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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JONATHAN B. GOLDSMITH, Plaintiff,

v.

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PECCOLE PROFESSIONAL PARK OOBO WEST ALTA DRIVE, SUITE 200 LAS VEGAS, NY 89145

JORDAN R. COOPER, an Individual; CHERYL COOPER DRISCOLL, an Individual; FACEBOOK, INC.; a Foreign Corporation; DOES 1 through 5 and ROE CORPORATIONS 1 through 5, inclusive,

Defendants

CV -

(Clark County District Court Case No. A626728, Dept, No.: XVII)

[JURY DEMAND]

PETITION FOR REMOVAL OF CIVIL ACTION

TO: The Clerk of the United States District Court for the District of Nevada

Defendant FACEBOOK, INC. ("Facebook" and/or "Defendant"), by and through its counsel of record, Joseph R. Ganley and Christian M. Orme of the law firm of Hutchison & Steffen, LLC, gives notice that it is removing this action from the Eighth Judicial District Court of Nevada to the United States District Court for the District of Nevada pursuant to 28 U.S.C. §§1331, 1441 and 1446. The grounds for removal are as follows:

1. Plaintiff Jonathan B. Goldsmith ("Plaintiff") brought this action in the District Court of Nevada, Clark County, entitled *Jonathan B. Goldsmith v. Jordan R. Cooper, Cheryl Cooper Driscoll, and Facebook, Inc.*, Case No. A-10-626728-C. The action was assigned to Department XVII of that Court. Defendant has not been properly served with a copy of the Complaint. A copy

of the Complaint is attached hereto as **Exhibit A**. This is the first paper received for which it could use to ascertain removability. *Id*. An index of the pleadings from the state court action is attached hereto as **Exhibit B**. *See generally* Affidavit of Christian M. Orme attached hereto as **Exhibit C**.

- 2. Goldsmith alleges that Defendants Cooper and Cooper Driscoll posted "defamatory and harassing statements and comments" on Facebook. *See* Exhibit A. Based on this, Goldsmith concludes that "Facebook facilitated, published or neglected to mitigate the defamatory or harassing statements and comments published by Defendant Cooper and Defendant Cooper Driscoll" (Compl., ¶ 14) and that Facebook is liable for slander and libel. *Id.* at ¶¶ 26-57. The Complaint does not allege that Facebook created or otherwise assisted in the creation of the "statements and comments." *Id.*
- 3. The Communications Decency Act, 47 U.S.C. § 230 ("CDA") states that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 42 U.S.C. § 230(c)(1). The statute explicitly immunizes covered individuals and entities against state tort claims by mandating that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. § 230(e)(3). Liability for state tort claims simply cannot be imposed unless the defendant is an "information content provider," defined as "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet." 47 U.S.C. § 230(f)(3).
- 4. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331, and is one which may be removed to this Court by Defendants pursuant to 28 U.S.C. § 1441(b) in that it arises under provisions of 18 U.S.C. §§ 2511. See Exhibit C.
- 5. To the extent the other claims alleged by Plaintiff do not relate to the CDA, they are "separate and independent" claims, such that the removal of this entire dispute is proper pursuant to 28 U.S.C. § 1441(c). See generally Risetto v. Plumbers & Steamfitters Local 343, 94 F.3d 597, 600n.2 (9th Cir. 1996) (holding the district court possessed supplemental jurisdiction over other state law claims because the action was properly removable in light of the preemption of the breach of contract and breach of the implied covenant claims). *Id*.

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6.	Defendant may remove this action to this Court pursuant to the provisions of 28
U.S.C. § 1441	(b) without regard to the amount in controversy or citizenship of the parties. <i>Id.</i>

- 7. This Court may exercise supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over the remaining state law claims in Goldsmith's Complaint because such claims form part of the same alleged case or controversy as the claims based upon federal law. Id.
- 8. This notice of removal is timely because Defendant has not been properly served. Nevertheless, Defendant is filing this notice of removal within thirty days of the filing of the Complaint on or about October 4, 2010. Id.
- 9. Facebook is not the only defendant in this case. Defendants Jordan Cooper and Cheryl Cooper Driscoll have agreed to join in this removal. *Id.* Thus, there is complete joinder of defendants in this matter. Id.
- Facebook has attached copies of the Complaint as Exhibit A and an index from the 10. state court action as Exhibit B. Id.
- 11. Facebook has concurrently filed a copy of this notice with the Eight Judicial District Court. Id.
 - 12. Facebook has served upon Plaintiff a copy of this notice. *Id.*
- 13. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. Id.

WHEREFORE, Petitioner Facebook prays that the above-entitled action be removed from the Eighth Judicial District Court in and for Clark County, Nevada to this Court on this date.

DATED this 21 day of October 2010.

HUTCHISON & STEFFEN, LLC

Joseph R. Ganley (5643) Christian M. Orme (10175) Peccole Professional Park 10080 West Alta Drive, Suite 200 Las Vegas, NV 89145

Attorneys for Defendant Facebook, Inc.