

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

LARRY JOE DAVIS, JR., an individual,

Plaintiff,

v.

Case No.:

AVVO, INC., a Washington corporation
d/b/a Avvo.com,

Defendant.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant, Avvo, Inc.

(“Defendant”), hereby files this Notice of Removal of the lawsuit entitled: LARRY JOE DAVIS, JR. v. AVVO, INC. d/b/a AVVO.COM, pending in the Circuit Court of the Ninth Judicial Circuit in and for Pinellas County, Florida, Case No. 10-12785-CI (hereinafter “the State Court Action”). The grounds for removal are as follows:

1. This Notice of Removal has been filed within the time prescribed in 28 U.S.C. § 1446(b). This Court has original jurisdiction pursuant to 28 U.S.C. §1332(a).

Background

2. This is an action whereby LARRY JOE DAVIS, JR. (hereinafter “Plaintiff”) has alleged that Defendant has engaged in practices constituting false light invasion of privacy, false advertising, unfair and deceptive trade practices, and misappropriation of likeness.

3. Defendant is the sole named defendant in the State Court Action. The Complaint was filed on or about August 26, 2010. An Amended Complaint was filed on

or about September 14, 2010. A copy of all pleadings served on Defendant and on file in the State Court Action is attached hereto as Composite Exhibit A.

Diversity of Citizenship

4. Defendant is a corporation formed in the State of Washington, with its principal place of business located at 1218 Third Avenue, Suite 300, Seattle, WA 98101, at the times that the Complaint and Amended Complaint were filed in the State Court Action and at the time of this removal. It is at this location where all executive officers operate and all corporate decisions are made.

5. Pursuant to 28 U.S.C. §1332(c)(1), a corporation is a citizen of the state in which it is incorporated and of the state where it maintains its principal place of business. Pursuant to 28 U.S.C. §1332(c)(1), Defendant is a citizen of Washington. Am. Compl. ¶ 8.

6. Plaintiff is a resident and citizen of the State of Florida. Am. Compl. ¶ 8. Accordingly, complete diversity of citizenship exists between the parties within the meaning of 28 U.S.C. §1332(a)(1).

Amount in Controversy

7. The amount in controversy in this action exceeds seventy-five thousand dollars (\$75,000.00). Plaintiff alleges entitlement to actual damages, royalties, punitive damages, exemplary damages and statutorily authorized attorney's fees but does not specify the amount, merely alleging that his damages "are in excess of \$15,000." Am. Compl. ¶ 1.

8. Where a complaint alleges only unspecified damages and does not support the amount in controversy, the defendant in a diversity case may invoke federal

jurisdiction so long as it can show by a preponderance of the evidence that the amount in controversy is more likely than not to exceed the \$75,000.00 jurisdictional requirement. See Tapscott v. MS Dealer Serv. Corp., 77 F.3d 1353, 1359 (11th Cir. 1996).

9. It is well-settled that a defendant may use “a written settlement demand ... to determine if the case is removable.” Essenson v. Coale, 848 F. Supp. 987, 989-90 (M.D. Fla. 1994). See also Jade East Towers Developers v. Nationwide Mut. Ins. Co., 936 F. Supp. 890, 892 (N.D. Fla. 1996) (defendant can utilize information from a demand letter to support removal).

10. In a settlement proposal made after filing suit, Plaintiff demanded the sum of \$145,000.00 if the Defendant included an apology, retraction and certain corrective actions, or alternatively, \$175,000.00 if Defendant did not include an apology, retraction and such corrective actions. See Exhibit B (Oct. 11, 2010 E-mail from Plaintiff tendering settlement proposal).

11. Elaborating on the basis for this demand, Plaintiff reaffirmed his assertion of entitlement to actual damages, royalties, exemplary and punitive damages, and attorney’s fees. According to the Plaintiff, his attorney’s fees were roughly \$40,000 as of October 11, 2010. See Exhibit C (Oct. 12, 2010 E-mail from Plaintiff articulating basis for damages).

12. The foregoing evidence amply supports a conclusion that the amount in jurisdiction for purposes of diversity jurisdiction exceeds \$75,000.00. As a result, this Court has subject matter jurisdiction over Plaintiff’s Amended Complaint.

Timing

13. Because Defendant removed this case on October 19, 2010, Defendant is within thirty (30) days of the date it first received “other paper” indicating that the case was removable, i.e., Plaintiff’s October 11, 2010 e-mail tendering initial settlement demand. See Exhibit B; 28 U.S.C. § 1446(b).

Process and Pleadings

14. Pursuant to 28 U.S.C. § 1446(a), copies of all process and pleadings served upon Defendant, and the pleadings now on file in the Circuit Court of Pinellas County, Florida, Case No. 10-12785-CI, are attached hereto. See Composite Exhibit A.

Service on Plaintiff and Circuit Court

15. The undersigned has served written notice of the removal of this lawsuit on Plaintiff, who is representing himself in this matter, by serving him with a copy of this Notice of Removal, and has filed a Notice to State Court of Filing Notice of Removal with the Clerk of the Circuit Court of the Ninth Judicial Circuit in and for Pinellas County, Florida.

Conclusion

16. This Court has removal jurisdiction over this action pursuant to 28 U.S.C. §§ 1332 and 1441. Defendant therefore exercises its right pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 to remove this action from the Ninth Judicial Circuit Court in and for Pinellas County, Florida to the United States District Court for the Middle District of Florida, Tampa Division.

WHEREFORE, Defendant Avvo, Inc. requests that this action proceed in this Court as an action properly removed pursuant to 28 U.S.C. §1441.

Respectfully submitted,

/s/ Susan Tillotson Bunch
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Attorneys for Avvo, Inc.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, on this 19th day of October, 2010 via U.S. Mail; Facsimile; Overnight Delivery to L. Joe Davis, Jr., Esq., 155 5th Avenue North, St. Petersburg, FL 33701.

/s/ Susan Tillotson Bunch
Attorney