

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RODNEY MAESTAS,

Plaintiff,

v.

APPLE INC.,

Defendant.

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NO. 1:11-CV-852

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446, Defendant Apple Inc. (“Apple” or “Defendant”) hereby gives notice that it is removing this civil action to the United States District Court for the Western District of Texas, Austin Division, based on the existence of diversity and federal question jurisdiction. In support of this Notice of Removal, Defendant respectfully shows the following:

**I.
BACKGROUND**

1. On August 25, 2011, Plaintiff Rodney Maestas filed this civil action, Cause No. D-1-GN-11-002588, in the 353rd Judicial District Court of Travis County, Texas.

2. On September 6, 2011, Defendant was served with Plaintiff’s Petition. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon Defendant in the state court proceeding are attached hereto and incorporated herein by reference. See Exhibit 1.

3. In this lawsuit, Plaintiff alleges that Defendant discriminated and retaliated against him based on his age when it terminated his employment in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et. seq.*, and Chapter 21 of the Texas Labor

Code.

II.

FEDERAL QUESTION JURISDICTION

4. This Court has subject matter jurisdiction in this case based upon federal question jurisdiction. 28 U.S.C. § 1331. Federal question jurisdiction exists in a civil matter when the “claim or right aris[es] under the Constitution, treaties or laws of the United States.” 28 U.S.C. § 1441(b). In addition, if a “separate and independent claim or cause of action . . . is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein” *Id.* § 1441(c).

5. Federal question jurisdiction has been clearly invoked in this case. In his Petition, Plaintiff alleges that Defendant discriminated against him based on his age in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et. seq.*, a federal anti-discrimination statute. *See* Plaintiff’s Petition, ¶¶ 5.7-5.9. In addition, to the extent that Plaintiff alleges state causes of action, this Court has supplemental jurisdiction under 28 U.S.C. § 1441(c).

III.

DIVERSITY JURISDICTION

6. This Court also has subject matter jurisdiction in this case based upon diversity jurisdiction. 28 U.S.C. § 1332. Diversity jurisdiction exists in a civil matter where the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the dispute is between citizens of different states. *Id.* § 1332(a)(1). Both of the requirements for diversity jurisdiction are met in this case.

A. The Amount in Controversy Exceeds \$75,000.

7. Although the Plaintiff does not plead a specific amount of damages in his Petition, it is facially apparent from his pleadings that Plaintiff seeks damages in excess of the \$75,000

jurisdictional amount of this Court. 28 U.S.C. §1332(a).¹ Specifically, in his pleadings, Plaintiff seeks damages for alleged “economic and actual damages, including past and future lost income, back wages or back pay, interest on back pay and front pay, future wages or front pay, lost earnings in the past and future, lost benefits under the contract or employment relationship, all consequential damages resulting from the breach of contract, employment benefits in the past, and employment benefits in the future.” *See* Plaintiff’s Petition, ¶ 6.1.

8. Plaintiff further seeks damages for alleged emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, job search expenses, lost earning capacity in the past and future, and “other” pecuniary and non-pecuniary losses. *Id.* at ¶ 7.1. Plaintiff also seeks attorneys’ fees, expert fees, and costs. *Id.* at ¶ 8.1. Finally, Plaintiff seeks an “award of punitive and exemplary damages in an amount to be determined at trial.” *Id.* at ¶ 9.1.

9. In light of the damages sought by Plaintiff in his Petition, it is facially apparent that he seeks damages well in excess of the \$75,000 jurisdictional limit of this Court. The Age Discrimination in Employment Act allows for an award of liquidated damages equal to the sum of any unpaid wages. 29 U.S.C. §§ 216(b), 626(b). Further, the Texas Labor Code provides for compensatory and punitive damage awards up to \$300,000. TEX. LAB. CODE. § 21.2585. Here, Plaintiff seeks those damages in addition to economic damages, attorneys’ fees, expert fees, and costs. Therefore, it is facially apparent from Plaintiff’s pleadings that he seeks damages in excess of \$75,000.00. *See Lewis v. State Farm Lloyds*, 205 F.Supp.2d 706, 708 (S.D. Tex. 2002) (finding it “easily” facially apparent that plaintiff’s claimed damages, which included mental

¹ Under Fifth Circuit case law, removal of a state court claim that seeks an indeterminate amount of damages is proper if the defendant shows it to be “facially apparent” from the plaintiff’s pleadings that her claimed damages likely exceed \$75,000.00. *See Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

anguish, exemplary damages, attorneys' fees, and other statutory and common law damages, were "*far in excess*" of \$75,000.00).

B. There is Complete Diversity of Citizenship.

10. Complete diversity of citizenship exists between Plaintiff and Defendant. Specifically, at the time this suit was filed and at the time of removal, Plaintiff was a citizen of the state of Texas. *See* Plaintiff's Petition, ¶ 2.1.

11. Both at the time this suit was filed and at the time of removal, Defendant was a corporation organized and existing under the laws of California with its principal place of business in California. *See* 28 U.S.C. § 1332(c) (discussing that a corporation is a citizen of the state in which it was incorporated and the state in which it has its principal place of business). Accordingly, there is complete diversity of citizenship between Plaintiff and Defendant.

**IV.
PROCEDURAL ALLEGATIONS**

12. The Western District of Texas, Austin Division, is the federal district and division that encompasses the 353rd Judicial District Court of Travis County, Texas. *See* 28 U.S.C. § 124(b)(1). This Notice of Removal is filed within 30 days of having been served with Plaintiff's Petition or Citation, and is therefore timely filed under 28 U.S.C. § 1446. Therefore, removal to this Court is proper under 28 U.S.C. §§ 1441(a) and (b) and 1446.

13. Defendant has simultaneously given prompt written notice of the filing of its Notice of Removal to all adverse parties and filed a copy of the Notice of Removal with the 353rd Judicial District Court of Travis County, Texas, attached hereto and incorporated by reference at Exhibit 2. *See* 28 U.S.C. § 1446(d).

**V.
PRAYER FOR RELIEF**

WHEREFORE, Defendant respectfully requests this action be removed from the 353rd

Judicial District Court of Travis County, Texas to the United States District Court for the Western District of Texas, Austin Division.

Dated: September 28, 2011

Respectfully submitted,

/s/ Suzanne M. Potter-Padilla

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ATTORNEYS FOR DEFENDANT

APPLE INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded to counsel of record by certified mail, return receipt requested, on this the 28th day of September 2011, addressed as follows:

Wylie E. Kumlar
MELTON & KUMLER, L.L.P.
2705 Bee Cave Road, Suite 220
Austin, Texas 78746

. ATTORNEY FOR PLAINTIFF

/s/ Suzanne M. Potter-Padilla
Suzanne M. Potter-Padilla