

1 JOSEPH C. LIBURT (STATE BAR NO. 155507)  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
2 1000 Marsh Road  
Menlo Park, California 94025  
3 Telephone: (650) 614-7400  
Facsimile: (650) 614-7401  
4 jliburt@orrick.com

5 JULIE A. TOTTEN (STATE BAR NO. 166470)  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
6 400 Capitol Mall, Suite 3000  
Sacramento, CA 95814-4497  
7 Telephone: (916) 447-9200  
Facsimile: (916) 329-4900  
8 jatotten@orrick.com

9 Attorneys for Defendant  
10 SPOTIFY USA, INC.

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13  
14 MATTHEW ELIAS, an individual on  
behalf of himself and all others similarly  
15 situated and aggrieved,

16 Plaintiff,

17 v.

18 SPOTIFY USA INC., a Delaware  
Corporation; and DOES 1 to 100,  
19 inclusive,

20 Defendants.

Case No. 2:20-cv-01854

**DEFENDANT SPOTIFY USA,  
INC.'S NOTICE OF REMOVAL**

21  
22  
23  
24  
25  
26  
27  
28

1 TO UNITED STATES DISTRICT COURT FOR THE CENTRAL  
2 DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND HIS COUNSEL OF  
3 RECORD:

4 PLEASE TAKE NOTICE that Defendant Spotify USA, Inc. (“Spotify”) files  
5 this Notice of Removal pursuant to 28 U.S.C. sections 1332, 1441, 1446 and 1453  
6 to effect the removal of the above-captioned action, which was commenced in the  
7 Superior Court in the State of California for the County of Los Angeles. The  
8 removal is proper for the reasons stated below.

9 **I. BACKGROUND**

10 1. On January 22, 2020, Plaintiff Matthew Elias (“Plaintiff” or “Elias”),  
11 on behalf of himself and purportedly all others similarly situated and allegedly  
12 aggrieved, filed a complaint in the Superior Court of California for the County  
13 Los Angeles, entitled *Matthew Elias v. Spotify USA, Inc.*, Case No. 20STCV02605  
14 (hereinafter, the “Complaint”).

15 2. The Complaint asserts the following causes of action: (1) Failure to  
16 Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512 and IWC Wage Order  
17 12-2001, § 11]; (2) Failure to Provide Rest Breaks [Cal. Lab. Code §§ 226.7, 512,  
18 1194 and IWC Wage Order 12-2001, § 12]; (3) Failure to Pay Minimum Wage  
19 [Cal. Lab. Code §§ 510, 1194, 1194.2, 1197, and IWC Wage Order 12-2001, § 4];  
20 (4) Failure to Pay Overtime Wages [Cal. Lab. Code §§ 510, 1194 and IWC Wage  
21 Order 12-2001, § 3]; (5) Failure to Furnish Timely and Accurate Itemized Wage  
22 Statements [Cal. Lab. Code § 226]; (6) Failure to Pay All Wages Owed Upon  
23 Separation [Cal. Lab. Code §§ 201-203]; (7) Failure to Reimburse All Necessary,  
24 Business-Related Expenses [Cal. Lab. Code §§ 2802]; (8) Violation of California’s  
25 Unfair Competition Law (“UCL”) [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]; and  
26 (9) Private Attorneys’ General Act of 2004 (PAGA) [Cal. Lab. Code §§ 2698, *et*  
27 *seq.*]. Plaintiff, on behalf of himself and the class members he seeks to represent,  
28 seeks relief in the form of allegedly unpaid wages, restitution, injunctive relief,

1 declaratory relief, penalties under the Labor Code, compensatory damages,  
2 attorneys' fees, costs, and interest. *See* Complaint, Prayer for Relief.

3 3. Specifically, Plaintiff alleges that he was employed by Spotify as a  
4 nonexempt employee in California from approximately July 6, 2016 through  
5 approximately July 1, 2018. Complaint ¶ 12. Plaintiff alleges that approximately  
6 one year into his employment Spotify reclassified – thereby misclassified – him  
7 from nonexempt employee to independent contractor while his compensation,  
8 duties, role, title and everything else remained unchanged. *Id.* Plaintiff thus  
9 contends that Spotify intentionally misclassified him and other employees as  
10 independent contractors. *Id.* ¶ 2. He alleges that as a result of this  
11 misclassification, Spotify failed to provide off-duty meal and rest breaks to these  
12 contractors; failed to pay them all wages owed including minimum wage, overtime  
13 wage, and premium pay; failed to reimburse all necessary, business-related  
14 expenses; failed to issue timely and accurate wage statements; and violated  
15 California's UCL. *Id.* ¶ 2.

16 4. Plaintiff further contends that Spotify similarly failed to provide off-  
17 duty meal periods and rest breaks to its California nonexempt employees; failed to  
18 pay them all wages owed including minimum wage, overtime wage, and premium  
19 pay; failed to reimburse all necessary, business-related expenses; failed to issue  
20 timely and accurate wage statements; and violated California's UCL. *Id.* ¶ 2.  
21 Plaintiff alleges that Spotify's policy and practice is to deny earned wages,  
22 including premium and overtime pay, to nonexempt employees and to require them  
23 to work off the clock, including, but not limited to performing work during meal  
24 periods and rest breaks and after their shifts end. *Id.* ¶ 4. Plaintiff further alleges  
25 that Spotify's policy and practice is to require nonexempt employees to incur  
26 necessary, business-related expenses to purchase streaming services and cellular  
27 data services, which are not reimbursed. *Id.* ¶ 6. As a result of these alleged  
28 violations, Plaintiff alleges that Spotify failed to provide accurate itemized wage

1 statements; failed to pay all wages due upon termination; and violated the  
2 California UCL. *Id.* ¶¶ 32, 85-110.

3 5. Spotify, through its agent for service of process, was served with the  
4 Summons and Complaint and other papers on February 1, 2020 via certified mail.  
5 The Summons and Complaint are attached hereto together with all other pleadings,  
6 process and orders served on Spotify as **Exhibit A**. The Notice of Removal is  
7 timely under any removal period. *See* 28 U.S.C. § 1446(b); Fed. R. Civ.  
8 P. 6(a)(1)(C); *SteppeChange LLC v. VEON Ltd.*, 354 F. Supp. 3d 1033, 1041  
9 (N.D. Cal. 2018) (Formal service of process, measured from the service date  
10 according to state law, is a prerequisite for triggering the 30-day removal period);  
11 *Kuxhausen v. BMW Financial Services NA LLC*, 707 F.3d 1136 (2013) (30-day  
12 removal period not triggered by indeterminate complaint that “does not make clear  
13 whether the required jurisdictional elements are present”).

## 14 **II. FIRST BASIS FOR REMOVAL JURISDICTION: DIVERSITY** 15 **JURISDICTION**

16 6. A civil action may be removed from a state court to a federal district  
17 court where the action is pending if the district court has original jurisdiction over  
18 the action. 28 U.S.C. § 1441(a). The action is a civil action over which this Court  
19 has original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because it is a civil  
20 action between citizens of different states and the matter in controversy for the  
21 named Plaintiff exceeds \$75,000, exclusive of interest and costs. As such, the  
22 action is removable to this Court under 28 U.S.C. § 1441(a)(1).

### 23 **Complete Diversity of Citizenship**

24 7. Section 1332 requires complete diversity, i.e., that “the citizenship of  
25 each plaintiff is diverse from the citizenship of each defendant.” *Caterpillar Inc. v.*  
26 *Lewis*, 519 U.S. 61, 67-68 (1996). Only the citizenship of the named parties in a  
27 proposed class action (the named plaintiff and defendant) is considered for diversity  
28 purposes. *Snyder v. Harris*, 394 U.S. 332, 339-340 (1969).

1           8.     Plaintiff's Citizenship. Plaintiff alleges that he was at the time this  
2 action was commenced, and still is, a resident of the State of California, and was  
3 employed in California from approximately July 6, 2016 through July 1, 2018.  
4 Complaint ¶ 12. For diversity purposes, a person is a "citizen" of the state in which  
5 he or she is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088 (9th Cir.  
6 1983). A person's domicile is the place he or she resides with the intention to  
7 remain or to which he or she intends to return. *Kanter v. Warner-Lambert Co.*,  
8 265 F.3d 853, 857 (9th Cir. 2001). Residence is *prima facie* the domicile. *See*  
9 *Ayala v. Cox Automotive, Inc.*, 2016 WL 6561284, at \*4 (C.D. Cal. 2016)  
10 (allegation that Plaintiff "is, and at all times, mentioned in the Complaint was," a  
11 California resident "gives rise to a presumption that Plaintiff is a California  
12 citizen"); *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir.  
13 1994). Spotify therefore alleges that Plaintiff is a citizen of California.

14           9.     Defendant Spotify's Citizenship. For diversity purposes, a corporation  
15 "shall be deemed a citizen of any State by which it has been incorporated and of the  
16 State where it has its principal place of business." 28 U.S.C. § 1332(c)(1). Spotify  
17 is now, and was at the time of the filing of the Complaint, a corporation  
18 incorporated under the laws of the State of Delaware. Complaint ¶ 13; Declaration  
19 of Katie Christiansen ("Christiansen Decl.") ¶ 3. Spotify's principal place of  
20 business is now, and as of the time of filing of the Complaint, in the state of New  
21 York. *Id.* Therefore, Spotify is deemed a citizen of Delaware and New York for  
22 the purposes of determining diversity of citizenship. 28 U.S.C. § 1332(c)(1).

23           10.    Doe Defendants' Citizenship. The citizenship of fictitious defendants  
24 is disregarded for purposes of establishing removal jurisdiction under 28 U.S.C.  
25 section 1332. *See* 28 U.S.C. § 1441(a); *see also Bryant v. Ford Motor Co.*,  
26 886 F.2d 1526 (9th Cir. 1989), cert. denied, 493 U.S. 1076 (1990).

27 ///

28 ///

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.