

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KATHY SWEENY	*	CIVIL ACTION
VERSUS	*	NO: 09-6763
PETCO ANIMAL SUPPLIES, INC., ET AL	*	SECTION: "D"(4)

ORDER AND REASONS

Before the court is the **"Motion for Remand" (Doc. No. 5)** filed by Plaintiff, Katy Sweeny. Defendant, Petco Animal Supplies Stores, Inc., filed a memorandum in opposition. The motion, set for hearing on Wednesday, November 18, 2009, is before the court on briefs, without oral argument. Now, having considered the memoranda of counsel, the record, and the applicable law, the court finds that the motion should be denied.

Plaintiff argues that this matter should be remanded because Defendant has failed to show that the amount in controversy exceeded \$75,000 at the time of removal. The court rejects this argument because the requisite amount in controversy is "facially apparent" from Plaintiff's allegations set forth in her Petition. Plaintiff alleges that as a result of her alleged trip and fall on

Defendant's parking lot, she sustained "serious injuries and damages" and "severe and painful personal injuries." (Petition at ¶II and ¶IV). Plaintiff seeks "past, present, and future physical and mental pain and suffering and disability;" "medical expenses, past and future;" scarring and loss of function;" and "lost wages and loss of earning capacity." (Petition at ¶VI). Plaintiff also failed to state in the prayer of her Petition that her damages did not exceed \$75,000, an allegation that is required by Louisiana Code of Civil Procedure Article 893(A)(1) if Plaintiff is to establish "lack of jurisdiction of federal courts due to sufficiency of damages." La. Code of Civ. Proc. Art. 893(A)(1).

Finally, prior to removal, Defendant possessed Plaintiff's recorded statement (taken on November 21, 2008)¹ which details the alleged severity of her injuries, the surgery she had as a result of her alleged injuries, and medical expenses. (See Plaintiff's Statement attached to Defendants' Opp. Memo. as Ex. A). Accordingly;

IT IS ORDERED that Plaintiff's "**Motion for Remand**" (Doc. No. 5) be and is hereby **DENIED**.

¹ The court notes that Plaintiff states in her Petition (filed in September 2009) that her alleged accident occurred on October 1, 2009. The court assumes that 2009 is a typographical error, and should be 2008.

New Orleans, Louisiana, this **19th** day of **November**, 2009.

A handwritten signature in black ink, appearing to read "A.J. McNamara", written over a horizontal line.

A.J. McNAMARA
UNITED STATES DISTRICT JUDGE