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FILED  
 09 FEB 17 PM 2:14  
 RICHARD B. LEXING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 (3) [Signature]

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10 ATTORNEYS FOR DEFENDANTS  
 MARK CUBAN AND DALLAS  
 BASKETBALL, LTD.

E-filing  
 MEJ

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA

13 RICHARD ROE, RICHARD ROE, II and DON  
 14 A. NELSON, Individuals,

Case No. **09-0682**

15 Plaintiffs,

(State Court No. RG08410275)

16 vs.

17 JOHN DOE, MARK CUBAN, an individual; and  
 DALLAS BASKETBALL, LTD., a partnership,  
 18 and DOES 1 through 10,

**NOTICE OF REMOVAL**

19 Defendants.

20 **TO: CLERK OF THE ABOVE-ENTITLED COURT:**

21 **TO: PLAINTIFFS AND THEIR ATTORNEY OF RECORD:**

22  
 23 **NOTICE IS HEREBY GIVEN** that Mark Cuban and Dallas Basketball, Ltd.  
 24 (“Defendants”), Defendants in the above-captioned action, No. RG08410275 in Superior Court  
 25 in and for the County of Alameda, hereby file a Notice of Removal of said action to the United  
 26 States District Court for the Northern District of California pursuant to 28 U.S.C. §§ 1332, 1441  
 27 and 1446.  
 28

1 Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendants present the following facts to  
2 the Judge of the United States District Court for the Northern District of California.

3 **I. FACTUAL BACKGROUND**

4 1. A civil action bearing the above-caption was commenced in the Superior Court of  
5 California, in and for the County of Alameda, Cause No. RG08410275, on September 17, 2008,  
6 and is pending therein. A true and correct copy of the Complaint is attached to the Appendix to  
7 Notice of Removal filed contemporaneously with this Notice of Removal.

8 2. On September 19, 2008 Plaintiffs filed their First Amended Complaint for  
9 Damages. A true and correct copy of the First Amended Complaint is attached to the Appendix  
10 to Notice of Removal filed contemporaneously with this Notice of Removal.

11 3. The First Amended Complaint in the pending action alleges a cause of action for  
12 defamation.

13 4. Defendant Dallas Basketball, Ltd. was served with a copy of the First Amended  
14 Complaint and Citation in this matter on January 16, 2009, and Defendant Mark Cuban was  
15 served with a copy of the First Amended Complaint and Citation in this matter on January 20,  
16 2009. This Notice of Removal is therefore being filed within 30 days after service of the  
17 Complaint and Citation upon Defendants and less than one year after commencement of the  
18 action. See 28 U.S.C. §1446(b).

19 **II. PARTIES AND JURISDICTION**

20 5. Plaintiff is residing in Oakland, California and is a citizen of California.

21 6. Defendant Mark Cuban is an individual residing in Dallas, Texas and is a citizen  
22 of Texas.

23 7. Defendant Dallas Basketball, Ltd. is a limited partnership organized under the  
24 laws of the State of Texas and is a citizen of Texas. All of its partners reside in a state other than  
25 California and are citizens of states other than California.

26 8. Defendants John Doe and Does 1 through 10, inclusive, are allegedly unknown  
27 and have been sued by Plaintiff under fictitious names.

1           9.       Removal of this action is proper under 28 U.S.C. §§ 1332(a) and 1441(a) because  
2 diversity jurisdiction exists over this action. There is complete diversity between Plaintiff and  
3 Defendants<sup>1</sup> in that Plaintiff and Defendants are citizens of different states and the amount in  
4 controversy exceeds \$75,000. *See* 28 U.S.C. § 1332(a).

5           10.       Where, as here, a plaintiff seeks recovery of an unspecified amount, diversity  
6 jurisdiction exists when a removing defendant establishes by a preponderance of the evidence  
7 that the amount in controversy exceeds \$75,000. *Matheson v. Progressive Specialty Ins. Co.*,  
8 319 F.3d 1089, 1090-91 (9th Cir. 2003). This burden may be met if “it is facially apparent” from  
9 the complaint that the plaintiff’s claims “are likely” to exceed \$75,000, exclusive of interest and  
10 costs. *Id.*

11           11.       While Plaintiff’s complaint does not specify an amount of requested damages, it  
12 is facially apparent that the damages claimed by him exceed the \$75,000 jurisdictional  
13 threshold. First, the lawsuit is pled as an “unlimited civil case,” for which the amount in  
14 controversy must exceed \$25,000. *See* California Code of Civil Procedure § 88 (“A civil action  
15 or proceeding other than a limited civil case may be referred to as an unlimited civil case.”).  
16 Further, Plaintiff prays for both general and special damages for allegedly defamatory statements  
17 made by Defendant Mark Cuban during radio interviews and to newspaper publications via the  
18 internet, which statements Plaintiff claims “intended to put Nelson into disrepute, shame, and  
19 obloquy” and which injured his reputation for honesty and integrity and damaged his trade,  
20 business and professional reputation.” (Complaint at pp. 7-9). These statements, Plaintiff  
21 contends, arise out of the parties’ disagreement and subsequent arbitration of Plaintiff’s salary  
22 and consulting compensation totaling approximately \$7 million. As is evidenced by the face of  
23 Plaintiff’s Original Petition, Plaintiff’s lengthy list of factual averments and subsequent harm  
24 shows that the amount in controversy is in excess of the jurisdictional requirement. *See White v.*  
25 *FCI USA, Inc.*, 319 F.3d 672, 674 (5th Cir. 2003).

26 \_\_\_\_\_  
27 <sup>1</sup> The citizenship of “John Doe” defendants sued under fictitious names is disregarded for purposes of diversity under 28  
28 U.S.C. § 1441(a).

