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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

12 MICHAEL REAL, as Private Attorney
General for the State of California,

13 Plaintiff,

14 vs.

15 WILINE NETWORKS INC., a corporation;
16 and DOES 1 through 25, inclusive,

17 Defendants.
18
19
20
21

No. 8:20-CV-01606

**NOTICE OF REMOVAL OF CIVIL
ACTION TO UNITED STATES
DISTRICT COURT PURSUANT
TO 28 U.S.C. §§ 1332, 1441(A), AND
1446**

[REMOVAL BASED ON
DIVERSITY JURISDICTION]

State Complaint Filed: July 21, 2020
Removal Filed: August 27, 2020

22 **TO THE HON. CLERK OF THIS COURT, PLAINTIFF AND HIS**
23 **COUNSEL OF RECORD:**

24 **PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1332, 1441(a), and
25 1446, Defendant WiLine Networks Inc., a Delaware corporation having its principal
26 place of business in Princeton, New Jersey (“Defendant”), hereby removes the state
27 court action described herein from the Superior Court of the State of California,
28

1 County of Orange (the “State Court”), to this Court, the judicial district and division
2 in which the action is pending. The grounds for removal are as follows:

3 **I. STATE COURT ACTION**

4 1. On July 21, 2020, Plaintiff Michael Real (“Plaintiff”) commenced an
5 action in the State Court, entitled *Michael Real, as Private Attorney General for the*
6 *State of California, Plaintiff, v. WiLine Networks Inc., a corporation; and Does 1*
7 *through 25, inclusive, Defendants*, Case No. 30-2020-01152166-CU-OE-CXC (the
8 “State Court Action”). True and correct copies of the Summons, Complaint, and
9 First Amended Complaint, and all attachments thereto filed in the State Court
10 Action are attached hereto collectively as **Exhibit A**. Plaintiff’s initial Complaint
11 purported to assert class claims for failure to pay earned commissions, failure to pay
12 wages at termination, and inaccurate wage statements under California’s Private
13 Attorneys General Act. (Complaint, ¶¶ 19-46.) The current State Court Complaint,
14 as amended on August 25, 2020, removes class allegations and purports to assert
15 claims for failure to pay earned commissions, failure to pay wages at termination,
16 and inaccurate wage statements under California’s Private Attorneys General Act.
17 (First Amended Complaint, ¶¶ 12-25.)

18 2. Defendant answered Plaintiff’s First Amended Complaint on August
19 26, 2020. A true and correct copy of Defendant’s Answer is attached hereto as
20 **Exhibit B**.

21 **II. JURISDICTION**

22 3. This Court has original jurisdiction over the State Court Action
23 pursuant to 28 U.S.C. § 1332(a), because the matter in controversy exceeds \$75,000,
24 exclusive of interest and costs, and is between citizens of different states. Pursuant
25 to 28 U.S.C. §1441(a), any civil action brought in a State court of which the district
26 courts of the United States have original jurisdiction, may be removed by the
27 defendant or the defendants, to the district court of the United States for the district
28

1 and division embracing the place where such action is pending. Where jurisdiction
 2 is founded on 28 U.S.C. § 1332(a), the removing party’s burden to establish federal
 3 jurisdiction will be satisfied if the parties are diverse and it is “facially evident from
 4 the complaint” that the amount in controversy exceeds \$75,000, excluding costs and
 5 interest. *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir.
 6 2003). For purposes of removal based on diversity of citizenship, the citizenship of
 7 ostensible “Doe” defendants, sued under fictitious names, is disregarded. 28 U.S.C.
 8 § 1441(b).

9 **A. Diversity of Citizenship**

10 4. The Complaint alleges that Plaintiff is domiciled in Anaheim, in
 11 Orange County, California (Complaint ¶ 6). For diversity purposes, a corporation is
 12 deemed to be a citizen of every state in which it is incorporated and of the state
 13 where it has its principal place of business. 28 U.S.C. § 1332(c)(1). The Supreme
 14 Court has adopted the “nerve center” test to determine a corporation’s principal
 15 place of business. *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010). In accordance
 16 with *Hertz*, the Ninth Circuit has observed that “the nerve center test focuses on
 17 where the enterprises decisions are made, as opposed to carried out, and thus centers
 18 on the ‘brains’ of an enterprise, not the ‘brawn’.” *See U.S. v. Chao Fan Xu*, 706 F.3d
 19 965, 976 (9th Cir. 2012) (holding the nerve center will usually be the state where the
 20 corporation has its headquarters); *3123 SMB LLC v. Horn*, 880 F.3d 461, 463 (9th
 21 Cir. 2018) (same) (citing *Hertz*).

22 5. Here, Defendant is an entity incorporated under the laws of the State of
 23 Delaware and maintains its corporate headquarters in Princeton, New Jersey.
 24 Declaration of Dave Hertgen (“Hertgen Decl.”), ¶ 1.¹ Defendant is therefore a
 25 citizen of Delaware and New Jersey, *see* 28 U.S.C. § 1332(c), and Plaintiff is a

26
 27 ¹ The Complaint incorrectly alleges that Defendant is a New Jersey corporation.
 28 (Complaint ¶ 7.)

1 citizen of California, a State different from Defendant, as required by 28 U.S.C. §
2 1332(a)(1).

3 **B. Amount in Controversy**

4 6. In the initial Complaint, Plaintiff sought, among other things,
5 “compensatory damages in an amount not less than \$500,000[.]” Complaint, Prayer
6 for Relief, p. 11. In his amended complaint, Plaintiff seeks, among other things,
7 civil penalties “in an amount not less than \$250,000[.]” First Amended Complaint,
8 Prayer, p. 7.

9 7. As set forth in its Answer, Defendant denies the validity and merit of
10 the entirety of all of Plaintiff’s alleged claims, the legal theories upon which they are
11 purportedly based, and the alleged claims for monetary and other relief that
12 ostensibly flow therefrom. For purposes of removal only, however, and without
13 conceding that Plaintiff is entitled to any damages or relief whatsoever, Plaintiff’s
14 own pleadings demonstrate on their face that the amount in controversy exceeds the
15 \$75,000 minimum threshold to confer jurisdiction on this Court pursuant to 28
16 U.S.C. § 1332(a); *see also Matheson*, 319 F.3d at 1090.

17 **III. VENUE**

18 8. Defendant alleges that venue lies in the United States District Court for
19 the Central District of California under 28 U.S.C. § 1441(a). As stated above,
20 plaintiff brought this action in the Superior Court of the State of California, County
21 of Orange. Thus, venue properly lies in the United States District Court for the
22 Central District Court, Southern Division, which embraces (indeed, is coextensive
23 with) Orange County,² the place where the State Action is pending. *See* 28 U.S.C. §
24 1441(a).

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26
27 ² *See* <https://www.cacd.uscourts.gov/jurisdiction>.
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1 **IV. COMPLIANCE WITH 28 U.S.C. § 1446**

2 9. Pursuant to 28 U.S.C. §1446(a), the documents referenced in paragraph
3 1 above and attached hereto as **Exhibits A and B** constitute all process, pleadings,
4 and orders of which Defendant has knowledge of being filed in the State Court
5 Action.

6 10. The Summons and Complaint in the State Court Action ostensibly were
7 served on Defendant on July 31, 2020, making August 31, 2020 the last day to
8 remove, pursuant to 28 U.S. Code § 1446 and Rule 26(a)(1) of the Federal Rules of
9 Civil Procedure. Declaration of Jose Raul Alcantar Villagran (“Alcantar Decl.”), ¶
10 2, Ex. 1, Proof of Service. Defendant is informed and believes no other person or
11 entity has been served. This Notice of Removal has been timely filed, in that it is
12 being filed on or before August 31, 2020. No previous Notice of Removal has been
13 filed or made with this Court for the relief sought herein.

14 11. Defendant, the only named defendants in this action, consents to this
15 removal, as required by 28 U.S.C. section 1446(b)(2)(A). Hertgen Decl. ¶ 3.

16 12. Defendant will promptly serve Plaintiff with this Notice of Removal,
17 and will promptly file a copy of this Notice of Removal with the clerk of the state
18 court in which the State Court Action is pending, as required under 28 U.S.C. §
19 1446(d).

20 **WHEREFORE**, Defendant hereby removes the above-referenced State Court
21 Action to this Court.

22
23 DATED: August 27, 2020

NASSIRI & JUNG LLP

24 By: /s/ Jose Raul Alcantar Villagran

25 Jose Raul Alcantar Villagran

26 Attorneys for Defendant

27 WILINE NETWORKS INC.
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