

No. \_\_\_\_\_

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IN THE  
*Supreme Court of the United States*

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SARA GONZÁLEZ FLAVELL,

Petitioner,

- v. -

TRACY JANE MARSHALL AND REED GROUP LTD,

Respondents.

On Petition for Writ of Certiorari to the United States  
Court of Appeals for the District of Columbia Circuit

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**APPENDIX**

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Sara González Flavell  
Proceeding Pro Se  
1207 Alps Drive  
McLean, VA 22102  
(703) 448-0213

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**APPENDIX A**

UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA

**No. 22-7041**                      **September Term, 2022**  
Filed on: December 16 2022      **No. 21-1406 (DLF)**

Sara Gonzalez Flavell,  
Appellant

v.

Tracy Jane Marshall and Reed Group, Ltd,  
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Katsas, Walker, and Childs, Circuit Judges

**JUDGMENT**

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir, Rule 34(j). It is

**ORDERED** that appellant's request for leave to appeal the August 30, 2021 order dismissing appellant's complaint in Flavell v. Collier No 20-cv-0959 (D.D.C.) be denied. It is

**FURTHER ORDERED AND ADJUDGED** that the district court's March 17, 2022 order be affirmed. Appellant has not shown that the district court erred in denying the motion to remand. Contrary to appellant's argument that the district court lacked jurisdiction under § 28 U.S.C.

§1332 a preponderance of the evidence shows that the amount in controversy exceeded \$75,000. Dart Cherokee Basin Operating Co. LLC v. Owens 574 U.S. 81, 88 (2014). Additionally appellant has not shown that the district court erred in dismissing the complaint. As to her negligence claim, appellant has shown no error in the district court's conclusion that, notwithstanding allegations of nausea and vomiting made for the first time in appellant's opposition to the motion to dismiss, she did not plausibly allege physical harm such that appellees breached a duty of care owed to her. See Ashcroft v. Iqbal 556 U.S. 662, 678 (2009) (plaintiff must allege sufficient factual matter to state a claim for relief that is plausible on its face); see also Presley v. Com. Moving and Rigging Inc., 25 A 3d 873 888-889 (D.C. 2011) (negligence claim by third-party beneficiary requires showing of physical harm). Additionally, appellant has not shown any error in the district court's dismissal of her remaining claims.

Furthermore, appellant has not shown court that the district court abused its discretion with regard to her request for leave to amend the complaint if the district court granted appellees' motion to dismiss. The district court then dismissed the complaint without prejudice, which gave appellant an opportunity to formally move for leave to file an amended complaint. See Ciralsky v. C.I.A. 355 F.3d 661, 666-67 (D.C.Cir. 2004); see also D.D.C. LCvR 15.1 ("A motion for leave to file an amended pleading shall attach, as an exhibit, a copy of the proposed pleading as amended."). However, appellant instead filed a notice of appeal, which divested the district court of jurisdiction. See United States v. DeFries 129 F.3d 1293, 1302 (D.C.Cir.1997).

3 a

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41 (b); D.C. Cir. Rule 41.

**Per Curiam**

FOR THE COURT:  
Mark J. Langer, Clerk.

**BY:** /s/  
Daniel J. Reidy  
Deputy Clerk

**APPENDIX B**

**UNITED STATES DISTRICT COURT FOR THE DISTRICT  
OF COLUMBIA**

**No. 21-1406 (DLF)**

Sara Gonzalez Flavell,  
Plaintiff

v.

Tracy Jane Marshall and Reed Group, Ltd,  
Defendants

**ORDER**

(March 17, 2022)

Sara Gonzalez Flavell, proceeding *pro se*, brings this action alleging four claims including negligence, medical malpractice, and intentional infliction of emotional distress. Before the Court is the defendants' Motion to Dismiss Plaintiff's Complaint, Dkt. 5, and the plaintiff's Motion to Remand to D.C. Superior Court with costs, Dkt. 10. For the reasons that this Court stated in *Flavell v. Collier*, No. 20-cv-959, 2021 WL 3856615 (D.D.C. Aug. 30, 2021), and for the additional reasons stated here, the Court will grant the defendants' motion to dismiss and deny the plaintiff's motion to remand.

**I. BACKGROUND<sup>1</sup>**

This case arises from the same set of facts present in *Collier*, so the Court presumes the parties' familiarity with the factual background. Compare No. 21-cv-1406, Compl., Dkt. 1-1, with No. 20-cv-959, Second Am. Compl.,

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<sup>1</sup> The Court assumes the truth of material factual allegations in the complaint. See *Am. Nat. Ins. Co. v. FDIC*, 642 F.3d 1137, 1139 (D.C. Cir. 2011).

Dkt. 20. In that case, Flavell sued defendant Reed Group, a third-party company responsible for administering her employer's disability program, and Rebecca Collier, the nurse case manager assigned to administer her disability leave. *Collier* 2021 WL 3856615, at \*1. Here, Flavell sues Reed Group and defendant Tracy Marsha, an employee of Reed Group and Collier's supervisor. Compl. // 2-3, 8.

In December 2016, Flavell gave Collier a statement signed by Flavell's physician indicating that she would be able to return to work after her short-term disability leave ended in March 2017. Compl.// 10. The following month, Marshall told Flavell to undergo an Independent Medical Examination to determine her eligibility for long-term disability leave. *Id.* // 12,14. On March 16, 2017, Flavell's treating physician signed Reed Group's "Release to Work" form, indicating that she was medically fit to return to work on March 19, 2017. Compl. // 17. Flavell submitted this form to Marshall and Collier. *Id.* When she came to work that day, she was not allowed into her office because Marshall had not approved the form. *Id.* // 18-19. Instead, Flavell's short-term disability was extended, without her consent, until June 2, 2017. See *id.* // 30,48.

Flavell tried to get permission to return to work, claiming that she participated in "intrusive medical testing and a Fitness for Duty examination," *id.* // 33, and that she contacted Marshall several times. *id.* // 38. But she was told that she would not be released from the disability program until she authorized the release of her medical information. *id.* // 45. Eventually, Flavell returned to work in June 2017 but was terminated from her position in December 2017. See Compl. // 53, 56, 58; Pl.'s Opp'n at 7, Dkt. 11; *Collier*, 2021 WL 3856615, at \*2.

Flavell filed her complaint on April 5, 2021, in the Superior Court of the District of Columbia. See Compl. The

defendants then removed the case to this Court. *See* Notice of Removal, Dkt. 1. Flavell asserts claims of negligence, medical malpractice, and intentional infliction of emotional distress against Marshall, and a negligence claim against Reed Group. *See* Compl. // 60-109. The defendants have moved to dismiss Flavell's complaint, *see* Defs.' Mot. to Dismiss, while Flavell has moved to remand, *see* Pl.'s Mot. to Remand. Both motions are now ripe for review.

## **II. ANALYSIS**

### **A. Motion to Dismiss**

The Court considered and rejected Flavell's nearly identical claims against Collier and Reed Group in *Collier*, 2021 WL 3856615. The Court's earlier analysis controls here.

First, Flavell fails to state a negligence claim against either Marshall or Reed Group. As this Court explained in *Collier* since Flavell's employer, and not Flavell herself, hired Reed Group to administer its benefit plan, Reed group (and Marshall, as its employee) only owed Flavell a duty as a third-party beneficiary. *Collier* 2021 WL 3856615, at \*4 (citing *Presley v. Com. Moving & Rigging, Inc.*, 25 A.3d 873, 889-90 (D.C. 2011)). And under District of Columbia law, the defendants are only liable to third-party beneficiaries if their alleged negligence caused "physical harm." *Id.* (citing Restatement( Second) of Torts s. 324A (Am. Law. Inst. 1965)).

Here, Flavell's complaint alleges that Marshall caused "deterioration of her mental status, daily mental struggles, pain suffering, anguish and depression" and that she "suffered emotional distress with physical manifestations." Compl. // 56. Reed Group, she claims, is vicariously liable for these injuries. *Id.* //58. But Flavell does not provide any supporting factual allegations as to

the physical harm she allegedly suffered. As was the case in *Collier*, Flavell's allegations amount to nothing more than an "unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); see *Collier*, 2021 WL 3856615, at \*4. True, she writes in her opposition brief that she suffered "debilitating panic attacks, nausea, vomiting, and mental and body illness." Pl.'s Opp'n at 9, and because she is *pro se*, the Court must consider her allegations "in light of all filings, including filings responsive to a motion to dismiss." *Johnson v. District of Columbia*, 927 F.3d 539, 541 (D.C. Cir. 2019) (internal quotation omitted). But, to the extent that nausea and vomiting even constitute "physical harm", she did not include this allegation in any of the three complaints in the nearly -identical *Collier* case, nor did she include it in her three opposition briefs. And in this opposition brief, she double down on the sufficiency of the complaint's allegations alone. See Pl.'s Opp'n at 24 ("Plaintiff need provide no further facts" than that she "suffered physical injury including mental pain and severe distress and physical manifestations.'). The Court thus concludes that Flavell has not plausibly alleged physical harm such that the defendants breached a duty of care owed to her. Her negligence claim must be dismissed.

*Second*, Flavell's claim of medical malpractice against Marshall fails because she has not shown that Marshall owed her a legal duty. *Newmyer v. Sidwell Friends Sch.*, 128 A.3d 1023, 1033 (D.C. 2015). Despite Flavell's repeated references to Marshall's status as a registered nurse, see, e.g., Compl. // 2, 14, a valid medical license does not on its own create a medical relationship that gives rise to a duty of care. See *Newmyer*, 128 A.3d at 1034-35. Instead, she must show that Marshall took "some action to treat [Flavell] before the physician-

patient relationship can be established." *Id* at 1035 (quoting *Dehn v. Edgecombe* 865 A.2d 603, 611 ( Md. 2005)). Just as she failed to show that Collier treated her, *see* 2021 WL 3856615, at \*5, she has not shown that Marshall treated her. The medical examination that Marshall ordered were "carried out by independent doctors through independent medical examinations" and were requested not for medical treatment but just to determine her eligibility for disability payments. *Collier* 2021 WL 3856615, at \*5; Compl. // 12, 14, 25, 31. Thus, Flavell's claim of medical malpractice must be dismissed.<sup>2</sup> *Third*, Flavell's intentional infliction of emotional distress (IIED) claim against Marshall is essentially identical to the claim she brought against Reed Group and Collier, *compare* No. 21-cv-1406, Compl. // 103-09, with 20-cv-959, Second Am. Compl. // 103-09, and thus fails for the same reasons. *See Collier* 2021 WL 3856615, at \*7-8. She had failed to show that Marshall's conduct, in preventing Flavell's return to work through inaction and false representations, was " so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Grimes v. D.C. Bus Decisions Info. Inc.* 89 A 3d 107, 113-14 ( D.C. 2014) ( internal quotation omitted). And Flavell does not meet the heightened standard of proof requires to support IIED claims against employers and administrators. *See Collier*, 2021 WL 3856615, at \*8, *see Kerrigan v. Britches*

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<sup>2</sup> Flavell also refers to Marshall's alleged breach of the D.C. Nurse Practices Act. Compl. // 98. But as this court explained in *Collier*, Flavell cannot rely on the ct to support her medical malpractice claim , as the "care management" provisions does not apply to "the benefits-administrative" role that Marshall filled. 2021 WL 3856615, at \*4.

of *Georgetowne, Inc.* 705 A. 2d 624, 628 (D.C. 1997) ( an employer's leak of information from an investigation into the employee did not constitute outrageous conduct); *Grimes*, 89 A.3d at 114 ( failing to provide benefits to an employee after relying on a false investigation did not constitute outrageous conduct). Marshall, like Reed Group and Collier, engaged in "conduct attributable to employer-employee conflicts that do[es] not ,as a matter of law, rise to the level of outrageous conduct." *Collier* 2021 WL 3856615, at \*8 ( quoting *Grimes*, 89 A. 3d at 114).

For these reasons, as explained more fully in *Collier*, 2021 WL 3856615, the Court grants the defendant's Motion to Dismiss.<sup>3</sup>

#### **B. Motion to Remand**

Flavell cites procedural and jurisdictional grounds in support of her motion to remand. See Pl.'s Mot. to Remand. Both grounds fail.

First, remand is not warranted based on the defendants' initial failure to include the Superior Court's initial order and addendum in their notice of removal, pursuant to 28 U.S.C. §1446(a). Cf Pl.'s Mot. to remand at 8-12. The Superior Court transferred the full file on June 1, 2021, just a week after removal and twenty days before Flavell moved to remand. See Dkt. 8. The defendants procedural mistake of "failing to include certain state court papers [is] ... *de minimus* at best," as it "cause[d] no prejudice to any party, d[id] not delay proceedings in the federal forum" and was easily cured by the Superior Court's transfer. See *Rocha v. Brown and*

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<sup>3</sup> The Defendants make two additional arguments supporting their motion (1) that Flavell's claims are time-barred. Defs.' Mot. to Dismiss at 4-5; and (2) that Flavell's claims violate the claim-splitting doctrine, *id.* at 11. Because the Court dismissed Flavell's claims on other grounds, the Court need not address these arguments.

*Gould, LLP*, 61 F. Supp. 3d 111, 114-115 (D.D.C. 2014). Next contrary to Flavell's claims, the defendants *did* unanimously consent to removal, as Reed Group and Marshall share the same counsel of record; their attorney signed the Notice of Removal for both. See Notice of Removal at 4, Dkt. 1; Amended Notice of Removal at 4, Dkt. 2.<sup>4</sup> Finally, the defendants' use of the word "resident" as opposed to "citizen" in the Notice of Removal does not justify remand. Cf. Pl.'s Mot. to Remand at 16-18. The Court may "accept [ ] the defendants' explanations that [their] references to residence instead of citizenship were not willful." *Middlebrooks v. Godwin Corp.*, 279 F.R.D. 8, 11 (D.D.C. 2011). They now state that Marshall is a "resident, domiciliary, and *citizen* of the state of Colorado" Def.'s Opp'n at 7 (emphasis added), Dkt. 12, which Flavell does not dispute, and the Court "is satisfied that ... the inaccuracy in [their] Notice of Removal was an inadvertent error." *Middlebrooks*, 279 F.R.D. at 11.<sup>5</sup>

The Court is also unpersuaded by Flavell's claim that it lacks jurisdiction because the defendants have not shown the requisite amount in controversy. Cf. Pl.'s Mot.

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<sup>4</sup> That counsel declined to accept service of process on Marshall's behalf, see Pl.'s Mot. to Remand at 14, is immaterial. See *Ashbourne v. Hansberry*, 302 F. Supp. 3d 338, 346 (D.D.C. 2018) (involving a situation where defendants did not authorize their counsel to accept service on their behalf).

<sup>5</sup> Flavell also complains that the Civil Cover Sheet was "defective," see Pl.'s Mot. to Remand at 12-13, because it does not indicate the citizenship of the parties, omits the Superior Court's initial order, falsely indicates that the amount of the controversy is \$75,000, and does not indicate that the suit is one for medical malpractice. The claims about the parties' citizenship and the Superior Court order fail for the reasons stated above. And for the reasons stated below, the defendants had reason to state the amount in controversy as \$75,000. Finally, the "medical malpractice" box is, in fact, checked off on the Civil Cover Sheet. See Notice of Removal, Civil Cover Sheet, Dkt. 1-4.

to Remand at 33-37. To invoke federal jurisdiction on the basis of diversity of citizenship, the amount in controversy must exceed \$75,000. 28 U.S.C. s. §1332(a). "Although the burden of proof may be with the defendant ... courts may consider the evidence provided to them and exercise some degree of common sense in order to independently determine whether the amount in controversy has been met." *Parker-Williams v. Charles Tini & Associates, Inc.*, 53 F. Supp. 3d 149., 152 (D.D.C. 2014). Flavell seeks damages of \$3,375 for medical expenses and specific financial loss of over \$12,000 , but does not specify the exact damages sought for her remaining categories of relief, which include general and economic loss representing "mental pain and suffering and severe emotional distress Compl.// 111. But in her earlier suit involving nearly identical claims against similarly-situated defendants, Flavell sought \$1,500,000 in damages for "mental pain and severe emotional distress." *See Collier*, 2021 WL 3856615, at \*2; Defs.' Opp'n at 8. Based on these similarities, the defendants have met their burden that the amount in controversy exceeds \$75,000.

Therefore , the Court denies Flavell's motion to remand.

Accordingly, it is

**ORDERED**, that the plaintiff's Motion to Remand to State Court and for Costs, Dkt. 10, is **DENIED**. It is further

**ORDERED** that the defendants' Motion to dismiss, Dkt. 5, is **GRANTED**, and that the plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE**.

**SO ORDERED**

March 17, 2022

DABNEY L. FRIEDRICH.  
United States District Judge

**APPENDIX C**

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

**Notice of Electronic Filing**

**Case Name** FLAVELL v. MARSHALL et al  
**Case Number:** No. 21-1406 (DLF)

**Filer:**

**Document Number:** No document attached

**Docket Text:**

**MINUTE ORDER**

On March 17, 2022, the Court granted the defendants' [5] Motion to Dismiss and dismissed the plaintiff's complaint without prejudice. See [15] Order. The plaintiff has since filed a notice of appeal, see [16] Notice of Appeal, rather than moving to amend her complaint. Accordingly, for the reasons stated in the Court's [15] Order, it is ORDERED that the case is DISMISSED. The clerk of Court is directed to close the case.

So Ordered by Judge Dabney L. Friedrich on April 12, 2022. (lcllf2)

1:21-cv-01406-DLF Notice has been electronically mailed to : Jeremy D. Camacho at grsm.com

1:21-cv-01406-DLF Notice will be delivered by other means to: SARA GONZALEZ FLAVELL 1207 Alps Drive, McLean, VA 22102

**APPENDIX D**

**UNITED STATES DISTRICT COURT FOR THE DISTRICT  
OF COLUMBIA**

**No. 21-1406 (DLF)**

Sara Gonzalez Flavell,

Plaintiff

v.

Tracy Jane Marshall and Reed Group, Ltd,

Defendants

**DEFENDANTS' NOTICE OF REMOVAL**

**PLEASE TAKE NOTICE** that Defendants, Tracy Jane Marshall and Reed group ,Ltd. (together, the "Defendants"), file this Notice of removal pursuant to 28 U.S.C. §1332, §1441, and §1446. Defendants seek removal of civil Case No. 2021 CA 1258 B from the Superior Court for the District of Columbia to the District Court for the District of Columbia. Removal of this action is proper for the following reasons:

**I. COMMENCEMENT AND SERVICE**

..... [ TEXT DELETED] .....

**II. GROUNDS FOR REMOVAL**

5. Pursuant to 28 U.S.C. §1332, §1441, and §1446, Defendants are entitled to remove the state court action

to this Court because the action is a civil action involving an amount in controversy exceeding \$75,000.00 between parties with complete diversity of citizenship. See 28 U.S.C. §1332(a) ( district courts have original jurisdiction where the matter in controversy (1) exceeds the sum of \$75,000, exclusive of costs and interest; and (2) is between citizens of different states).

### **III. DIVERSITY OF CITIZENSHIP**

6. This is an action between parties with diversity of citizenship.

..... [ TEXT DELETED] .....

11. Complete diversity of citizenship exists because the Plaintiff is from a different state than the Defendants and, therefore, the first prong of 28 U.S.C. §1332(a) is satisfied.

### **IV. AMOUNT IN CONTROVERSY**

12. Under 28 U.S.C. §1332(a), district court have original jurisdiction where the matter in controversy exceeds the sum of \$75,000, exclusive of costs and interest.

13. The Complaint alleges that Defendants are liable for, among other things, "Specific Financial Loss," "General Economic Loss," "Non-Economic Loss," and "Punitive Damages." (Ex. A at 223,24.) As there is no legal certainty that the claim is really for less than the jurisdictional amount, the claim satisfies the amount in controversy. See *St. Paul Mercury Indem. Co. v. Red Cab*

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*Co.*, 303 U.S. 283, 289 (1938), *cited with approval in Kiline v. Nationsbank of Virginia, N.A.*, 886 F. Supp. 1285, 1298, (E.D. Va 1995).

..... [ TEXT DELETED] .....

**VIII. PRAYER**

**WHEREFORE**, pursuant to 28 U.S.C. § § §1332, 1441, and 1446, Defendants Tracy Jane Marshall and Reed Group, Ltd. File this Notice of Removal with the United States District Court for the District of Columbia and hereby seek to remove this action from the Superior Court for the District of Columbia.

Respectfully submitted,

Dated: May 24, 2021

[ Defendants Counsels' names and contact information]

## **APPENDIX E**

### **The Code of the District of Columbia § 11-921:**

(a) the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia...

### **28 U.S. Code § 1291:**

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

### **28 U.S. Code § 1332(a):**

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—

- (1) citizens of different States;
- (2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;
- (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

**28 U.S.C. §1441:**

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

**28 U.S. Code § 1446:**

(a)Generally.— A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b)Requirements; Generally.—

(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

(2)(A) When a civil action is removed solely under section §1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.

(B) Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.

(C) If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

(3) Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

(c) Requirements; Removal Based on Diversity of Citizenship.—

(1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section §1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section §1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that—

(A) the notice of removal may assert the amount in controversy if the initial pleading seeks—

(i) nonmonetary relief; or

(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section §1332(a).

(3) (A) If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section §1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an "other paper" under subsection (b)(3).

(B) If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).

**28 U.S. Code § 1447(c):**

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section §1332(a).

(3) (A) If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section §1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an "other paper" under subsection (b)(3).

(B) If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).

**28 U.S. Code § 1447(c):**

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.