

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CITY OF HUNTINGTON, WEST VIRGINIA,
CITY OF CHARLESTON, WEST VIRGINIA,
CITY OF KENOVA, WEST VIRGINIA, and
TOWN OF CEREDO, WEST VIRGINIA,
municipal corporations,

Plaintiffs,

Civil Action No. 2:18-cv-00580

Judge David A. Faber

v.

EXPRESS SCRIPTS HOLDING COMPANY;
EXPRESS SCRIPTS, INC.; MCCLOUD
FAMILY PHARMACY, INC.; T&J
ENTERPRISES, INC.; CONTINUUMCARE
PHARMACY LLC; MEDICAL PARK
PHARMACY LTC, INC.; WEST VIRGINIA
CVS PHARMACY, L.L.C.; MRNB, INC.;
RXBYTEL, INC.; RITE AID OF WEST
VIRGINIA, INC.; KROGER LIMITED
PARTNERSHIP I; SAFE RX PHARMACIES,
INC.; PASTM, INC; CROSS LANES
FAMILY PHARMACY, INC; and
BEEWELL PHARMACY, INC.,

Defendants.

PLAINTIFFS' MOTION TO REMAND

Plaintiffs Cities of Huntington, Charleston, and Kenova and Town of Ceredo, West Virginia ("Plaintiffs"), respectfully submit Plaintiffs' motion to remand. Plaintiffs seek remand pursuant to 28 U.S.C. § 1447(c) because this Court lacks subject matter jurisdiction over the claims raised in the Complaint. This motion is based on the following grounds:

There is no complete diversity between Plaintiffs and Defendants. The Pharmacy Defendants (Defendants that are pharmacies) are not fraudulently joined. Neither the West Virginia Medical Professional Liability Act's notice of claim requirement nor West Virginia's

pharmacy liability statute preclude claims against the Pharmacy Defendants. The Pharmacy Defendants also are not fraudulently misjoined. The claims against the Pharmacy Benefit Manager (“PBM”) Defendants, which removed the case, and the Pharmacy Defendants arise out of the same series of transactions or occurrences, and there are questions of law and fact common to all Defendants. The PBM Defendants also cannot establish that there is “no possibility” that the state court would find joinder permissive under W. Va. R. Civ. P. 20(a).

This case likewise is not removable under the Class Action Fairness Act because this is not a class action.

WHEREFORE, for the reasons stated in this motion and accompanying memorandum of law, Plaintiffs respectfully request that the Court remand this case to the Circuit Court of Kanawha County, West Virginia.

CITY OF HUNTINGTON, WEST VIRGINIA,
CITY OF CHARLESTON, WEST VIRGINIA,
CITY OF KENOVA, WEST VIRGINIA, AND
TOWN OF CEREDO, WEST VIRGINIA
By Counsel

May 16, 2018

/S/ Dennis C. Taylor
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CERTIFICATE OF SERVICE

I certify that on May 16, 2018, I caused the foregoing **Plaintiffs' Motion to Remand** to be served on counsel of record via the Court's CM/EFC system and upon the following party by regular U.S. Mail:

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