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RICHARD H. WILSON
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NORTHERN DISTRICT OF CALIFORNIA

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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN JOSE DIVISION

22 CV 12-00859
23 Case No.

24 PSC

25 SACHE QUILDON, individually and on
26 behalf of all others similarly situated,

27 Plaintiffs,

28 v.

INTUIT INC., a Delaware corp.,

Defendant.

NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(b)

(FEDERAL QUESTION JURISDICTION)

[Santa Clara Superior Court Case
No. 1-12-CV-216744]

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

2 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1441, defendant Intuit Inc. (“Intuit”)
3 hereby removes this entire civil action, and all claims and causes of action included therein, from the
4 Superior Court of the State of California in and for the County of Santa Clara to the United States
5 District Court for the Northern District of California on the basis of federal question jurisdiction, as
6 more fully set forth below.

7 **A. BACKGROUND FACTS**

8 1. On January 13, 2012, Plaintiff Sache Quildon (“Plaintiff”) filed a putative class action
9 complaint against Intuit in the Superior Court of the State of California in and for the County of Santa
10 Clara. *Quildon v. Intuit Inc.* (Case No. 1-12-CV-216744) (the “State Court Action”). Plaintiff served
11 Intuit’s registered agent with the summons and a copy of the complaint on January 23, 2012. True
12 and correct copies of all process, pleadings, and other papers served on Intuit in the State Court
13 Action are attached to this Notice as Exhibit 1.
14

15 2. Intuit offers self tax preparation services through its TurboTax software. In the State
16 Court Action, Plaintiff alleges that Intuit also provides its customers with various payment options for
17 such services, including a refund processing option (“RPO”) that allows customers to have the tax
18 preparation fees deducted from their federal tax refunds.¹ (Compl. ¶ 41.) Plaintiff alleges that the
19 RPO requires a customer to open a deposit account at a participating third-party bank, into which the
20 I.R.S. will disburse the consumer’s federal tax refund. (Compl. ¶ 42.) Plaintiff further alleges that
21 the third-party bank charges a \$29.95 fee for creating and administering the bank account, deducting
22 the tax preparation fee, and processing the tax refund. (Compl. ¶ 32 (alleging that “third-party
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¹ This should be distinguished from a refund anticipation loan (“RAL”), which is a loan of money in anticipation of a tax refund. With the RPO, no money is lent to the customer; it is simply a way for the customer to use a portion of his or her anticipated federal tax refund to pay the tax preparation fee. (Compl. ¶¶ 44, 45, 48.)

1 banks” provide the RPO); ¶ 91 (alleging that “the bank collected Refund Processing Service Fees
2 from Plaintiff”).)

3 3. Plaintiff claims that she paid a \$30.95 fee to Intuit for tax preparation services and a
4 \$29.95 RPO fee to the third-party bank. (Compl. ¶ 48.) Plaintiff alleges that the third-party bank
5 deducted these two fees from her federal tax refund and the remainder was remitted to her. (Compl.
6 ¶¶ 32, 49.)

7
8 4. Plaintiff seeks to hold Intuit liable for the \$29.95 RPO fee that she paid to the third-
9 party bank. Specifically, Plaintiff alleges that the RPO fee charged by the third-party bank is an
10 undisclosed “interest rate or finance charge” that violates the federal Truth in Lending Act, 15 U.S.C.
11 § 1601, *et seq.* (“TILA”). (Compl. ¶ 45.) She further alleges that “[t]he APR, properly calculated in
12 accordance with TILA, was an exorbitant quadruple-digit interest rate.” (Compl. ¶ 52.)

13
14 5. Plaintiff seeks damages on behalf of herself and a class of California residents who
15 “used TurboTax Online and received a [RPO] payment facilitated by Defendant and Defendant’s fees
16 were deducted from the deposit account established for the [RPO] payment.” (Compl. ¶ 54.)

17 **B. JURISDICTIONAL STATEMENT**

18 6. This is a civil class action over which this Court has original jurisdiction pursuant to
19 28 U.S.C. § 1441(b). Supplemental jurisdiction exists with respect to any remaining claims pursuant
20 to 28 U.S.C. § 1367.

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22 7. This action is removable because resolution of a federal question is necessary to
23 resolution of the action, and therefore this action could have originally been filed in this Court
24 pursuant to 28 U.S.C. § 1441(b).²

25 8. Plaintiff alleges that Intuit is a creditor under TILA. (Compl. ¶ 29.)
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27 ² Plaintiffs’ counsel in this case filed a virtually identical action, *Smith v. Intuit Inc.*, Case No. 12-
28 cv-222, in this Court on January 13, 2012. The *Smith* action contains identical claims, but seeks
certification of a nationwide class, as opposed to the California class described in *Quildon*.

1 9. Plaintiff alleges that “[f]inance charges within the meaning of TILA include fees and
2 amounts charged by third parties where the contracting party requires the use of a third party or
3 where the creditor retains a portion of the third-party charge.” (Compl. ¶ 31.)

4 10. Plaintiff alleges that the purported class raises “[c]ommon questions of law and fact”
5 involving alleged TILA violations. (Compl. ¶ 59(a)-(c).)

6 11. Plaintiff makes numerous other allegations explicitly referring to alleged TILA
7 violations. (See Compl. ¶¶ 24, 28, 30, 37, 38, 45, 52, 70, 72, 94.)

8 12. Three of Plaintiff’s four claims are predicated upon alleged TILA violations.

9 13. Plaintiff’s first cause of action for violation of California’s Refund Anticipation Loan
10 Laws is explicitly based on TILA. Plaintiff alleges that Intuit violated California Business and
11 Professions Code §§ 22253.1(d)(1)-(2) and 22253.1(f)(2) by failing to “articulat[e] the interest rate
12 ‘using the guidelines established under [TILA]’ for each RPO it facilitated for a Class Member.”
13 (Compl. ¶ 70.)³

14 14. Plaintiff’s Second Cause of Action for violation of California Business and
15 Professions Code § 17500 is predicated upon Intuit’s alleged “fail[ure] to disclose interest rates and
16 finance charges,” which is a reference to TILA’s disclosure requirements. (Compl. ¶ 79.)

17 15. Plaintiff’s Fourth Cause of Action for violation of California Business and Professions
18 Code § 17200 is explicitly predicated upon TILA and Intuit’s alleged failure to “disclose any interest
19 rate or finance charge”. (Compl. ¶¶ 94-95.)

20 16. As summarized above, and as is clear on the face of the Complaint, Plaintiff
21 repeatedly invokes federal law to support her claims and raises two disputed issues of federal law
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³ California Business and Professions Code § 22251.3(d)(2)(B) specifically incorporates TILA, requiring disclosures of “[t]he estimated annual percentage rate for the client’s refund anticipation loan, using the guidelines established under [TILA].” Intuit disputes that the bank’s RPO Fee is a refund anticipation loan.

1 necessary to their resolution. First, Plaintiff raises the issue of whether TILA applies to Intuit.
2 Second, Plaintiff raises the issue of whether Intuit's alleged actions qualify as violations of TILA.

3 17. To proceed and prevail on her claims, Plaintiff must prevail on both of these issues of
4 federal law. If Plaintiff fails to affirmatively establish her position on either of these federal issues,
5 her state claims fail. In other words, without affirmatively proving TILA violations, three of
6 Plaintiff's four claims must fail. Because the resolution of federal issues is essential to resolution of
7 Plaintiff's case, this Court has jurisdiction.
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9 **C. INTRADISTRICT ASSIGNMENT**

10 18. Pursuant to Local Civil Rule 3-2(d), this action should be assigned to the San Jose
11 Division because the State Court Action was filed in the Superior Court for the County of Santa
12 Clara.
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14 19. Intuit requests that the case be assigned to Judge Edward J. Davila, who is the
15 presiding judge in *Smith v. Intuit Inc.*, Case No. 12-cv-222, which was filed with this Court on
16 January 13, 2012, and which involves claims identical to those alleged in the State Court Action.

17 **D. REMOVAL PROCEDURE**

18 20. In compliance with 28 U.S.C. § 1446(a), Intuit attaches as Exhibit 1 all process,
19 pleadings, and orders received in the State Court Action.
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21 21. This Notice of Removal is timely because it is filed within 30 days of service of the
22 summons and complaint, as required by 28 U.S.C. § 1446(b).

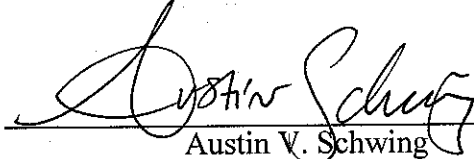
23 22. Intuit will promptly give written notice of this Notice to Plaintiff and will file a copy
24 of this notice with the clerk of the Superior Court for the County of Santa Clara, as required by 28
25 U.S.C. § 1446(d).

26 WHEREFORE Defendant removes the original action brought by Plaintiff now pending in the
27 Superior Court for the County of Santa Clara to the United States District Court for the Northern
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1 District of California.

2 Dated: February 22, 2012

GIBSON, DUNN & CRUTCHER LLP

3
4 By: 
5 Austin V. Schwing

6 Attorneys for Defendant
7 INTUIT INC.