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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Cynthia Binkley, an individual,

Plaintiff,

v.

Safeway Inc., a Delaware Corporation,

Defendant.

No.

NOTICE OF REMOVAL
UNDER 28 U.S.C. § 1441
(DIVERSITY)

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

Defendant Safeway Inc. ("Safeway"), by the undersigned attorneys, respectfully files and serves this Notice of Removal. Safeway removes this case within thirty days after service and within one year of commencement, on the basis of complete diversity of citizenship.

Safeway states as follows:

1. Plaintiff Cynthia Binkley ("Plaintiff") served Safeway with a Summons and Complaint for Damages for Employment Discrimination and Wrongful Termination ("Complaint") in this action on April 29, 2011. A true and correct copy of the Notice of Service of Process from Corporation Service Company, Safeway's registered agent, the Summons, the Complaint, and Safeway's Notice of Appearance (with certificate of service on

NOTICE OF REMOVAL
UNDER 28 U.S.C. § 1441
(DIVERSITY) - 1
Case No.

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SUITE 2900
SEATTLE, WASHINGTON 98104-1158
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1 Plaintiff) are appended as Exhibits A-D to the Declaration of Daniel P. Hurley (“Hurley
2 Decl.”).

3 2. The Complaint was the first pleading from which Safeway could ascertain that
4 the case was removable. Hurley Decl. ¶ 2.

5 3 On May 25, 2011, Plaintiff filed the Summons and Complaint in the Superior
6 Court of Washington for King County. *Id.* ¶ 3. The Superior Court assigned the action Case
7 No. 11-2-18652-1 SEA. Pursuant to King County Local Civil Rule 4, the Superior Court
8 issued a standard Order Setting Civil Case Schedule. *Id.* ¶ 3, Ex. E.

9
10 4. To Safeway’s knowledge, Plaintiff has not yet filed any other pleadings in this
11 action. *Id.* ¶ 3.

12 4. Original jurisdiction based on complete diversity of citizenship exists.

13 a. Plaintiff alleges that she is a resident of Seattle, King County,
14 Washington. *Id.*, Ex. C ¶ 1.2. Based on Safeway’s information and belief, Ms.
15 Binkley is a citizen of Washington State where she resides. *See* 28 U.S.C. § 1332(a).

16 b. Plaintiff identifies Safeway in the caption of the Complaint as a
17 Delaware corporation, and alleges that Safeway is a foreign corporation doing
18 business in King County, Washington. Hurley Decl., Ex. C ¶ 1.3. Safeway agrees.
19 *Id.* ¶ 4, Ex. F. Moreover, Safeway’s principal place of business is in Pleasanton,
20 California. *Id.* ¶ 5, Exs. G-H. Because Safeway has over 1400 stores located in more
21 than twenty states and no state contains a substantial predominance of the
22 corporation’s business (*id.*, ¶ 5, Ex. G), its principal place of business for purposes of
23 diversity jurisdiction under 28 U.S.C. § 1332(c)(1) is deemed to be Safeway’s
24 corporate headquarters or the “nerve center” in Pleasanton, California. *Breitman v.*
25
26

1 *May Co. California*, 37 F.3d 562, 564 (9th Cir. 1994) (where corporation had retail
2 locations in 30 states, principal place of business was location of corporate
3 headquarters); *Industrial Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1094 (9th Cir.
4 1990) (explaining the “nerve center” test).

5 c. Because Plaintiff is a citizen of Washington and Safeway is a citizen of
6 Delaware and California, complete diversity of citizenship exists between Plaintiff and
7 Safeway. 28 U.S.C. § 1332(a).

8 5. The amount in controversy requirement is also satisfied. Although the
9 Complaint does not set forth the dollar amount prayed for, pursuant to CR 101(a), Safeway
10 identifies the following reasons why it believes Plaintiff is seeking damages in excess of
11 \$75,000:
12

13 a. Plaintiff has asserted claims for discriminatory discharge due to
14 Plaintiff’s age, sex and physical limitation in violation of the Washington Law Against
15 Discrimination, RCW 49.60.180; wrongful termination in breach of employment
16 contact and/or employment policy; failure to accommodate Plaintiff’s physical
17 limitations in violation of the Washington Law Against Discrimination, RCW
18 49.60.180; and retaliation against Plaintiff for filing a worker’s compensation claim
19 and for requesting a workplace accommodation. Hurley Decl., Ex. C ¶¶3.1 - 3.7.
20 Plaintiff is seeking special damages for lost wages, benefits and out of pocket
21 expenses (including medical expenses); general damages for emotional distress;
22 reinstatement to her former position with Safeway or, in lieu or reinstatement, future
23 wage loss; and actual and reasonable attorney fees, litigation expenses and costs
24 incurred in this action under RCW 49.60.030 and/or RCW 49.48.010 to .030; and
25
26

1 pre-judgment interest on lost wages and economic loss. *Id.* Ex. C ¶¶4.1.1 - 4.1.4, Part
2 V. 1 - 4. Although Safeway denies that any claims or damages exist, its counsel
3 confirms that these types of claims, if substantiated and completely successful,
4 typically involve amounts in dispute that exceed \$75,000. *Id.* ¶ 6.

5 c. In fact, successful plaintiffs in such matters often recover attorney's
6 fees that exceed the \$75,000 jurisdictional amount. *Id.* ¶ 6.

7
8 6. Because Plaintiff's Complaint involves parties with diverse citizenship and the
9 matter in controversy exceeds \$75,000, this Court has jurisdiction pursuant to 28 U.S.C. §
10 1332(a)(1).

11 7. Because this Court is the District Court of the United States for the district
12 where this action is pending, it is the appropriate court for removal pursuant to 28 U.S.C. §
13 1441(a).

14 8. Pursuant to 28 U.S.C. § 1446(b), this Notice is filed with the Court within
15 thirty days after Safeway was served a copy of the Complaint (exclusive of Sunday, May 28,
16 and Monday, May 29 (a legal holiday), pursuant to FED. R. CIV. P. 6(a)).

17 9. Less than one year has passed since the commencement of this action. 28
18 U.S.C. § 1446(b).

19 10. In accordance with 28 U.S.C. § 1446(a), 28 U.S.C. § 1447(b), and CR 101(b),
20 filed with this Notice of Removal are true and complete copies of all process, pleadings, and
21 orders filed (or served) in the state court action, as verified by counsel. *See* Verification of
22 State Court Records.

23 11. Written notice to Plaintiff and her counsel is being served as required by 28
24 U.S.C. § 1446(d). Hurley Decl. ¶ 7.

25
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