IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

AFG COMPANIES, INC.,	§	
	§	
	§	
Plaintiff,	§	
	§	
	§	
v.	§	
	§	**Civil Action No. 4:25-cv-01272-O**
GENUINE LIFETIME, LLC AND TYLER J. LUCK,	§	
	§	
	§	
Defendants.	§	

DEFENDANTS' OPPOSITION TO MOTION TO REMAND

Defendants Genuine Lifetime, LLC ("Genuine") and Tyler Luck (collectively, "Defendants") hereby submit this opposition to Plaintiff AFG Companies, Inc.'s ("AFG") motion to remand the case to the Tarrant County 48th Judicial District.

I. INTRODUCTION AND FACTUAL BACKGROUND

This case does not exist in a vacuum. Rather, the instant matter is just one iteration of a larger drama that spans multiple tribunals, a revolving cast of characters, and substantial procedural lore. Plaintiff leaves out many facts that bear directly on the propriety of Defendants' removal. Most importantly, its motion to remand contains no mention of a complementary lawsuit—concerning the same breach of contract—currently pending between AFG, Genuine, and Luck in Wyoming federal court.

That case, originally filed in Wyoming state court as *AFG Companies, Inc. v. Genuine Lifetime LLC, et al.*, 2025-CV-0019225, was removed by Defendants Genuine and Luck. Once removed, Plaintiff AFG never challenged federal court jurisdiction in the District of Wyoming or otherwise objected to removal. *See AFG Companies, Inc., v. Genuine Lifetime LLC, et al.*, 25—

CV-104 (D. Wyo.). It had no basis to do so. But curiously, it has taken a different tack here, even though this case involves an identical contract claim by a Texas Plaintiff (AFG) against two out-of-state Defendants (Genuine and Luck). As complete diversity exists between the Parties and the amount of controversy exceeds $75,000, this Court has original jurisdiction and removal is authorized under 28 U.S.C. § 1441.

Moreover, Plaintiff incorrectly claims that removal was untimely. In fact, Defendants removed this case within thirty days from the date it received Judge Taylor's written ruling (the "Consolidation and Reset Order") consolidating and resetting all deadlines in two state court cases: *AFG Companies, Inc. v. Genuine Lifetime, LLC and Tyler Luck*, Cause No. 017-352358-24 (the "17th Judicial District" case) and *AFG Companies, Inc. v. Travis Gates*, Cause No. 048-352249-24 (the "48th Judicial District" case). Removal was thus timely under 28 U.S.C. § 1446(b)(1).

The procedural history of the two Texas state court cases further illustrates the propriety of removal. Kelly Hart, counsel for Plaintiff, is new to the Texas state cases (as is new lead counsel for Defendants). When Kelly Hart entered the case, they requested a 70 day extension of time to get up to speed on the case given the impending October 2025 trial date, which was then moved to January 2026. As a professional courtesy, Defendants' prior lead counsel did not oppose this request. Unfortunately, and unbeknownst to Defendants, Kelly Hart used this extension not to delve into the merits of the cases or conduct necessary discovery, but to file a motion to consolidate and to reset all case deadlines. This motion was made over Defendants' objection.

This about-face unnecessarily slowed the Texas state cases even more than had previously been done. In April 2024, Plaintiff's then-counsel failed to prosecute their case against Defendants for over eight months. Their failure to conduct any discovery or otherwise to move the case towards a resolution led to an administratively closure in November 2024. The case languished as

Defendants waited to clear their name. These facts—conveniently omitted by Plaintiff—provide the context for Defendants' removal.

II. LEGAL STANDARD

Title 28 U.S.C. § 1441(a) permits the removal of any civil action brought in state court of which the district courts of the United States have original jurisdiction. This includes diversity of citizenship under 28 U.S.C. § 1332. A district court can properly exercise jurisdiction on diversity of citizenship if: (1) the parties are of completely diverse citizenship; and (2) the amount in controversy exceeds $75,000.00. *See* 28 U.S.C. § 1441(a).

III. ARGUMENT

Plaintiff raises several arguments for why removal of this case was improper. Each argument is unavailing. Further, these positions are contradicted by Plaintiff's endorsement of the federal forum in an analogous case concerning the same parties and the same claims. Defendants will refute each argument in turn.

A. Removal Was Timely Under Both the Letter and Spirit of the Law

Defendants notice of removal was timely. Two similar yet distinct facts make this clear. First, given the radical changes that were made to the 17th Judicial District case because of the Consolidation and Reset Order, this Court has discretion to extend the deadline by which Defendants can seek removal. And second, the Consolidation and Reset Order, which vacated all hearings and reset all deadlines in the consolidated case, meant that Defendants' window to remove the action was also reset.

Generally, "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 . . . ." 28 U.S.C. § 1446(b)(1).

However, the Fifth Circuit acknowledges a judicially-created safe harbor to this general rule—the "revival exception." As the Fifth Circuit held in *Johnson v. Heublein Inc.*, federal courts have discretion to consider a notice of removal that is filed after the thirty day deadline. 227 F.3d 236 (5th Cir. 2000). Specifically, *Johnson* sets out in part:

> The revival exception provides that a lapsed right to remove an initially removable case within thirty days is restored when the complaint is amended so substantially as to alter the character of the action and constitute essentially a new lawsuit. We believe the district court's decision to apply the exception in the present case is consistent with all of these considerations. The district court correctly found that "the allegations contained in the amended complaint bear no resemblance whatsoever to the allegations of the original complaint. The parties to the original action are now aligned in a completely different manner. GSE and Walker, arguably the only Defendants against which the Johnsons stated a valid cause of action originally are now named Plaintiffs in this matter." *Johnson v. Heublein, Inc.,* 982 F. Supp. 438, 444 (S.D. Miss. 1997). After the complaint was amended, the Co-defendants were confronted with a suit on a construction contract involving exposure to substantial compensatory and punitive damages, instead of only a questionable conversion claim by a competing creditor with an apparently inferior lien . . . Because the amended complaint starts a virtually new, more complex, and substantial case against the Co-defendants upon which no significant proceedings have been held, the removal will not result in delay, waste, or undue tactical advantage to a party. Nor does the removal impair proper allocation of state and federal judicial responsibilities.

Id. at 241–42.[1] Simply put, *Johnson* stands for the proposition that § 1446's thirty day removal deadline can and should be reset when a state court case is substantially transformed.

[1] Other courts have come to similar conclusions. *See Evans v. Dillingham*, 43 F. 177, 177 (C.C.N.D. Tex. 1890); *Mattoon v. Reynolds*, 62 F. 417, 417 (C.C.D. Conn. 1894); *Wilson v. Intercollegiate (Big Ten) Conference A. A.,* 668 F.2d 962 (7th Cir. 1982) ("The courts . . . have read into [§ 1446(b)] an exception for the case where the plaintiff files an amended complaint that so changes the nature of his action as to constitute 'substantially a new suit begun that day.'") (citing 14 Wright, Miller & Cooper, Federal Practice and Procedure § 3732, at 727–29 (1976)); *Henderson v. Midwest Refining Co.,* 43 F.2d 23, 25 (10th Cir. 1930).

Thus, while Defendants' original deadline to remove the 17th Judicial District case was May 30, 2024 (thirty days after it was served with the original complaint), justice requires a modification. Specifically, the thirty day window should have begun only once Judge Taylor issued his Consolidation and Reset Order on October 11, 2025. This reset stems both from the fact that (1) the consolidation of the 17th and 48th cases—which contain highly dissimilar facts, parties, and causes of action—started "a virtually new, more complex, and substantial case"; and (2) the Court reset all dates and deadlines that had been set in both cases prior to consolidation.

Assuming the Consolidation and Reset Order triggered Defendants' new thirty day window, this deadline was satisfied. The Consolidation and Reset order was memorialized in a written ruling on October 11, 2025. Defendants' filed their notice of removal on November 10, 2025—exactly thirty days later.[2]

While Plaintiff agrees the notice of removal was filed on November 10, 2025, they claim this was not made within the statutory thirty day window because Judge Taylor's decision to consolidate the 17th and 48th Judicial District cases was made from the bench on November 8, 2025. Plaintiff is mistaken. Under 28 U.S.C. § 1446(b)(1), "[t]he 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* Removal was thus timely (emphasis added). The italicized words above make clear that an oral pronunciation—whether by a litigant or the Court—does not trigger the thirty day window to remove. Rather, the removal clock starts ticking only upon the

[2] The original lead counsel for the case in the 17th Judicial District withdrew from the matter on October 25, 2025. This left the new lead counsel with less than fifteen days to file the notice of removal in the Northern District of Texas.

"receipt" or memorialization of such an order. It is undisputed that the Consolidation and Reset Order was transmitted to the Parties on October 11, 2025—three days after the ruling was made from the bench. It is this later date which matters, and under this later day, Defendants' removal was timely under the statute.

B. Removal of the 17th Judicial District Case Was Proper

Plaintiff also incorrectly claims that the removal statute prevents Defendant from only removing the parties and claims from the 17th Judicial District. This contention ignores the context and history of the two Texas state court actions as well as the Wyoming federal action.

AFG's consolidation motion amounts to forum manipulation. New lead counsel for Plaintiff obtained an unopposed 70-day extension under the guise of "getting up to speed," then immediately moved to consolidate unrelated cases over Defendants' objection. This tactic mirrors improper joinder scenarios where courts sever to prevent abuse. *See Hoyt v. Lane Constr. Corp.*, 927 F.3d 287, 295 (5th Cir. 2019) (removal statutes construed to protect defendants from manipulative joinder). Moreover, AFG is actively litigating the identical contract claims against these Defendants in Wyoming federal court without seeking remand, confirming that federal jurisdiction is proper and non-prejudicial.

In particular, the timing of Plaintiff's request to consolidate the 17th and 48th Judicial District cases make clear that this plan had two motives: (1) to delay the impending January 2026 trial date in the 17th Judicial District before Judge Wilkinson; and (2) to destroy diversity between the Parties. There is no colorable argument that consolidation of these matters was an attempt to increase efficiency and duplicative legal proceedings. Such judicial economy arguments are inapplicable here because the two matters that were consolidated share no common parties or claims and do not require the Court to consider common questions of law. As mentioned, the 17th

Judicial District case (the matter between AFG, Genuine, and Luck) is a standard breach of contract matter between two businesses and an individual who served as a personal guarantor. In stark contrast, in the 48th Judicial District case between AFG and Travis Gates, AFG alleges that Gates, its former executive, appropriated AFG's trade secrets. Gates, in turn, brought counterclaims for employment retaliation as a whistleblower and federal securities violations. Indeed, the discrepancy between the two cases was further highlighted by Judge Taylor, who noted that if the two cases were consolidated, that they would nonetheless be tried separately in order to avoid confusing the jury with different parties, divergent fact patterns, and distinct legal doctrines. The upshot is that Plaintiff's motion to consolidate the 17th and 48th Judicial District cases was made (1) to delay and avoid a trial date less than 80 days away, (2) for self-serving reasons other than to streamline the litigation. Defendants' removal right must not be prejudiced as a result of Plaintiff's gamesmanship and blatant forum shopping in Wyoming and Texas state court.

Further, Plaintiff has already acknowledged that federal diversity jurisdiction exists between AFG, Genuine, and Luck. While AFG originally filed its Wyoming lawsuit in Wyoming state court, it did not seek to remand the action when Defendants removed that case to the District of Wyoming. Their failure to object to federal jurisdiction over the Wyoming case—again, a case involving the same series of agreements between AFG, Genuine, and Luck—is a tacit endorsement that the instant case may also be heard in federal court. Because Plaintiff has acknowledged federal jurisdiction in an analogous case and because Plaintiff's claims against Gates differ significantly from its claim against Genuine and Luck, remand is not warranted and this case should remain in federal court.

C. Fees and Costs Are Not Justified Under 28 U.S.C. § 1447(c)

Finally, if the Court is inclined to grant Plaintiff's motion to remand, it should not assess attorney's fees and costs for the motion. As stated above, given this Circuit's binding precedent in *Johnson*, Defendants had an objectively reasonable basis for believing that the Consolidation and Reset Order (1) dramatically changed the nature of the state court actions by grouping two factually and legally distinct cases and (2) started a new thirty day removal window by resetting and vacating all dates in the case. Because Defendants removed the case within thirty days of receipt of Judge Taylor's written Consolidation and Reset Order, the removal was timely and thus reasonable. *See Johnson*, 227 F.3d 236, 241–42; 28 U.S.C. § 1446(b)(1). Further, Defendants' removal was based on reasonable grounds given that Plaintiff AFG and Defendants Genuine and Luck are completely diverse from one another, and Plaintiff does not dispute the amount in controversy is satisfied. *See* 28 U.S.C. § 1441(a).

IV. CONCLUSION

For the reasons outlined above, Defendants Genuine Lifetime and Tyler Luck respectfully request the Court deny Plaintiff's motion to remand the case to state court.

Respectfully submitted,

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	Chapter 11
PROSPECT MEDICAL HOLDINGS, INC., *et al.*[3]	Case No. 25-80002 (SGJ)
Debtors.	(Jointly Administered)

NOTICE OF APPEARANCE AND REQUEST FOR SPECIAL NOTICE

TO THE HONORABLE STACEY G.C. JERNIGAN, UNITED STATES BANKRUPTCY JUDGE, THE ABOVE-CAPTIONED DEBTORS, THE OFFICE OF THE UNITED STATES TRUSTEE, OTHER PARTIES IN INTEREST, AND THEIR COUNSEL OF RECORD:

Pursuant to 11 U.S.C. § 1109(b), the undersigned, as proposed counsel for McKesson Corporation, on behalf of itself and certain corporate affiliates (collectively, "McKesson") hereby appears and requests that all parties in interest and all counsel of record provide the following person with copies of all notices, pleadings, and other filings in the above-captioned cases. Counsel of record is requested to direct all written or telephonic correspondence as follows:

Jason Blackstone
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Dallas, Texas 75201
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Please take further notice that the foregoing request includes all notices and papers referred to in the Bankruptcy Rules and Local Bankruptcy Rules and additionally includes, without limitation, notices of any application, complaint, demand, hearing, motion, pleading or request, formal or informal, whether conveyed by mail, telephone or otherwise.

[3] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at https://omniagentsolutions.com/Prospect. The Debtors' mailing address is 3824 Hughes Ave., Culver City, CA 90232.

McKesson additionally requests that the Debtors, the Clerk of the Court, and any court-approved noticing agent place the undersigned counsel on any mailing matrix to be prepared or existing in the above-captioned cases.

Neither this Request for Notice nor any subsequent appearance, pleading, claim, proof of claim, document, suit, motion nor any other writing or conduct, shall constitute a waiver of McKesson to its:

1. Right to have any and all final orders in any and all non-core matters entered only after de novo review by a United States District Court Judge;

2. Right to trial by jury in any proceeding as to any and all matters so triable herein, whether or not the same be designated legal or private rights, or in any case, controversy or proceeding related thereto, notwithstanding the designation *vel non* of such matters as "core proceedings" pursuant to 28 U.S.C. § 157(b)(2)(H), and whether such jury trial is pursuant to statute or the United States Constitution;

3. Right to have the reference of this matter withdrawn by the United States District Court in any matter or proceeding subject to mandatory or discretionary withdrawal; and

4. Other rights, claims, actions, defenses, setoffs, recoupments or other matters to which McKesson is entitled under any agreements or at law or in equity or under the United States Constitution.

All of the above rights are expressly reserved and preserved unto this party without exception and with no purpose of confessing or conceding jurisdiction in any way by this filing or by any other participation in these matters.

DATED: December 12, 2025

Respectfully submitted,

BUCHALTER, APC

By: */s/ Jason Blackstone*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 12, 2025, a true and correct copy of the foregoing document was served via ECF notification on all parties entitled to ECF notification in this case.

/s/ Matthew Yarbrough
Matthew Yarbrough