

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF KENTUCKY  
 AT LOUISVILLE  
 CIVIL ACTION NO. \_\_\_\_\_

BRUCE HILLBERRY	)
	)
PRO SE PLAINTIFF	)
	)
v.	)
	)
WAL-MART STORES EAST, L.P.	)
	)
DEFENDANT	)
	)

MEMORANDUM OF POINTS  
 AND AUTHORITIES

\* \* \* \* \*

Petitioner, Wal-Mart Stores East, L.P., Defendant in the state court action, submits this Memorandum of Points and Authorities in support of its Notice of Removal. Petitioner will demonstrate by this Memorandum that the removal jurisdiction of this Court is properly invoked by the Notice filed herewith because there is diversity of citizenship between Plaintiff and Defendant, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and the filing of the Notice of Removal is timely.

The applicable statute governing the removal, 28 U.S.C. § 1441, provides in pertinent part:

- (a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court in which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the District Court of the United States for the district and division embracing the place where such action is pending. For purpose of removal under this Chapter the citizenship of defendants sued under a fictitious name shall be disregarded.
- (b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the Citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and

served as defendants is a citizen of the State in which such action is brought.

Original jurisdiction of this action is conferred by the Removal Statute, 28 U.S.C. § 1332(a), which states in pertinent part:

The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum value of \$75,000.00 exclusive of interest and costs, and is between:

- (1) citizens of different states.

This Court has original jurisdiction of this action by reason of diversity of citizenship and amount in controversy.

#### Diversity of the Parties

As shown by the Notice of Removal, this Memorandum of Points and Authorities, and the Affidavit attached hereto, Plaintiff is now and was at the time of the commencement of this action, and at all times pertinent hereto, a citizen and resident of Kentucky. Defendant, Wal-Mart Stores East, L.P., is not now, and was not at the time of the commencement of this action, a citizen of the Commonwealth of Kentucky. Instead, it is now, and was at the time of the commencement of this action, a citizen of the states of Delaware and Arkansas.

For removal and diversity purposes of Section 1441, the citizenship of a corporation is defined by 28 U.S.C. § 1332(c) as follows:

- (1) a corporation shall be deemed a citizen of any state by which it has been incorporated and of the state where it has its principal place of business . . .

Accordingly, pursuant to 28 U.S.C. § 1332(c), Defendant, Wal-Mart Stores East, L.P., is a citizen of the states of Delaware and Arkansas, and there is complete diversity of citizenship between Plaintiffs and this Defendant.

#### Amount in Controversy

The amount in controversy herein exceeds the sum of \$75,000.00, exclusive of costs and interest. While the Complaint of Plaintiff failed to state any amounts being claimed, the

discovery answers, certified by Plaintiff on January 14, 2005, indicated amounts in excess of \$75,000.00, thereby making this removal timely.

Timeliness of Notice of Removal

The Complaint of Plaintiff failed to state any amounts being claimed; the discovery answers, certified by Plaintiff on January 14, 2005, indicated amounts in excess of \$75,000. Pursuant to 28 U.S.C. § 1446(b), any removal must be filed within thirty days after receipt of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based. The Notice tendered herewith is being filed on January 27th, 2005, thus making removal timely.

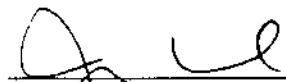
Consent to Removal

There is only one Defendant in this action, thus, there is no need to establish that all party defendants join in this removal petition.

CONCLUSION

For the above reasons, Petitioner, Wal-Mart Stores East, L.P., submits that this Court's removal jurisdiction is properly invoked in this action.

Respectfully submitted,



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Jennifer Kincaid Adams  
WOODWARD, HOBSON & FULTON, L.L.P.  
2500 National City Tower  
Louisville, Kentucky 40202  
502-581-8041  
Counsel for Defendant

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing was this the 27<sup>th</sup> day of January

2005, mailed to:

Bruce Hillberry  
3723 Cliff Avenue  
Louisville, Kentucky 40215  
PRO SE PLAINTIFF

  
\_\_\_\_\_  
Jennifer Kincaid Adams