

NO: NNH-CV-14-6050848	:	SUPERIOR COURT
	:	
ZHAOYIN WANG,	:	JUDICIAL DISTRICT OF NEW HAVEN
Plaintiffs,	:	AT NEW HAVEN
	:	
VS.	:	
	:	
BETA PHARMA, INC., DON ZHANG,	:	
AND ZHEJIANG BETA PHARMA	:	
CO., LTD.,	:	
Defendants.	:	DECEMBER 1, 2014

NOTICE OF REMOVAL TO FEDERAL COURT

PLEASE TAKE NOTICE that a Notice of Removal (a copy of which is attached hereto) of this action from this Court to the United States District Court for the District of Connecticut (the “Federal Court”) was filed on this 1st day of December 2014 by defendants Beta Pharma, Inc. and Don Zhang with the Clerk of the Federal Court, thereby effecting removal of this action. Pursuant to 28 U.S.C. § 1446(d), this Court shall proceed no further.

To the extent that any responsive pleading is required in response to the allegations made in Plaintiff’s Complaint, any such allegations are hereby denied.

DEFENDANTS BETA PHARMA, INC. AND DON ZHANG,

By: ^{SA} /s/ _____
Michael G. Caldwell, indiv juris no. 421880
LeClairRyan, A Professional Corporation
545 Long Wharf Drive, Ninth Floor
New Haven, Connecticut 06511
Telephone: (203) 672-1636
Facsimile: (203) 672-1656
Email michael.caldwell@leclairryan.com
-- Their Attorney--

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was sent by first-class mail, postage prepaid, to all counsel and pro se parties of record in this action on this 1st day of December, 2014, as follows:

Jonathan Katz, Esq.
Jacobs & Dow, LLC
350 Orange Street
New Haven, CT 06511

/s/
Michael G. Caldwell, indiv. juris no. 421880

controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between a citizen or subject of a foreign state and citizens of a State or States. Thus, the Removed Action may be removed to this Court pursuant to 28 U.S.C. § 1441. This action is being removed to the district court of the United States for the district and division embracing the place where such action is pending in state court. 28 U.S.C. § 1441(a).

3. For the purpose of determining whether diversity jurisdiction exists, a corporation is considered to be a citizen of the state where it is incorporated and the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1). Beta Pharma is a Delaware corporation with a principal place of business in Princeton, New Jersey. Don Zhang is an individual who is a resident and citizen of New Jersey.

4. Plaintiff alleges in the Summons that he is a resident of Kirkland, Quebec, Canada. Plaintiff makes no allegations in his Summons and Complaint from which it could be concluded that he is a citizen of Delaware or New Jersey.

5. While the Summons and Complaint name Zhejiang Beta Pharma Co., Ltd. (“ZJBP”) as a defendant, its citizenship is not relevant because it is not a properly joined defendant. Under the doctrine of fraudulent joinder, courts overlook the citizenship of a non-diverse defendant when there is no possibility that the claims against that defendant could be asserted in state court. Bounds v. Pine Belt Mental Health Care Resources, 593 F.3d 209, 215 (2d Cir. 2010), quoting Briarpatch Ltd., L.P. v. Phoenix Pictures, Inc., 373 F.3d 296, 302 (2d Cir. 2004). The sole claim in the Complaint that is purportedly asserted against ZJBP, the Ninth Count, could not successfully be asserted in state court because the face of the Complaint reveals the absence of a cause of action. In the Ninth Count, Plaintiff seeks a declaratory judgment based on an alleged sale or transfer of shares to him pursuant to a “Partnership Offering”

document that is annexed to and thus incorporated into the Complaint. The document shows that the sale or transfer that is the sole basis for this claim was made by Beta Pharma, and not by ZJBP. Thus, the face of the Complaint itself establishes that Plaintiff has no cause of action for a declaratory judgment against ZJBP. The naming of ZJBP as a defendant was evidently intended only to defeat diversity jurisdiction. See Briarpatch at 302 (“The doctrine of fraudulent joinder is meant to prevent plaintiffs from joining non-diverse parties in an effort to defeat federal jurisdiction.”).

6. ZJBP’s citizenship is also not relevant because it has not been properly served. The Complaint alleges that ZJBP is a corporation incorporated under the laws of the People’s Republic of China. Under Connecticut law, service on a foreign corporation, where no agent for service has been appointed in Connecticut, must be made by registered or certified mail addressed to the secretary of the corporation at its principal office, as shown on an application for a certificate of authority or its most recent annual report. Conn. Gen. Stat. § 33-929(b). Service of the Summons and Complaint was not made on the secretary of ZJBP. In addition, Plaintiff pleads no basis for personal jurisdiction over ZJBP, and Beta Pharma has not been served.

7. Diversity of citizenship therefore exists in accordance with the requirements of 28 U.S.C. § 1332(a) because there is complete diversity between Plaintiff and all properly joined defendants.

8. Section 1332(a) also requires that the amount in controversy in diversity actions exceed \$75,000, exclusive of interest and costs. The notice of removal may assert the amount in controversy when “the State practice either does not permit demand for a specific sum or permits recovery in excess of the amount demanded.” 28 U.S.C. § 1446(c)(2)(A). Connecticut law does

not require a plaintiff bringing an action in the State Court to demand a specific sum, but instead permits the plaintiff to state that the amount, legal interest or property in demand is \$15,000 or more, exclusive of interest and costs. Conn. Gen. Stat. § 52-91. Plaintiff so stated in the Complaint. See Complaint, Claim for Relief. Thus, this Notice may assert the amount in controversy.

9. When a plaintiff fails to make a specific monetary demand in its prayer for relief, a district court should consider the value of the consequences that may result from the litigation. Beacon Constr. Co. v. Matco Elec. Co., 521 F.2d 392, 399 (2d Cir. 1975) (“[T]he amount in controversy is . . . the value of the consequences which may result from the litigation.”). There is a rebuttable presumption that the face of the Complaint is a good faith representation of the amount in controversy. Wolde-Meskel v. Vocational Instructional Project Cmty. Servs., Inc., 166 F.3d 59, 63 (2d Cir. 1999). See also Dwight v. JP Morgan Chase Co., No. 3:03CV117, 2005 WL 756517, at *9 (D. Conn. Mar. 31, 2005) (“This allegation [establishing the amount in controversy] is sufficient, absent a showing that the plaintiffs made their claims in bad faith or that their claims cannot, to a legal certainty, exceed the \$75,000 jurisdictional amount.”). In the present action, it is evident from the face of the Complaint that the amount in controversy exceeds \$75,000. For example, Plaintiff claims damages for an unpaid salary of \$140,000 per year and other compensation, including stock in Beta Pharma and ZJBP. See, e.g., Complaint First Count ¶¶ 10, 12.

II. Consent of Defendants

10. Defendants Zhang and Beta Pharma join in this Notice of Removal.

11. Because ZJBP is not a properly joined and served defendant, its consent is not required for removal of this action. “When a civil action is removed solely under section

