

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

ALYSSA SANDERS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. _____
)	
KC BELL, INC., DELOREAN BLOW, AND NATALIE JOHNSTON)	
)	
Defendants.)	

DEFENDANT KC BELL, INC.’S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant KC Bell, Inc. (“Defendant KC Bell”) removes to the United States District Court for the Western District of Missouri the action captioned *Alyssa Sanders v. KC Bell, Inc. et al.*, Case No. 1816-CV05405, currently pending in the Circuit Court of Jackson County, Missouri. Defendant KC Bell removes this case on grounds of diversity jurisdiction under 28 U.S.C. § 1332 because all of the legitimate parties are citizens of different states and the amount in controversy exceeds \$75,000.00. In support of its Notice of Removal, Defendant KC Bell state as follows:

1. On March 2, 2018, Plaintiff Alyssa Sanders (“Plaintiff”) filed an action in the Circuit Court of Jackson County, Missouri, styled *Alyssa Sanders v. KC Bell, Inc, et al.*, Case No. 1816-CV005405 (the “State Court Action”). Plaintiff’s Petition purports to assert claims for violations under the Missouri Human Rights Act (“MHRA”).

2. On March 30, 2018, Defendant KC Bell was served with the summons and a copy of the Petition in the State Court Action. See **Exhibit A**, state court file.

3. Defendant Natalie Johnston was served with the Summons and a copy of the Petition in the State Court Action on March 15, 2018. Ms. Johnston consents to the removal of

this action.¹ Ms. Johnston will separately file a motion to dismiss her as a party defendant for the reasons set forth in this Notice of Removal as she has been improperly joined.

4. To date, Defendant Delorean Blow has not been served, so his consent is not needed for this removal. *See Roberts v. Palmer*, 354 F. Supp. 2d 1041, 1044 (E.D. Mo. 2005) (“It is well recognized that the consent of unserved defendants need not be obtained to effectuate removal”).

5. Defendant KC Bell is filing this Notice of Removal within thirty (30) days after service of the Summons and Petition. The date on or before which Defendant KC Bell is required by law to remove this action is April 30, 2018. Therefore, this Notice of Removal is timely filed under the provisions of 28 U.S.C. § 1446(b).

6. This action arises from Plaintiff’s employment, and Defendant KC Bell was Plaintiff’s employer. In her Petition, Plaintiff purports to bring two (2) causes of action under the MHRA; claims for sex discrimination and retaliation.

7. The Circuit Court of Jackson County, Missouri is located within the Western District of Missouri. Venue is proper in this Court because it is the “district and division embracing the place where such [state court] action is pending.” 28 U.S.C. §1441(a).

8. In accordance with 28 U.S.C. §1446(a), a copy of the entire court file in the State Court Action, including all pleadings and papers that have been filed and served on Defendants in the State Court Action, is attached to this Notice as **Exhibit A**. Plaintiff has not served upon Defendants any other process, pleadings, or orders.

9. Defendant will promptly, upon filing this Notice of Removal, give written notice to Plaintiff’s counsel and will file a copy of this Notice of Removal with the Circuit Court of

¹ A copy of Natalie Johnston’s consent is will be subsequently filed following this Notice of Removal.

Jackson County, Missouri, as required by 28 U.S.C. §1446(d). Attached to this Notice as **Exhibit B** is a copy of the Notice of Defendant's Notice of Removal to Federal Court which is being filed in the Circuit Court of Jackson County, Missouri.

DIVERSITY OF CITIZENSHIP

10. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 by reason of complete diversity jurisdiction between the parties.

11. According to Plaintiff's Petition, she is a resident of Missouri. (Petition, ¶ 3)

12. KC Bell is a Kansas Corporation with its principal place of business in Wichita, Kansas. (Petition, ¶ 5) Because KC Bell is incorporated in Kansas and has its principal place of business in Kansas, it is a citizen of Kansas for diversity purposes, and is not a citizen of Missouri. 28 U.S.C. § 1332(c)(1).

13. Although Defendant Johnston resides in Missouri, the right of an out-of-state defendant (such as KC Bell) to properly remove a matter to federal court "cannot be defeated by fraudulent joinder of a resident defendant." *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921); *see also Simpson v. Thomure*, 484 F.3d 1081, 1083 (8th Cir. 2007).

14. Upon information and belief, at the time Plaintiff filed her Petition, Defendant Blow was a resident of North Carolina. As noted, Defendant Blow has not been served.

15. The citizenship of Defendants Johnston and Blow should not be considered by the Court because they have been fraudulently joined and should be dismissed from this action.²

² Defendant Johnston will promptly file her Motion to Dismiss, within the time required by the Federal Rules of Civil Procedure.

FRAUDULENT JOINDER OF DEFENDANT JOHNSTON

16. Courts have long recognized fraudulent joinder as an exception to the complete diversity rule. *In re Prempro Prod.*, 591 F.3d 614, 620 (8th Cir. 2010) (citing 14B Charles Alan Wright, Arthur R. Miller & Edward H. Copper, *Federal Practice and Procedure* § 3723, at 788-89 (4th ed. 2009)). “Fraudulent joinder occurs when a plaintiff files a frivolous or illegitimate claim against a non-diverse defendant solely to prevent removal.” *Id.* (citing *Filla v. Norfolk S. Ry. Co.*, 336 F.3d 806, 809 (8th Cir. 2003)). The Eighth Circuit has noted that:

a proper review should give paramount consideration to the reasonableness of the basis underlying the state claim. Where applicable state precedent precludes the existence of a cause of action against a defendant, joinder is fraudulent. . . . [J]oinder is fraudulent when there exists ***no reasonable basis in fact or law supporting a claim*** against the resident defendants.

Filla, 336 F.3d at 810 (citations omitted; emphasis added). While all doubts should be resolved in favor of remand, *In re Prempro*, 591 F.3d at 620, the joinder is fraudulent and federal jurisdiction nevertheless should be retained “[i]f it is clear under governing state law that the complaint does not state a cause of action against the non-diverse defendant.” *Knudson v. Sys. Painters, Inc.*, 634 F.3d 968, 980 (8th Cir. 2011) (citing *Filla*, 336 F.3d at 810); *see also Iowa Public Service Co. v. Medicine Bow Coal Co.*, 556 F.2d 400, 406 (8th Cir. 1977).

17. If a party has been fraudulently joined, the court ignores that party’s citizenship in determining whether diversity jurisdiction exists. *Anderson v. Home Ins. Co.*, 724 F.2d 82, 84 (8th Cir. 1983).

18. The MHRA was amended *effective August 28, 2017*. See Senate Bill 43, June 30, 2017; A.L. 2017 S.B. 43. The MHRA amendment specifically provides:

(8) “Employer” shall not include ... (c) an individual employed by an employer.

R.S. Mo. § 213.010(8).

19. Plaintiff's right to sue under the MHRA is dated December 6, 2017, after the effective August 2017 date of the amendments to the MHRA. Plaintiff has fraudulently joined Defendants Johnston and Blow in her Petition because the MHRA no longer allows her to sue individual employees, like Johnston and Blow.

20. The version of the law that applies to a plaintiff's cause of action is the version that was effective on the date that the cause of action "accrued." See *Klotz v. St. Anthony's Med. Ctr.*, 311 S.W.3d 752, 759 (Mo. 2010) (applying version of the law that was effective at the time the plaintiffs' cause of action had accrued).

21. "A cause of action accrues . . . when the right to sue arises." *State ex rel. Beisly v. Perigo*, 469 S.W.3d 434, 437 (Mo. banc 2015) (quoting *Hunter v. Hunter*, 237 S.W.3d 100, 103 (Mo. 1951); see also *Chambers v. Nelson*, 737 S.W.2d 225, 226 (Mo. App. E.D. 1987); Black's Law Dictionary, 10th Ed. 2014 ("Accrue. A cause of action 'accrues' when a suit may be maintained thereon.")).

22. A person can only maintain a civil rights/discrimination cause of action under the Missouri Human Rights Act after the Missouri Commission on Human Rights issues a notice indicating she has a right to sue. § 213.111.1, RSMo; 8 CSR 60-2.025(7)(B)(6). Therefore, such a cause of action accrues when the MCHR issues a right-to-sue notice. See *Whitmore v. O'Connor Management, Inc.*, 156 F.3d 796, 800 (8th Cir. 1998) (holding an employee's failure to obtain a right-to-sue letter from the MCHR precluded her claims under the MHRA).

23. The civil rights laws of other states and the federal government similarly provide a plaintiff with the right to sue only after issuance of a letter from the appropriate administrative agency authorizing a cause of action to initiate in court.

24. These civil rights/discrimination claims, therefore, accrue upon issuance of the requisite right to sue letters by the applicable administrative agency. See, e.g., *Salgado v. Atl. Richfield Co.*, 823 F.2d 1322, 1326 (9th Cir. 1987) (“Under the [California’s human rights law], the right to sue accrues from the time a party receives a right-to-sue notice from the Department”); *Peters v. Black Tie Value Parking Serv., Inc.*, 2013 WL 148773 (W.D. Okla. Jan 14, 2013)(“A cause of action accrues [under Oklahoma’s human rights law] when the claim can be maintained, and a claim asserting discrimination accrues when the plaintiff receives a right to sue notice from the Equal Employment Opportunity Commission or Oklahoma Human Rights Commission.”); *Bickford v. Ponce de Leon Care Ctr.*, 918 F. Supp. 377, 378 (M.D. Fla. 1996) (“Her right to bring these claims in federal court accrued upon her receipt of the Notice of Right to Sue from the EEOC, which occurred in April or May of 1995.”).

25. On December 6, 2017, the MCHR issued a right-to-sue letter to Plaintiff and gave her a right to file a civil action. (Petition, ¶ 14) Thus, Plaintiff’s cause of action accrued on December 6, 2017.

26. In her Petition, Plaintiff purports to sue individual employees Natalie Johnston and Delorean Blow under the MHRA. (See Petition ¶¶ 9, 10)

27. At the time Plaintiff’s right to bring a civil action under the MHRA accrued, the MHRA did not allow Plaintiff to sue individual employees. The law prohibits an “employer” from engaging in discrimination or retaliation, §§ 213.055.1(1), §§ 213.075 RSMo. But the law specifically excludes individual employees from the definition of “employer,” stating: “Employer shall not include . . . (c) An individual employed by an employer” § 213.010(8), RSMo.

28. Because the MHRA does not provide for individual employee liability – and did not so provide at the time Plaintiff’s cause of action accrued – there is no reasonable basis in fact or law to support Plaintiff’s purported claims against Johnston or Blow in the Petition.

29. Thus, neither Johnston nor Blow is a “party in interest properly joined.” 28 U.S.C. § 1441(b).

30. There is complete diversity of citizenship between Plaintiff and KC Bell; the only proper Defendant in this case. *See* 28 U.S.C. § 1332(a)(1).

AMOUNT IN CONTROVERSY

31. Although Plaintiff does not plead a specific amount of damages, the amount in controversy claimed by Plaintiff exceeds \$75,000.00, exclusive of interest and costs.

32. The standard for determining whether a plaintiff’s claim meets the amount in controversy is “whether the fact finder might legally conclude” that a plaintiff’s damages are greater than \$75,000.00. *Quinn v. Kimble*, 228 F.Supp.2d 1038, 1040 (E.D. Mo. 2002).

33. Courts consider compensatory damages, punitive damages, and attorneys’ fees in determining whether the amount in controversy exceeds \$75,000.00. *See Allison v. Sec. Ben. Life Ins. Co.*, 980 F.2d 1213, 1215 (8th Cir. 1992); *Capital Indem. Co. v. Miles*, 978 F.2d 437, 438 (8th Cir. 1992).

34. Plaintiff’s alleged damages include compensatory damages of lost wages, emotional distress, punitive damages and attorneys’ fees. (*See* Petition)

35. While Plaintiff makes no specific monetary demand in her Petition, precedent establishes that the Court is not bound by amounts stated in the Petition when determining the amount in controversy. *See O’Keefe v. Midwest Transit, Inc.*, No. 4:06-cv-1060-DDN, 2006 WL 2672992, at *1 (E.D. Mo. Sept. 18, 2006) (holding that “[a]ny amounts stated in the petition are

not determinative, and the court must look to the substance of the claim to determine if federal jurisdiction is present”).

36. Plaintiff alleges she has suffered actual and compensatory damages, including emotional distress damages. (See Petition at ¶¶ 55-56). While “awards for pain and suffering are highly subjective and should be committed to the sound discretion of the jury,” *Frazier v. Iowa Beef Processors, Inc.*, 200 F.3d 1190, 1193 (8th Cir. 1999), damages for emotional distress can range up to \$200,000. See *Eich v. Bd. of Regents for C.M. St. Univ.*, 350 F.3d 752, 763-64 (8th Cir. 2004) (reinstating \$200,000 verdict for non-economic damages related to emotional distress under Title VII and MHRA and citing to a number of cases, including *Kucia v. Se. Ark. Cmty. Action Corp.*, 284 F.3d 944, 947-48 (8th Cir. 2002) (upholding \$50,000 in compensatory damages for emotional distress in race discrimination case).

37. Plaintiff also seeks an award of punitive damages. It is well established that punitive damages are included in the calculation to determine the amount in controversy. *Allison*, 980 F.2d at 1215 (citing *Bell v. Preferred Life Assur. Soc’y*, 320 U.S. 238, 240 (1943)). Punitive damages are recoverable for claims of discrimination and retaliation brought under the MHRA. Mo. Rev. Stat. § 213.111(2). Plaintiff has the burden to show that Defendants’ conduct was “outrageous because of its evil motive or reckless indifference to the rights of others.” *Browning v. President Riverboard Casino-MO.*, 139 F.3d 631, 636-37 (8th Cir. 1998) (quoting *Kientzy v. McDonnell Douglas Corp.*, 990 F.2d 1051, 1062 (8th Cir. 1993)). If successful, however, the potential recovery on punitive damages could, by itself, exceed the jurisdictional requirement for diversity jurisdiction. Finally, Plaintiff seeks attorneys’ fees. (Petition, ¶ 56) The Eighth Circuit permits the Court to consider attorneys’ fees in determining the amount in controversy. *Capital*

Indem. Corp, 978 F.2d at 438. In this case, Plaintiff's counsel likely will seek to recover attorneys' fees of tens or hundreds of thousands of dollars should Plaintiff prevail.

38. In this lawsuit, Plaintiff is requesting lost wages, emotional distress damages, attorneys' fees and punitive damages resulting from her employment with KC Bell. Accordingly, KC Bell has proven by a preponderance of the evidence that the amount in controversy, inclusive of actual damages, punitive damages and attorneys' fees, far exceeds \$75,000.

39. Exhibits A and B constitute all records and proceedings in the State Court Action.

CONCLUSION

For the above and foregoing reasons, Defendant KC Bell respectfully gives notice that the action now pending in the Circuit Court of Jackson County, Missouri, Case No. 1816-CV05405, is removed from to the United States District Court for the Western District of Missouri pursuant to 28 U.S.C. § 1441.

Respectfully submitted,

/s/ Samantha J. Monsees

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ATTORNEYS FOR DEFENDANT
KC BELL, INC.

CERTIFICATE OF SERVICE

I certify on this 30th day of April, 2018 that a true and correct copy of the above and foregoing document was filed using the Court's Electric Filing System which will automatically send electronic notice of filing to the following:

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