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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ICF TECHNOLOGY, INC., a Washington Corporation,

Plaintiff,

v.

GOOGLE INC., a Delaware Corporation,

Defendant.

No. _____

DEFENDANT GOOGLE INC.'S
NOTICE OF REMOVAL

TO: The Clerk, United States District Court
for the Western District of Washington at Seattle

Defendant Google Inc. ("Google") is a party in the above-entitled civil action commenced on November 1, 2013, and still pending in the Superior Court of the State of Washington for King County, as Cause No. 13-2-37267-3 SEA. Through this Notice, Google prays that this action be removed to this Court from the Superior Court of the State of Washington for King County. Google provides a short and plain statement of the grounds for removal and includes copies of all process, pleadings, and orders served. 28 U.S.C. § 1446.

A. The State Court Action

Plaintiff ICF Technology, Inc. ("Plaintiff") filed a complaint against Google on November 1, 2013 in King County Superior Court seeking damages and injunctive relief because Google allegedly made it difficult for individuals to access Plaintiff's clients' websites through

NOTICE OF REMOVAL – 1

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1 the Google search engine or Google-affiliated browsers. *See* Compl. (Notice of Removal
 2 App. 1) ¶ 7. Google was served on November 4, 2013. Together with the complaint, Plaintiff
 3 also filed a Motion for Temporary Restraining Order and Order to Show Cause that sought to
 4 preliminarily enjoin Google to reverse the alleged actions that it took against Plaintiff’s websites.
 5 *See* Pl.’s Mot. for TRO & Order to Show Cause (“TRO Motion”) (Notice of Removal App. 3).
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 7 The TRO Motion has been fully briefed but has not yet been ruled upon by the court.
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 11 Google now removes this action from the Superior Court of the State of Washington for
 12 King County to the U.S. District Court for the Western District of Washington under federal
 13 removal statutes, 28 U.S.C. §§ 1441 and 1446.
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 18 **B. Basis for Removal Jurisdiction in Federal Court**

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 20 This Court has original jurisdiction over the subject matter of this action under 28 U.S.C.
 21 § 1332 because Plaintiff and Google are citizens of different states and the amount in
 22 controversy is in excess of \$75,000, exclusive of costs and interest.
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 27 **1. There Is Diversity of Citizenship**

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 29 Plaintiff alleges that it is a resident and citizen of the State of Washington. Compl. ¶ 2.
 30 Defendant Google is a corporation incorporated in the State of Delaware with its principal place
 31 of business in California and is not a citizen of the State of Washington. *Id.* ¶ 3. The diversity
 32 requirement under 28 U.S.C. § 1332(a) is therefore met.
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 37 **2. The Alleged Amount in Controversy Exceeds \$75,000**

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 39 Plaintiff does not assert a specific amount in controversy in the complaint. It asserts
 40 claims for (1) interference with prospective advantage or business expectancy, (2) tortious
 41 interference with contract, (3) defamation, (4) injunctive relief, and (5) violations of
 42 Washington’s Consumer Protection Act (“CPA”), Ch. 19.86 RCW. Plaintiff alleges that it is
 43 entitled to recover actual damages, treble damages up to \$10,000, and attorneys’ fees under the
 44 CPA, Compl. ¶ 15.3, but does not otherwise specify the amount in controversy. Instead, Plaintiff
 45 seeks an award of damages “in an amount to be determined at the time of trial.” *Id.* ¶ IV(1).
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1 Because Plaintiff does not specify an amount in controversy, Google need only show by a
 2 preponderance of the evidence that more than \$75,000 is in controversy. *See Sanchez v.*
 3 *Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). This “burden is not daunting, as
 4 courts recognize that under this standard, a removing defendant is *not* obligated to research,
 5 state, and prove the plaintiffs’ claims for damages.” *Korn v. Polo Ralph Lauren Corp.*, 536 F.
 6 Supp. 2d 1199, 1204-05 (E.D. Cal. 2008) (internal quotation marks and citation omitted)
 7 (emphasis in original); *see also Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004)
 8 (“[T]he parties need not predict the trier of fact’s eventual award with one hundred percent
 9 accuracy.”). A declaration or affidavit can satisfy the defendant’s burden on removal. *Lewis v.*
 10 *Verizon Commc’ns, Inc.*, 627 F.3d 395, 397 (9th Cir. 2010) (“To satisfy its burden in this case,
 11 the removing defendant . . . supplied an affidavit to show that the potential damages could
 12 exceed the jurisdictional amount. We conclude that this showing satisfies Verizon’s burden.”).

13 Here, the allegations in the complaint as described below, combined with the records
 14 filed in this case and the Declaration of Simon Conant in Support of Defendant Google Inc.’s
 15 Notice of Removal (“Conant Decl.”) (Notice of Removal App. 2), demonstrate that Plaintiff has
 16 put more than \$75,000 in controversy. (To be clear, Google disputes that it has *any* liability in
 17 this action and further, that even if there were liability, Plaintiff has any viable damages theory
 18 either factually or legally.)

19 Plaintiff alleges it is a “white label” website hosting company, and it also describes itself
 20 more specifically as a “reseller host.” Compl. ¶¶ 4, 10. Plaintiff alleges that it is a host for
 21 “several thousand” websites, which are its “Clients.” *Id.* ¶ 4 (“ICF is a ‘white label’ host for
 22 thousands of third-party websites (the ‘Clients’).”). Plaintiff alleges that Google took a “manual
 23 spam action” against the websites, which allegedly made it “nearly impossible . . . for
 24 [Plaintiff’s] Clients’ subscribers (or anyone else) to access the Clients’ websites through the
 25 Google search engine or Google affiliated browsers” *Id.* ¶ 7. In a cease and desist letter
 26 that Plaintiff sent to Google one week before filing its complaint, Plaintiff attached a list of over

1 1,500 websites that allegedly were affected by Google’s action. *See* Decl. of Rebecca S. Engrav
2 in Supp. of Google Inc.’s Opp’n to Pl.’s Mot. for TRO & Order to Show Cause (Notice of
3 Removal App. 4) ¶ 2, Ex. A. Plaintiff alleges that if Google does not reverse its manual spam
4 action, “subscribers will terminate their subscriptions with the Clients, and the Clients will move
5 their business to other reseller hosts, damaging [Plaintiff]” Compl. ¶ 10. Thus, Plaintiff
6 alleges that it will lose the business of the over 1,500 websites allegedly affected by Google’s
7 manual spam action. In its TRO Motion, Plaintiff goes further, asserting that, “[n]ot only will
8 [Plaintiff] lose existing Clients, but it will lose untold and unknown others who will not come to
9 [Plaintiff] for services,” TRO Mot. at 3, and in fact, that it may go out of business, *id.*
10 (“[Plaintiff]’s goodwill and reputation in the industry will be damaged, *maybe mortally.*”)
11 (emphasis added).
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23 Thus, Plaintiff’s theory of damages appears to be that 1,500 websites (Plaintiff’s Clients)
24 will cancel their contracts with Plaintiff and that other potential clients will not come to Plaintiff
25 for reseller hosting. Even focusing solely on the existing Clients, Plaintiff’s allegations put more
26 than \$75,000 in controversy. The amount in controversy, based on Plaintiff’s allegations (which,
27 again, Google disputes both factually and legally), is at least (a) the fee it charges each Client,
28 (b) multiplied by 1,500 websites. Plaintiff does not specifically allege the fees it charges its
29 Clients, but publicly available information shows that in the industry, other reseller hosts charge
30 a range of fees. *See* Conant Decl. ¶¶ 3-4, Exs. A-D. The average of the posted monthly charges
31 for these other hosting services is \$50.92 per month.¹ *Id.* ¶ 4. Multiplying this average price by
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49 ¹ The website SexTracker.com charges a minimum of \$150 per month for adult website hosting. Conant Decl. ¶ 5,
50 Ex. E. SexTracker.com appears to be owned by Plaintiff. *Id.* ¶ 9, Ex. F. While it is unclear whether the hosting
51 provided at SexTracker.com is the hosting to which Plaintiff refers in its complaint for the 1,500 websites at issue, it suggests that Plaintiff’s reseller hosting prices are likely well above this average.

1 1,500 websites results in an alleged revenue loss to Plaintiff of \$76,380 in one month alone if, as
2 Plaintiff alleges, all its Clients for the 1,500 websites leave and go to other reseller hosts.
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5 Given that Plaintiff claims it is at risk of being put out of business entirely, it likely will
6 argue that it is entitled to more than one month of lost fees. And, Plaintiff also seeks attorneys’
7 fees, which are included in the calculation of the amount in controversy when authorized by
8 statute, as they are here under the CPA. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th
9 Cir. 1998) (“[W]here an underlying statute authorizes an award of attorneys’ fees, either with
10 mandatory or discretionary language, such fees may be included in the amount in controversy.”);
11 RCW 19.86.090 (authorizing fees). Additionally, Plaintiff seeks treble damages up to \$10,000,
12 which are likewise authorized by the CPA. RCW 19.86.090. Adding attorneys’ fees for the
13 CPA claim and treble damages of \$10,000 to any alleged lost hosting fees further demonstrates
14 that the amount in controversy is over \$75,000.
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25 **C. Propriety of Removal**

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27 This action is removable to this Court under 28 U.S.C. § 1441 because this Court would
28 have had original jurisdiction over Plaintiff’s claims had Plaintiff elected to file the action
29 initially in federal court. This Court is the United States District Court for the district and
30 division embracing the place where the state court action is pending and is therefore the
31 appropriate court for removal pursuant to 28 U.S.C. § 1441(a).
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37 **D. Receipt of Initial Pleading and Timeliness of Removal**

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39 On November 4, 2013, Google first received a copy of the complaint in this action. This
40 Notice is filed within thirty days of receipt as required by 28 U.S.C. § 1446(b)(1), (2)(B).
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43 **E. The State Court Complaint and Other Pleadings**

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45 Attached to this Notice is a true copy of the complaint (Notice of Removal App. 1). All
46 process, pleadings, or orders served on Google or filed in the state court in this action have been
47 attached to the Verification of State Court Records, filed concurrently with this Notice.
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1 **F. Intradistrict Assignment**

2 Google removes this action to the Seattle Division because Plaintiff's claims arose in
3
4 King County.

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6 DATED this 15th day of November, 2013.

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8
9 s/ Rebecca S. Engrav, WSBA No. 33275

10 s/ John R. Tyler, WSBA No. 42097

11 Rebecca S. Engrav, WSBA No. 33275

12 REngrav@perkinscoie.com

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17 Seattle, WA 98101-3099

18 Telephone: 206.359.8000

19 Facsimile: 206.359.9000

20
21 *Attorneys for Google Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2013, I caused to be served a true and correct copy of the foregoing on the following counsel of record as indicated:

Jackson Schmidt
Pepple Cantu Schmidt PLLC
1000 Second Avenue, Suite 2950
Seattle, WA 98104

- Via hand delivery
- Via U.S. Mail, 1st Class,
Postage Prepaid
- Via Overnight Delivery
- Via Facsimile

DATED this 15th day of November, 2013.

s/ Rebecca S. Engrav, WSBA No. 33275
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Attorneys for Google Inc.

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General Information

Court	United States District Court for the Western District of Washington
Nature of Suit	Statutes: Other Statutory Actions
Docket Number	2:13-cv-02068

