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16 Blue Apron, Inc.

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA
19 WESTERN DIVISION

20 LISA RICCOBONO,
21 INDIVIDUALLY AND ON
22 BEHALF OF ALL OTHERS
23 SIMILARLY SITUATED,

24 Plaintiff,

25 v.

26 BLUE APRON, INC.,

27 Defendant.

No. 15-5521

[Removed from Los Angeles Super. Ct.
Case No. BC584017]

NOTICE OF REMOVAL

Complaint filed: June 9, 2015
Trial date: None Set

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

2 **PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. §§ 1332, 1446 and
3 1453, Defendant Blue Apron, Inc. (“Blue Apron” or “Defendant”) hereby removes
4 the state court action described below from the California Superior Court for the
5 County of Los Angeles to the United States District Court for the Central District of
6 California.

7 **I. BACKGROUND**

8 **A. Procedural Background**

9 1. On or about June 9, 2015, Plaintiff Lisa Riccobono (“Plaintiff”)
10 commenced a class action against Defendant in the California Superior Court for
11 the County of Los Angeles, entitled *Lisa Riccobono, individually and on behalf of*
12 *all others similarly situated, v. Blue Apron, Inc.*, as case number BC584017 (the
13 “Complaint”). Copies of the Summons and Complaint, and all other documents
14 served on Defendant, are attached as Exhibit A.

15 2. Defendant was served with the Summons and Complaint on June 22,
16 2015. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely because it
17 was filed within 30 days of service of the Summons and Complaint.

18 **B. The Complaint**

19 3. The Complaint alleges three causes of action: (1) violation of
20 California’s Automatic Purchase Renewal Statute, Cal. Bus. & Prof. Code § 17600,
21 *et seq.*; (2) violation of California’s Unfair Competition Law (“UCL”), Cal. Bus. &
22 Prof. Code § 17200, *et seq.*; and (3) violation of California’s Business and
23 Professions Code, Cal. Bus. & Prof. Code § 17535, *et seq.* See Compl. ¶¶ 28-48.

24 4. Each cause of action in the Complaint derives from Defendant’s
25 “automatic renewal offers and continuous service offers” arising from Plaintiff’s
26 purchase of “a 2-Person Plan subscription from Defendant’s website.” *Id.* ¶¶ 1, 12-
27 13; *see also id.* ¶¶ 13-17.

1 brought by Plaintiff on behalf of herself and “all others similarly situated.” Compl.
2 ¶ 19. Under the section entitled “Class Action Allegations,” Plaintiff further
3 alleges that Plaintiff “believes the Class members number in the hundreds of
4 thousands” and “[t]he potential members of the Class as defined are so numerous
5 and so diversely located throughout California, that joinder of all the members of
6 the Class [would be] impracticable.” *Id.* ¶¶ 20-21(a).

7 9. During the alleged class period, Defendant sold Blue Apron meal plans
8 to more than 100 customers in California. Declaration of Jesse St. Charles in
9 Support of Notice of Removal (“St. Charles Decl.”), ¶ 4.

10 **2. Minimal diversity exists between the parties.**

11 10. CAFA requires that only “minimal diversity” exist; that is, the
12 citizenship of at least one putative class member differs from that of at least one
13 defendant. 28 U.S.C. §§ 1332(d)(2)(A).

14 11. Plaintiff is a citizen and resident of California. Compl. ¶ 9; 28 U.S.C.
15 § 1332(a)(1) (an individual is a citizen of the state in which she resides).

16 12. Defendant is incorporated under the laws of the State of Delaware and
17 its headquarters are located in New York. Compl. ¶ 10. A corporation’s principal
18 place of business is the place where “a corporation’s officers direct, control, and
19 coordinate the corporation’s activities,” which is typically “the place where the
20 corporation maintains its headquarters.” *Hertz Corp. v. Friend*, 130 S. Ct. 1181,
21 1192 (2010). Defendant is therefore a citizen of New York.

22 13. Diversity exists between Plaintiff and Defendant, and therefore the
23 citizenship of “any member of a class of plaintiffs is a citizen of a State different
24 from any defendant,” as required under CAFA. 28 U.S.C. § 1332(d)(2)(A).

25 **3. The amount in controversy requirement is satisfied.**

26 14. Plaintiff’s lawsuit meets CAFA’s amount-in-controversy requirements
27 because it seeks restitution and other relief that, in the aggregate, exceed CAFA’s

1 \$5 million threshold.

2 15. Plaintiff does not plead a specific amount in controversy, so Defendant
3 need only make “a plausible allegation that the amount in controversy exceeds the
4 jurisdictional threshold.” *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193,
5 1195 (9th Cir. 2015) (citing *Dart Basin Operating Co. v. Owens*, — U.S. —, —,
6 135 S.Ct. 547, 554, 190 L.Ed.2d 495 (2014)).

7 16. Under CAFA, the “claims of the individual class members must be
8 aggregated.” 28 U.S.C. § 1332(d)(6). “[T]he [CAFA] statute tells the District
9 Court to determine whether it has jurisdiction by adding up the value of the claim
10 of each person who falls within the . . . proposed class and determine whether the
11 resulting sum exceeds \$5 million.” *Standard Fire Ins. Co. v. Knowles*, 133 S.Ct.
12 1345, 1348 (2013). Attorneys’ fees are properly included in the calculation.
13 *Deaver v. BBVA Compass Consulting & Benefits, Inc.*, No. 13-CV-00222, 2014
14 WL 2199645, at *3 (N.D. Cal. May 27, 2014). If the Court is uncertain whether the
15 amount in controversy exceeds \$5 million, “the court should err in favor of
16 exercising jurisdiction over the case.” S. Rep. No. 109-14, at 42 (2005).

17 17. Plaintiff seeks restitution and disgorgement for herself and the putative
18 class. Compl. at 12-13 (Prayer for Relief). Plaintiff also seeks attorneys’ fees and
19 costs, as well as “[a]ny and all other relief as this Court may deem necessary or
20 appropriate.” *Id.* Together, as shown below, removal is proper because these
21 remedies exceed \$5 million, as required for federal jurisdiction:

22 18. Restitution. As described in the Declaration of Jesse St. Charles filed
23 in support of this Notice of Removal, the sales of Blue Apron plans from June 9,
24 2011 to June 9, 2015 have exceeded \$5 million in California. St. Charles Decl. ¶ 4.
25 As noted, Plaintiff seeks restitution as a potential remedy. Thus, the amount in
26 controversy unquestionably exceeds the CAFA threshold. *Watkins v. Vital*
27 *Pharms., Inc.*, 720 F.3d 1179 (9th Cir. 2013) (holding that a declaration stating that

1 total sales of the product at issue exceeded \$5 million during the class period was
2 sufficient to meet CAFA's amount in controversy requirement).

3 19. Attorneys' Fees. Plaintiff also seeks attorneys' fees and costs. Compl.
4 at 12-13 (Prayer for Relief). As noted, attorneys' fees can be considered with
5 respect to CAFA's amount in controversy requirement. Although Plaintiff does not
6 allege an estimate as to attorneys' fees, she requests them and such fees should be
7 considered with respect to the amount in controversy requirement.

8 20. Total Amount in Controversy. As discussed above, the amount in
9 controversy exceeds the \$5 million threshold as required for removal to federal
10 court under 28 U.S.C. § 1332(d). The actual value of the restitution sought by
11 Plaintiff is at least \$5 million, without even accounting for attorneys' fees and other
12 monetary relief.

13 **4. No CAFA Exceptions Apply**

14 21. This action does not fall within any exclusion to removal jurisdiction
15 under 28 U.S.C. § 1332(d), and Plaintiff has the burden of proving otherwise. *See*
16 *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007).

17 **B. Defendant Has Satisfied All Other Requirements For Removal**

18 22. Intradistrict Assignment. Pursuant to 28 U.S.C. § 1441(a), assignment
19 to the United States District Court for the Central District of California is proper
20 because Plaintiff filed this action in the Superior Court of California, County of Los
21 Angeles.

22 23. Attachment of Pleadings. Pursuant to 28 U.S.C. § 1446, Defendant
23 hereby provides this Court with copies of all process, pleadings, and orders served
24 on Defendant in this action, attached as Exhibit A. Defendant has not received any
25 pleadings, process or orders besides those attached.

26 24. Notice to State Court/Plaintiff. Pursuant to 28 U.S.C. § 1446(d),
27 Defendant will promptly serve on Plaintiff and file with the Superior Court a

1 Notice to Plaintiff of Removal to Federal Court. Pursuant to Federal Rule of Civil
2 Procedure 5(d), Defendant will also file with this Court a Certificate of Service of
3 its Notice to Plaintiff.

4 **C. Non-Waiver of Defenses**

5 25. Defendant expressly reserves all of its defenses. By removing the
6 Action to this Court, Defendant does not waive any rights or defenses available
7 under federal or state law. Defendant expressly reserves the right to move for
8 dismissal of the Complaint pursuant to Rule 12 of the Federal Rules of Civil
9 Procedure. Nothing in this Notice of Removal should be taken as an admission that
10 Plaintiff's allegations are sufficient to state a claim or have any substantive merit.

11 WHEREFORE, Defendant hereby removes the above-entitled case to this
12 Court.

13
14 DATED: July 21, 2015

PERKINS COIE LLP

15
16 By: /s James G. Snell
James G. Snell

17 Attorneys for Defendant
18 Blue Apron, Inc.