UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

Scott Francis Iceberg v. The Kroger Co.

Iceberg · No. C25-2342JLR · Decided January 8, 2026

SUMMARY

The United States District Court for the Western District of Washington denies Scott Francis Iceberg’s motion to remand his state-law consumer-protection action against The Kroger Co. to state court. The court holds that Iceberg’s post-removal amendment removing his request for injunctive relief reduced the amount in controversy but did not destroy diversity jurisdiction.

CASE DETAILS

COURT	United States District Court for the Western District of Washington
WRITING FOR THE COURT	James L. Robart
JURISDICTION	United States District Court for the Western District of Washington
DECIDED	January 8, 2026
DOCKET	C25-2342JLR
DISPOSITION	remanded
PROCEDURAL POSTURE	Plaintiff moved to remand a removed diversity action to King County Superior Court after amending his complaint to eliminate injunctive relief, attorneys' fees, and costs. The federal district court denied the motion to remand.
STANDARD OF REVIEW	The removing defendant bears the burden of establishing by a preponderance of the evidence that removal was proper, and removal statutes are strictly construed against federal jurisdiction.
PRECEDENTIAL VALUE	Unknown; district court order with no reported citation or stated precedential designation
PARTIES	Scott Francis Iceberg v. The Kroger Co.

TOPICS

subject matter jurisdiction · motion to amend · civil procedure · deceptive trade practices · consumer protection

PRACTICE AREAS

civil procedure | removal and remand | federal subject matter jurisdiction | consumer protection

QUESTIONS PRESENTED

1. Whether a post-removal amendment eliminating injunctive relief and thereby reducing the alleged amount in controversy below $75,000 destroys diversity subject matter jurisdiction.
2. Whether the court was required to remand the action because the amended complaint no longer contained the original request for costly injunctive relief.

HOLDINGS

1. A post-removal amendment that only reduces the alleged amount in controversy below $75,000 ordinarily does not destroy diversity jurisdiction.
2. Iceberg's amendment did not destroy diversity jurisdiction because it removed only the request for injunctive relief and did not join any nondiverse party; the motion to remand was therefore denied.
3. The removing defendant bears the burden of establishing by a preponderance of the evidence that removal was proper, and removal statutes are strictly construed against federal jurisdiction.

KEY QUOTATIONS

> *“The removing defendant faces a “strong presumption” against removal and bears the burden of establishing, by a preponderance of the evidence, that removal was proper.”* (at 3)

> *“The Court made clear, however, that a post-removal amendment that only reduces the alleged amount in controversy to below $75,000 “will usually not destroy diversity jurisdiction.””* (at 4)

FACTUAL BACKGROUND

Iceberg sued Kroger in Washington state court, alleging that Kroger falsely represented that its Simple Truth Fruit and Grain Bars contained no preservatives. His original complaint sought injunctive relief requiring Kroger to change its business practices, in addition to damages, fees, and costs. Kroger removed based on diversity jurisdiction and alleged that complying with the requested injunction would cost more than $75,000. Iceberg later amended the complaint to seek only declaratory relief and damages, without joining any nondiverse party.

PROCEDURAL HISTORY

Iceberg filed Washington Consumer Protection Act, breach-of-express-warranty, and unjust-enrichment claims in King County Superior Court. Kroger removed the action on the basis of diversity jurisdiction, asserting that the amount in controversy exceeded $75,000 because of the cost of the requested injunction. After Kroger moved to dismiss, Iceberg amended his complaint as a matter of course and removed the request for injunctive relief, fees, and costs. Iceberg then argued that the amendment eliminated the amount in controversy required for diversity jurisdiction. The court denied remand.

DISPOSITION

remanded

CASES CITED

- Hawaii ex rel. Louie v. HSBC Bank Nev., N.A., 761 F.3d 1027, 1034 (9th Cir. 2014)
- Gaus v. Miles, Inc., 980 F.2d 564, 566-67 (9th Cir. 1992)
- Royal Canin U.S.A., Inc. v. Wullschleger, 604 U.S. 22, 25-26, 38 & n.8 (2025)
- St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289, 292 (1938)

OPINION

Iceberg

PER CURIAM.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

SCOTT FRANCIS ICEBERG, CASE NO. C25-2342JLR

Plaintiff, ORDER v.

THE KROGER CO.,

Defendant.

I. INTRODUCTION

Before the court is Plaintiff Scott Francis Iceberg's motion to remand this matter to King County Superior Court. (MTR (Dkt. # 10); Reply (Dkt. # 19).) Defendant The Kroger Co. ("Kroger") opposes Mr. Iceberg's motion. (Resp. (Dkt. # 15).) The court also granted Kroger leave to respond to new jurisdictional arguments Mr. Iceberg raised in his reply. (Supp. Br. (Dkt. # 25); see 12/23/25 Order (Dkt. # 20).) The court has reviewed the parties' submissions, the relevant portions of the record, and the governing law. Being fully advised,[1] the court DENIES Mr. Iceberg's motion to remand.

II. BACKGROUND

Mr. Iceberg filed this lawsuit in King County Superior Court on November 17, 2025. (Compl. (Dkt. # 1-1).) He alleges, on behalf of himself alone, that Kroger falsely represents that its Simple Truth Brand Fruit and Grain Bars (the "Bars") contain no preservatives, and raises state-law claims for violation of the Washington Consumer Protection Act, breach of express warranty, and unjust enrichment. (Id. ¶¶ 1-2, 25-49.) In his original complaint, Mr. Iceberg sought, in relevant part, an injunction "requiring [Kroger] to change its business practices to prevent or mitigate the risk of [] consumer deception and violations of law[,]" including by “add[ing] appropriate warning labels or engag[ing] in an affirmative advertising campaign to dispel the public misperception” that the Bars contain no preservatives. (Id. at 12.) He also sought monetary damages, punitive or statutory damages, and attorneys’ fees and costs. (Id. at 13.) On November 21, 2025, Kroger removed the action, asserting that this court has diversity subject matter jurisdiction because Mr. Iceberg is a resident and citizen of Washington, Kroger is a citizen of Ohio, and the costs of complying with Mr. Iceberg’s proposed injunction would exceed $75,000. (See generally Not. of Removal (Dkt. # 1)); 28 U.S.C. § 1332(a). On November 24, 2025, Mr. Iceberg moved to remand this action because Kroger cannot show that the amount in controversy exceeds the $75,000 jurisdictional minimum 1 Kroger requests oral argument. Mr. Iceberg does not. The court concludes that oral argument would not assist it in resolving this motion. See Local Rules W.D. Wash. LCR 7(b)(4). required for diversity jurisdiction. (See generally MTR.) In its response, Kroger asserted that the court must deny the motion because the value of the “sweeping injunctive relief” Mr. Iceberg sought is greater than $75,000. (Resp. at 1, 5-6 (citing Studer Decl. (Dkt. # 15-1) ¶¶ 5-6).)

After Kroger filed its motion to dismiss, Mr. Iceberg amended his complaint. (Am. Compl. (Dkt. # 17)); see Fed. R. Civ. P. 15(a) (allowing a party to amend its pleading once as a matter of course within 21 days after service of a motion to dismiss under Rule 12(b)). In relevant part, Mr. Iceberg no longer requests injunctive relief, attorneys’ fees, or costs. (See Am. Compl. at 12.) Instead, he now seeks only declaratory relief and damages. (See id.) In his reply in support of his motion to remand, he argues that remand is required because Kroger can no longer demonstrate that the amount in controversy exceeds $75,000 absent his request for injunctive relief. (See generally Reply (citing Royal Canin U.S.A., Inc. v. Wullschleger, 604 U.S. 22 (2025)).).

Because Mr. Iceberg’s reply is based on his newly-filed amended complaint and raises new jurisdictional issues that were not addressed in his motion to remand or in Kroger’s response, the court granted Kroger leave to file a supplemental brief to address those issues. (12/23/25 Order.) Mr. Iceberg’s motion to remand is now fully briefed and ready for decision.

III. ANALYSIS

Federal courts strictly construe the removal statute and must reject jurisdiction if there is any doubt as to the right of removal in the first instance. See Hawaii ex rel. Louie v. HSBC Bank Nev., N.A., 761 F.3d 1027, 1034 (9th Cir. 2014); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). The removing defendant faces a “strong presumption” against removal and bears the burden of establishing, by a preponderance of the evidence, that removal was proper. Gaus, 980 F.2d at 566-67.

Mr. Iceberg argues that the court must remand this action because Kroger can no longer satisfy the $75,000 amount-in-controversy requirement for diversity jurisdiction. (See generally Reply.) He does not attack Kroger’s estimate of the costs it would incur to comply with the injunction he sought in his original complaint. (See generally id.) Instead, he asserts that under the “uniform rule” set forth in Royal Canin U.S.A. v. Wullschleger, his amendment to remove his request for injunctive relief eliminated the “sole potential basis” for the court to exercise subject matter jurisdiction over this matter. (See generally id.) As Kroger points out, however, Mr. Iceberg misreads Royal Canin. (See generally Supp. Br.) In that case, the Supreme Court held that when a plaintiff amends their complaint to remove the federal claims that enabled the defendant to remove the matter on the basis of federal question jurisdiction, the federal court loses its supplemental jurisdiction over the remaining state-law claims and must remand the matter to state court. Royal Canin, 604 U.S. at 25-26. The Court further observed that an amendment to join a non-diverse party after removal destroys diversity jurisdiction and, as a result, also requires remand. Id. at 38. The Court made clear, however, that a post-removal amendment that only reduces the alleged amount in controversy to below $75,000 “will usually not destroy diversity jurisdiction.” Id. at 38 n.8 (citing St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289, 292 (1938)). Here, Kroger removed this matter on the basis of diversity jurisdiction based on both the citizenship of the parties and the original complaint’s request for costly injunctive relief. (See Not. of Removal.) Mr. Iceberg’s amendments affected only the amount in controversy; he did not join any non-diverse parties. (Compare Compl. at 12-13; with Am. Compl. at 12.) As a result, Mr. Iceberg’s amendments did not destroy this court’s diversity jurisdiction over this matter. Royal Canin, 604 U.S. at 38 n.8. Therefore, the court denies Mr. Iceberg’s motion to remand.

IV. CONCLUSION

For the foregoing reasons, the court DENIES Mr. Iceberg’s motion to remand (Dkt. # 10).

Dated this 8th day of January, 2026.

A

JAMES L. ROBART

United States District Judge