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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LEE WALTH and JANET WALTH,  
husband and wife and the marital  
community comprised thereof,  
  
Plaintiff,

NO: 2:17-CV-323-RMP  
  
ORDER DENYING PLAINTIFFS’  
MOTION TO REMAND

v.

STAPLES THE OFFICE  
SUPERSTORE, LLC; STAPLES,  
INC; SPAR MARKETING FORCE,  
INC; and JOHN DOES 1-5,  
  
Defendants.

BEFORE THE COURT is Plaintiffs’ Motion to Remand this matter to state court, ECF No. 4. The Court has reviewed the motion and all relevant filings, and is fully informed.

**BACKGROUND**

Plaintiffs Lee and Janet Walth (“the Walths”) filed a civil tort action in Spokane County Superior Court against Staples the Office Superstore, LLC; Staples, Inc.; Spar Marketing Force, Inc.; and John Does 1-5 (collectively, “Defendants”).

1 ECF No. 1-2. On September 15, 2017, Defendant Spar Marketing Force removed  
2 the action to federal court pursuant to diversity jurisdiction. ECF No. 1. On October  
3 9, 2017, the Walths filed this motion<sup>1</sup> to remand the matter to the Spokane County  
4 Superior Court on the ground that all named Defendants had not consented to  
5 removal. ECF No. 4. On October 12, 2017, the other named Defendants, Staples  
6 the Office Superstore, LLC, and Staples, Inc., joined Defendant Spar Marketing  
7 Force in removing the action to federal court.

### 8 **DISCUSSION**

9 Defendant Spar Marketing Force filed its Notice of Removal pursuant to 28  
10 U.S.C. § 1441(a), which provides that defendants may remove a civil action brought  
11 in a State court to the federal district court embracing the place where the action is  
12 pending. Spokane County Superior Court is within the Eastern District of  
13 Washington, where this Court sits.

14 The federal district court must have original jurisdiction over the action. §  
15 1441(a). Defendant Spar Marketing Force filed its Notice of Removal on the basis  
16 of diversity jurisdiction under 28 U.S.C. § 1332(a), asserting that the amount in  
17 controversy exceeds \$75,000 and that the Walths are citizens of a different state than  
18 all named Defendants. ECF No. 1, at 2-3. The Walths' complaint seeks damages

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20 <sup>1</sup> Although Plaintiffs filed this motion ex parte, the Court finds that there is no  
21 basis for considering this motion appropriate for ex parte filing.

1 for medical expenses, loss of earnings, loss of future earnings, pain and suffering,  
2 and loss of consortium, which the Court concludes exceeds the \$75,000 mark for  
3 diversity jurisdiction cases. ECF No. 1-2, at 4.

4 In addition, section 1441 provides that, “[i]n determining whether a civil  
5 action is removable on the basis of the jurisdiction under [28 U.S.C. § 1332(a)], the  
6 citizenship of defendants sued under fictitious names shall be disregarded.” §  
7 1441(b). Therefore, the citizenship of the John Does 1-5 is immaterial to this  
8 motion. The Walths are citizens of Spokane County, Washington. ECF No. 1-2, at  
9 2. Defendant Spar Marketing Force is a Nevada domestic corporation with its  
10 principal place of business in Michigan. ECF No. 1, at 2. Defendants Staples the  
11 Office Superstore and Staples, Inc., are Delaware business entities with their  
12 principal place of business in Massachusetts. *Id.* Therefore, the parties are diverse  
13 for the purposes of § 1332(a).

14 The Walths seek to remand the action to State court on the ground that not all  
15 Defendants had consented to removal as required by 28 U.S.C. § 1446(b)(2)(A).  
16 When an action is removed under § 1441(a) all properly joined and served  
17 defendants are required to join in or consent to the removal of the action. 28 U.S.C.  
18 § 1446(b)(2)(A). If all defendants have not joined the petition for removal when it is  
19 filed, “the district court may allow the removing defendants to cure the defect by  
20 obtaining joinder of all defendants prior to the entry of judgment.” *Destfino v.*  
21 *Reiswig*, 630 F.3d 952, 957 (9th Cir. 2011) (citing *Soliman v. Philip Morris Inc.*, 311

1 F.3d 966, 970 (9th Cir. 2002)). The Court finds that Defendants have cured the  
2 procedural defect because Defendants Staples the Office Superstore and Staples,  
3 Inc., the only named Defendants, have joined in the notice of removal. ECF No. 5.

4 Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's Ex Parte Motion to  
5 Remand, **ECF No. 4**, is **DENIED**.

6 The District Court Clerk is directed to enter this Order and provide copies to  
7 Plaintiffs.

8 **DATED** October 16, 2017.

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10 *s/ Rosanna Malouf Peterson*  
11 ROSANNA MALOUF PETERSON  
12 United States District Judge  
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