

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

THE STATE OF INDIANA, EX REL. HARMEYER,)	
<i>Plaintiff,</i>)	
)	
vs.)	1:17-cv-00538-JMS-DML
)	
THE KROGER CO., KROGER LIMITED PART-)	
NERSHIP I, KRGP, INC., PAY LESS SUPER)	
MARKETS, INC., and RALPHS GROCERY COM-)	
PANY,)	
<i>Defendants.</i>)	


ORDER

On March 20, 2017, Relator Michael Harmeyer filed a Response to Defendants’ Amended Notice of Removal pursuant to Local Rule 81-1. [[Filing No. 20.](#)] In his response, Mr. Harmeyer argues that this Court cannot exercise diversity jurisdiction over this matter because the State of Indiana is a real party in interest and “its presence destroys diversity jurisdiction.” [[Filing No. 20 at 2-4.](#)] Mr. Harmeyer states that he “has no objection to litigating this action in the Southern District of Indiana, [but] it appears that this case must be remanded to the Superior Court of Marion County, Indiana, as a matter of law.” [[Filing No. 20 at 4.](#)] On April 11, 2017, Defendants filed a twenty page Reply in Support of Notice of Removal, in which they dispute Mr. Harmeyer’s arguments. [[Filing No. 25.](#)]

The parties may not stipulate to jurisdiction, and the Court must ensure that it can exercise diversity jurisdiction over this matter before it can proceed. See *Evergreen Square of Cudahy v. Wisconsin Housing and Economic Development Authority*, 776 F.3d 463, 465 (7th Cir. 2015) (“the parties’ united front is irrelevant since the parties cannot confer subject-matter jurisdiction by agreement...and federal courts are obligated to inquire into the existence of jurisdiction *sua sponte*”). Accordingly, even though Mr. Harmeyer does not directly request that the Court remand

this matter in his Response to Defendants' Amended Notice of Removal, the Court will treat the Response, [[Filing No. 20](#)], as a Motion to Remand, and will consider Defendants' Reply in Support of Notice of Removal, [[Filing No. 25](#)], to be a response to the Motion to Remand. Mr. Harmeyer shall have until **April 20, 2017** to file a reply brief in support of remand.

Date: April 13, 2017


Hon. Jane Magnus-Stinson, Chief Judge
United States District Court
Southern District of Indiana

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