

**UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

ENERGY TRANSFER LP (formerly known as Energy)	
Transfer Equity, L.P.) and ENERGY TRANSFER)	
OPERATING, L.P. (formerly known as Energy)	
Transfer Partners, L.P.),)	
)	
Plaintiffs,)	
)	
v.)	Civil Case No.
)	_____
GREENPEACE INTERNATIONAL (also known as)	
“Stichting Greenpeace Council”); GREENPEACE,)	
INC.; GREENPEACE FUND, INC.; RED WARRIOR)	
SOCIETY (also known as “Red Warrior Camp”);)	
CODY HALL; KRYSTAL TWO BULLS; and)	
CHARLES BROWN,)	
)	
Defendants)	

JOINT NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants Greenpeace International, Greenpeace, Inc., Greenpeace Fund, Inc., and Charles Brown (together, the “Removing Defendants”), hereby give notice of removal of this action from the State of North Dakota, District Court of South Central Judicial District, in and for the County of Morton, to the United States District Court for the District of North Dakota, Western Division. As grounds for removal, the Removing Defendants allege as follows:

I. PROCEDURAL HISTORY

1. On August 22, 2017, Energy Transfer Equity, L.P. (the predecessor to Plaintiff Energy Transfer LP) and Energy Transfer Partners, L.P. (the predecessor to Plaintiff Energy Transfer Operating, L.P.) filed a complaint in this Court alleging civil RICO violations and state law claims against Defendant Greenpeace International, Defendant Greenpeace, Inc., Defendant

Greenpeace Fund, Inc. (collectively the “Greenpeace Defendants”), as well as BankTrack, Earth First!, and John and Jane Does, related to widespread controversy, including criticism and protests, of the construction of the Dakota Access Pipeline (“DAPL”), a 1,172-mile-long crude oil pipeline that runs from the oil fields in northwest North Dakota, across South Dakota and Iowa, and terminates in Illinois. *Energy Transfer Equity, L.P., et al. v. Greenpeace Int’l, et al.*, Case No. 1:17-cv-00173-BRW-CRH, ECF No. 1 (“Original Federal Complaint”). Plaintiffs asserted subject matter jurisdiction pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over “the pendent state law claims” pursuant to 28 U.S.C. § 1367. Original Federal Complaint ¶ 27. On July 24, 2018, this Court dismissed BankTrack for lack of jurisdiction and failure to state a claim. ECF No. 87. On August 22, 2018, after issuing a show cause order, this Court dismissed Earth First! for lack of service and because Plaintiffs failed to show Earth First! was an entity subject to suit. ECF Nos. 86, 89, and 99. After denying Greenpeace’s motions to dismiss and expressing concerns about the claims in the Original Federal Complaint, this Court directed Plaintiffs to file an amended complaint. ECF No. 88.

2. Plaintiffs filed an amended complaint in this Court on August 6, 2018, adding several defendants including Defendant Charles Brown, Defendant Cody Hall, Defendant Krystal Two Bulls, and two other individuals. *Energy Transfer Equity, L.P., et al. v. Greenpeace Int’l, et al.*, Case No. 1:17-cv-00173-BRW-CRH, ECF No. 95 (“Amended Federal Complaint”). The Amended Federal Complaint alleged several causes of action: RICO violations, conspiracy to commit RICO violations, racketeering in violation of North Dakota law, defamation, tortious interference, criminal trespass, and common law conspiracy.

3. On February 14, 2019, this Court granted the defendants’ motions to dismiss the Amended Federal Complaint. *Energy Transfer Equity, L.P., et al. v. Greenpeace Int’l, et al.*,

Case No. 1:17-cv-00173-BRW-CRH, ECF No. 135. In particular, this Court dismissed Plaintiffs' RICO claims with prejudice, and dismissed all other claims without prejudice, "declin[ing] to exercise jurisdiction over the remaining state-law claims."

4. On or about February 21, 2019, Plaintiffs commenced the above-captioned action as Case No. 30-2019-GV-00180 in the State of North Dakota, District Court of South Central Judicial District, in and for the County of Morton (the "State Court Action"). A true and correct copy of the Complaint and Summons filed in the State Court Action is attached to this Notice as Exhibit A. The State Court Action has since been moved to East Central Judicial District. *See* Ex. G. Plaintiffs' suit once again pertains to criticism and protest activities concerning the DAPL construction and attempts to assert claims for trespass to land and chattel (against the Greenpeace Defendants, Red Warrior Society, Hall, and Two Bulls); aiding and abetting trespass to land and chattel (against the Greenpeace Defendants, Hall, and Two Bulls); conversion (against the Greenpeace Defendants, Red Warrior Society, Hall, and Two Bulls); aiding and abetting conversion (against the Greenpeace Defendants, Hall, and Two Bulls); defamation (against the Greenpeace Defendants); tortious interference (against the Greenpeace Defendants); and civil conspiracy (against all Defendants).

5. For the reasons explained in greater detail below, this case is removable under 28 U.S.C. §§ 1441 and 1446. There is complete diversity of citizenship as to all parties properly named in this action and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. Accordingly, this is a civil action over which this Court has jurisdiction under 28 U.S.C. § 1332(a), and is one which may be removed to this Court under 28 U.S.C. § 1441(a).

6. The Removing Defendants have good and sufficient defenses to the claims in the Complaint and do not waive any defenses, jurisdictional or otherwise, by the filing of this Notice of Removal.

II. GROUNDS FOR REMOVAL

7. As set forth below, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity between all parties and the amount in controversy exceeds \$75,000.

A. Complete Diversity Exists as to All Properly-Named Parties

8. Plaintiff Energy Transfer LP is a master limited partnership organized under the laws of Delaware and headquartered in Dallas, Texas. Ex. A, Compl. ¶ 11.

9. Plaintiff Energy Transfer Operating, L.P. is a master limited partnership organized under the laws of Delaware and headquartered in Dallas, Texas. *Id.* ¶ 12.

10. Defendant Greenpeace International is a Dutch non-for-profit foundation based in Amsterdam, the Netherlands. *Id.* ¶ 15.

11. Defendant Greenpeace, Inc. is a nonprofit corporation organized under the laws of California and headquartered in Washington, D.C. *Id.* ¶ 16.

12. Defendant Greenpeace Fund, Inc. is a nonprofit corporation organized under the laws of California and headquartered in Washington, D.C. *Id.* ¶ 17.

13. Defendant Charles Brown is a resident of Virginia. *Id.* ¶ 19.

14. Defendant Cody Hall is a resident of South Dakota. *Id.* ¶ 20.

15. Defendant Krystal Two Bulls is a resident of Montana. *Id.* ¶ 21.

16. Defendant Red Warrior Society, a non-entity, is not alleged to have any citizenship, formal structure, state of incorporation, or principal place of business. *See id.* ¶¶ 22-23.

B. “Red Warrior Society” Is Not An Entity With Capacity To Be Sued And Its Joinder Should Be Ignored Under The Doctrine Of Fraudulent Joinder

17. In a transparent attempt to defeat the Court’s exercise of jurisdiction over this action, Plaintiffs have fraudulently named as defendant “Red Warrior Society,” described by Plaintiffs as “an informal organization,” *id.* ¶ 22, which is not subject to suit under North Dakota law or Federal Rule of Civil Procedure 17(b)(3). Plaintiffs fail to allege the citizenship of non-entity “Red Warrior Society,” and to the extent the complaint alleges any individuals connected to it, they are alleged to be diverse parties—Defendant Cody Hall, a citizen of South Dakota, and Defendant Krystal Two Bulls, a citizen of Montana. *See supra* ¶¶ 14-15.

18. Diversity jurisdiction requires “complete diversity, that is ‘where no defendant holds citizenship in the same state where any plaintiff holds citizenship.’” *Junk v. Terminix Int’l Co.*, 628 F.3d 439, 445 (8th Cir. 2010) (quoting *In re Prempro Prods. Liab. Litig.*, 591 F.3d 613, 620 (8th Cir.), *cert. denied*, -- U.S. --, 131 S. Ct. 474 (2010))), *cert. denied*, -- U.S. --, 132 S. Ct. 94 (2011). Because Red Warrior Society is not amenable to suit, the fact that Plaintiffs have named it in their complaint cannot operate to defeat diversity jurisdiction. Although courts generally must look to all defendants in assessing diversity and consent to removal, “the presence of nominal or formal or unnecessary parties has no controlling significance for removal purposes,” *Bradley v. Md. Cas. Co.*, 382 F.2d 415, 419 (8th Cir. 1967), and “may be ignored in determining whether diversity jurisdiction exists,” *Slater v. Republic–Vanguard Ins. Co.*, 650 F.3d 1132, 1134 (8th Cir. 2011). In a “classic enunciation of this rule,” *Midwestern Indem. Co. v. Brooks*, 779 F.3d 540, 544 (8th Cir. 2015), Justice Story wrote for the Supreme Court: “This Court will not suffer its jurisdiction to be ousted by the mere joinder or non-joinder of formal parties; but will rather proceed without them, and decide upon the merits of the case between the parties, *who have the real interests before it*, whenever it can be done without prejudice to the

rights of others.” *Wormley v. Wormley*, 21 U.S. (8 Wheat.) 421, 451, 5 L.Ed. 651 (1823) (emphasis is original). A non-entity such as “Red Warrior Society” therefore ““may be ignored” for diversity and removal purposes where that party is not a ““real party in interest.”” *Cascades Dev. of Minn., LLC v. Nat’l Specialty Ins.*, 675 F.3d 1095, 1098 (8th Cir. 2012) (quoting *Iowa Pub. Serv. Co. v. Med. Bow Coal Co.*, 556 F.2d 400, 404 (8th Cir. 1977)).

19. “Fraudulent joinder” exists when a party has been named a defendant in order to defeat diversity jurisdiction. “Joinder is fraudulent, and removal is proper when there exists no reasonable basis in fact and law supporting a claim against the resident defendants.” *Wiles v. Capitol Indem. Corp.*, 280 F.3d 868, 871 (8th Cir. 2002). The court must consider the “reasonableness of the basis underlying the state claim.” *Menz v. New Holland North Am., Inc.*, 440 F.3d 1002, 1004 (8th Cir. 2006). If the complaint clearly fails to state a cause of action against the resident defendant, joinder is fraudulent. *See Filla v. Norfolk Southern Ry. Co.*, 336 F.3d 806, 810 (8th Cir. 2003).

20. The naming of defendants who are nonentities and who cannot be served is fraudulent joinder, since there is no reasonable basis for predicting that state law could impose liability on these nonentities. *Jernigan v. Ashland Oil Inc.*, 989 F.2d 812, 816 (5th Cir. 1993) (no cause of action could be established against dissolved or nonexistent corporation “because as a matter of law [plaintiff’s] allegations of corporate and contractual relationships simply cannot exist”).

21. Plaintiffs here cannot seriously argue that they intend to obtain a judgment against “Red Warrior Society,” as their own complaint alleges that the non-entity is “an informal organization,” Ex. A, Compl. ¶ 22, and fails to allege that it is an incorporated or unincorporated association capable of being sued, that it has any formal membership or any discernable

members other than already named parties, that it has any formal leadership (much less regularly constituted officers and organization), has any employees, owns any property, has been licensed by any arm of state or federal government, or has ever sued or been sued. Indeed, as this Court previously observed in dismissing the Amended Federal Action, “Red Warrior Camp” (which Plaintiffs’ State Court Action caption indicates as another name for “Red Warrior Society”) is an “encampment” and thus “not an entity subject to suit.” Amended Federal Action, ECF No. 135, Order, at 11.

22. As a non-entity, “Red Warrior Society” lacks a resident agent for service of process, suggesting that Plaintiffs will be unable to even serve their complaint on this nominal party. Plaintiffs faced a similar challenge when they failed to serve their Original Federal Complaint on Earth First!. Earth First! is a social movement without formal membership, leadership, or entity structure and accordingly was not an entity subject to suit. *See Doe v. Mckesson*, Civ. Action No. 16-00742-BAJ-RLB, 2017 WL 4310240, at *4 (M.D. La. Sept. 28, 2017) (“Although many entities have utilized the phrase ‘black lives matter’ in their titles or business designations, ‘Black Lives Matter’ itself is not an *entity* of any sort”) (emphasis in original). Upon Plaintiffs’ repeated failure to serve the non-entity Earth First!, this Court dismissed Earth First! for lack of service and because Plaintiffs failed to show Earth First! was an entity subject to suit. ECF Nos. 86, 89, and 99.¹ Such will undoubtedly be the outcome for

¹ This Court previously admonished Plaintiffs that the real parties in interest for their claims should be identified individually, rather than by bringing allegations generally against non-existent groups like Earth First!, or numerous advocacy organizations. *Energy Transfer Equity, L.P., et al. v. Greenpeace Int’l, et al.*, Case No. 1:17-cv-00173-BRW-CRH, ECF No. 94. In an order denying Plaintiffs’ motion to amend or leave to conduct limited discovery, Judge Wilson denied the request for discovery (and instead let Plaintiffs amend the complaint), noting: “But Plaintiffs have not named a single, directly responsible individual in their complaint, even though they did in another related complaint. *See Dakota Access, LLC v. Achambault, II, et al.*, 1:16CV296-DLH-CSM, Doc. No. 1, pp. 9, 57 (N.D.D. closed March 19, 2018) (One of Plaintiffs’ companies sued individuals who they allege committed criminal acts to disrupt their construction of DAPL in a related suit).” ECF No. 94 at 2, n.5. In the *Dakota Access* case cited by this Court, Plaintiffs did not name “Red Warrior Society” or “Red Warrior Camp” as a defendant.

nominal defendant “Red Warrior Society.” Here, too, “Red Warrior Society,” cannot be sued, cannot be served, and cannot defeat diversity jurisdiction.

23. Although ordinarily all defendants in a state court action must join in the petition for removal, 28 U.S.C. § 1446(b)(2)(A), this general rule applies only to defendants properly joined and served in the action. The rule of unanimity does not apply to fraudulently joined parties, like “Red Warrior Society,” because requiring their consent would be “nonsensical.” *Jernigan*, 989 F.2d at 815; *see also Balazik v. County of Dauphin*, 44 F.3d 209, 213 n.4 (3d Cir. 1995); *Wooten v. Darragh Co.*, No. 07-2004, 2009 WL 10707083, at *6 (W.D. Ark. Nov. 23, 2009) (although Eighth Circuit has not addressed the issue, adopting “exception to the rule of unanimity for fraudulently joined parties”).

24. Indeed, because no entity subject to suit named “Red Warrior Society” exists, its citizenship is irrelevant and its consent is not required. *See Termini v. Life Ins. Co. of North Am.*, 464 F. Supp. 2d 508, 512 n.2 (E.D. Va. 2006) (“LINA thus did not have to secure this non-entity’s consent for removal.”); *Davis v. One Beacon Ins. Grp.*, 721 F. Supp. 2d 329, 337 (D.N.J. 2010) (“[A] defendant that is a non-existent business entity is not required to join in or consent to the removal of a case, nor is the citizenship of the non-existent entity considered for purposes of complete diversity of citizenship.”) (quoting *Newsom v. Caliber Auto Transfer of St. Louis, Inc.*, 2009 WL 4506298, at *2 (S.D. Ill. Nov. 26, 2009)).

25. Because Red Warrior Society is fraudulently misjoined as a defendant in Plaintiffs’ Complaint, and it does not appear that the non-entity has been served in the State Court Action, its consent is not necessary to remove the action. Indeed, it would be impossible for a non-entity to grant consent.

C. The Amount in Controversy Exceeds the Jurisdictional Limit

26. The introduction to Plaintiffs' Complaint states that "[b]y this action, Energy Transfer seeks to recover the *millions of dollars* of damages caused by Defendants' unlawful, malicious, and coordinated attack on Energy Transfer and DAPL." Ex. A, Compl. ¶ 10 (emphasis added). Although Plaintiffs did not state a specific amount of damages sought in their Complaint, *see id.* ¶¶ 101, 106, 110, 115, 121, 127, 131,132, it is obvious simply from this introductory statement that the amount in dispute far exceeds the \$75,000 jurisdictional threshold.²

27. Moreover, courts are free to review other materials submitted by a plaintiff in determining the amount in dispute. *See Raskas v. Johnson & Johnson*, 719 F.3d 884, 888 (8th Cir. 2013). In their Amended Federal Action, Plaintiffs demanded \$300,000,000 in damages, ECF No. 95, Am. Compl. ¶¶ 213, 221, 236, 244 and 251, for "costs associated with damaged equipment, construction sites, and the pipeline itself; increased security costs; and costs associated with the delays in construction of DAPL"; "damage to Plaintiffs' reputation and access to capital markets, including impaired access to financing and increased costs of capital, impairing the company's ability to finance future infrastructure projects at economical rates;" and "substantial expenditures to mitigate the direct impact of the slander campaign and other violent protests." *Id.* ¶ 17.

28. The State Court Action similarly seeks to recover for "substantial damage," Ex. A, Compl. ¶ 36, related to "damaged or destroyed construction equipment, fencing and other barrier systems and land; loss of use of Energy Transfer's land and construction equipment;

² The Removing Defendants dispute Plaintiffs' claims, and deny that Plaintiffs are entitled to any amount of damages. In evaluating the amount in controversy, however, the Court is to look only at Plaintiffs' allegations to see if the amount of damages sought exceeds the jurisdictional threshold; it is not an assessment of the likelihood that damages would be awarded.

numerous construction delays; and increased costs of operations,” *id.* ¶¶ 101, 110, “lost financing; lost profits; increased expenses; legal fees; and monies expended to mitigate the impact of Greenpeace Defendants’ and Banktrack’s defamation campaign,” *id.* ¶ 121, “increased cost of capital, ... lost revenue, injury to reputation, ... and attorney’s fees,” *id.* ¶ 127.

III. REMOVAL IS TIMELY AND PROPER

29. This Joint Notice of Removal is timely filed within thirty days of the date each Removing Defendant was served with the original Summons and Complaint for the State Court Action in accordance with 28 U.S.C. § 1446(b).

30. Defendant Greenpeace International accepted service of the State Court Action on March 14, 2019.

31. Defendant Greenpeace, Inc. was served with the original Summons and Complaint on February 26, 2019.

32. Defendant Greenpeace Fund, Inc. was served with the original Summons and Complaint on February 26, 2019.

33. Defendant Charles Brown was served with the original Summons and Complaint on March 1, 2019.

34. The docket for the State Court Action does not indicate that either Defendant Cody Hall or Defendant Krystal Two Bulls have been served in the State Court Action.

35. Defendant Cody Hall, Defendant Krystal Two Bulls, and Defendant Red Warrior Society’s consent to removal is not required, as they have not been served as of the filing of this Joint Notice of Removal. 28 U.S.C. § 1446(b)(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”) (emphasis added).

IV. PROCEDURAL MATTERS

36. Because the State Court Action is pending in State of North Dakota, District Court of East Central Judicial District, removal of the State Court Action to this District Court is proper under 28 U.S.C. § 1446(a).

37. The Removing Defendants have not filed any responsive pleading in the State Court Action. The time in which the Removing Defendants are required by the laws of the State of North Dakota to answer or otherwise move against the Complaint has not elapsed.

38. This Notice of Removal includes a short and plain statement of the grounds for removal together with all process, pleadings, and orders filed in this action, pursuant to 28 U.S.C. § 1446(a).

39. Pursuant to 28 U.S.C. § 1446(a), the following constitutes all of the process, pleadings, or orders received or served by Plaintiffs or otherwise found in the State Court Action court file, and available to the Removing Defendants at the time of the filing of this removal. True and correct copies are attached of the follow:

- Ex. A: Complaint and Summons, filed by Plaintiffs in the State Court Action;
- Ex. B: Notice of Assignment of Judge;
- Ex. C: Demand for Change of Judge, filed by Plaintiffs;
- Ex. D: Assignment of Judge (Hon. Douglas Bahr);
- Ex. E: Disqualification
- Ex. F: Letter regarding notice of Disqualification
- Ex. G: Order of Assignment (Hon. Steven L. Marquart)
- Ex. H: Returned Mail sent to Krystal Two Bulls re Letter re Disqualification

40. The Removing Defendants will promptly serve written notice of the filing of this Notice of Removal to Plaintiffs and will file a copy of this Notice of Removal along with a

Notice of Filing of Notice of Removal with the State of North Dakota, District Court of South Central Judicial District, in and for the County of Morton, as provided by 28 U.S.C. § 1446(d). A copy of the Notice of Filing of Notice of Removal is attached as Exhibit I.

41. All Removing Defendants have consented to this removal.

42. This Joint Notice of Removal is hereby being signed pursuant to Rule 11 of the Federal Rules of Civil Procedure.

43. Accordingly, the Removing Defendants have complied with all applicable terms of 28 U.S.C. § 1446, and hereby remove the State Court Action from State of North Dakota, District Court of South Central Judicial District, in and for the County of Morton, and respectfully request that further proceedings be conducted in this Court as provided by law.

WHEREFORE, the Removing Defendants respectfully request that this action proceed before this Court as an action properly removed from the State of North Dakota, District Court of South Central Judicial District, in and for the County of Morton.

Dated: March 15, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2019, the foregoing was mailed by first class mail, postage paid, to the following parties:

Lawrence Bender
1133 College Drive, Suite 1000
Bismarck, North Dakota 58501

A courtesy copy was also sent by e-mail to lbender@fredlaw.com.

DATED this 15th day of March, 2019.

/s/ Derrick Braaten

Derrick Braaten