

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

SUZANNE MUELLER, a citizen of the State
of Washington,

Plaintiff,

v.

MOVE, INC., a citizen of the States of
California and Delaware,

Defendant.

Case No.

DEFENDANT'S NOTICE OF REMOVAL
PURSUANT TO 28 U.S.C. §§ 1332, 1441,
1446, 128 (b)

**TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON AND TO PLAINTIFF SUZANNE MUELLER AND HER ATTORNEY
OF RECORD:**

PLEASE TAKE NOTICE that Defendant Move, Inc. ("Defendant" or "Move") hereby
removes the above-titled action from the Superior Court of the State of Washington for the
County of King ("King County Superior Court") to the United States District Court for the
Western District of Washington, asserting original jurisdiction under 28 U.S.C. Section 1332(a)
(Diversity Jurisdiction) and removal jurisdiction under 28 U.S.C. Sections 1441(a)-(b) and 1446
and this Court's Local Rule 101. Move states that removal is proper for the following reasons:

PLEADINGS, PROCESS, AND PROCEEDINGS IN STATE COURT

1. Plaintiff Suzanne Mueller (“Plaintiff” or “Mueller”) has commenced this action against Move in King County Superior Court by serving a summons (“Summons”) and complaint (“Complaint”) on Move in California. A copy of the Summons, Complaint, and proof of service of the Summons and Complaint are attached hereto as Attachments 1, 2, and 3, respectively, and to the concurrently filed Declaration of Molly Gabel (“Gabel Decl.”) at Exhibit A.

2. Mueller served the Summons and Complaint on Move on August 18, 2020 without filing the Complaint in King County Superior Court. (Attachment 3; Gabel Decl. ¶ 3.)

3. On September 3, 2020, Move served its Notices of Appearances on Mueller. (Gabel Decl. ¶ 4, Exhibit B.)

4. On September 3, 2020, Move demanded, pursuant to Washington State Court Rules, Superior Court Civil Rules 3(a) (CR 3(a)), that Mueller file the Complaint in King County Superior Court. (Gabel Decl. ¶ 5, Exhibit C.)

5. As of the date of this Notice of Removal, upon information and belief, Mueller has not filed the Complaint in King County Superior Court. (Gabel Decl. ¶ 7.)

6. Attachments 1, 2, and 3 hereto and Exhibits B and C to the Declaration of Molly Gabel constitute all pleadings, processes, and documents served on, or filed by either party in this matter.

7. The Complaint alleges claims under Washington law, including (1) negligent retention; (2) negligent supervision; (3) sexual harassment, age discrimination, sex discrimination, and retaliation under the Washington Law Against Discrimination; (4) intentional infliction of emotional distress; (5) negligent infliction of emotional distress; (6) wrongful discharge; and (7) retaliation. (Attachment 2, Cmpl. ¶¶ 4.1-10.6.) Through the Complaint, Mueller seeks back pay with prejudgment interest, compensation for past and future pecuniary losses (including out-of-pocket expenses), past and future non-pecuniary losses (*e.g.*, emotional

1 pain, suffering, anguish, loss of enjoyment of life, damage to reputation), and attorneys' fees,
 2 among other forms of relief. (Attachment 2, Cmplt. at Prayer for Relief at 3-7.)

3 8. Move denies that it owes anything by the Complaint, but treats the Complaint's
 4 allegations as true for purpose of this Notice of Removal only.

5 **TIMELINESS OF REMOVAL**

6 9. A defendant has 30 days after service to file a Notice of Removal. 28 U.S.C. §
 7 1446(b)(1). The time for filing of a Notice of Removal begins to run when a party has been
 8 formally served with the summons and complaint under applicable state law "setting forth the
 9 claim for relief upon which such action or proceeding is based." *Id.*; *Murphy Bros., Inc. Michetti*
 10 *Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999) (holding that "a named defendant's time to
 11 remove is triggered by simultaneous service of the summons and complaint").

12 10. The service of process which triggers the 30-day period to remove is governed by
 13 state law. *City of Clarksdale v. BellSouth Telecomms, Inc.*, 428 F.3d 206, 210 (5th Cir. 2005)
 14 ("Although federal law requires defendant to file a removal motion within thirty days of service,
 15 the term 'service of process' is defined by state law.). Under Washington law a civil action is
 16 commenced by service of a summons and complaint or by filing a complaint. *See, e.g., Melvin v.*
 17 *Kingsolver*, Case No. C12-5401 RJB, 2012 WL 13026632 (W.D.Wash. June 12, 2012) (citing
 18 RCW 4.28.020)).

19 11. This Notice of Removal is timely because it is filed within 30 days of service of
 20 the Summons and Complaint on Move on August 18, 2020.

21 **JURISDICTION BASED ON DIVERSITY OF CITIZENSHIP**

22 12. The Court has original jurisdiction of this action under 28 U.S.C. Section
 23 1332(a)(1). As set forth below, this action is removable pursuant to the provisions of 28 U.S.C.
 24 Section 1441(a) and (b) because the amount in controversy exceeds \$75,000, exclusive of
 25 interest and costs, and the lawsuit is between citizens of different states.

Jurisdiction Based on Amount in Controversy

13. While Move denies any liability as to Mueller’s claims, the amount in controversy requirement is satisfied because the amount in controversy exceeds the jurisdictional minimum of \$75,000. *See, e.g., Sanchez v. Monumental Life Ins.*, 102 F.3d 398, 403-04 (9th Cir. 1996) (“[T]he defendant must provide evidence establishing that it is ‘more likely than not’ that the amount in controversy exceeds [the threshold] amount.”) (citations omitted); *Lewis v. Hartford Cas. Ins. Co.*, No. 3:15-CV-05275- RBL, 2015 WL 4430971, at *2 (W.D.Wash. July 20, 2015) (what ultimately matters is the amount put into controversy by the complaint, “not what the a defendant will actually owe”) (internal citations and quotations omitted).

14. As explained by the Ninth Circuit, “the amount-in-controversy inquiry in the removal context is not confined to the face of the complaint.” *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) (finding that the Court may consider facts presented in the removal petition). When the amount in controversy is not apparent from the face of the complaint, a defendant may state underlying facts supporting its assertion that the amount in controversy exceeds the jurisdictional threshold. *See Gaus v. Miles, Inc.*, 980 F.2d 564, 566-67 (9th Cir. 1992).

15. In determining the amount in controversy, the Court must consider the aggregate of damages and attorneys’ fees. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998).

16. Further, in determining the amount in controversy at the time of removal, the Court is not limited to the amount of damages incurred as of the time of removal, but may look forward in time to damages that can be recovered in the future. *See Chavez v. JP Morgan Chase & Co.*, 888 F.3d 413, 417-18 (9th Cir. 2018) (“That the amount in controversy is assessed at the time of removal does not mean that the mere futurity of certain classes of damages precludes them from being part of the amount in controversy. In sum the amount in controversy includes all relief claimed at the time of removal to which the plaintiff would be entitled if she prevails.”).

1 17. Here, considered together, the damages sought by Mueller, along with attorneys’
 2 fees that might be awarded if she prevails, establishes that the amount in controversy exceeds
 3 \$75,000, exclusive of interest and costs, as required by 28 U.S.C. Section 1332(a). Pursuant to
 4 Local Rule 101(a), Move sets forth below the basis for its good-faith belief that the amount in
 5 controversy exceeds \$75,000:

6 18. **Backpay and Pecuniary Losses.** Move employed Mueller from December 14,
 7 2015 until June 5, 2020. Declaration of Terry Kontonickas filed concurrently herewith
 8 (“Kontonickas Decl.”) at ¶ 7. As a result of her alleged wrongful termination, Mueller seeks to
 9 be made whole with “back pay with prejudgment interest, in amounts to be determined at trial”
 10 and “compensation for past and future pecuniary losses.” (Attachment 2, Cmplt. at Prayer for
 11 Relief (3) and (4).)

12 19. At the time Move terminated her employment, Mueller was a full-time salaried
 13 employee, making \$243,262.65 in regular salary annually (\$4,678.13 weekly, or \$116.9532
 14 hourly, based on a 40 hour work week). (Kontonickas Decl. ¶ 9.) Given that Mueller alleges she
 15 was wrongfully terminated, Mueller already has incurred 15 weeks of lost salary totaling
 16 \$70,171.95 (\$4678.13 per week X 15 weeks (June 6, 2020 to September 17, 2020)) since her last
 17 day of employment on June 5, 2020.

18 20. Assuming this matter is resolved at trial in the 19.3 month median time period
 19 from filing to disposition in this Court (*i.e.*, on or about April 25, 2022),¹ and Mueller remains
 20 unemployed for a total of 98 weeks (June 6, 2020 through April 25, 2022), Mueller’s lost salary
 21 alone would equal \$458,456.74 (\$4678.13 per week X 98 weeks (June 6, 2020 through April 25,
 22 2022)).

23 ¹ Based on the Judicial Caseload Profile for the Western District of Washington obtained from
 24 the United States Courts’ official website, the median time from filing of a lawsuit through a
 25 disposition at trial in a civil matter is 19.3 months. *See* Table C-5, U.S. District Courts -- Median
 26 Time Intervals from Filing to Disposition of Civil Cases Terminated, by District and Method of
 Disposition, During 12-Month Period Ending March 31, 2020 at Column K, Row 93 (available
 at: http://www.uscourts.gov/sites/default/files/data_tables/fjcs_c5_0331.2020.xlsx).

21. Mueller also routinely received, among other forms of compensation, bonus payments in addition to her annual regular salary. (Kontonickas Decl. ¶ 10.) She received bonus payments in each of 2017, 2018, and 2019, with the minimum annual bonus payment during that period totaled over \$39,000. (*Id.*) Accordingly, the estimated amounts of back pay and compensation described above in paragraphs 19 and 20 actually underestimate the amount of back pay and compensation at issue through trial in this matter.

22. **Emotional Distress Damages.** Mueller also claims damages for emotional distress. (Attachment 2, Cmplt. at ¶¶ 7.1-8.4, Prayer for Relief at (5).) A review of jury verdicts in Washington demonstrates that emotional distress awards in Washington Law Against Discrimination cases meet and exceed \$75,000. *See, e.g., Bunch v. King Cty. Dep't of Youth Servs.*, 155 Wash.2d 165, 180 (2005) (“[E]vidence of emotional distress [was] limited, but . . . sufficient to support an award of noneconomic damages” in the amount of \$260,000” in discrimination case); *Martini v. Boeing Co.*, 137 Wash.2d 357, 362 (1999) (noting jury award of \$75,000 for pain, suffering, and emotional distress in discrimination case).

23. **Attorneys’ Fees.** Mueller also claims that she is entitled to attorneys’ fees. (Attachment 2, Cmplt. at ¶ 1.1, Prayer for Relief (6).) Attorneys’ fees are properly considered in calculating the amount in controversy for purposes of removal on grounds of diversity jurisdiction. *See, e.g., Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (claims for statutory attorneys’ fees to be included in amount in controversy, regardless of whether such an award is discretionary or mandatory).

24. Move anticipates depositions being taken in this case, and that ultimately, Move will file a motion for summary judgment. Based on defense counsel’s experience, attorneys’ fees in employment discrimination cases often exceed \$75,000. In this regard, it is more likely than not that the fees will exceed \$75,000 through discovery and a summary judgment disposition, and the fees would certainly exceed \$75,000 if the case proceeds to trial. (Gabel Decl. ¶ 8.)

25. **Mueller's Settlement Demand.** On or about June 1, 2020, Mueller demanded \$304,078.33 in regular salary alone, among other demands, to settle this dispute. (Kontonickas Decl. ¶ 11.) This Court considers settlement demands when determining reasonable estimates of the amount in controversy. *See, e.g., Flores v. Safeway, Inc.*, No. C19-0825-JCC, 2019 WL 4849488, at *6 (W.D. Wash. Oct. 1, 2019); *Babcock v. ING Life Ins. & Annuity Co.*, No. 12-CV-5093-TOR, 2012 WL 3862031, at *2 (E.D. Wash. Sept. 5, 2012) (*citing Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir.2002)).

26. As paragraphs 18 through 25 demonstrate, more than \$75,000 is at issue in this matter. Based on the foregoing estimates, Mueller's allegations and prayer for relief in the Complaint, and her settlement demand, Move has shown that Mueller seeks damages within the jurisdictional authority of this Court.

Jurisdiction Based on Diversity of Citizenship

27. **Mueller's Citizenship.** For diversity purposes, a person is a "citizen" of the state in which the person is domiciled. *See Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). A person's domicile is the place where the person resides with the intent to remain indefinitely. *See Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). Residence is *prima facie* evidence of domicile. *See State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994) ("[T]he place of residence is *prima facie* [evidence of] domicile.").

28. Mueller is and, at all times since the commencement of this lawsuit has been, a resident and citizen of the State of Washington. Mueller alleges in the Complaint that she "is a citizen and resident of the United States and resides in King County, Washington." (Attachment 2, Cmpl't. at ¶ 3.2.) Additionally, Mueller's home address while she was employed at Move was in Kirkland, Washington. (Kontonickas Decl. ¶ 12.)

29. Accordingly, Mueller was at all relevant times, and still is, a citizen of the State of Washington.

1 30. **Move’s Citizenship.** For diversity purposes, “a corporation is a citizen of (1) the
2 state under whose laws it is organized or incorporated; and (2) the state of its ‘principal place of
3 business.’” *Davis v. HSBC Bank Nevada, N.A.*, 557 F.3d 1026, 1028 (9th Cir. 2009) (citing 28
4 U.S.C. § 1332(c)(1)).

5 31. The United States Supreme Court in *The Hertz Corp. v. Friend*, 559 U.S. 77, 92-
6 93 (2010), held that a corporate entity’s “principal place of business” for determining its
7 citizenship is its “nerve center”:

8 We conclude that “principal place of business” is best read as referring to the
9 place where a corporation’s officers direct, control, and coordinate the
10 corporation’s activities. It is the place that Courts of Appeals have called the
11 corporation’s “nerve center.” And in practice it should normally be the place
12 where the corporation maintains its headquarters . . .”

11 *Id.*

12 32. Move is, and ever since this action commenced has been, incorporated under the
13 laws of the State of Delaware. (Kontonickas Decl. ¶ 4.)

14 33. Move’s principal place of business is, and has been at all times since this action
15 commenced, located in the State of California. (Kontonickas Decl. ¶ 5.) Specifically, Move’s
16 corporate headquarters is in Santa Clara, California. (*Id.*) Move’s leadership and most major
17 executive administrative operations are located in California. (*Id.*) Santa Clara, California is
18 where Move’s President and CEO and many other corporate leaders have their offices and
19 typically spend most of their working time. (*Id.*) The core executive and administrative
20 functions for Move are carried out in Santa Clara, California and in Westlake Village, California.
21 (*Id.*) Move does not maintain any corporate offices or administrative operations in Washington.
22 (*Id.*)

23 34. For the foregoing reasons, for purposes of diversity of citizenship, Move is a
24 citizen of Delaware and a citizen of California.

25 35. Mueller is a citizen of Washington. Move is a citizen of Delaware and California,
26 but not of Washington. There is complete diversity amongst the parties.

1 43. Therefore, Move gives notice that the above-titled case against it in King County
2 Superior Court has been removed from King County Superior Court to this Court.

3 **PRAYER FOR REMOVAL**

4 WHEREFORE, Move prays that the above-titled action be removed from the Superior
5 Court of Washington in and for King County to the United States District Court for the Western
6 District of Washington.

7 DATED this 17th day of September, 2020.

8 SEYFARTH SHAW LLP
9 Attorneys for Move, Inc.

10 By: s/ Molly Gabel
11 Molly Gabel, WSBA 47023
12 Amanda J. Hailey, WSBA 51166
13 999 Third Avenue, Ste. 3000
14 Seattle, WA 98104
15 P: (206) 946-4923
16 F: (206) 260-8839
17 mgabel@seyfarth.com
18 ahailey@seyfarth.com

CERTIFICATE OF SERVICE

I hereby declare that on this 17th day of September, 2020, I caused a copy of ***Move, Inc.'s Notice of Removal*** to be sent by Federal Express and emailed to the following:

Robin Williams Phillips
LASHER HOLZAPFEL
SPERRY & EBBERSON, P.L.L.C.
2600 Two Union Square
601 Union Street
Seattle, WA 98101
Email: phillips@lasher.com

DATED this 17th day of September, 2020.

s/ Molly Gabel

Molly Gabel, Attorney for Move, Inc.

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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **COUNTY OF KING**

9 SUZANNE MUELLER,

10 Plaintiff,

11 v.

12 MOVE, INC.

13 Defendants.
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15
16

NO.

SUMMONS

17 **TO THE DEFENDANTS:** A lawsuit has been started against you in the above-
18 entitled court by plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which
19 is served upon you with this summons.

20 In order to defend against this lawsuit, you must respond to the complaint by stating
21 your defense, in writing, and serve a copy upon the undersigned attorney for the plaintiff within
22 twenty (20) days after service of this summons (or within forty (40) days after service if you
23 were served outside the state of Washington), excluding the day of service, or a default
24 judgment may be entered against you without notice. A default judgment is one where plaintiff
25 is entitled to what plaintiff asks for because you have not responded. If you serve a notice of
26

SUMMONS - 1

**LASHER
HOLZAPFEL
SPERRY &
EBBERSON**

ATTORNEYS AT LAW
2600 TWO UNION SQUARE
601 UNION STREET
SEATTLE WA 98101-4000
TELEPHONE 206 624-1230
Fax 206 340-2563

1 appearance on the undersigned attorney, you are entitled to notice before a default judgment
2 may be entered.

3
4 You may demand that the plaintiff file this lawsuit with the court. If you do so, the
5 demand must be in writing and must be served upon the person signing this summons. Within
6 14 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the
7 service on you of this summons and complaint will be void.

8 If you wish to seek the advice of an attorney in this matter, you should do so promptly
9 so that your written response, if any, may be served on time.

10 This summons is issued pursuant to Superior Court Civil Rule 4.

11 DATED this 17th day of August, 2020.
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13
14 LASHER HOLZAPFEL
SPERRY & EBBERSON, P.L.L.C.

15
16 By s/ Robin Williams Phillip s
17 Robin Williams Phillips, WSBA #17947
18 Attorney for Plaintiff
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

SUZANNE Z. MUELLER,

Plaintiff,

v.

MOVE, INC.,

Defendant.

NO.

COMPLAINT FOR NEGLIGENT
SUPERVISION, NEGLIGENT RETENTION,
NEGLIGENT AND INTENTIONAL
INFLICTION OF EMOTIONAL DISTRESS,
SEXUAL HARASSMENT, AGE
DISCRIMINATION, RETALIATION, AND
WRONGFUL DISCHARGE

COMES NOW plaintiff Suzanne Z. Mueller, by and through her attorneys, LASHER HOLZAPFEL SPERRY & EBBERSON, P.L.L.C., and for causes of action against the named defendant states and alleges as follows:

I. PRELIMINARY STATEMENT

1.1 This is an action under the Washington Law Against Discrimination, RCW 49.60 *et seq.*; RCW 49.52 *et seq.*; and Washington common law for declaratory injunctive relief compensatory and monetary damages, costs, and attorney's fees. Plaintiff alleges that defendant harassed and discriminated against her on the basis of sex and age. During the time she worked for defendant Move, Inc., plaintiff was employed as the Senior Vice President of Industry Relations. Defendant failed to provide plaintiff with a safe working environment and failed to adequately supervise employees, including but not limited to, The Chief Revenue Officer, Raymond Picard.



1 1.2 Plaintiff further alleges that defendant committed the torts of intentional and
2 negligent infliction of emotional distress, negligent supervision and retention and wrongful
3 discharge. Plaintiff seeks injunctive relief, compensatory damages and all other damages allowed
4 by law, and payment of costs and attorney's fees.

5 II. JURISDICTION AND VENUE

6 2.1 Plaintiff herein incorporates by reference the foregoing paragraphs of plaintiff's
7 Complaint as if set forth herein at length.

8 2.2 This Court has jurisdiction pursuant to RCW 4.92.010 *et seq.*

9 2.3 This action arises under RCW 49.60 *et seq.*, and Washington State common law.

10 2.4 At all relevant times, defendant Move, Inc. is a Delaware Corporation doing
11 business within King County in the State of Washington, employing eight or more employees.

12 2.5 At all relevant times the Executive Vice President of Sales, Raymond Picard, who
13 was later promoted to Chief Revenue Officer, acted in a managerial and supervisory capacity on
14 behalf of the Move, Inc.

15 2.6 All acts complained of herein were committed by defendant while doing business
16 in King County, Washington.

17 2.7 Declaratory injunctive and equitable relief is sought pursuant to RCW 49.60 *et seq.*

18 2.8 Costs and reasonable attorney's fees may be awarded pursuant to RCW 49.60.030
19 *et seq.*, and other Washington statutes.

20 III. STATEMENT OF CLAIMS

21 3.1 Plaintiff herein incorporates by reference the foregoing paragraphs of plaintiff's
22 Complaint as if set forth herein at length.

23 3.2 Plaintiff Suzanne Z. Mueller had been employed by defendant Move, Inc. since
24 December 14, 2015 as the Senior Vice President of Industrial Relations. She is a citizen and
25 resident of the United States and resides in King County, Washington. Plaintiff is 56 years old.

26 3.3 At all times hereto, Move, Inc. was and is responsible for all acts committed by its
agents, representatives, and employees.

1 3.4 During her years of employment, plaintiff performed her duties well above
2 expectation and had always received exceptional annual performance reviews.

3 3.5 At all material times hereto, the Chief Revenue Officer/the Executive Vice
4 President of Sales, and the Executive Vice President of Software were in superior positions to
5 plaintiff, and could and did supervise and direct her work activities.

6 3.6 During plaintiff's employment, the roles of Chief Revenue Officer/ Executive Vice
7 President of Sales and the Executive Vice President of Software were held by men.

8 3.7 In 2016, after it became known that violent and sexual comments had been made
9 by males at an industry event, the Senior Vice President of Sales, Raymond Picard, commented to
10 the plaintiff "they were just being boys on a bus shooting the shit. Why do you want to penalize
11 these guys for just a few random comments?"

12 3.8 In 2016, the Executive Vice President of Software said to plaintiff that "all field
13 employees' cell phone expenses have been capped at the same amount, although I bet the women
14 are going to ask for more because they talk more. Are you going to ask for more?"

15 3.9 In 2017, the Executive Vice President of Software said to plaintiff "What on earth
16 does your family do with their mom traveling so much?"

17 3.10 The environment of harassment and discrimination was hostile and abusive towards
18 women and unreasonably interfered with many female employees' work performance. Said
19 environment created an intimidating, hostile, and offensive working environment.

20 3.11 In 2019, an international women's day event was held where a panel of executive
21 women from several industries met to network and discuss current issues. Plaintiff was the
22 representative who attended on behalf of the defendant. Following the event, the Chief Revenue
23 Officer commented "this women's event and panel is meaningless and made the entire day a waste
24 of work time."

25 3.12 In 2019, the Chief Revenue Office told plaintiff "I don't know how you could think
26 to lose weight on the road with your travel schedule and your metabolism is clearly slowing down."

1 **3.13** In 2019, a NAR Executive had been reported to the defendant for sexually harassing
2 a female employee over dinner and at meetings. In response to the complaint, the Chief Executive
3 Officer told plaintiff “but that’s her job, and yours, to deal.”

4 **3.14** In 2019, the Chief Revenue Office told plaintiff “as a woman, you shouldn’t walk
5 anywhere outside the hotel after dark.”

6 **3.15** In the fall of 2019, a complaint was made by a female employee claiming that she
7 had been sexually harassed in the workplace by the Vice President of National Association of
8 Realtors, Chief Operating Officer, Ken Burlington. Plaintiff reported the harassment and supplied
9 corroborating information to the Chief People Officer doing the investigation and to corporate
10 legal counsel.

11 **3.16** In 2017, in reviewing the plaintiff’s expense reports, the Executive Vice President
12 of Software said to the plaintiff “should I have to cover Tylenol on an expense report just because
13 you got cramps or something?”

14 **3.17** On May 4, 2020, plaintiff received notice that she had been chosen for layoff. She
15 is one of the highest executive being laid off. It is believed and therefore averred that plaintiff’s
16 duties and responsibilities have been reassigned to a male employee.

17 **3.18** Plaintiff was the subject of verbal, sexual innuendo and has suffered as a result of
18 the sexually charged atmosphere.

19 **3.19** The environment of harassment and discrimination was hostile and abusive towards
20 women and unreasonably interfered with many female employees’ work performance. Said
21 environment created an intimidating, hostile, and offensive working environment.

22 **3.20** All those persons participating in the harassment and discriminatory conduct
23 directed towards the plaintiff and other similarly situated females held superior positions and
24 management roles at Move, Inc. with immediate or successor authority over plaintiff.

25 **3.21** Defendant took no effectual action to stop the harassment directed at women
26 despite actual and/or constructive knowledge of such unlawful activity, and, in fact, often
condoned such harassment.

1 **3.22** Plaintiff found defendant's harassing conduct to be wholly unwelcome, and
 2 experienced substantial and enduring emotional distress as a direct result of defendant's conduct.
 3 Defendant acted in total disregard of the high probability of causing emotional distress to the
 4 plaintiff in that defendant knew, or should have known there was a high degree of probability that
 5 emotional distress would result to plaintiff from the harassment and discrimination and defendant
 6 acted in conscious disregard of those probable results.

7 **3.23** The unlawful employment practices complained of in the above paragraphs were
 8 intentional and willful.

9 **3.24** The unlawful employment practices complained of in the above paragraphs were
 10 done with malice or with reckless indifference to plaintiff's rights as protected by state laws.

11 **3.25** Defendant had a duty to refrain from inflicting emotional distress upon the plaintiff,
 12 but negligently breached this duty. As a result of this breach of duty by defendant, plaintiff
 13 suffered damages in an amount to be proven at trial.

14 **3.26** Defendant acted intentionally or recklessly, thereby causing severe emotional
 15 distress to plaintiff. As a result of this breach of duty by defendant, plaintiff suffered damages in
 16 an amount to be proven at trial.

17 **3.27** Defendant Move, Inc. failed to act to eliminate the harassment, discrimination and
 18 retaliation at its facilities, and was negligent in its supervision and its retention of its supervisory
 19 employees and other employees, thus breaching a duty it owed to plaintiff. As a result of this
 20 breach of duty, plaintiff suffered damages in an amount to be proven at trial.

21 **3.28** As a result of defendant's conduct, plaintiff has suffered and continues to suffer
 22 economic losses, mental anguish, pain and suffering, and other non-pecuniary losses.

23 **IV. FIRST CAUSE OF ACTION: NEGLIGENT RETENTION**

24 **4.1** Plaintiff herein incorporates by reference the foregoing paragraphs of plaintiff's
 25 Complaint as if set forth herein at length.
 26

1 4.2 Defendant Move, Inc. breached its duty of care owed to plaintiff by failing to
2 provide plaintiff with a safe working environment.

3 4.3 At all material times hereto, The Chief Revenue Officer/the Executive Vice
4 President of Sales and the Executive Vice President of Software were employees of Move, Inc.

5 4.4 At all material times hereto, Move, Inc. knew or should have known of the
6 inappropriate conduct, and that these employees were unfit for their positions.

7 4.5 As a direct and proximate result of Move, Inc.'s negligent retention of The Chief
8 Revenue Officer/the Executive Vice President of Sales and the Executive Vice President of
9 Software, plaintiff has been harmed in an amount to be proven at trial.

10
11 **V. SECOND CAUSE OF ACTION: NEGLIGENT SUPERVISION**

12 5.1 Plaintiff herein incorporates the foregoing paragraphs to plaintiff's Complaint as if
13 set forth herein at length.

14 5.2 At all material times hereto, The Chief Revenue Officer/the Executive Vice
15 President of Sales and the Executive Vice President of Software were employees of Move, Inc.

16 5.3 At all material times hereto, Move, Inc. knew or should have known, with
17 reasonable investigation of their inappropriate conduct.

18 5.4 Move, Inc. failed to adequately supervise and control the inappropriate behavior of
19 these individuals and others.

20 5.5 Defendant failed to prevent, remedy or reprimand the unlawful activities described
21 above as perpetuated and participated in by supervisory personnel and other personnel of authority
22 at Move, Inc.

23 5.6 As plaintiff's employer, Move, Inc. had a duty to provide a safe workplace.

24 5.7 Move, Inc. breached its duty to provide a safe workplace for plaintiff.

25 5.8 As a direct and proximate result of Move, Inc.'s failure to adequately supervise its
26 employees, and its failure to take meaningful action within a reasonable time to correct the

1 atmosphere of harassment and to take reasonable action against the employees who participated in
 2 such harassment, plaintiff has been harmed in an amount to be proven at trial.

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 4 **VI. THIRD CAUSE OF ACTION: WASHINGTON LAWS**
 5 **AGAINST DISCRIMINATION**

6 **6.1** Plaintiff incorporates herein by reference all the foregoing paragraphs of her
 7 Complaint as if fully set forth herein at length.

8 **6.2** The above-described harassment on the basis of sex is a violation of RCW 49.60 *et*
 9 *seq.*, and Washington common law.

10 **6.3** Plaintiff was a victim of sexual harassment and age and gender discrimination by
 11 the defendant, which would not have occurred but for her sex and age. The harassment and
 12 discrimination was sufficiently pervasive so as to affect the terms, conditions and/or privileges of
 13 employment by creating an intimidating, hostile and offensive working environment that any
 14 woman would have found offensive. The actions made against plaintiff by defendant were due to
 15 plaintiff's gender and were not accidental, but were intentional, inappropriate, and demeaning in
 16 nature.

17 **6.4** Defendant Move, Inc. knew, or should have known, of the hostile and offensive
 18 working environment created and sustained by its agents and employees, all of whom held a
 19 supervisory position at all times during the aforementioned harassment. Move, Inc. took no action
 20 against various employees and agents, and did nothing to stop the retaliatory actions taken against
 21 plaintiff after she provided supporting facts in the sexual harassment investigation.

22 **6.5** Defendant Move, Inc. is strictly liable for the actions of its agents and employees,
 23 and it knew or should have known of the unlawful conduct, as its agents and were direct or tacit
 24 participants in the unlawful discriminatory and retaliatory acts. Defendant was negligent in failing
 25 to remedy, deter, or otherwise correct the unlawful discrimination and retaliation directed towards
 26 plaintiff, which was perpetuated, conducted and condoned by its own agents and employees. Such



1 inaction on the part of defendant constituted a reckless indifference to the protected rights of
2 plaintiff.

3 6.6 The unlawful employment practices complained of above were intentional.

4 6.7 The unlawful employment practices complained of above were done with malice
5 or with reckless indifference to the unprotected rights of the plaintiff.

6 6.8 As a result of defendant's unlawful employment practices, plaintiff has been
7 harmed in an amount to be proven at trial.

8 **VII. FOURTH CAUSE OF ACTION: INTENTIONAL INFLICTION OF**
9 **EMOTIONAL DISTRESS**

10 7.1 Plaintiff hereby incorporates by reference the foregoing paragraphs of plaintiff's
11 Complaint as if set forth herein at length.

12 7.2 Defendant acted in conscious disregard of the high probability of causing emotional
13 distress to plaintiff. Defendant knew, or should have known, there was a high degree of probability
14 that emotional distress would result to plaintiff from the discriminatory and retaliatory conduct.
15 Knowing this, defendant acted in conscious disregard of those probable results.

16 7.3 Defendant engaged in acts of sexual harassment and discrimination based upon
17 gender and age, which caused plaintiff to suffer emotional distress and mental suffering.
18 Defendant is liable for the intentional infliction of emotional distress and mental suffering incurred
19 by the plaintiff in the past, present and future.

20 7.4 Defendant is vicariously liable under the doctrine of *repondeat superior* for its
21 agent's actions that caused plaintiff to suffer emotional distress and mental suffering, and by way
22 of its failure to take reasonably prompt and adequate corrective action calculated to end the
23 discrimination and retaliation. Defendant is thus liable for the intentional infliction of emotional
24 distress and mental suffering incurred by the plaintiff in the past, present and future.

1 **VIII. FIFTH CAUSE OF ACTION: NEGLIGENT INFLICTION OF**
2 **EMOTIONAL DISTRESS**

3 **8.1** Plaintiff herein incorporates the foregoing paragraph of plaintiff's Complaint as if
4 set forth herein at length.

5 **8.2** Defendant acted in a negligent disregard of the high probability of causing
6 emotional distress to plaintiff in that defendant knew or should have known that there was a high
7 degree of probability that emotional distress would result to plaintiff from the unwelcomed
8 discrimination and retaliatory conduct. Knowing this, defendant acted in negligent disregard of
9 those probable results.

10 **8.3** Defendant acted negligently in its conduct, knowing that emotional distress would
11 result to plaintiff from the discriminatory and retaliatory conduct. Knowing this, the defendant
12 acted in conscious disregard.

13 **8.4** Certain acts of harassment and retaliation engaged in by defendant's agents caused
14 plaintiff to suffer emotional distress and mental suffering incurred by the plaintiff in the past,
15 present, and future.

16 **XII. SIXTH CAUSE OF ACTION: WRONGFUL DISCHARGE**

17 **9.1** Plaintiff herein incorporates by reference the foregoing paragraphs of plaintiff's
18 complaint as if set forth herein at length.

19 **9.2** At all material times hereto, plaintiff was successfully employed by Move, Inc..

20 **9.3** Plaintiff was wrongfully terminated from employment based upon plaintiff's
21 exercise of statutorily protected rights, to wit, the reporting of and participation in a sexual
22 harassment investigation.

23 **9.4** Said termination was intentional and wrongful and violates the laws of the State of
24 Washington and defendant's policies.

25 **9.5** As a result of defendant's illegal conduct, plaintiff has been injured in an amount
26 to be proven at trial.

XIII. SEVENTH CAUSE OF ACTION: RETALIATION

10.1 Plaintiff herein incorporates the foregoing paragraphs to plaintiff's complaint as if set forth herein at length.

10.2 At all material times hereto, plaintiff was successfully employed by Move, Inc..

10.3 Move, Inc. engaged in a pattern and practice of retaliating against the plaintiff for plaintiff's participation and support of coworkers' complaints of sexual harassment.

10.4 Move, Inc. engaged in retaliatory acts including, but not limited discharge.

10.5 Termination of employment is an adverse employment actions.

10.6 As a direct and proximate result of defendant's retaliatory conduct, plaintiff has been damaged in an amount to be proven at trial.

XIV. PRAYER FOR RELIEF

Wherefore, plaintiff Suzanne Z. Mueller respectfully requests that this Court:

(1) Grant a permanent injunction enjoining defendant, his officers, successors, agents, assigns, and all persons in active concert or participation with it, from engaging in any employment practice which discriminates on the unlawful bases detailed above;

(2) Order defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for all employees, and which eradicate the effects of his past and present unlawful employment practices;

(3) Order defendant to make plaintiff whole by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of his unlawful employment practices;

(4) Order defendant to make plaintiff whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in the above paragraphs, including out-of-pocket expenses, in amounts to be determined at trial;

1 (5) Order defendant to make plaintiff whole by providing compensation for past and
2 future nonpecuniary losses resulting from the unlawful practices complained of in the above
3 paragraphs, including without limitation emotional pain, suffering, anguish, and loss of enjoyment
4 of life, damage to reputation in amounts to be determined at trial;

5 (6) Award plaintiff all of the recoverable costs of this action, attorneys' fees and
6 prejudgment interest.

7 (7) Grant any additional or further relief as provided by law which this Court finds
8 appropriate, equitable, or just;

9 DATED this 17th day of August, 2020.

10 LASHER HOLZAPFEL
11 SPERRY & EBBERSON, P.L.L.C.
12
13

14 By: s/ Robin Williams Phillips
15 Robin Williams Phillips, WSBA #17947
16 Attorney for Plaintiff Suzanne Z. Mueller
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**Service of Process
Transmittal**

08/18/2020

CT Log Number 538114504

TO: Jan Tomon
MOVE, Inc.
30700 Russell Ranch Rd., Suite 1000
Westlake Village, CA 91362

RE: Process Served in California

FOR: Move, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: SUZANNE Z. MUELLER, PLTF. vs. MOVE, INC., DFT.

DOCUMENT(S) SERVED: -

COURT/AGENCY: None Specified
Case # NONE

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 08/18/2020 at 13:30

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: None Specified

ATTORNEY(S) / SENDER(S): None Specified

ACTION ITEMS: CT has retained the current log, Retain Date: 08/18/2020, Expected Purge Date: 08/23/2020

Image SOP

Email Notification, Jan Tomon Jan.Tomon@move.com

SIGNED: C T Corporation System

ADDRESS: 1999 Bryan Street
Suite 900
Dallas, TX 75201

For Questions: 866-665-5799
SouthTeam2@wolterskluwer.com

PROCESS SERVER DELIVERY DETAILS

Date: Tue, Aug 18, 2020

Server Name: judith smith

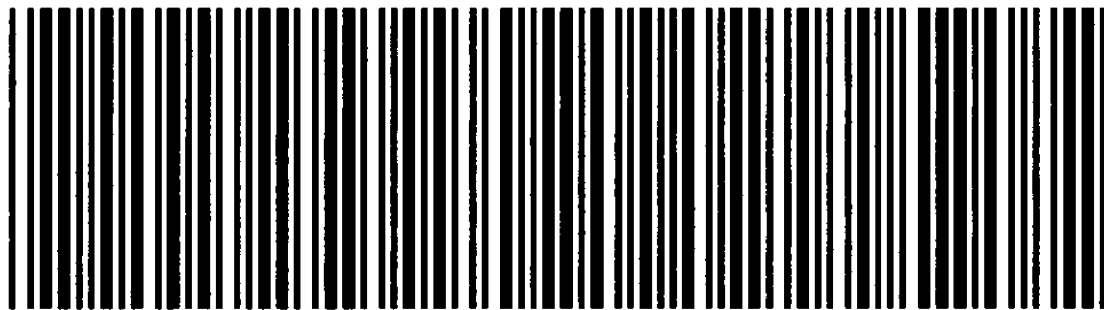
Location: Los Angeles, CA-LA

Entity Served Move, Inc. dba Move Holdings

Agent Name

Case Number N/A

Jurisdiction CA-LA



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE