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2009 JUN -9 PM 3:54

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 BRIAN NOVACK, M.D.

12 Plaintiff,

13 vs.

14 STATE FARM MUTUAL
15 AUTOMOBILE INSURANCE
COMPANY, a corporation; STEPHEN
16 ROTHMAN, M.D., an individual, DOES
1-100,

17 Defendants.
18 _____

CASE NO. CV09-4114

NOTICE OF REMOVAL OF ACTION
(DIVERSITY JURISDICTION, 28
U.S.C. §1332)

Discovery Cut-Off : None
Motion Cut-Off : None

Filing Date : April 16, 2009
Trial Date : None

19 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

20 PLEASE TAKE NOTICE that Defendant State Farm Mutual Automobile Insurance
21 Company ("State Farm") removes to this Court the state action described below:

22 JURISDICTION

23 1. At all relevant times, defendant State Farm was and is now a corporation
24 organized and existing under the laws of Illinois with its principal place of business in the
25 State of Illinois. Pursuant to 28 U.S.C. section 1332, subdivision (c)(1), defendant State
26 Farm is a citizen of the State of Illinois.
27
28

2. At all relevant times, Plaintiff Brian Novack, M.D. ("Plaintiff" or "Novack") was and is now a citizen of California.

3. State Farm is the sole defendant and therefore consent to this removal by other parties is not required. There are no local defendants.

STATE COURT ACTION

4. On or about April 16, 2009, an action was commenced in the Superior Court of the State of California in and for the County of Los Angeles, entitled Brian Novack, M.D. v. State Farm Mutual Automobile Insurance Company, a corporation; STEPHEN ROTHMAN, M.D., et al., as case number BC412007. Copies of the summons and complaint, along with all documents served with the complaint, are attached as Exhibit 1. Venue is proper in this district as the Central District of California is the district in which a substantial part of the alleged events or omissions on which the case is based occurred.

5. The first date upon which State Farm received a copy of said complaint was April 29, 2009, when, according to the proof of service of summons, State Farm was served with a copy of the complaint and a summons from the state court. Defendant State Farm was not served with any other initial pleadings prior to April 29, 2009 in this matter.

6. The complaint in the state court action alleges that Dr. Rothman is a citizen of the State of California. While Dr. Rothman was a party defendant, there was not complete diversity of citizenship, meaning the case was not removable. On May 29, 2009, Novack filed in the state court a dismissal with prejudice form pertaining to Dr. Rothman, and mail-served the request for dismissal form on State Farm's counsel. The state court entered the dismissal, with prejudice, of Dr. Rothman on June 1, 2009. A true copy of the dismissal form reflecting the entry of dismissal with prejudice is attached as Exhibit 2.

7. True copies of the remainder of the pleadings filed in state court are attached as Exhibit 3.

8. Under 28 U.S.C. § 1446 (b), in that removability was not ascertainable from the original complaint, and in that the request for dismissal form for Dr. Rothman was filed on May 29, 2009, this removal notice is timely because it is filed less than 30 days

1 after May 29, 2009, the earliest possible date complete diversity existed for the first time.

2 9. This action is a civil action of which this Court has original jurisdiction under
3 28 U.S.C. § 1332 and is one which may be removed to this Court by State Farm pursuant
4 to 28 U.S.C. § 1441(b) in that it is a civil action between citizens of different states and
5 the matter in controversy exceeds the sum of \$75,000, exclusive of interests and costs.

6 10. Plaintiff's complaint seeks tort damages for State Farm's alleged breach of
7 the covenant of good faith and fair dealing implied in the applicable contract of insurance.
8 Plaintiff also alleges entitlement to punitive damages and attorney's fees, the latter as
9 alleged damages for bad faith. Under California law, Plaintiff is entitled to seek such
10 attorney's fees. (*Brandt v. Superior Ct.* (1985) 37 Cal.3d. 813, 817, 210 Cal.Rptr. 211.)
11 Under California law, tort damages and punitive damages may be sought by Plaintiff for
12 breach of the implied covenant in the applicable insurance policy. (*Cates Const. v. Talbot*
13 *Partners* (1999) 21 Cal.4th 28, 43-44, 86 Cal.Rptr.2d 855.) Based on the claims for
14 damages, including punitive damages and attorney's fees, it is legally certain that
15 plaintiff's claims exceed \$75,000, exclusive of interests and costs. (See *Anthony v. Sec.*
16 *Pac. Fin'l Services, Inc.* (7th Cir. 1996) 75 F.3d 311, 315 [amount in controversy includes
17 punitive damages where recoverable under state law and it cannot be said to a legal
18 certainty that plaintiff would not be entitled to recover the jurisdictional amount]; *Gibson*
19 *v. Chrysler Corp.* (9th Cir. 2001) 261 F.3d 927, 946 [punitive damages included in
20 determining amount in controversy]; *Galt G/S v. JSS Scandinavia* (9th Cir. 1998) 142
21 F.3d 1150, 1155-1156 [attorney fee claim included in determining amount in controversy
22 where fees recoverable by statute].) Therefore, although State Farm disputes liability, State
23 Farm asserts that the amount in controversy exceeds \$75,000, exclusive of interest and
24 costs, and that this Court has jurisdiction over this action, which may be removed pursuant
25 to 28 U.S.C. §§ 1332, 1441 and 1446. Plaintiff refused to stipulate, when asked by
26 counsel for State Farm, that the action does not seek in excess of \$75,000, exclusive of
27 interest and costs. (See Exhibit 4.)

REMOVAL

11. Pursuant to 28 U.S.C. section 1441, subdivision (a) and 28 U.S.C. section 1446, subdivisions (a) and (b), State Farm may now and does remove this action to this Court.

12. As there is now complete diversity between plaintiff Novack and Defendant State Farm, and because the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, pursuant to section 28 USC section 1441, subdivision (a) and section 1446, subdivision (b), defendant State Farm now removes this action to this Court.

WHEREFORE, defendant State Farm requests this Court to assume full jurisdiction over this case.

DATED: June 9, 2009

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By: 

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