

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ARMSLIST LLC, TORQUELIST LLC,  
JONATHAN GIBBON, and N. ANDREW  
VARNEY, III,

Plaintiff,

v.

FACEBOOK, INC., and INSTAGRAM, LLC,  
  
Defendants.

Civil Action No. 2:21-cv-1917

*Electronically filed*

**NOTICE OF REMOVAL**

Defendants Facebook, Inc.<sup>1</sup> (“Facebook”) and Instagram, LLC (“Instagram”) (collectively “Defendants”), by and through their undersigned counsel and pursuant to 28 U.S.C. §§ 1332(a), 1441 and 1446, file this Notice of Removal of Case No. 21C103063, which was pending in the Court of Common Pleas of Westmoreland County, Pennsylvania.<sup>2</sup> In support of their Notice of Removal, Defendants state as follows:

**INTRODUCTION AND BACKGROUND**

1. On or about August 11, 2021, Plaintiffs Armslist LLC, Torquelist LLC, Jonathan Gibbon, and N. Andrew Varney, III (“Plaintiffs”) filed a “Complaint for Declaratory and Injunctive Relief” in the Court of Common Pleas of Westmoreland County, Pennsylvania, styled

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<sup>1</sup> On October 28, 2021, Facebook, Inc. changed its name to Meta Platforms, Inc. Because Plaintiffs’ Complaint was filed prior to the name change and for ease of reference, this Notice of Removal refers to Defendant identified as “Facebook, Inc.” in the pleadings as “Facebook, Inc.” here.

<sup>2</sup> Counsel for Defendants specially appear for purposes of this notice of removal. This notice shall not be construed as a general appearance or the consent of Defendants to the jurisdiction of the Court, nor as a waiver of any defenses, including on grounds of lack of personal jurisdiction or improper venue.

as *Armslist LLC, Torquelist LLC, Jonathan Gibbon, and N. Andrew Varney, III v. Facebook, Inc. and Instagram, LLC.*, Case No. 21CI03063. The Complaint did not contain a demand for damages. Exhibit A, Compl., ¶ 1, and pp. 34-40.

2. On September 1, 2021, Plaintiffs filed a Petition to File Amended and Supplemental Complaint. Like the original Complaint, the Amended and Supplemental Complaint sought declaratory judgment and injunctive relief only. Exhibit B, Am. & Suppl. Compl. ¶ 7, and pp. 37-43.

3. Plaintiffs served the Complaint and Amended and Supplemental Complaint upon Instagram on September 15, 2021, and upon Facebook on September 29, 2021. Exhibit C, Affidavit of Service upon Defendants, Instagram, LLC and Facebook, Inc.

4. Defendants filed preliminary objections to the Amended and Supplemental Complaint on November 12, 2021. Exhibit D, Defendants' Preliminary Objections to Plaintiffs' Complaint, pp. 3-5.

5. In response to Defendants' preliminary objections, Plaintiffs filed and served a Second Amended and Supplemental Complaint on December 2, 2021 ("SAC"). Exhibit E, Second Am. & Suppl. Compl. The SAC added a count for breach of contract (Count Two), and in the alternative, unjust enrichment (Count Three) and promissory estoppel (Count Four). *Id.* at pp. 45, 49, 52, 53. Counts Two, Three and Four will be collectively referred to herein as Plaintiffs' "Breach of Contract Claims."

6. Further, Plaintiffs' SAC added a request for damages "not to exceed \$74,999.99," at Counts Two through Four. *Id.* at ¶ 254, 274, 294.

7. Copies of “all process, pleadings, and orders served upon [] defendant” are attached hereto as Exhibits A through F, as required by 28 U.S.C. § 1446(a). Exhibit F contains copies of the state court’s orders.

### **DIVERSITY JURISDICTION**

8. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332, which grants the U.S. District Courts original jurisdiction over “all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States . . .”). This action satisfies all Section 1332(a) requirements.

#### **Diversity of Citizenship**

##### **Plaintiffs are citizens of Pennsylvania.**

9. Plaintiffs Armslist LLC and Torquelist LLC allege that they are Pennsylvania limited liability companies, and the individual Plaintiffs allege that they are citizens of Pennsylvania. Exhibit E, ¶¶ 1-4.

##### **Defendants are citizens of Delaware and California.**

10. Defendant Facebook is a Delaware corporation, with a principal place of business in Menlo Park, CA. *Id.* at ¶ 5. Facebook is therefore a citizen of Delaware and California for the purposes of diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1) (“a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.”).

11. Defendant Instagram is a Delaware limited liability company, with a principal place of business in Menlo Park, CA. Exhibit E, ¶ 6. Instagram is therefore a citizen of Delaware and California for the purposes of diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1).

12. Neither Defendant is a citizen of Pennsylvania. *See* 28 U.S.C. § 1441(b)(2) (prohibiting removal under 28 U.S.C. 1332(b) where any of the defendants in the action are citizens of the State in which the action is brought.)

13. Accordingly, diversity of citizenship exists between the parties.

**The Amount in Controversy Exceeds \$75,000, Exclusive of Interest and Costs.**

14. The amount in controversy in this civil action exceeds the sum or value of \$75,000, exclusive of interest and costs.

15. Count I of the SAC seeks equitable relief in the form of declaratory and injunctive relief only. Exhibit E, ¶¶ 179-209 and 241-253.

16. Counts II, III and IV, Plaintiffs' Breach of Contract Claims, demand "[d]amages not to exceed \$74,999.99."<sup>3</sup> Exhibit E, ¶¶ 254, 274, 294.

17. Taking the relief sought by Plaintiffs for all the claims in the SAC into account, the amount in controversy exceeds \$75,000.00, satisfying the statutory requirement of 28 U.S.C. § 1332(a).

18. Plaintiffs' SAC includes stipulations and verifications that their damages for the Breach of Contract Claims do not exceed \$74,999.99.

19. As explained more fully below, Plaintiffs' claim for equitable relief has value that far exceeds the two-cent difference between the stipulated damages of \$74,999.99 and the jurisdictional requirement that the amount in controversy exceed \$75,000.00.

**Plaintiffs' Request for Equitable Relief in Count One Has a Monetary Value of More Than Two Cents.**

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<sup>3</sup> In acknowledging that Plaintiffs' SAC pleads facts establishing this Court's subject matter jurisdiction under 28 U.S.C. § 1332, Defendants in no way concede that Plaintiffs are entitled to damages, a declaratory judgment, injunctive relief, attorneys' fees, costs, or any other relief whatsoever.

20. When determining the amount in controversy, the “Court’s task is to examine not just the dollar figure offered by the plaintiff but also her actual legal claims.” *Morgan v. Gay*, 471 F.3d 469, 475 (3d Cir. 2006).

21. Also, the court determines the amount in controversy from the complaint itself. *See Angus v. Shiley, Inc.*, 989 F.2d 142, 145 (3d Cir. 1993), citing, *Horton v. Liberty Mutual Ins. Co.*, 367 U.S. 348, 353, 81 S. Ct. 1570, 1573, 6 L.Ed.2d 890 (1961); and *see also Samuel-Bassett v. Kia Motors*, 357 F.3d 392, 398-99 (3d Cir. 2004) (“When the amount in controversy is not specified in the complaint, the court must assess the claims and attempt to translate those claims into monetary sums.”).

22. The Third Circuit recognizes that equitable claims have monetary value that are to be considered when determining the amount in controversy. For instance, in *Spock v. David* the Third Circuit held that rights of free speech and free assembly have value, can be considered in deciding whether a claim for equitable relief meets the required jurisdictional amount, and are sufficiently capable of meeting the jurisdictional amount. *Spock v. David*, 469 F.2d 1047, 1052 (3d Cir. 1972).<sup>4</sup> “Free speech is almost by definition, worth more than \$10,000.” *Spock*, 469 F.2d at 1052.

**Plaintiffs’ Allegations Demonstrate That Their Equity Claims in Count One Have Value in Excess of One Cent.**

23. Here, Plaintiffs specifically allege that Armslist’s website sells advertisements and premium memberships. *Id.* at ¶ 33 (“Armslist makes money by selling advertisements on its

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<sup>4</sup> The statute at issue in *Spock v. David* was 28 U.S.C. § 1331, which had a \$10,000 amount in controversy requirement in 1972. *Spock*, 469 F.2d at 1050. The court’s reasoning for finding the amount in controversy satisfied the court’s original jurisdiction requirements under Section 1331 apply equally to Section 1332’s amount in controversy requirements.

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