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KING COUNTY
SUPERIOR COURT CLERK
E-FILED

CASE NUMBER: 18-2-14129-0 SEA

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HONORABLE JOHN H. CHUN

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

No. 18-2-14129-0 SEA

NOTICE TO SUPERIOR COURT CLERK
OF REMOVAL

**To: CLERK OF SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY**

NOTICE IS HEREBY GIVEN, pursuant to 28 U.S.C. § 1446(d), that on July 13, 2018, Defendant Facebook, Inc. filed in the United States District Court for the Western District of Washington, a Notice of Removal of the above-entitled action. A copy of the Notice of Removal is attached hereto.

Pursuant to 28 U.S.C. § 1446(d), removal is effective with the filing of such notice, and the State Court is to proceed no further unless and until the case is remanded.

NOTICE TO SUPERIOR COURT CLERK OF
REMOVAL – 1

LEGAL140458714.1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

DATED this 13th day of July 2018.

By: s/ William B. Stafford

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Attorney for Defendant
Facebook, Inc.

NOTICE TO SUPERIOR COURT CLERK OF
REMOVAL – 2

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CERTIFICATE OF SERVICE

On July 13, 2018, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the following document:

NOTICE TO SUPERIOR COURT CLERK OF REMOVAL

Linda A. Dalton	<input checked="" type="checkbox"/>	Via Email Transmission
LindaD@ATG.WA.GOV	<input type="checkbox"/>	Via U.S. Mail, 1st Class, Postage
S. Todd Sipe	<input type="checkbox"/>	Prepaid
ToddS4@ATG.WA.GOV	<input type="checkbox"/>	Via Overnight Delivery
Attorney General of Washington	<input type="checkbox"/>	Via Facsimile
Campaign Finance Unit	<input type="checkbox"/>	
P. O. Box 40100	<input type="checkbox"/>	Via E-filing
1125 Washington St. S.E.		
Olympia, WA 98504		

Attorneys for Plaintiff

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, this 13th day of July 2018.

/s/ Cindy Anderson
Legal Practice Assistant

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

No. 2:18-cv-1031

NOTICE OF REMOVAL

**TO: THE CLERK AND HONORABLE JUDGES OF THE UNITED STATES
DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON**

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Facebook, Inc. (“Facebook”) removes this action from the Superior Court of the State of Washington for King County to the United States District Court for the Western District of Washington. In support of this Notice, Facebook respectfully states as follows:

BACKGROUND

1. Plaintiff is the State of Washington. Compl. ¶ 2.1 (Exhibit A). On June 4, 2018, Plaintiff commenced this action in the King County Superior Court, where it was assigned the case number 18-2-14129-0 SEA. Ten days later, on June 14, 2018, counsel for Facebook accepted service of the Summons and Complaint on Facebook’s behalf. No further proceedings in this matter have taken place.

NOTICE OF REMOVAL – 1

Perkins Coie LLP
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1 2. The Complaint contains allegations relating to Facebook’s purported “fail[ure] to
2 maintain and make available for public inspection documents and books of account specifying
3 statutorily required information concerning political advertising sponsored through Facebook’s
4 platform.” Compl. ¶ 1 (Exhibit A). In particular, Plaintiff claims that, in late 2017 and early
5 2018, two members of the public were refused access to such documents and books of account.
6
7 See *id.* ¶¶ 4.16, 4.19. Such a refusal, according to Plaintiff, constitutes a violation of Section
8 42.17A.345 of the Washington Code. See *id.* ¶ 5.1. Both of Plaintiff’s claims arise out of this
9 alleged statutory violation by Facebook. See *id.* (Count I); *id.* ¶ 5.2 (Count II).

16 **VENUE AND JURISDICTION**

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19 3. Venue is proper in this Court under 28 U.S.C. § 115, 1441(a), and 1446(a)
20 because the Superior Court of the State of Washington for King County, where the Complaint
21 was filed, is a state court within the Western District of Washington.
22

23
24 4. The Court has original jurisdiction over the subject matter of this action under 28
25 U.S.C. § 1332 because (1) there is complete diversity of citizenship between Plaintiff and
26 Facebook; (2) the amount in controversy exceeds \$75,000; and (3) all other requirements for
27 removal have been satisfied.
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32 **Diversity of Citizenship**

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34 5. For a case to qualify for federal jurisdiction under 28 U.S.C. § 1332, there must
35 be complete diversity of citizenship between the parties opposed in interest. *Kuntz v. Lamar*
36 *Corp.*, 385 F.3d 1177, 1181 (9th Cir. 2004). Here, the diversity of citizenship requirement of 28
37 U.S.C. § 1332 has been satisfied because Plaintiff brought suit on behalf of two Washington
38 citizens, the real parties in interest, and Facebook is a citizen of states other than Washington.
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43 6. First and foremost, Facebook is not a citizen of Washington. For purposes of
44 diversity jurisdiction, it is black-letter law that a corporation is a citizen of its state of
45 incorporation and the state where its principal place of business is located. 28 U.S.C.
46 § 1332(c)(1); see also, e.g., *Hertz Corp. v. Friend*, 559 U.S. 77, 78 (2010). Facebook is
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1 incorporated in Delaware and its principal place of business is in California, where it is
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3 headquartered. *See* Compl. ¶ 2.2 (Exhibit A).

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5 7. None of the other real parties in interest to this case are citizens of Delaware or
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7 California. As relevant here, courts have long recognized that while “a State is not a citizen of
8
9 itself,” the mere presence of the State as a party will not defeat diversity jurisdiction when the
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11 state is not the “real party to the controversy”:

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13 [A]lthough “the State has a governmental interest in the welfare of all its citizens,
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15 in compelling obedience to the legal orders of all its officials, and in securing
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17 compliance with all its laws,” these “general governmental interest[s]” will not
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19 satisfy the real party to the controversy requirement for the purposes of defeating
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21 diversity because “if that were so the state would be a party in interest in all
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23 litigation. . . .”

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25 *Dep’t of Fair Emp’t & Hous. v. Lucent Techs., Inc.*, 642 F.3d 728, 737 (9th Cir. 2011) (quoting
26
27 *Mo., Kan. and Tex. Ry. Co. v. Hickman*, 183 U.S. 53, 60 (1901)). “For this reason, a State’s
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29 presence in a lawsuit will defeat jurisdiction under 28 U.S.C. § 1332(a)(1) *only if the relief*
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31 *sought is that which inures to it alone*, and in its favor the judgment or decree, if for the plaintiff,
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33 will effectively operate.” *Lucent*, 642 F.3d at 737 (quotation marks and citations omitted)
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35 (emphasis added).

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37 8. Thus, although the State of Washington is the named plaintiff in this action, it is
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39 not the real party in interest. The State brought this lawsuit on behalf of two individuals (Eli
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41 Sanders and Connor Edwards) who were allegedly denied access by Facebook to records
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43 pertaining to political advertising:

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45 On at least two occasions, Facebook failed to provide access to information
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47 required by law to members of the public. As a result, the State seeks . . . civil
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49 penalties, costs and fees, and injunctive relief.

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51 Compl. ¶ 1 (Exhibit A). Notably, the only evidence that Plaintiff cites in support of its theory of
liability stems from the alleged denial of Mr. Sanders’ request for information, and a “citizen
action notice” the State received from Mr. Edwards. Compl. ¶ 4.20. And at the time Plaintiff
filed this lawsuit, RCW 42.17A.765 allowed citizens to pursue an action under RCW 42.17A.345

1 if the Attorney General and county prosecuting attorney declined to bring a suit within 45 days
2 of receiving notice of the alleged violation of Chapter 41.27A. In other words, citizens would be
3 entitled to pursue the same relief available to the State here, including recovery of attorney’s fees
4 and costs. See RCW 42.17A.765.
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9 9. Under similar circumstances, courts in the Ninth Circuit have instructed that a
10 State’s interest is too general for the State to qualify as the real party in interest for purposes of
11 diversity jurisdiction. For example, in *Lucent*, the Ninth Circuit held that California’s
12 governmental interest in enforcing California’s anti-discrimination laws on behalf of an
13 individual was too “general” to render the State a real party to the controversy, even though the
14 statute explicitly declared the State’s interest in protecting all persons from employment
15 discrimination. 642 F.3d at 738-40. Similarly, in *Washington v. Matheson Flight Extenders,*
16 *Inc.*, this Court concluded that the State of Washington’s interest in enforcing the Washington
17 Law Against Discrimination on behalf of an aggrieved citizen was too general to render it the
18 real party in interest for purposes of diversity jurisdiction. 2018 WL 2440643, at *2 (W.D.
19 Wash. May 31, 2018).¹
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31 10. Here, too, the State has brought suit to vindicate general governmental interests,
32 rather than seek relief on its own behalf. The Complaint itself makes clear that this action was
33 filed on behalf of two Washington citizens—Mr. Edwards and Mr. Sanders—rather than on
34 behalf of the State or in the State’s sole interest. As a result, the relief the State seeks does not
35 “inure[] to it alone,” *Lucent*, 642 F.3d at 737 (citation omitted), and the inclusion of the State as a
36 party will not defeat diversity jurisdiction. Because the real parties in interest to this case are two
37 individuals who reside in Washington, complete diversity with Facebook, a citizen of Delaware
38 and California, exists.
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48 ¹ It is of no moment that the State enacted legislation giving it the ability to bring suit on behalf of its
49 citizens. As the *Lucent* court aptly explained, “control alone cannot render California a real party in interest because
50 a state can always bestow upon itself control over virtually any lawsuit via legislation[.]” 642 F.3d at 738 n. 4
51 (internal citation omitted).

Amount in Controversy

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3 11. When the complaint does not specify a particular amount of damages, “the
4 removing defendant bears the burden of establishing, by a preponderance of the evidence, that
5 the amount in controversy” exceeds \$75,000. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d
6 398, 403-404 (9th Cir. 1996). Here, the Complaint does not specify the amount of damages
7 sought, but, based on the allegations in the Complaint, it is clear that at least \$75,000 is in
8 controversy.
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14 12. Most importantly, RCW 42.17A.750(1)(c) provides for civil penalties of up to
15 \$10,000 per violation of Chapter 42.17A. The Complaint alleges two such violations by
16 Facebook. Moreover, Plaintiff also requests treble damages under RCW 42.17A.750 and “all
17 costs of investigation and trial, including reasonable attorneys’ fees.” Compl. ¶¶ 6.1-6.4. Once
18 trebled, the potential \$20,000 in damages stemming from the two alleged violations of Chapter
19 42.17A would amount to no less than \$60,000. *See Nw. Ry. Museum v. Indian Harbor Ins. Co.*,
20 No. C17-1060JLR, 2017 WL 4466619, at *3 (W.D. Wash. Oct. 5, 2017) (“[W]hen plaintiffs
21 request treble damages . . . the court trebles the amounts alleged to determine the amount in
22 controversy.”). Taking into account Plaintiff’s request for reasonable attorneys’ fees and the
23 costs associated with investigation and trial,² which would undoubtedly be greater than \$15,000,
24 it is clear that the total amount in controversy, if proved, would exceed \$75,000.
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Other Removal Requirements

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38 8. Facebook accepted service of the Complaint on June 14, 2018. This Notice of
39 Removal, filed on July 13, 2018, is within thirty days of service of the Complaint and is therefore
40 timely. *See* 28 U.S.C. § 1446(b).
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45 ² *See Roe v. Teletech Customer Care Mgmt. (CO), LLC*, No. C07-5149 RBL, 2007 WL 1655172, at *4
46 (W.D. Wash. June 6, 2007) (“[A] reasonable, informed estimation of fees, based on the various tasks to be
47 accomplished by both sides, and the hourly rates of the attorneys who will conduct those tasks (including *future*
48 attorneys’ fees), properly comprise the evidence that can and should be considered in evaluating the amount in
49 controversy for jurisdictional purposes.”); *Nw. Ry. Museum*, 2017 WL 4466619, at *3 (“The court concludes that
50 Defendants’ estimated amount of contract damages under the insurance policy is reasonable in light of the injuries
51 [plaintiff] claims and the fees and costs the City of Snoqualmie is likely to incur.”).

1 9. As required by 28 U.S.C. § 1446(a), a copy of all process and pleadings served on
2 Facebook are attached to the Verification of State Court Record filed with this Notice.
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4 10. Nothing in this Notice of Removal shall be interpreted as a waiver or
5 relinquishment of Facebook’s right to assert any defense. Facebook reserves the right to assert
6 all applicable claims and defenses in response to the Complaint.
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10 DATED: July 13, 2018

11 *By: s/ William B. Stafford*
12 _____
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15 James R. McCullagh, WSBA No. 27744
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24 Attorney for Defendant
25 Facebook, Inc.
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CERTIFICATE OF SERVICE

On July 13, 2018, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the following document:

NOTICE OF REMOVAL

Linda A. Dalton
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Campaign Finance Unit
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Olympia, WA 98504

Attorneys for Plaintiff

Via Email Transmission
 Via U.S. Mail, 1st Class, Postage
Prepaid
 Via Overnight Delivery
 Via Facsimile
 Via E-filing

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, this 13th day of July 2018.

/s/ Cindy Anderson
Legal Practice Assistant