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11
12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 ALEXANDER LIU, Individually and On Behalf of
15 All Others Similarly Situated,

16 Plaintiff,

17 vs.

18 XOOM CORP., JOHN KUNZE, AND RYNO
19 BLIGNAUT,

Defendants.

Case No. 3:15-cv-00602

NOTICE OF REMOVAL

1 Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendants Xoom Corporation (“Xoom”),
2 John Kunze, and Ryno Blignaut (collectively, “Defendants”), specially appearing solely for the
3 purpose of submitting this notice of removal and preserving and not waiving any defenses they may
4 have based on lack of personal jurisdiction or service of process, or any other defenses, by their
5 attorneys, hereby remove the above-captioned case pending in the Superior Court of the State of
6 California, County of San Francisco, to the United States District Court for the Northern District of
7 California.

8 As grounds for removal, Defendants state as follows:

9 1. On January 6, 2014, plaintiff Alexander Liu initiated this putative state court class
10 action by filing a complaint (the “Complaint”) entitled *Alexander Liu vs. Xoom Corp., et al.*, in the
11 Superior Court of the State of California, County of San Francisco, ostensibly on behalf of all
12 similarly-situated individuals who purchased common stock of Xoom allegedly “pursuant and/or
13 traceable to [Xoom’s] Registration Statement and Prospectus, declared effective by the SEC on
14 February 14, 2013, issued in connection with [Xoom’s] Initial Public Offering (‘IPO’).” Complaint
15 ¶ 1. This case was assigned docket number CGC-15-543531. Plaintiff made an attempt to serve
16 Xoom on January 8, 2015, and Messrs. Kunze and Blignaut on January 15, 2015.¹

17 2. The Complaint alleges that Xoom’s February 14, 2013 Registration Statement and
18 Prospectus contained material misstatements and/or omissions, and seeks to assert claims under
19 Sections 11 and 15 of the Securities Act of 1933 (the “1933 Act”), 15 U.S.C. §§ 77k and 77o.

20 3. Pursuant to 28 U.S.C. §§ 1441(a) and 1446(a), this Notice of Removal is being filed
21 in the United States District Court for the Northern District of California.

22 4. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. See 28 U.S.C.
23 1446(a).

24 5. In accordance with 28 U.S.C. § 1446(a), attached is a copy of the Complaint, and the
25 summons attached thereto.

26 6. All defendants join in this Notice of Removal, and all consent thereto.

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¹Defendants do not concede that Plaintiff’s attempted service was proper.

1 7. Defendants will promptly serve a copy of the Notice of Removal on Plaintiff's
2 counsel and file with the Clerk of the Superior Court of the State of California, County of San
3 Francisco, a Notice of Filing of Notice of Removal pursuant to 28 U.S.C. § 1446(d).

4 8. This Court has original subject matter jurisdiction over this lawsuit pursuant to 28
5 U.S.C. § 1331 in that the Complaint asserts claims based upon, and this action thus arises under, the
6 statutory laws of the United States. As such, this action is removable under 28 U.S.C. § 1441(a).

7 9. All requirements for such jurisdiction are met.

8 10. A district court has jurisdiction over cases that arise under the Constitution, laws, or
9 treaties of the United States. 28 U.S.C. § 1331. A case "arises under" federal law where either (i)
10 federal law creates a cause of action; or (ii) "the vindication of a right under state law necessarily
11 turn[s] on some construction of federal law. *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*,
12 463 U.S. 1, 9 (1983). The present case arises under federal law because the cause of action Plaintiff
13 seeks to assert is created by federal law.

14 11. Conversely, the state courts do not have subject matter jurisdiction over this action.
15 More specifically, Plaintiff has filed a putative class action asserting claims for alleged violations of
16 the 1933 Act on behalf of "thousands" of Xoom shareholders. Complaint ¶ 24. Accordingly, this
17 lawsuit is a "covered class action" as defined in Section 16(f)(2)(A) of the 1933 Act. Section
18 16(f)(2)(A) defines a "covered class action" as any "single lawsuit in which (I) damages are sought
19 on behalf of more than 50 persons or prospective class members." 15 U.S.C. § 77p(f)(2)(A)(i)(I). In
20 1998, as part of Congress' efforts to ensure that the federal courts would be the exclusive venue for
21 litigation of securities class action claims, Congress amended the jurisdictional provision of the 1933
22 Act (Section 22(a)) to divest state courts of subject matter jurisdiction over "covered class actions."
23 Section 22(a) previously had conferred upon state courts concurrent jurisdiction over all suits
24 asserting claims under the 1933 Act. But in 1998, Congress amended Section 22(a)'s grant of
25 subject matter jurisdiction to remove concurrent jurisdiction over "covered class actions." *See* 15
26 U.S.C. § 77v(a) (1998). As amended, Section 22(a) now provides:

27 The district courts of the United States . . . shall have jurisdiction of offenses and
28 violations under this subchapter . . . and concurrent with State and Territorial courts,
 except as provided in section 77p of this title [i.e., Section 16,] *with respect to covered*
 class actions

1 *Id.*²

2 12. Because the federal courts (and not the state courts) have original subject matter
 3 jurisdiction over this federal question case, it is properly removable to this Court under 28 U.S.C.
 4 § 1441(a). *See, e.g., Lapin v. Facebook, Inc.*, No. C–12–3195 MMC, 2012 WL 3647409, at *2
 5 (N.D. Cal. Aug. 23, 2012) (“federal courts alone have jurisdiction to hear covered class actions
 6 raising 1933 Act claims”); *In re Fannie Mae Sec. Lit.*, No. 08-cv-7831-PAC, 2009 WL 4067266, at
 7 *2 (S.D.N.Y. Nov. 24, 2009) (“federal courts have exclusive jurisdiction over covered . . . class
 8 actions alleging claims under the 1933 Act”); *Knox v. Agria Corp.*, 613 F. Supp. 2d 419, 425
 9 (S.D.N.Y. 2009) (“the exception in the jurisdictional provision of Section 22(a) exempts covered
 10 class actions raising 1933 Act claims from concurrent jurisdiction” such that “federal courts alone
 11 have jurisdiction to hear them”); *Pinto v. Vonage Holdings Corp.*, Civ. A. No. 07-0062 (FLW), 2007
 12 WL 1381746, at *2 (D.N.J. May 7, 2007) (holding that § 22(a) of the 1933 Act “divest[s] state
 13 courts of concurrent jurisdiction over covered class actions”).

14 Based upon the foregoing, Defendants respectfully submit that this Court has exclusive
 15 jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 77v(a), and the claims
 16 may be removed to this Court under 28 U.S.C. §§ 1441(a) and 1446(a).

17 WHEREFORE, this action should proceed in the United States District Court for the
 18 Northern District of California, as an action properly removed thereto.

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 25 ² Likewise, Section 22(a) previously provided that no 1933 Act claims filed in state court could be
 26 removed to federal court. In conjunction with Congress’ amendment in 1998 of Section 22(a)’s
 27 jurisdictional provision to divest state courts of concurrent jurisdiction over “covered class actions”
 28 like the present case, Congress also amended this removal bar provision to provide that only 1933
 Act suits filed in a “State court of competent jurisdiction” may be removed. Because state courts no
 longer have subject matter jurisdiction over “covered class actions,” they are not “courts of
 competent jurisdiction” in regard to “covered class actions,” and, thus, Section 22(a)’s removal bar
 does not apply to the removal of “covered class actions.”

1 Dated: February 6, 2015

Respectfully submitted,

2 **GOODWIN PROCTER LLP**

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4 By: /s/ Nicole L. Chessari
5 Brian E. Pastuszenski (*pro hac vice*
application pending)
6 Nicole L. Chessari (SBN 259970)

7 *Attorneys for Defendants Xoom*
Corporation, John Kunze, and Ryno
8 *Blignaut*

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PROOF OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is Three Embarcadero Center, 24th Floor, San Francisco, CA 94111.

On **February 6, 2015**, I served the following documents by placing a true copy thereof in a sealed envelope(s) on the persons below as follows:

NOTICE OF REMOVAL

Lawrence M. Rosen
Alexander Liu
The Rosen Law Firm PA
350 Fifth Avenue, Suite 5508
New York, NY 10118

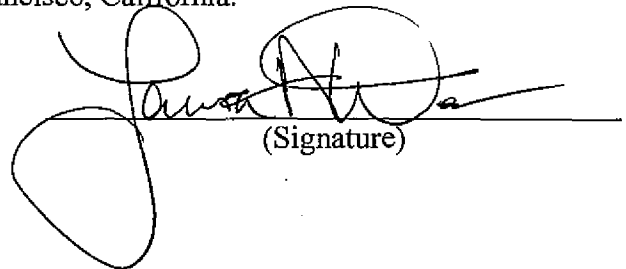
Counsel for Plaintiff Alexander Liu

- (MAIL) I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at San Francisco, California.
- (CM/ECF Electronic Filing) I caused the above document(s) to be transmitted to the office(s) of the addressee(s) listed above by electronic mail at the e-mail address(es) set forth above pursuant to Fed.R.Civ.P.5(d)(1). "A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof of service as required by Fed.R.Civ.P.5(d)(1). A copy of the NEF shall be attached to any document served in the traditional manner upon any party appearing pro se."

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction this service was made and that the foregoing is true and correct.

Executed on **February 6, 2015**, at San Francisco, California.

Laura A Weaver
(Type or print name)


(Signature)