

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

1 Joel P. Hoxie (#005448)
Todd A. Williams (#020066)
2 SNELL & WILMER L.L.P.
One Arizona Center
3 400 E. Van Buren
Phoenix, AZ 85004-2202
4 Telephone: (602) 382-6000
Attorneys for Defendants
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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
8

9 BALAR EQUIPMENT
CORPORATION, an Arizona
10 corporation,

11 Plaintiff,

12 v.

13 VT LEEBOY, INC., a North Carolina
corporation, fka B.R. LEE
14 INDUSTRIES, INC., a North Carolina
Corporation, JOHN DOES and JANE
15 DOES I-X, inclusive; BLACK AND
WHITE CORPORATIONS I-X,
16 inclusive; XYZ PARTNERSHIPS I-X,
inclusive,
17

18 Defendants.

No.

**DEFENDANT VT LEEBOY, INC.’S
NOTICE OF REMOVAL PURSUANT
TO 28 U.S.C. §1441(a)**

19 PLEASE TAKE NOTICE that Defendant VT Leeboy, Inc. (“Leeboy”) hereby
20 removes to this Court the state court action described below, on the following grounds:

- 21 1. On January 16, 2007, an action was commenced in the Superior Court of the
22 State of Arizona in and for the County of Maricopa, entitled *Balar Equipment*
23 *Corporation, an Arizona corporation, v. VT Leeboy, Inc., a North Carolina corporation,*
24 *fka B.R. Lee Industries, Inc., a North Carolina corporation, et al.*, case no. CV2007-
25 000926. Copies of the Summons and Complaint in that action are attached as Exhibit A.
26

1 Plaintiff simultaneously filed a Certificate Re Compulsory Arbitration certifying that the
2 matter was not subject to compulsory arbitration as contemplated by the Arizona Rules of
3 Civil Procedure. A copy of the Certificate Re Compulsory Arbitration is attached as
4 Exhibit B.

5 2. The Summons, Complaint, and Certificate of Compulsory Arbitration were
6 served on Defendant's statutory agent on January 24, 2007. Courtesy copies of these
7 documents were hand-delivered to Leeboy's Arizona litigation counsel on January 17,
8 2007. Aside from these three documents, Defendant is not aware of any other process,
9 pleadings, or orders on file in Maricopa County Superior Court in this action.

10 3. This notice of removal is timely under 28 U.S.C. § 1446(b) because this
11 notice is filed within thirty (30) days after receipt by Defendant of the Complaint and
12 within thirty (30) days after service on Defendant.

JURISDICTION

13
14 4. As alleged in the Complaint, Plaintiff Balar Equipment Corporation is an
15 Arizona corporation with its principal place of business located in Phoenix, Arizona.
16 Defendant VT Leeboy is a North Carolina corporation with its principal place of business
17 located in Lincolnton, North Carolina.

18 5. The amount in controversy in this matter exceeds \$75,000, exclusive of
19 interest and costs. As required by Rule 8(g), Arizona Rules of Civil Procedure, the
20 Complaint is silent as to the amount of damages sought in this matter. As set forth below,
21 however, there can be no legitimate dispute that the amount in controversy in this matter
22 substantially exceeds the \$75,000 jurisdictional threshold.

23 6. Plaintiff's Complaint arises from a Dealership Agreement between Balar
24 and Leeboy pursuant to which Balar became an authorized dealer of Leeboy equipment.
25 (Complaint at ¶ 9.) By letter dated October 27, 2006, Leeboy terminated the Dealership
26 Agreement with Balar as of December 31, 2006. (Complaint at ¶ 16.) The crux of Balar's

1 Complaint is that Leeboy was prohibited from terminating the Dealership Agreement with
2 Balar under Arizona’s Equipment Dealers Act, A.R.S. § 44-6701, *et seq.* The Complaint
3 seeks compensatory damages in the form of lost sales and reduced parts and repair
4 revenue, in addition to punitive damages.

5 7. By letter dated December 18, 2006, Plaintiff’s counsel detailed the claims
6 that now constitute the state court suit that is the subject of this removal, and urged
7 Leeboy to reconsider the termination of the Dealership Agreement. *See* December 18,
8 2006 Letter, attached as Exhibit C. In that letter, Plaintiff’s counsel asserted that Balar’s
9 net earnings from the Leeboy relationship for 2006 alone were approximately \$780,000.
10 *Id.* at 3. Plaintiff’s counsel “conservatively” estimated Balar’s damages claim against
11 Leeboy in the amount of \$4,290,000 plus punitive damages. *Id.*

12 8. There being complete diversity of citizenship for purposes of jurisdiction
13 conferred by 28 U.S.C. § 1332(a), the State Court action may be removed pursuant to 28
14 U.S.C. § 1446(b).

15 9. Pursuant to 28 U.S.C. § 1446(d) and Rule 3.7, Rules of Practice of the
16 United States District Court for the District of Arizona, a copy of this Notice of Removal
17 has been filed with the Clerk of Maricopa County Superior Court and served upon
18 Plaintiff.

19 DATED this 16th day of February, 2007.

20 SNELL & WILMER L.L.P.

21
22 By s/ Todd A. Williams

23 Joel P. Hoxie
24 Todd A. Williams
25 One Arizona Center
26 400 E. Van Buren
Phoenix, AZ 85004-2202
Attorneys for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2007, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing. A copy of the attached document was mailed to:

Mark D. Samson
KELLER ROHRBACK, P.L.C.
3101 N. Central Ave., Suite 1400
Phoenix, AZ 85012-2643

s/ Todd A. Williams