

ORIGINAL

1 COOLEY LLP
 2 MICHAEL G. RHODES (116127) (rhodesmg@cooley.com)
 3 MATTHEW D. BROWN (196972) (brownmd@cooley.com)
 101 California Street, 5th Floor
 San Francisco, CA 94111-5800
 Telephone: (415) 693-2000
 4 Facsimile: (415) 693-2222

Paid
 NP
 (1)

Filed

JUN 10 2011

E-filing

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

RYAN UNG, CHI CHENG and ALICE
 ROSEN, on Behalf of Themselves and All
 Others Similarly Situated,

CV No 11-02829 PSG

Plaintiffs,

Cal. Superior Court, County of Santa
 Clara
 Case No. 111CV200467

v.

NOTICE OF REMOVAL OF ACTION
 UNDER 28 U.S.C. §§ 1332(d), 1446, &
 1453(b)

FACEBOOK, INC.,

Defendant.

Complaint Filed: May 9, 2011

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332(d), 1446, and 1453(b), defendant Facebook, Inc. ("Facebook" or "Defendant"), by its undersigned attorneys, hereby removes to this Court the above-captioned civil action, and all claims and causes of action therein, from the Superior Court of California, County of Santa Clara, to the United States District Court for the Northern District of California. Defendant states as follows:

Jurisdiction and Authority for Removal

1) On May 5, 2011, an action was commenced by plaintiffs Ryan Ung, Chi Cheng, and Alice Rosen (collectively, "Plaintiffs") against Facebook in the Superior Court of the State of

1 California in and for the County of Santa Clara, entitled “Ryan Ung, Chi Cheng, and Alice Rosen,
2 on Behalf of Themselves and All Others Similarly Situated v. Facebook, Inc.,” with case number
3 111CV200467. Attached hereto as **Exhibits 1 through 7** are all available documents in the *Ung*
4 case file, including a copy of the *Ung* complaint (“Complaint”).

5 2) The Northern District of California encompasses Santa Clara County.

6 3) Plaintiffs served Facebook with the Complaint on May 11, 2011.

7 4) This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d) (the
8 Class Action Fairness Act (“CAFA”)) because (a) a member of the putative class is a citizen of a
9 state different from any defendant, 28 U.S.C. § 1332(d)(2)(A); (b) the putative class action
10 consists of at least 100 putative class members, 28 U.S.C. § 1332(d)(5)(B); and (c) the amount in
11 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, 28 U.S.C.
12 § 1332(d)(2).

13 5) This action is a “class action” within the meaning of CAFA because Plaintiff seeks
14 to represent a class of persons in a civil action filed under California Code of Civil Procedure
15 § 382 (Compl. ¶ 19), which is a “statute . . . of judicial procedure authorizing an action to be
16 brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B).

17 6) Defendant may thus remove this action to this Court under 28 U.S.C. § 1453(b).

18 **Citizenship of Parties and Putative Class (28 U.S.C. § 1332(d)(2)(A))**

19 7) On the basis of Plaintiffs’ allegations in the Complaint (Compl. ¶¶ 4-6), Defendant
20 is informed that at the time Plaintiffs filed this action, Ryan Ung and Chi Cheng were, and still
21 are, residents of San Francisco County, California, and Alice Rosen was, and still is, a resident of
22 Sunnyvale, California.

23 8) At the time this action was filed, Facebook was, and still is, a corporation
24 organized under the laws of Delaware with its principal place of business in Palo Alto, California.

25 9) Facebook operates a social networking website (www.facebook.com) that enables
26 users to connect and share with other users and the world around them. Users of the Facebook
27 website reside throughout the United States.

28

1 10) Facebook users may also share their experiences on other websites that have
2 integrated Facebook Connect or added the “Like” button social plugin. Visitors to these websites
3 reside throughout the United States.

4 11) Plaintiffs seek to represent classes of plaintiffs who reside throughout the United
5 States. As stated in the Complaint:

6 Pursuant to California Code of Civil Procedure § 382, Plaintiffs
7 bring this action on behalf of themselves and two subclasses of
8 Internet users: 1) *all Facebook members* who visited a website
9 displaying the Facebook “Like” button from April 22, 2010 to the
10 date of filing of this complaint; and 2) *all non-Facebook members*
11 who visited a website in the Facebook Connect network and
12 subsequently visited a website displaying the Facebook “Like”
13 button from April 22, 2010 to the date of the filing of this
14 complaint.

15 (Compl. ¶ 19 (emphases added).)

16 12) Thus, at least one member of the putative classes of plaintiffs is a citizen of a state
17 other than Delaware or California. 28 U.S.C. § 1332(d)(2)(A).

18 **Number of Class Members (28 U.S.C. § 1332(d)(5)(B))**

19 13) Plaintiffs allege that Facebook tracks users’ browsing activity on websites that
20 have integrated Facebook Connect or added the “Like” button social plugin. (Compl. ¶ 14.)
21 Plaintiffs allege that Facebook uses different “tracking mechanism[s] . . . depending on whether
22 the Internet user is a Facebook member or not.” (Compl. ¶ 15.)

23 14) Plaintiffs seek to represent all Internet users who have allegedly been tracked
24 using the “Like” button, with a subclass for Facebook users and a subclass for non-Facebook
25 users. (Compl. ¶ 19.)

26 15) Plaintiffs allege that “tens of millions of Internet users . . . have been tracked via
27 the Facebook ‘Like’ button.” (Compl. ¶ 22.)

28 16) There are therefore at least 100 members of Plaintiffs’ putative classes. 28 U.S.C.
§ 1332(d)(5)(B).

//

//

//

1 **Amount in Controversy (28 U.S.C. § 1332(d)(2))**

2 17) Assuming, for purposes of this Notice of Removal, that all of Plaintiffs'
3 allegations were true and the putative classes of plaintiffs were to be certified, the amount in
4 controversy, exclusive of interest and costs, exceeds \$5,000,000. 28 U.S.C. § 1332(d)(2).

5 18) Plaintiffs bring two claims: (i) violation of Article 1, Section 1 of the California
6 Constitution and (ii) unjust enrichment. (Compl. ¶¶ 28-39.)

7 19) Plaintiffs do not allege a specific dollar figure for damages or restitution sought.
8 However, Plaintiffs seek, *inter alia*, (a) an injunction against Facebook, (b) "disgorgement of all
9 revenue earned from selling or otherwise trading on the private information obtained from
10 Plaintiffs and the Class via the Facebook 'Like' button," and (c) costs and expenses. (Compl. at 9
11 (Prayer for Relief).)

12 20) As noted above, Plaintiffs seek to represent classes that allegedly include "tens of
13 millions of Internet users." (Compl. ¶ 22.) Plaintiffs allege that Facebook has collected personal
14 information from these Internet users, and that information "is an asset of the sort that is priced,
15 bought, and sold in discrete units for marketing and other purposes." (Compl. ¶ 16.)

16 21) Plaintiffs allege that the value of similar information for one Internet user was
17 \$8.95. (Compl. ¶ 18.)

18 22) Without taking into account other relief sought by Plaintiffs, and based on
19 Plaintiffs' own allegations, Plaintiffs' demand for "disgorgement of all revenue earned" from the
20 tens of millions of members of Plaintiffs' putative classes places more than \$5,000,000 in
21 controversy. 28 U.S.C. § 1332(d)(2).¹

22 23) Defendant will promptly serve a copy of this Notice of Removal on counsel for
23 Plaintiffs and will file a copy of this Notice of Removal with the Clerk of the Superior Court of
24 California for the County of Santa Clara pursuant to 28 U.S.C. § 1446(d).

25 //

26 //

27 ¹ In filing this Notice of Removal, Facebook makes no admissions as to any allegations contained
28 in Plaintiffs' Complaint, nor does Facebook waive or forfeit any arguments or defenses.

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
28

Dated: June 10, 2011

COOLEY LLP

Matthew Brown / J.M.
Matthew D. Brown (196972)

Attorneys for Defendant FACEBOOK, INC.

1221282 v2/SF