

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

LAUREN PITTS,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION, a  
foreign corporation; DOES I-X, and ROE  
ENTITIES I-X, inclusive,

Defendants.

Case No. 2:17-cv-01248-APG-CWH

**ORDER REGARDING OBJECTIONS TO  
REMOVAL**

12 Defendant Costco removed this case to federal court on May 3, 2017 based upon diversity  
13 jurisdiction. The removing party has the burden of proving that removal is proper, and that this  
14 court may properly assert jurisdiction over the parties and dispute. In its Notice of Removal, Costco  
15 states that the plaintiff commenced this action in state court on February 9, 2016. ECF No. 1 at  
16 1:23-26. "A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred  
17 by section 1332 more than 1 year after commencement of the action, unless the district court finds  
18 that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action."  
19 28 U.S.C. § 1446(c)(1).

20 "A motion to remand the case on the basis of any defect other than lack of subject matter  
21 jurisdiction must be made within 30 days after the filing of the notice of removal under section  
22 1446(a)." 28 U.S.C. § 1447(c). Thus, if the plaintiff wishes to seek to have this case remanded to  
23 state court based upon an untimely removal, she must file a motion within 30 days of Costco's  
24 removal. The failure to file a timely motion to remand constitutes a waiver of any procedural  
25 defects. *Smith v. Mylan Inc.*, 761 F.3d 1042, 1045 (9th Cir. 2014) ("[T]he one-year time limitation  
26 for removal of diversity cases is a procedural, non jurisdictional (sic) requirement rather than  
27 jurisdictional. Because procedural defects are waivable, a district court lacks authority to remand  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

based on the defendant's violation of § 1446(b)'s one year-time limitation absent a timely filed motion to remand.").

**IT IS THEREFORE ORDERED** that if the plaintiff wishes to challenge removal based on procedural defects, she must file an appropriate motion within 30 days of Costco's removal.

Dated: May 9, 2017.



---

ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE