

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PARLER LLC,

Plaintiff,

v.

AMAZON WEB SERVICES, INC., and
AMAZON.COM, INC.,

Defendants.

No. 2:21-cv-270

DEFENDANTS' NOTICE OF
REMOVAL

King County Superior Court
Case No. 21-2-02856-6 SEA

TO: Clerk, United States District Court for the Western District of Washington;

AND TO: Parler LLC

Defendants Amazon Web Services, Inc. ("AWS") and Amazon.com, Inc. remove this case, originally filed in the Superior Court of the State of Washington for King County under case number 21-2-02856-6 SEA, to the United States District Court for the Western District of Washington at Seattle. Defendants remove this case pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, on the grounds described below.

I. INTRODUCTION

Parler's state court complaint is an extreme attempt to forum shop. After suffering an unequivocal defeat on its motion for preliminary injunction before this Court and then agreeing to amend its federal court complaint, Parler instead dismissed the federal complaint and filed a new complaint in state court involving the same nucleus of facts. This gamesmanship is nothing more than a transparent effort to evade this Court's dim view of the merits of Parler's claims.

1 But Parler’s scheme is futile. The parties are diverse, the amount in controversy exceeds
2 \$75,000, and thus Defendants file this notice of removal of this case back to federal court.

3 **II. STATEMENT OF FACTS**

4 1. Parler initially filed suit in this Court on January 11, 2021. Case No. 2:21-cv-31-
5 BJR Dkt. 1. Attached as **Exhibit 1** is a true and correct copy of the complaint in that action
6 (“Federal Complaint”).

7 2. On January 21, 2021, Judge Rothstein denied Parler’s motion for preliminary
8 injunction, finding Parler had failed to show a likelihood of prevailing on its claims, including its
9 claim that AWS breached the parties’ contract by allegedly terminating the contract without
10 sufficient notice. In particular, the Court found Parler “has not denied that ... [it] was in
11 violation of [its] Agreement” with AWS, *id.* at 9, and had “failed to demonstrate the likelihood
12 that AWS breached the CSA” because “the evidence at this point suggests that AWS’s
13 termination ... was in response to Parler’s material breach,” *id.* at 10. Attached as **Exhibit 2** is a
14 true and correct copy of Judge Rothstein’s order (the “Federal Order”) (Case No. 2:21-cv-31-
15 BJR Dkt. 34).

16 3. Parler has not served Defendants in the State Action.

17 4. After receiving the order denying its request for preliminary injunction, Parler
18 informed AWS that it intended to amend the Federal Complaint. Parler asked AWS to stipulate
19 to allow Parler to file the amendment by February 16, 2021, and accordingly, AWS agreed not to
20 respond to the Federal Complaint. The stipulation was entered January 28, 2021. *See* W.D.
21 Wash. Case No. 2:21-cv-31-BJR, Dkt. 38 (Joint Stipulation for Amendment and Response
22 Schedule) (attached as **Exhibit 3**). On February 15, 2021, Parler’s counsel contacted AWS’s
23 counsel, asking for additional time to file its amended complaint. AWS agreed, and Parler and
24 AWS stipulated that Parler would file the amended complaint by March 2, 2021. *See* W.D.
25 Wash. Case No. 2:21-cv-31-BJR, Dkt. 40 (Stipulated Motion and Proposed Order for
26 Amendment and Response Schedule) (attached as **Exhibit 4**).

1 5. On March 2, 2021, Parler filed a lawsuit based on the same facts and alleging at
2 least one of the same claims in King County Superior Court, 21-2-02856-6 SEA (the “State
3 Complaint”). Attached as **Exhibit 5** is a true and correct copy of the State Complaint.

4 6. In the State Complaint, Parler asserts that “as a result of the unlawful actions of
5 Amazon and AWS, Parler has permanently lost ... hundreds of millions of dollars in annual
6 advertising revenue,” among other damages, and also demands treble damages and attorneys’
7 fees on several of its claims. State Complaint ¶ 11; *see also id.* ¶¶86, 114, 130, 142, 149, 165,
8 222, 229, 237, 250; *id.* p. 65.

9 7. Defendants are entitled to remove this action under 28 U.S.C. § 1332 because
10 complete diversity of citizenship exists and the amount in controversy exceeds \$75,000. *See* 28
11 U.S.C. § 1446(a) (requiring a “short and plain statement of the grounds for removal”).

12 **III. DIVERSITY JURISDICTION EXISTS**

13 **A. Complete Diversity Exists**

14 8. This case satisfies the complete diversity requirement. A person’s state of
15 domicile determines his or her state citizenship. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853,
16 857 (9th Cir. 2001). Under 28 U.S.C. § 1332, a corporation “shall be deemed to be a citizen of
17 every State . . . by which it has been incorporated and of the State . . . where it has its principal
18 place of business.” A corporation’s principal place of business is “where a corporation’s officers
19 direct, control, and coordinate the corporation’s activities,” which is generally “the place where
20 the corporation maintains its headquarters.” *Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010).

21 9. Parler is a Nevada limited liability corporation with its principal place of business
22 in Henderson, Nevada. *See* Federal Complaint ¶ 10. Parler therefore is a citizen of Nevada.

23 10. Defendants are incorporated in Delaware with their principal places of business in
24 Seattle, Washington. *See* State Complaint ¶¶ 13, 14; Federal Complaint ¶ 11.

25 11. Because Defendants are not citizens of the same state as Parler, the parties are
26 completely diverse.

1 12. Because Defendants have not been served in the State Action, 28 U.S.C.
2 § 1441(b)(2) does not bar removal. *See, e.g., Gibbons v. Bristol-Myers Squibb*, 919 F.3d 699,
3 705 (2d Cir. 2019); *Texas Brine Company v. American Arbitration Association*, 955 F.3d 482,
4 487 (5th Cir. 2020); *Encompass Insurance Co. v. Stone Mansion Restaurant Inc.*, 902 F.3d 147,
5 153 (3d Cir. 2018).

6 **B. Plaintiffs Demand More than \$75,000**

7 13. The State Complaint avoids specifying a damage amount, but the allegations
8 make clear that the amount in controversy exceeds \$75,000. In evaluating the amount in
9 controversy, a court considers “the reality of what is at stake in the litigation, using reasonable
10 assumptions underlying the defendant’s theory of damages exposure.” *Gierke v. Allstate Prop.*
11 *& Cas. Ins. Co.*, No. C19-0071JLR, 2019 WL 1434883, at *2 (W.D. Wash. Apr. 1, 2019)
12 (quoting *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1198 (9th Cir. 2015)).

13 14. Under Local Civil Rule 101(a), where the complaint does not “set forth the dollar
14 amount prayed for,” a removal petition shall “set forth the reasons which cause petitioner to have
15 a good faith belief that the plaintiff is seeking damages in excess of the jurisdictional amount of
16 this court.” As the Supreme Court has held, “a defendant’s notice of removal need include only
17 a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*
18 *Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89, 135 S. Ct. 547, 190 L. Ed. 2d
19 495 (2014).

20 15. It is facially apparent from the State Complaint that Parler is seeking damages in
21 excess of \$75,000 because Parler alleges that “millions” of dollars are at stake. For instance, the
22 State Complaint alleges:

- 23 • “As a result of the unlawful actions of Amazon and AWS, Parler has permanently lost
24 tens of millions of current and prospective future users—many of whom have
25 migrated to other platforms—and hundreds of millions of dollars in annual
26 advertising revenue. Parler therefore brings this suit for multiple violations of
27

1 Washington’s contract, tort, unfair-competition, and consumer protection laws.” State
2 Complaint ¶ 11.

- 3 • “AWS’s unfair and deceptive acts and practices have resulted in substantial damages
4 to Parler, including but not limited to the loss of millions of dollars of revenue from
5 advertisements.” State Complaint ¶ 86.
- 6 • “AWS caused severe economic injury to Parler by depriving it of millions of dollars
7 of advertising revenues and by making it extremely difficult for Parler to get back
8 online with another service provider, which injury AWS knew would occur given the
9 reputational injury Parler had suffered at AWS’s hands.” State Complaint ¶ 250.

10 *See also* State Complaint ¶¶ 114, 130, 142, 149, 165, 222, 229, 237.

11 16. “The amount in controversy includes the amount of damages in dispute, as well as
12 attorneys’ fees, if authorized by statute[.]” *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th
13 Cir. 2005). Treble damages are also considered. *See, e.g., Nw. Ry. Museum v. Indian Harbor Ins.*
14 *Co.*, No. C17-1060JLR, 2017 WL 4466619, at *3 (W.D. Wash. Oct. 5, 2017) (when plaintiffs
15 requested treble damages, the court trebled the amounts alleged to determine the amount in
16 controversy and denied remand); *Lim v. Nat’l Gen. Ins. Co.*, No. C15-383 RSL, 2015 WL
17 12025326, at *1 (W.D. Wash. Apr. 30, 2015) (plaintiff sought actual damages, treble damages
18 under statute, and reasonable attorney’s fees and costs, which court considered in determining
19 the amount in controversy in denying remand); *Rain v. Ameriprise Auto & Home Ins. Agency,*
20 *Inc.*, No. C14-5088 RJB, 2014 WL 1047244, at *3 (W.D. Wash. Mar. 18, 2014) (when plaintiffs
21 requested treble damages and defendants showed that plaintiffs’ damages would be at least
22 \$41,000.00 before trebling, court denied remand).

23 17. The State Complaint seeks “damages, including trebled and exemplary damages,
24 in an amount to be determined at trial,” in addition to “attorney’s fees and costs.” State
25 Complaint p. 65. The State Complaint includes fifteen separate causes of action, including six
26 under the Washington Consumer Protection Act, which provides for treble damages and
27 attorneys’ fees and costs to a prevailing plaintiff. *See* RCW 19.86.090.

1 18. Thus, the State Complaint alleges Amazon caused “millions” of dollars in
2 damages, and requests that the Court treble those damages and award statutory attorneys’ fees.
3 The amount in controversy far exceeds \$75,000.

4 **IV. REMOVAL IS TIMELY**

5 19. Parler filed the State Complaint on March 2, 2021. The notice of removal is
6 timely pursuant to 28 U.S.C. § 1446.

7 **V. INTRADISTRICT ASSIGNMENT**

8 20. This action is properly removed to the Seattle Division of the Western District of
9 Washington. Under LCR 3(e), cases where the claims arose in King County are properly
10 removed to Seattle. Parler elected to file this action in King County. For these reasons,
11 Defendants have properly removed this case to the Seattle Division. *See* LCR 3(e).

12 **VI. DEFENDANT HAS SATISFIED THE REMAINING PROCEDURAL**
13 **REQUIREMENTS**

14 21. The United States District Court for the Western District of Washington is the
15 federal judicial district embracing the superior courts of King County, where Parler filed the
16 State Action. 28 U.S.C. § 128(b).

17 22. A copy of State Complaint is attached as **Exhibit 5**. Defendants separately will
18 file a Verification of State Court Records under LCR 101(c).

19 23. Promptly after filing this Notice of Removal, Defendants will give written notice
20 to Parler’s counsel and will file a copy of this Notice with the Clerk of King County Superior
21 Court pursuant to 28 U.S.C. § 1446(d). A true and correct copy of the Notice of Filing a Notice
22 of Removal is attached as **Exhibit 6**.

23 **VII. NO WAIVER**

24 24. Defendants have additional defenses to this action and do not waive any
25 defenses.¹

26 ¹ Defendant expressly preserves all Rule 12(h) objections. *See* Wright & Arthur R. Miller,
27 *Federal Practice & Procedure* § 1395 (3d ed. 2004) (“When a defendant removes an action from
a state court in which he has been sued, he consents to nothing and ‘waives’ nothing; he is

1 Defendants therefore give notice that the above-entitled action is removed from the
2 Superior Court of the State of Washington for King County to the United States District Court
3 for the Western District of Washington at Seattle.
4

5 DATED this 3rd day of March, 2021.

6 Davis Wright Tremaine LLP
7 Attorneys for Defendants Amazon Web
8 Services, Inc. and Amazon.com, Inc.

9 By s/ Ambika K. Doran

10 Ambika Kumar Doran, WSBA #38237
11 920 Fifth Avenue, Suite 3300
12 Seattle, WA 98104-1610
13 Telephone: 206-622-3150
14 E-mail: ambikadoran@dwt.com

15 Alonzo Wickers IV, Cal. State Bar #169454
16 *pro hac vice* application forthcoming
17 865 S. Figueroa Street, Suite 2400
18 Los Angeles, CA 90017
19 Telephone: 213-633-6800
20 E-mail: alonzowickers@dwt.com

21
22
23
24
25
26 _____
27 exercising a privilege unconditionally conferred by statute, and, since the district court to which
he must remove it is fixed by law, he has no choice, without which there can be no ‘waiver.’”) (quoting *Greenberg v. Giannini*, 140 F.2d 550, 553 (2d Cir. 1944)).

CERTIFICATE OF SERVICE

I hereby certify that counsel of record has been served a true and correct copy of the foregoing *Notice of Removal* by electronic mail and by U.S. mail at the below address:

Angelo J. Calfo, WSBA# 27079
CALFO EAKES LLP
1301 Second Avenue, Suite 2800
Seattle, WA 98101
Email: angeloc@calfoeakes.com

David J. Groesbeck, WSBA No. 24749
DAVID J. GROESBECK, P.S.
1333 E. Johns Prairie Rd.
Shelton, WA 98584
Email: david@groesbecklaw.com

DATED this 3rd day of March, 2021.

Davis Wright Tremaine LLP
Attorney for Defendants

By s/ Ambika K. Doran
Ambika K. Doran, WSBA # 38237
920 Fifth Avenue, Suite 3300
Seattle, WA 98104-1610
Telephone: 206-757-8030
Fax: 206-757-7030
E-mail: ambikadoran@dwt.com