

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

WILLIAM WILCOX,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 1:23-cv-00619
)	
AZIYO BIOLOGICS, INC.,)	DEMAND FOR JURY TRIAL
)	
MEDTRONIC SOFAMOR DANEK USA, INC.,)	
)	
SPINALGRAFT TECHNOLOGIES, LLC,)	
)	
DCI DONOR SERVICES, INC., and)	
)	
NEW MEXICO DONOR SERVICES,)	
)	
Defendants.)	
_____)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants Aziyo Biologics, Inc. (“Aziyo”), Medtronic Sofamor Danek USA, Inc. (“MSD”) and SpinalGraft Technologies, LLC (“SGT”) (MSD and SGT are collectively referred to as “the Medtronic Defendants”), hereby remove the above-captioned case, which was filed in the Circuit Court of Loudoun County, Virginia as Case No. CL23-1569, to the United States District Court for the Eastern District of Virginia, Alexandria Division.

PROCEDURAL HISTORY

On or about March 7, 2023, Plaintiff William Wilcox (“Plaintiff”) filed his Complaint entitled *William Wilcox v. Aziyo Biologics, Inc. et al.*, Case No. CL23-1569, in the Circuit Court of Loudoun County, Virginia.

Attached to this Notice of Removal are the entirety of the pleadings and documents filed in the state court action, which include Plaintiff's Complaint (attached hereto as **Exhibit 1**) and docket of the state court proceedings for this matter as of May 8, 2023 (attached hereto as **Exhibit 2**).

Upon information and belief, service of process of the Complaint has not been properly made on any of the Defendants. *See La Russo v. St. George's Univ. Sch. of Med.*, 747 F.3d 90, 97 (2d Cir. 2014) ("Service of process upon a removing defendant is not a prerequisite to removal.").

Plaintiff's lawsuit is a product liability action for personal injuries allegedly sustained following the implantation of FiberCel, a Fiber Viable Bone Matrix human tissue allograft manufactured by Aziyo and distributed by SGT, a wholly owned subsidiary of MSD. Defendant New Mexico Donor Services, one of Defendant DCI Donor Services, Inc.'s tissue recovery facilities, recovered and provided the subject human donor tissue to Aziyo. Plaintiff alleges that the FiberCel used during his March 8, 2021 spinal surgery was contaminated with tuberculosis, leading to Plaintiff's development of tuberculosis and subsequent need for medical care.

BASIS FOR REMOVAL - DIVERSITY OF CITIZENSHIP

This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332(a) based upon diversity of citizenship and the amount in controversy. This case is removable pursuant to 28 U.S.C. § 1441(b).

I. Complete Diversity of Citizenship Exists in this Lawsuit

Plaintiff William Wilcox is a resident of Loudoun County, Virginia. *See* Ex. 1, at ¶ 2.

Defendant Aziyo is a Delaware corporation with its principal place of business located at 12510 Prosperity Drive, Suite 370, Silver Spring, Maryland 20904. Thus, Aziyo Biologics, Inc. is considered a citizen of Delaware and Maryland for purposes of diversity jurisdiction. *See* 28

U.S.C. § 1332(c)(1) (“[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”).

Defendant MSD is a Tennessee corporation with its principal place of business at 2600 Sofamor Danek Drive, Memphis, Tennessee 38132. Thus, MSD is considered a Tennessee citizen for purposes of diversity jurisdiction.

Defendant SGT is a limited liability company and wholly owned subsidiary of MSD, with its principal place of business at 4340 Swinnea Road, Memphis, Tennessee 38118. MSD is the only member of SGT. As stated above, MSD is considered a Tennessee citizen for purposes of diversity jurisdiction. Thus, SGT is considered a citizen of Tennessee for purposes of diversity jurisdiction. *See Smiley v. Forcepoint Fed. LLC*, 2018 WL 3631885, at *1 (E.D. Va. July 31, 2018) (“It is well established that an LLC’s citizenship, for the purpose of diversity jurisdiction, consists of the citizenship of all of its members.”).

Defendant DCI Donor Services, Inc. (“DCIDS”) is a Tennessee corporation with its principal place of business at 566 Mainstream Drive, Suite 300, Nashville, Tennessee 37228. Thus, DCIDS is considered a Tennessee citizen for purposes of diversity jurisdiction.

Defendant New Mexico Donor Services, Inc. is a New Mexico corporation and subsidiary of DCIDS with its principal place of business at 1609 University Boulevard NE, Albuquerque, New Mexico 87102. Thus, NMDS is considered a citizen of New Mexico for purposes of diversity jurisdiction.

Accordingly, this dispute meets the requirements for diversity jurisdiction under 28 U.S.C. § 1332(a)(3). It is a civil action between “citizens of different States,” Plaintiff (Virginia), on the one hand, and Aziyo (Delaware and Maryland), the Medtronic Defendants (Tennessee), DCIDS

(Tennessee), and NMDS (New Mexico), on the other hand. *See Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 84 (2005) (“Defendants may remove an action on the basis of diversity of citizenship if there is complete diversity between all named plaintiffs and all named defendants, and no defendant is a citizen of the forum State.”)

II. Amount in Controversy Exceeds \$75,000

The allegations set forth in the Complaint establish that the amount in controversy exceeds \$75,000 exclusive of interest and costs. Plaintiff’s Request for Relief seeks \$25,000,000 in compensatory damages for all past, present, and future pain and suffering. *See* Ex. 1, at pp. 25-26. Plaintiff also seeks punitive and/or exemplary damages in the sum of \$350,000. *Id.* at 26.

CONSENT TO REMOVAL

As no Defendants have been properly joined and served in this action, consent of the Parties is not required for removal. *See* 28 U.S.C. § 1446(b)(2)(A) (“[A]ll defendants who have been properly joined and served must join in or consent to the removal of the action.”).

VENUE

Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a) and 1446(a) because the Circuit Court of Loudoun County, Virginia is located within the Alexandria Division of the United States District Court for the Eastern District of Virginia. *See* 28 U.S.C. § 127(c); E.D. Va. Loc. Civ. R. 3(B)(4). Therefore, venue is proper in this Court because it is the “district and division embracing the place where such action is pending.” *See* 28 U.S.C. § 1441(a); *see also* E.D. Va. Loc. Civ. R. 3(B)(4).

NOTIFICATION TO ADVERSE PARTIES AND THE STATE COURT

Immediately following the filing of this Notice of Removal, and pursuant to 28 U.S.C. § 1446(d), Defendants Aziyo, MSD and SGT will give written notice of the filing of this Notice of Removal to Plaintiff’s counsel and will also file a copy of the Notice of Removal with the Clerk’s Office for the Circuit Court of Loudoun County, Virginia. The Notice of Filing for Removal is attached hereto as **Exhibit 3**. As of the date of this filing, there are no pending motions in this matter.

The combination of these filings with notice to the Parties confers exclusive jurisdiction over this matter to the United States District Court for the Eastern District of Virginia. *See Burroughs v. Palumbo*, 871 F. Supp. 870, 871 (E.D. Va. 1994) (“It is clear that the filing of the notice of removal in the state court terminates the state court’s jurisdiction.”).

Dated: May 9, 2023

Respectfully submitted,

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***Attorneys for Defendants Aziyo Biologics, Inc.,
Medtronic Sofamor Danek USA, Inc., and
SpinalGraft Technologies, LLC***

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2023, a true and correct copy of the foregoing was sent via regular mail, first-class, postage prepaid, to the following:

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