tex. 2004), some courts still refer to Chapter 21 of the Texas Labor Code as the Texas Commission on Human Rights Act (TCHRA). *See Johnson v. Select Energy Services, L.L.C.*, 2013 WL 5425115, at *1 (S.D. Tex. Sept. 24, 2013). For purposes of this Notice of Removal, Mitsubishi will use the same terminology as used by Plaintiff in the Original Petition.

³ The 30-day deadline actually falls on Saturday, August 7, 2021.

II. DIVERSITY JURISDICTION

7. Diversity jurisdiction exists in a civil matter where the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the dispute is between citizens of different states. *Id.* at § 1332(a)(1). As addressed below, both of the requirements for diversity jurisdiction are met in this case.

A. Diversity of Citizenship

8. A district court is required to determine whether there is complete diversity only at the time the plaintiff brings a suit or when a defendant removes a matter to federal court. *See Freeport–McMoRan, Inc. v. K N Energy, Inc.*, 498 U.S. 426, 428 (1991).

9. As stated in Plaintiff’s Original Petition, Plaintiff resided in Galveston County, Texas, at the time her Petition and this Notice of Removal were filed. *See* Exhibit C-1, ¶ 3.

10. An individual is a citizen of the state in which he or she is domiciled. Accordingly, Plaintiff is a citizen of Texas for purposes of diversity jurisdiction.

11. For purposes of 28 U.S.C. § 1332, a corporation is deemed to be a citizen of any state in which it has been incorporated and of the state where its principal place of business is located. 28 U.S.C. §1332(c)(1). As clarified by the United States Supreme Court in *Hertz Corporation v. Friend*, 559 U.S. 77 (2010), “the phrase ‘principal place of business’ in § 1332(c)(1) refers to the place where a corporation’s high level officers direct, control, and coordinate the corporation’s activities, i.e., its ‘nerve center,’ which will typically be found at its corporate headquarters.” *Id.* at 80-81; *see also Metroplexcore, L.L.C. v. Parsons Transp., Inc.*, 743 F.3d 964, 971 (5th Cir. 2014) (following *Hertz* for “principal place of business”).

12. Mitsubishi is incorporated in the State of Delaware. Mitsubishi’s corporate headquarters, including its principal executive and administrative offices, are located in the State

of New Jersey, which is where the majority of its corporate officers and senior executives and directors perform the company's executive and administrative functions. Accordingly, Mitsubishi's principal place of business is in New Jersey, and it is a citizen of New Jersey and Delaware for diversity purposes.

13. Thus, Mitsubishi is not a citizen of Texas, and there is complete diversity between Plaintiff and Mitsubishi.

B. Amount in Controversy

14. Diversity jurisdiction under 28 U.S.C. § 1332(a) also requires the amount in controversy, exclusive of interest and costs, be in excess of \$75,000.

15. Mitsubishi denies that it is liable to Plaintiff for any amount of damages; however, the amount in controversy in this case exceeds \$75,000 because the allegations in Plaintiff's Original Petition state as such. *See* Exhibit C, ¶ 2 ("Plaintiff seeks monetary relief over \$250,000 but not more than \$1,000,000.").

16. Accordingly, this Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a).

**III.
CONCLUSION**

WHEREFORE, Defendant Mitsubishi Tanabe Pharma America, Inc. respectfully requests the removal of this action from the 212th Judicial District Court of Galveston County, Texas to this Court.

Dated August 6, 2021

Respectfully submitted,

/s/ Kelley Edwards

Kelley Edwards (Attorney in Charge)

State Bar No. 24041775

Federal I.D. No. 560755

LITTLER MENDELSON, P.C.

1301 McKinney Street, Suite 1900

Houston, Texas

Telephone: 713.951.9400

Facsimile: 713.951.9212

kedwards@littler.com

**ATTORNEY FOR DEFENDANT
MITSUBISHI TANABE PHARMA
AMERICA, INC.**

Of Counsel:

Jessica Craft

Texas State Bar No. 24106824

Federal I.D. No. 3144196

LITTLER MENDELSON, P.C.

1301 McKinney Street, Suite 1900

Houston, TX 77010

713.951.9400 (Telephone)

713.951.9212 (Facsimile)

jcraft@littler.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of August, 2021, a true and correct copy of the foregoing was served and filed using the Court's e-filing system and *via* email upon the following counsel of record:

Jennifer J. Spencer

James E. Hunnicutt

Sara M. Barfield

Jackson Spencer Law PLLC

Three Forest Plaza

12221 Merit Drive, Suite 160

Dallas, Texas 75251

***Sent Via Court's E-Filing System and
Email: jspencer@jacksonspencerlaw.com;
jhunnicutt@jacksonspencerlaw.com;
and sbarfield@jacksonspencerlaw.com***

/s/ Kelley Edwards

Kelley Edwards

4823-9961-4450.1 / 999999-2968