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7 Attorneys for Defendant Nutiva, Inc.
8

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11

12 PRESTON JONES, on behalf of himself,
13 all others similarly situated, and the general
public,

14 Plaintiff,

15 vs.
16

17 NUTIVA, INC.,

18 Defendant.
19

Case No. 3:16-CV-00711

**DEFENDANT'S NOTICE OF
REMOVAL**

20 Complaint Filed: January 8, 2016
21 Trial Date: None Set
22
23



1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT OF THE**
2 **NORTHERN DISTRICT OF CALIFORNIA:**

3 **PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and
4 1453, Defendant Nutiva, Inc. (“Defendant” or “Nutiva”) hereby removes this action
5 from the Superior Court of the State of California for the County of Contra Costa to the
6 United States District Court for the Northern District of California, on the
7 following grounds:

8 **STATEMENT OF THE CASE AND TIMELINESS OF REMOVAL**

9 1. On January 8, 2016, Plaintiff Preston Jones (“Plaintiff”) commenced an
10 action against Defendant in the Superior Court of the State of California for the County
11 of Contra Costa, Case Number C16-00014, by filing a Complaint entitled “*PRESTON*
12 *JONES, on behalf of himself, all others similarly situated, and the general public v.*
13 *NUTIVA, INC.*” A true and correct copy of this document is attached hereto as Exhibit
14 1. (See Declaration of Matthew R. Orr (“Orr Decl.”), ¶ 2.)

15 2. In his Complaint, Plaintiff seeks, among other things, to certify a putative
16 class that purports to include “all persons in the United States who, on or after [*sic*]
17 from January 7, 2011 (the “Class Period”), purchased, for personal or household use,
18 and not for resale or distribution purposes, Nutiva Extra Virgin Coconut Oil, Nutiva
19 Virgin Coconut Oil, or Nutiva Refined Coconut Oil (the “Class”).” (Compl. ¶ 109.)
20 These three coconut oil products are referred to herein as the “Products.”

21 3. The Complaint alleges causes of action against Defendant for supposed
22 violations of Consumer Legal Remedies Act § 1750 *et seq.*, California Business and
23 Professions Code §§ 17200 and 17500 *et seq.*, and Breach of Express and Implied
24 Warranties based on Defendant’s alleged improper labeling of the Products.

25 4. On January 15, 2016, Defendant accepted service of the summons and
26 complaint by returning an executed Acknowledgement of Receipt to counsel for
27 Plaintiff. A true and correct copy of the Acknowledgement and Receipt is attached
28 hereto as Exhibit 2. (Orr Decl., ¶ 3.) On February 10, 2016, Defendant filed an Answer

1 in state court denying the allegations in the Complaint and reserving a number of
2 affirmative defenses. A true and correct copy of the Answer is attached hereto as
3 Exhibit 3. (Orr Decl., ¶ 4.)

4 5. The Complaint establishes Plaintiff as a resident of Virginia and thus, not a
5 citizen or domicile of the State of California at the time of the filing of the Complaint.
6 (See Compl., ¶ 4.)

7 6. This removal is timely filed as required by 28 U.S.C. § 1446(b) as it is
8 brought within 30 days of January 15, 2016; the date the Complaint was served on
9 Defendant.

10 **SUBJECT MATTER JURISDICTION**

11 7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1332,
12 1441, and 1453. This Court specifically has jurisdiction under the Class Action
13 Fairness Act of 2005 (“CAFA”), codified in part at 28 U.S.C. §§ 1332(d)(2) and
14 1453(b), because it is a civil action styled as a class action in which: (1) the number of
15 members of the proposed plaintiff class is not less than one hundred, in the aggregate;
16 (2) the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of
17 interest and costs; and (3) any member of the class of plaintiff is a citizen of a State
18 different from any defendant. 28 U.S.C. §§ 1332(d)(2) and (d)(5).

19 **PLAINTIFF’S CASE IS STYLED AS A PUTATIVE CLASS ACTION**
20 **WITH A PROPOSED CLASS OF NOT LESS THAN 100 MEMBERS**

21 8. This Court has CAFA jurisdiction because this lawsuit is a putative class
22 action, and the proposed class comprises more than 100 individuals.

23 9. CAFA jurisdiction exists over any “class action” brought under any “State
24 statute or rule of judicial procedure authorizing an action to be brought by one or more
25 representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B). This case
26 constitutes a “class action” for purposes of removal because Plaintiff styles his
27 Complaint as a “Class Action,” and the Complaint seeks certification of a class pursuant
28 to California Code of Civil Procedure § 382, a state statute that authorizes class actions

1 if the representative plaintiff can prove that the “parties are numerous, and it is
2 impracticable to bring them all before the court” (Compl., ¶¶ 108–117.) Thus, this
3 action qualifies as a class action under CAFA.

4 10. CAFA jurisdiction exists unless “the number of members of all proposed
5 plaintiff classes in the aggregate is less than 100.” 28 U.S.C. § 1332(d)(5)(A). CAFA
6 defines class members as “the persons (named or unnamed) who fall within the
7 definition of the proposed or certified class in a class action.” 28 U.S.C.
8 § 1332(d)(1)(D). This requirement is met here because Plaintiff seeks to represent a
9 class defined as “all persons in the United States who, on or after [sic] from January 7,
10 2011 (the “Class Period”), purchased, for personal or household use, and not for resale
11 or distribution purposes, Nutiva Extra Virgin Coconut Oil, Nutiva Virgin Coconut Oil,
12 or Nutiva Refined Coconut Oil (the “Class”).” (Compl. ¶ 109.) The total number of
13 class members in the class proposed by Plaintiff is at least in the tens of thousands of
14 individuals. (*See* Declaration of John Roulac (“Roulac Decl.”), ¶ 5.) Thus, there are
15 more than 100 members in Plaintiff’s proposed class.

16 **THE AMOUNT IN CONTROVERSY EXCEEDS \$5 MILLION**

17 11. Under CAFA, “the claims of individual class members shall be aggregated
18 to determine whether the matter in controversy exceeds the sum or value of \$5,000,000,
19 exclusive of interests and costs.” 28 U.S.C. § 1332(d)(6). In determining the amount in
20 controversy, “a court must assume that the allegations in the complaint are true and
21 assume that a jury will return a verdict for the plaintiff on all claims made in the
22 complaint.” *Fong v. Regis Corp.*, No. C 13-04497 RS, 2014 WL 26996, *2 (N.D. Cal.
23 Jan. 2, 2014).

24 12. Where, as here, the Complaint does not specify the amount in controversy,
25 the Defendant must show “by a preponderance of the evidence, that the amount in
26 controversy exceeds the statutory amount.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d
27 395, 397 (9th Cir. 2010).
28

1 13. As discussed above, Plaintiff brings this action on behalf of a purported
2 class of consumers consisting of everyone in the United States who, from January 7,
3 2011 to the present purchased the Products. (*See* Compl., ¶ 109.) Among a host of
4 other remedies (including injunctive relief, punitive damages, and attorneys’ fees),
5 Plaintiff seeks on his behalf and on behalf of the proposed class, the return of the full
6 purchase price of all of the Products sold during the class period. (Compl., ¶¶ 131, 145,
7 152, 158, Prayer for Relief.)

8 14. The Declaration of John Roulac concurrently filed herewith, establishes
9 that the amount in controversy exceeds the jurisdictional limit. (*See* Roulac Decl., ¶ 6.)
10 Thus, although Defendant denies Plaintiff’s allegations of liability, injury, and damages
11 and will oppose certification of the putative class, taking Plaintiff’s allegations to be
12 true, this is a “civil action in which the matter in controversy exceeds the sum or value
13 of \$5,000,000.” 28 U.S.C. § 1332(d)(2).

14 **MINIMAL DIVERSITY IS MET**

15 15. CAFA jurisdiction is met where “any member of a class of plaintiffs is a
16 citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). That
17 requirement is met here. Defendant is now and has been, before and after the
18 commencement of this action, organized and existing under and by virtue of the laws of
19 the State of California. (*See* Roulac Decl. ¶¶ 3–4.) Currently and before and since the
20 commencement of this action, Defendant has had its corporate headquarters and
21 principal place of business in California. (*Id.*) The California headquarters is and has
22 been the place where the majority of Defendant’s corporate books and records are
23 located. (*Id.*; *see generally, Hertz v. Friend*, 130 S.Ct. 1181, 1192 (Feb. 23, 2010) (“We
24 conclude that ‘principal place of business’ is best read as referring to the place where a
25 corporation’s officers direct, control, and coordinate the corporation’s activities” and,
26 “in practice[,] it should normally be the place where the corporation maintains its
27 headquarters—provided that the headquarters is the actual center of direction, control,
28 and coordination, *i.e.*, the ‘nerve center’”).)

DEMAND FOR JURY

Defendant Nutiva, Inc. hereby demands a jury pursuant to FRCP 38(b) on all issues subject to a jury trial raised in the Complaint of Plaintiff.

Dated: February 11, 2016

CALL & JENSEN
A Professional Corporation
Matthew R. Orr
William P. Cole

By: /s/ Matthew R. Orr
Matthew R. Orr

Attorneys for Defendant Nutiva, Inc.

CALL &
JENSEN
EST. 1981

CIVIL COVER SHEET

JS 44 (Rev. 12/12) cand rev (1/15/13)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 PRESTON JONES, on behalf of himself, all others similarly situated, and the general public,

(b) County of Residence of First Listed Plaintiff Virginia
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Paul K. Joseph, Esq. (619) 767-0356
 paul@pauljosephlaw.com
 Jack Fitzgerald, Esq. (619) 692-3840
 jack@jackfitzgeraldlaw.com

DEFENDANTS
 NUTIVA, INC.

County of Residence of First Listed Defendant Contra Costa
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
 Matthew R. Orr, Bar No. 211097
 William P. Cole, Bar No. 186772
 Call & Jensen, APC
 610 Newport Center Drive, Suite 700,, Newport Beach, CA 92660
 (949) 717-3000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District (specify)
 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§ 1332, 1441, 1446, and 1453

Brief description of cause:

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 02/11/16 SIGNATURE OF ATTORNEY OF RECORD /s/ Matthew R. Orr **3:16-CV-00711**

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)
 (Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA NDC-JS44

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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
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12 PRESTON JONES, on behalf of himself,
13 all others similarly situated, and the general
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14 Plaintiff,

15 vs.
16

17 NUTIVA, INC.,

18 Defendant.
19

Case No. 3:16-CV-00711

CERTIFICATE OF SERVICE

20 Complaint Filed: January 8, 2016
21 Trial Date: None Set
22
23



CERTIFICATE OF SERVICE
(United States District Court)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660.

On February 11, 2016, I have served the foregoing document described as

- 1. **DEFENDANT’S NOTICE OF REMOVAL;**
- 2. **CIVIL COVER SHEET;**
- 3. **DEFENDANT’S CERTIFICATE OF INTERESTED PARTIES [L.R.7.1-1];**
- 4. **CORPORATE DISCLOSURE STATEMENT [FRCP 7.1];**
- 5. **DECLARATION OF MATTHEW R. ORR IN SUPPORT OF DEFENDANTS’ NOTICE OF REMOVAL;**
- 6. **DECLARATION OF JOHN ROULAC; and**
- 7. **CERTIFICATE OF SERVICE**

on the following person(s) in the manner(s) indicated below:

SEE ATTACHED SERVICE LIST

(BY ELECTRONIC SERVICE) I am causing the document(s) to be served on the Filing User(s) through the Court’s Electronic Filing System.

(BY MAIL) I am familiar with the practice of Call & Jensen for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Call & Jensen, Newport Beach, California, following ordinary business practices.

(BY OVERNIGHT SERVICE) I am familiar with the practice of Call & Jensen for collection and processing of correspondence for delivery by overnight courier.

CALL & JENSEN
EST. 1981

1 Correspondence so collected and processed is deposited in a box or other facility
2 regularly maintained by the overnight service provider the same day in the ordinary
3 course of business. On this date, a copy of said document was placed in a sealed
4 envelope designated by the overnight service provider with delivery fees paid or
5 provided for, addressed as set forth herein, and such envelope was placed for delivery
6 by the overnight service provider at Call & Jensen, Newport Beach, California,
7 following ordinary business practices.

8 (BY FACSIMILE TRANSMISSION) On this date, at the time indicated on the
9 transmittal sheet, I transmitted from a facsimile transmission machine, which telephone
10 number is (949) 717-3100, the document described above and a copy of this declaration
11 to the person, and at the facsimile transmission telephone numbers, set forth herein.
12 The above-described transmission was reported as complete and without error by a
13 properly issued transmission report issued by the facsimile transmission machine upon
14 which the said transmission was made immediately following the transmission.

15 (BY E-MAIL) I transmitted the foregoing document(s) by e-mail to the
16 addressee(s) at the e-mail address(s) indicated.

17 (FEDERAL) I declare that I am a member of the Bar and a registered Filing User
18 for this District of the United States District Court.

19 (FEDERAL) I declare that I am employed in the offices of a member of this
20 Court at whose direction the service was made.

21 I declare under penalty of perjury under the laws of the United States of America
22 that the foregoing is true and correct, and that this Certificate is executed on February
23 11, 2016, at Newport Beach, California.

24 
25 Denise Reigel

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SERVICE LIST

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