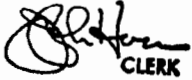


UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

**FILED**  
**MAY 25 2016**  
  
CLERK

STATE OF SOUTH DAKOTA, )  
)  
Plaintiff, )  
)  
v. )  
)  
WAYFAIR INC., )  
OVERSTOCK.COM, INC., and )  
NEWEGG INC., )  
)  
Defendants. )

CIV. NO. 16- 3019

**NOTICE OF REMOVAL**

**TO: THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA, CENTRAL DIVISION**

Pursuant to 28 U.S.C. §§ 1441(a) and 1446, Defendants Wayfair Inc., Overstock.com, Inc., and Newegg Inc. (“Defendants”) hereby give notice of removal of the action captioned *State of South Dakota v. Wayfair Inc., et al.*, Docket No. 32CIV16-000092, now pending in the Circuit Court of the Sixth Judicial Circuit, in and for Hughes County, South Dakota, (the “Action”), to the United States District Court for the District of South Dakota, Central Division.

As grounds for removal, the Defendants state as follows:

1. On or about April 29 or May 2, 2016, Plaintiff State of South Dakota (“the State”) served upon each Defendant a copy of the Complaint in the Action. True and accurate copies of the Complaint and all other documents served upon each of the Defendants are attached hereto as Exhibits A, B, and C, respectively.

2. Pursuant to 28 U.S.C. § 1446, removal to the United States District Court for the District of South Dakota, Central Division, is appropriate because this action is being removed from the Sixth Judicial Circuit in and for Hughes County, South Dakota. *See* D.S.D. Local Rules, Divisions of District of South Dakota.
3. This Notice of Removal is timely filed within thirty (30) days after the receipt by the Defendants of a copy of the Complaint, as required under 28 U.S.C. § 1446(b).
4. This Notice of Removal is filed by all Defendants remaining in the Action. Systemax Inc., which was originally named as a Defendant in the Action, has since been voluntarily dismissed from the Action pursuant to a Notice of Voluntary Dismissal pursuant to SDCL § 15-6-41(a)(1)(A) filed by the State on May 19, 2016.
5. The Action is one over which the United States District Court has jurisdiction, as required under 28 U.S.C. § 1441(a), and as described below.
6. The Action seeks an affirmative declaration regarding the validity of a new state statute under the United States Constitution. On March 22, 2016, South Dakota Governor Dennis Daugaard signed into law “An Act to provide for the collection of sales taxes from certain remote sellers,” (South Dakota Senate Bill No. 106) (“the Act”). The Act was adopted with the express understanding that its terms violate established requirements for state sales and use taxes under the Commerce Clause, U.S. Const. Art. I, Sec. 3, Cl. 8, as reaffirmed by the United States Supreme Court in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). In *Quill*, the

Supreme Court held that a State lacks the authority, under the “substantial nexus” standard applicable under the Commerce Clause, to require a company with no physical presence in the State to collect or report the State’s sales and use taxes. *Quill*, 504 U.S. at 313-19.

7. The Action by the State seeks a declaratory judgment of the constitutional validity of the Act as applied to the Defendants, each of which the State alleges has no physical presence in South Dakota. Complaint, ¶ 19. As asserted and acknowledged by the State in the Complaint, “a declaration in its favor will require abrogation of the United States Supreme Court’s decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992)” and “the State recognizes that *a change in federal constitutional doctrine will be necessary* for the State to prevail in this case.” *Id.*, ¶¶ 1, 51 (emphasis added).
8. The Complaint’s discussion of the “Relevant Legal Background” to the Action also contains a lengthy recitation of the State’s view of the federal constitutional doctrine on which the Action is premised and depends. *Id.*, ¶¶ 2-11.
9. The Complaint further alleges that the Action presents a “justiciable and ripe controversy, between adverse parties, in which the State has a legally protected interest.” *Id.*, ¶ 23.
10. The Complaint thus alleges a question of federal law “arising under the Constitution . . . of the United States” which is necessarily raised by the Action, is actually disputed and substantial, and over which the exercise of jurisdiction by the federal District Court is both available and proper pursuant to 28 U.S.C. §

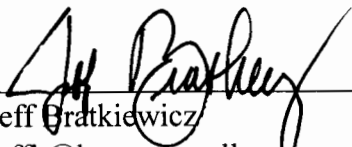
1331. See *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308, 313-14 (2005).

11. Defendants will promptly file with the Clerk for the Sixth Judicial Circuit in and for Hughes County, South Dakota, a Notice of Filing of Notice of Removal pursuant to 28 U.S.C. § 1446(b). A copy of this Notice is attached as Exhibit D.

WHEREFORE, Defendants remove this action, previously commenced in the Circuit Court of the Sixth Judicial Circuit, in and for Hughes County, South Dakota, to the United States District Court for the District of South Dakota, Central Division.

Dated this 25th day of May, 2016.

BANGS, MCCULLEN, BUTLER, FOYE & SIMMONS, LLP

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\*Admission *pro hac vice* pending


*Attorneys for the Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 25, 2016, I served a true and correct copy of the foregoing

Notice of Removal, via e-mail and U.S. Mail, postage prepaid, upon the following:

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*Attorneys for Plaintiff*

  
\_\_\_\_\_  
One of the Attorneys for the Defendants