

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

DATA SALES CO., INC.,	:	
	:	CIVIL ACTION
Plaintiff	:	
	:	NO. _____
VS.	:	
	:	JURY TRIAL DEMANDED
VOLUMEDRIVE, INC.	:	
	:	
Defendant	:	

NOTICE OF REMOVAL OF THE DEFENDANT, VOLUMEDRIVE, INC.

Defendant, VOLUMEDRIVE, INC., by and through its attorneys, Comitiz Law Firm LLC, files the following Notice of Removal.

1. The Plaintiff, DATA SALES CO., INC., filed a Complaint against the Defendant in the Luzerne County Court of Common Pleas on September 20, 2013 at Luzerne County Docket No. 11138 of 2013. A true and correct copy of Plaintiff’s Complaint is attached hereto as **Exhibit “A”** and incorporated herein by reference.

2. The Complaint alleges that the Plaintiff is a Minnesota company with its principal place of business at 3450 West Burnsville Parkway, Burnsville, Minnesota. See Complaint at Paragraph 1.

3. Thus, for purposes of federal diversity jurisdiction, Plaintiff is a citizen of the State of Minnesota.

4. The Complaint alleges that the Defendant is a Pennsylvania corporation with its principal place of business located at 1143 Northern Boulevard, Clarks Summit, PA. See Complaint at Paragraph 2.

5. Thus, for purposes of federal diversity jurisdiction, Defendant is a citizen of the Commonwealth of Pennsylvania.

6. Federal courts have jurisdiction for diversity cases – that is, when the suit involves a controversy between citizens of different states, and when the amount in controversy exceeds \$75,000, excluding interest and costs. 28 U.S.C. § 1332(a).

7. The Complaint alleges that Defendant owes Plaintiff an amount of \$116,118.48 for the Leased Equipment, as that term is defined in the Complaint. See Complaint at Paragraph 14.

8. The Complaint contains four (4) counts: Count I (Breach of Contract); Count II (Unjust Enrichment); Count III (Replevin); and Count IV (Replevin).

9. Plaintiff's Count I seeks monetary damages in the amount of \$116,118.48, plus interest, costs of suit, the return of the Leased Equipment, and attorneys' fees.

10. Plaintiff's Count II seeks monetary damages in the amount of \$116,118.48, plus interest, costs of suit, the return of the Leased Equipment, and attorneys' fees.

11. Plaintiff's Count III seeks possession of the Leased Equipment (which Plaintiff alleges is valued at \$116,118.48, see Complaint at Paragraph 14), attorneys' fees, costs and damages for the alleged unjust retention, and all costs of suit.

12. Plaintiff's Count IV seeks possession of the Collateral (which Plaintiff alleges is valued at \$107,635.00, see Complaint at Paragraph 43), attorneys' fees, costs and damages for the alleged unjust retention, and all costs of suit.

13. Accordingly, Plaintiff's suit involves an amount in controversy that exceeds \$75,000, excluding interest and costs. 28 U.S.C. § 1332(a).

14. As of the date of the filing of this Notice of Removal, the Complaint has not been properly served upon the Defendant in accordance with the Pennsylvania Rules of Civil Procedure.

15. In fact, Defendant only received a copy of the Complaint because Plaintiff filed a Motion for Issuance of Writ of Seizure on September 20, 2013, and attached to that Motion as an exhibit is a copy of Plaintiff's Complaint.

16. The aforementioned Motion was not served on the Defendant until October 14, 2013, Columbus Day, a federal holiday, by a Pennsylvania Constable.

17. If a suit is removable when it is filed, the defendant must file the notice of removal within 30 days after receiving a copy of the complaint. Murphy Bros. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 354 (1999); 28 U.S.C. § 1446(b).

18. Accordingly, Defendant's instant Notice of Removal is timely because less than 30 days have elapsed since the Defendant received notice of the suit and a copy of the Complaint on October 14, 2013.

19. Defendant will give written notice of the filing of this instant Notice of Removal to the Plaintiff, as required by 28 U.S.C. § 1446(d), as evidenced on Certificate of Service filed concurrently herewith.

20. A copy of this Notice of Removal will be filed with the Luzerne County Prothonotary on October 24, 2013, as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant, VOLUMEDRIVE, INC., requests that Plaintiff's lawsuit proceed in the United States District Court for the Middle District of Pennsylvania as a civil action properly removed.

COMITZ LAW FIRM, LLC

BY:

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