

David B. Gordon (DG 001)
RICHARDSON & PATEL LLP
750 Third Avenue, 9th Floor
New York, New York 10017

CV 12 - 3475

BIANCO, J.

FILED
CLERK
DISTRICT COURT
STERN DISTRICT
OF NEW YORK
JUL 13 PM 1:07

Attorneys for Defendant SPARK NETWORKS USA, LLC
(erroneously sued as "JDATE")

NO SUMMONS ISSUED

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
LISA ZALTZ,

Plaintiff,

-vs-

JDATE,

Defendant.
-----X

LINDSAY, M.J.

NOTICE OF REMOVAL

DISTRICT COURT
STERN DISTRICT
OF NEW YORK

2012 JUL 13 PM 1:08

FILED
CLERK

Defendant SPARK NETWORKS USA, LLC (erroneously sued as "JDATE")

("SPARK") petitions this Court for removal, pursuant to 28 U.S.C. § 1441, *et seq.*, of the above-captioned action pending in the Supreme Court of the State of New York, County of Nassau. In support of removal, SPARK alleges as follows:

1. Plaintiff Lisa Zaltz ("Plaintiff") commenced a civil action, entitled *Zaltz v. JDATE*, Index No. 006779-2012, in the Supreme Court of the State of New York, County of Nassau.
2. Plaintiff served SPARK with the Summons and Complaint via personal service on or about June 14, 2012.
3. Copies of the Summons and the Complaint, which are dated as "RECEIVED" by the Supreme Court on May 25, 2012, are annexed hereto as Exhibit "A".
4. This petition is being filed within thirty (30) days after service of the Summons and Complaint on SPARK.

5. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this Court by SPARK pursuant to the provisions of 28 U.S.C. § 1441, because it is a civil action between citizens of different states and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

6. No prior application for the same or similar relief has been made to this or to any other court.

A. Complete Diversity Exists

7. Complete diversity exists between Plaintiff, on the one hand, and Defendant, on the other.

8. As set forth in the Summons, Plaintiff is, and was at the time of the institution of this civil action, a citizen and resident of Nassau County in the State of New York. *See* Exhibit “A”.

9. Defendant SPARK is a Delaware limited liability company with its principal place of business in Beverly Hills, California. No member of SPARK is a citizen or resident of the State of New York. Although Plaintiff has solely named “JDATE” as defendant, SPARK is the owner and operator of JDate.com

10. Accordingly, because Plaintiff’s citizenship is different from that of Defendant, complete diversity exists as required by 28 U.S.C. § 1332.

B. The Amount in Controversy Requirement is Satisfied

11. The amount in controversy requirement here is met because the complaint demonstrates a reasonable probability that the claims will exceed \$75,000, exclusive of interest and costs. In the Complaint, Plaintiff alleges claims against Defendant for: (1) breach of contract, (2) personal injury and (3) fraud. *See* Exhibit “A”. Although the damages are solely referenced as being

“[greater than] \$50,000” and are not itemized by claim, Plaintiff seeks damages for (1) injuries from being physically and sexually assaulted by a member of the JDate.com site, (2) injuries from being subject to “prank and sexual calls” from the JDate.com site, (3) having her site hacked into, and (4) being “billed repetitively monthly without [her] consent.” While Defendant disputes the allegations and any liability for the various claims and without waiver or prejudice to any of its defenses thereto, Defendant acknowledges that the remedies sought for the claims are potentially available to successful claimants thereunder. Based upon the extensive nature of the remedies sought by Plaintiff, including damages for personal injuries suffered related to a physical and sexual assault, Defendant is informed and believes that Plaintiff seeks damages in excess of \$75,000.

12. Accordingly, because the amount in controversy exceeds \$75,000, exclusive of interest and costs, the jurisdictional amount required by 28 U.S.C. § 1332 is satisfied. See, e.g. *Felipe v. Target Corp.*, 572 F. Supp. 2d 455, 460 (S.D.N.Y. 2008) (where plaintiff alleged personal injuries related to a slip and fall at defendant’s retail store, Court held “[t]hat there appears to a ‘reasonable probability’ that the claim is in excess of the statutory jurisdictional amount is sufficient for this Court to find the amount-in-controversy requirement met.”); *Burr ex rel. Burr v. Toyota Motor Credit Co.*, 478 F. Supp. 2d 432, 439 (S.D.N.Y. 2006) (where plaintiffs’ pleading alleges “serious and severe permanent personal injuries” related to an automobile accident, defendant established reasonable probability that the claim is in excess of the statutory jurisdictional amount); *Juarbe v. Kmart Corp.*, 2005 WL 1994010 at *2, (S.D.N.Y. Aug. 17, 2005) (Even though the complaint “does not in fact specify what injury [the] plaintiff suffered and how it occurred” and “does not claim precisely what transpired,” the Court found that plaintiff’s allegations of “severe and serious personal injuries to mind and body, great physical pain and mental anguish, and severe


nervous shock” demonstrated a “reasonable probability” that the amount in controversy requirement would be met); *Armstrong v. ADT Sec. Servs., Inc.*, 2007 WL 187693, at *2-3 (S.D.N.Y. Jan. 23, 2007) (concluding that plaintiff was probably seeking more than \$75,000.00 although his amended complaint stated that he sought \$70,000.00 plus interest and costs).

13. Plaintiff has been served with a copy of this Notice of Removal, and a true copy of this Notice has been filed with the in the Supreme Court of the State of New York, County of Nassau.

WHEREFORE, SPARK respectfully requests that the above-captioned action be removed from the Supreme Court of the State of New York, County of Nassau, to this Court.

Dated: New York, New York
July 13, 2012

RICHARDSON & PATEL LLP

By: 

David Gordon (DG 0010)
750 Third Avenue, 9th Floor
New York, New York 10017
(646) 755-7315

Attorneys for Defendant SPARK NETWORKS
USA, LLC (erroneously sued as “JDATE”)

TO: Lisa Zaltz (pro se)
124 Fulton Street
Lawrence, NY 11559

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

LISA ZALTZ

[2. Fill in name(s)]

Plaintiff(s)/Petitioner(s)

x

[1. Index No. & Year]

Index No.

12/006719

-against-

JDATE

[3. Fill in name(s)]

Defendant(s)/Respondent(s)

CERTIFICATION
PURSUANT TO
22 NYCRR 130-1.1-a

x

I hereby certify that all of the papers that I have served, filed or submitted to the court in this action/proceedings (as indicated by the check marks below) are not frivolous as defined in subsection c of Section 130-1.1 of the Rules of the Chief Administrator of the Courts.

- | | |
|---|--|
| <input type="checkbox"/> Note of Issue | <input type="checkbox"/> Defendant's Affidavit |
| <input type="checkbox"/> Poor Person Order | <input type="checkbox"/> Petition |
| <input type="checkbox"/> Order permitting alternative service | <input type="checkbox"/> Consent of Infant |
| <input checked="" type="checkbox"/> Summons or Summons with Notice | <input type="checkbox"/> Consent of Spouse |
| <input checked="" type="checkbox"/> Verified Complaint | <input type="checkbox"/> Emergency Affidavit |
| <input type="checkbox"/> Affidavit of Service or Defendant's Waiver | <input type="checkbox"/> Affidavit in Support of TRO against public officers, etc. |
| <input type="checkbox"/> Notice of Appearance | <input type="checkbox"/> Decision |
| <input type="checkbox"/> Affidavit or Affirmation of Regularity | <input type="checkbox"/> Judgment |
| <input type="checkbox"/> Affidavit of Military Status or Investigator | <input type="checkbox"/> Reply Affidavit |
| <input type="checkbox"/> Plaintiff's Affidavit | <input type="checkbox"/> Notice of Entry |
| <input type="checkbox"/> Affidavit of Witness | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Exhibits _____ | |

[4. Date] Dated: 5-9-12

Lisa Zaltz
[5. Plaintiff Signature]

LISA ZALTZ
[6. Print Name]

Duly Sworn to before me this

9 day of May, 2012

Virginia Dupree
[7. Notary Public]

VIRGINIA DUPREE
NOTARY PUBLIC, State of New York
No. 01DU5080170
Qualified in Nassau County
Commission Expires 6/16/2015

[Fill in the spaces next to the instructions. Other spaces are for Court use.]
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

_____ X

LISA WALTZ
[2. Fill in name(s)] Plaintiff(s)

-against-

JDATE
[3. Fill in name(s)] Defendant(s)

To the Person (s) Named as Defendant(s) above:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to appear in this action by serving a notice of appearance on the plaintiff(s) at the address set forth below, and to do so within twenty (20) days after the service of this Summons, or within thirty(30) days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer or appear, a judgment will be entered against you by default for the relief demanded below.

[4. Date and County papers are signed in]

Dated: 5/9/2012

County: Nassau

[1. Index No. & Year]

Index No.

006779112

SUMMONS WITH
NOTICE

RECEIVED

MAY 25 2012

NASSAU COUNTY
COUNTY CLERK'S OFFICE

[Signature]
[5. Your Signature]

LISA WALTZ
[6. Your Name]

124 Fulton Street
[7. Your Address]

Lewiston, NY 11559
[8. City, State & Zip Code]

[9. Your Phone Number]

8983 Wilshire Blvd
Suite 800
Beverly Hills, CA 90211

To the Defendant:
Sparks Motocycle
[10. Defendant Address]

877-453-961
[11. City, State Zip Code]

[12. Phone Number]

cb
JDATE

NOTICE: The nature of this action is [13. Insert the type of case against the defendant.]

Breach of contract & personal injury, fraud

The relief sought is [14. Describe what you want the Court to grant you.]

> \$ 50,000

Should defendant (s) fail to appear herein, judgment will be entered by default for the sum of [15. Insert the amount of money demanded] \$ 50,000 with interest from the date of [16. Insert date from which interest on amount demanded is claimed] February 2010, and the costs of this action.

VENUE: Plaintiff designates Nassau County as the place of trial. The basis of this designation is [17. Check one]

- Plaintiff's Residence in Nassau County
- Defendant's Residence in Nassau County
- Other _____

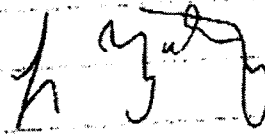
[18. Note: This form of summons may not be used in actions for divorce.]

4/17/2010

Complaint:

I was being billed repetitively monthly without my consent or knowledge & I did complain. The person didn't want to change anything or refund my money & threw me off the site. Also I had been receiving prank & sexual calls from the website & I do not know their names. I went to the police they told me she ^{and} got the names of the individuals who did this. One member physically ^{sexually} assaulted me on a date & gave me a fake name. I also experienced a lot of hacking into my site.

Sincerely,
Lisa Zalkin



VIRGINIA DUPREE
NOTARY PUBLIC, State of New York
No. 01DU5080170
Qualified in Nassau County
Commission Expires: 6/16/2015

Virginia Dupree

877-459-3869

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

In the Matter of the Application of

LISA ZALIV
[Fill in name(s)] Plaintiff(s)/Petitioner(s)
-against-

[Index No. & Year]

Index No.
12/0067/19

JDATE
[Fill in name(s)] Defendant(s)/Respondent(s)

Summons with notice & complaint

[Insert name(s) of papers submitted]

[Signature]
[YOUR SIGNATURE]

LISA ZALIV
[PRINT YOUR NAME]

124 Fulton Street
[YOUR ADDRESS]

Manhasset, NY 11559
[CITY, STATE ZIP CODE]


516-941-9184
[YOUR PHONE NUMBER]

CERTIFICATE OF SERVICE

I, David B. Gordon, do hereby certify that on July 13, 2012, I caused a copy of the foregoing Notice of Removal to be served by first class mail, postage pre-paid upon the following:

Lisa Zaltz
124 Fulton Street
Lawrence, NY 11559

Dated: New York, New York
July 13, 2012



David B. Gordon