

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

MICHAEL R. NACK, individually and on behalf of all others similarly-situated,)
)

Plaintiff,)

v.)

REED ELSEVIER, INC.,)

Defendant.)
)

Case No. _____

Removed from the Circuit Court of St. Louis
County, Missouri, Twenty-First Judicial
Circuit, Case No. 12SL-CC00991

NOTICE OF REMOVAL

**TO: THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446, Defendant LexisNexis, a division of Reed Elsevier Inc. (“LexisNexis”),¹ by and through its undersigned counsel, hereby file its Notice of Removal of this action (“Action”) from the Circuit Court of St. Louis County, Missouri, to the United States District Court for the Eastern District of Missouri. LexisNexis appears for the purpose of removal only and for no other purpose, and reserves all defenses and rights available to it. In support of this Notice of Removal, LexisNexis states as follows:

BACKGROUND AND PLEADINGS

1. On or about March 16, 2012, Plaintiff, Michael R. Nack (“Nack”), individually and on behalf of all others similarly situated, filed a Class Action Petition in the Circuit Court of St. Louis County, Missouri, Case No. 12SL CC00991. Count I asserts a claim on behalf of Nack under the Telephone Consumer Protection Act (“TCPA”), codified at 47 U.S.C. § 227, arising

¹ Plaintiff incorrectly names Defendant as “Reed Elsevier, Inc.” The correct name of Defendant is “LexisNexis, a division of Reed Elsevier Inc.”

from LexisNexis's alleged sending of unsolicited faxes. Compl. ¶¶ 33-48. Count II asserts a claim for conversion. Compl. ¶¶ 49-60. Count III asserts a claim for violations of the Missouri Merchandising Practices Act, incorrectly referred to by Nack as the "Missouri Consumer Fraud and Deceptive Business Practices Act," codified at Mo. Rev. Stat. §§ 407.010 *et seq.* Compl. ¶¶ 61-69.

2. In accordance with 28 U.S.C. § 1446(b) and Local Rule 2.03, LexisNexis attaches a true and accurate copy of the record from the Circuit Court of St. Louis County, Missouri, as obtained by Defendant (**Exhibit A**).

REMOVAL IS TIMELY

3. LexisNexis was served with a copy of the Class Action Petition and summons on April 2, 2012. Removal is timely because this Notice of Removal was filed on May 2, 2012, within 30 days of the date on which LexisNexis was served with the Class Action Petition. *See* 28 U.S.C. § 1446(b).

4. As of this date, LexisNexis has not appeared or filed a responsive pleading in the Action. Other than the filing of the Complaint, no other proceedings have transpired and no orders have been issued by the state court.

FEDERAL QUESTION AND SUPPLEMENTAL JURISDICTION EXISTS

5. Under 28 U.S.C. § 1331, the United States District Court "shall have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States."

6. In *Mims v. Arrow Financial Services, LLC*, the United States Supreme Court recently ruled that federal question jurisdiction exists over TCPA claims. --- U.S. ----, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012) ("We now hold that Congress did not deprive federal courts of federal question jurisdiction over private TCPA suits."); *accord Heller v. H.R.B. Tax Group*,

No. 11 cv 1121, 2012 U.S. Dist. LEXIS 6167, at *4 (E.D. Mo. Jan. 19, 2012) (denying motion to remand removed Class Action Petition premised on violations of the TCPA); *Nack v. Walburg*, No. 10 cv 478, 2011 U.S. Dist. LEXIS 8266, at * 10 n.2 (E.D. Mo. Jan. 28, 2011) (“All federal courts of appeals that have considered the question have concluded that federal district courts have federal-question jurisdiction over claims under the TCPA and pendent state law claims.”)

7. Supplemental jurisdiction over Nack’s state law claims for conversion and violations of the Missouri Merchandising Practices Act (Counts II and III) exists because they are also premised on LexisNexis’s alleged sending of unsolicited faxes and, therefore, form part of the same case or controversy within the meaning of under 28 U.S.C. § 1367(a). *See also Heller*, 2012 U.S. Dist. LEXIS 6167, at *2-4 (federal jurisdiction exists over claims for violation of TCPA, conversion and violation of consumer protection statutes).

VENUE IS PROPER

8. Under 28 U.S.C. § 1441(a), the instant action may be removed to the United States District Court for the Eastern District of Missouri because it is the United States District Court for the district and division embracing the Circuit Court of St. Louis County, the place where Nack filed the Action.

LEXISNEXIS HAS PROVIDED WRITTEN NOTICE OF REMOVAL

9. Pursuant to 28 U.S.C. § 1446(d) and Local Rule 2.03, LexisNexis has filed a copy of this Notice of Removal with the Clerk of the Circuit Court of St. Louis County, Missouri. *See*

Exhibit B.

10. LexisNexis has also served Plaintiff’s counsel with a copy of this Notice of Removal.

CONCLUSION

11. The statements made in this Notice of Removal are made for the purpose of removal only, and should not be used by any party for any other purpose.

12. The filing of the instant Notice of Removal in this Court and the filing of the same with the state court immediately serves to confer upon this Court exclusive jurisdiction over Nack's claims and, simultaneously, to divest the state court of jurisdiction with respect to those claims.

WHEREFORE, LexisNexis respectfully requests that the Action now pending in the Circuit Court of St. Louis County, Missouri, Case No. 12SL-CC00991, be removed to the United States District Court for the Eastern District of Missouri.

DATED: May 2, 2012

Respectfully submitted,

HUSCH BLACKWELL LLP

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--and--

Jason P. Stiehl (*application for admission to be filed*)

Jordan P. Vick (*application for admission to be filed*)

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(312)460-5000

Attorneys for Defendant LEXISNEXIS, A
DIVISION OF REED ELSEVIER INC.

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2012, I caused a copy of NOTICE OF REMOVAL to be served upon the following counsel of record by electronic and First Class U.S. Mail:

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MEMORANDUM FOR CLERK

Defendant LexisNexis, a division of Reed Elsevier Inc. (incorrectly named by Plaintiff as “Reed Elsevier, Inc.”), files herewith proof of filing a copy of its Notice of Removal in the Circuit Court of St. Louis County, Missouri, Twenty-First Judicial Circuit, on May 2, 2012.

DATED: May 2, 2012

Respectfully submitted,

HUSCH BLACKWELL LLP
By: /s/ Theodore R. Bynum III
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Attorneys for Defendant LEXISNEXIS, A
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I hereby certify that on May 2, 2012, I caused a copy of MEMORANDUM FOR CLERK to be served upon the following counsel of record by electronic and First Class U.S. Mail:

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