

3. In the Complaint, Plaintiff asserted three (3) causes of action allegedly based on Defendant's retail sales and advertising practices. The first cause of action is for alleged violations of the Maryland Consumer Protection Act ("MCPA"), Md. Code. Com. Law § 13-101, *et seq.* The second cause of action is for alleged fraud and fraud by omission under Maryland Common Law. The third cause of action is for unjust enrichment. *See Exhibit A*, Complaint, First-Third Causes of Action.¹

4. This Court has original jurisdiction under 28 U.S.C. § 1332(d), as amended by CAFA, because this is a putative class action in which (a) at least one member of the putative class is a citizen of a State different than that of Defendant JAB; (b) the number of putative class members is not less than one hundred (100); and (c) the matter in controversy exceeds the sum or value of Five Million Dollars (\$5,000,000.00) when the claims of the individual putative class members are aggregated, exclusive of interest and costs.

5. JAB's Notice of Removal is timely under 28 U.S.C. § 1446(b), as it was filed within thirty (30) days of the date that JAB received a copy of the Complaint.

DIVERSITY EXISTS UNDER 28 U.S.C. § 1332(d)(2)(A)

6. A corporation is a citizen of the state where it is incorporated and the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1). JAB is incorporated in Delaware and is a citizen of that state for purposes of diversity jurisdiction.

7. The "principal place of business" refers to the corporation's "nerve center" or "the place where the corporation's high level officers direct, control, and coordinate the corporation's

¹ In accordance with L.R. 103.5(a), Exhibit A comprises "all process, pleadings, documents, and orders which have been served upon [the Defendant]." The copy of the Complaint served upon the Defendant is incomplete in that it did not include Exhibits 3, 4 and 5 referenced in the body of the Complaint. A full, true and accurate copy of the Complaint will be filed with counsel's certification pursuant to L.R. 103.5(a) within thirty (30) days after the filing of this Notice of Removal.

activities[.]” *Hertz Corp. v. Friend*, 559 U.S. 77, 78 (2010). JAB’s principal place of business is in California. The vast majority of JAB’s executive officers, senior vice presidents, and its board of directors direct, control and coordinate JAB’s business activities from its executive office in Fremont, California. *See Exhibit B*, Declaration of Yolanda M. Diaz (hereinafter “Diaz Dec.”) ¶¶ 4-6. Thus, for purposes of the diversity analysis, JAB is also deemed a citizen of California.

8. The putative class that Plaintiff seeks to represent allegedly consists of “Maryland residents who purchased JAB merchandise.” *See* Complaint, ¶ 20. However, diversity jurisdiction depends only on the citizenship of the named parties. *See, e.g., Central Wesleyan College v. W.R. Grace & Co.*, 6 F.3d 177, 186 n.3 (4th Cir. 1993) (“The rule in federal class actions ... is only that the citizenship of the named parties be diverse from that of the defendants.”); *Gilman v. Wheat, First Sec.*, 896 F. Supp. 507, 509 n.3 (D. Md. 1995) (“Diversity of citizenship in a class action depends solely on the citizenship of the named parties.” (citing *Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356, 366 (1921))). For purposes of jurisdiction, citizenship is fixed at the time the complaint or notice of removal is filed. *See Dennison v. Carolina Payday Loans, Inc.*, 549 F.3d 941, 943 (4th Cir. 2008); 28 U.S.C.A. § 1332. “Ordinarily an individual’s citizenship will be determined by his place of residence.” *Sligh v. Doe*, 596 F.2d 1169, 1171 n.5 (4th Cir. 1979). Although Plaintiff alleges in the Complaint that he was a resident of Maryland when he purchased JAB merchandise, at the time this action was filed and at the time of this Notice of Removal, Plaintiff was and is a resident of Illinois. *See* Complaint, ¶ 19. Thus, Plaintiff should be deemed a citizen of Illinois.

9. There is diversity of citizenship as required for removal under CAFA because JAB is not a citizen of Illinois. *See* 28 U.S.C. § 1332(d)(2)(A). In the event the Court deems

Plaintiff a citizen of Maryland, there is still diversity of citizenship because JAB is not a citizen of Maryland.

THE STATE COURT ACTION IS A “CLASS ACTION” WITHIN THE MEANING OF CAFA

10. Under CAFA, “the term ‘class action’ means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action[.]” *See* 28 U.S.C.A § 1332(d)(1)(B).

11. Plaintiff purports to define and represent his putative class pursuant to Maryland law. *See* Complaint, ¶ 51-59. Rule 2-231 of the Maryland Rules governs class actions in Maryland state courts and is patterned after Federal Rule of Civil Procedure 23. Thus, Plaintiff’s putative class action fits within the above-quoted definition of a class action. *See* 28 U.S.C. § 1332(d)(1)(B); *Frazier v. Castle Ford, Ltd.*, 59 A.3d 1016, 1021 n.6 (Md. 2013).²

PLAINTIFF’S PUTATIVE CLASS CONTAINS AT LEAST ONE HUNDRED (100) MEMBERS

12. Plaintiff defines the putative class as:

All persons who, in the State of Maryland and within the applicable statutory limitation (the “Class Period”), purchased a suit, dress pants or sport coats/suit jackets from JAB, where the purchase price of the item was for a percentage or discount off an advertised “regular” price, or where the purchase was for a suit, dress pants or sport coat/suit jacket based on a “regular” price in connection with an offer of at least one other “free” item of JAB apparel (the “Class”).

See Complaint, ¶ 51. Plaintiff further states that “all members of the putative Class as described ... are Maryland residents who purchased JAB merchandise.” *See* Complaint, ¶ 20. Plaintiff’s defined Class Period covers purchases made in the last three years. *See* Md. Code Ann., Cts. & Jud. Proc. § 5-101; *Boardley v. Household Fin. Corp. III*, 39 F. Supp. 3d 689, 713 (D. Md. 2014)

² Given the fact that Plaintiff is an Illinois resident raises questions about whether he is an appropriate class representative. However, that is an issue for a later day.

(“[A] three-year statute of limitations applies to claims under the MCPA.”); *Sasso v. Koehler*, 445 F.Supp. 762, 765 (D.Md.1978) (statute of limitations for common law fraud is three years from date of accrual).

13. There are currently 21 JAB stores in Maryland. Diaz Dec, ¶ 7.

14. JAB offers frequent sales promotions and events to its customers, typically several every month. *Id.* at ¶ 8; *see also* Complaint, ¶ 31.

15. More than half of the suits, sport coats, and dress pants JAB sells in Maryland (and nationwide) are purchased at a discounted rate. Diaz Dec, ¶ 9.

16. In fiscal year 2016 (February 1, 2016 to January 31, 2017), JAB estimates that 25,811 customers purchased suits, sport coats, or dress pants from JAB’s Maryland stores. *Id.* at ¶ 10.

17. In fiscal year 2016, approximately 5,341 customers with Maryland billing addresses purchased suits, sport coats, or dress pants through JAB’s website. *Id.* at ¶ 12.

18. In fiscal year 2016, approximately 220 customers with Maryland billing addresses purchased suits, sport coats, or dress pants through JAB’s call center. *Id.* at ¶ 13.

19. Given the number of JAB stores in Maryland and JAB’s sales data for just fiscal year 2016, Plaintiff’s putative class consists of at least one hundred (100) members. Moreover, Plaintiff’s Complaint alleges that his putative class “is composed of hundreds of thousands of Maryland individuals, whose joinder of this action would be impracticable.” *See* Complaint, ¶ 52.

20. Because there are at least 100 putative class members, the exclusion for removal under CAFA for class actions with fewer than 100 class members does not apply. *See* 28 U.S.C. § 1332(d)(5).

THE AMOUNT IN CONTROVERSY EXCEEDS FIVE MILLION DOLLARS (\$5,000,000)

21. Original jurisdiction in federal court exists to remove a class action under CAFA when, inter alia, “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs[.]” *See* 28 U.S.C.A. § 1332(d)(2).

22. Under 28 U.S.C. § 1332(d)(6), “[i]n any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.”

23. In the Fourth Circuit, courts apply the “either party” perspective for calculating whether the jurisdictional amount is met for purposes of diversity jurisdiction. *Dixon v. Edwards*, 290 F.3d 699, 710 (4th Cir. 2002) (“In this circuit, it is settled that the test for determining the amount in controversy in a diversity proceeding is ‘the pecuniary result to either party which [a] judgment would produce.’”) (quoting *Gov’t Employees Ins. Co. v. Lally*, 327 F.2d 568, 569 (4th Cir. 1964)).

24. To establish the amount in controversy in a notice of removal, “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, ___ U.S. ___, 135 S. Ct. 547, 554 (2014) (emphasis added). A “short and plain statement,” just as required of pleadings under Fed. R. Civ. P. 8(a), is sufficient. *Id.* at 553; *see also Ellenburg v. Spartan Motors Chassis, Inc.*, 519 F.3d 192, 200 (4th Cir. 2008) (holding a defendant is not required “to meet a higher pleading standard than the one imposed on a plaintiff in drafting an initial complaint.”). No evidentiary support is required, and a defendant’s amount in controversy allegation “should be accepted” for purposes of conferring jurisdiction on the federal court unless it is “contested by the plaintiff or questioned by the court.” *Dart*, 135 S. Ct. at 553; *see*

also id. at 554 (“Defendants do not need to prove to a legal certainty that the amount in controversy requirement has been met. Rather, defendants may simply allege or assert that the jurisdictional threshold has been met.”). It is only upon challenge by the plaintiff that the removing defendant must prove by a “preponderance of the evidence, that the amount in controversy exceeds” \$5 million. *Id.* at 553-544.

25. JAB denies that Plaintiff or any putative class member is entitled to recover any amount or is entitled to recover any of the relief demanded in the Complaint. However, based on the Complaint’s allegations of a statewide class over a three-year period and the various forms of relief sought, it is plausible that the aggregate amount in controversy exceeds \$5 million, exclusive of interests and costs, for purposes of removal.

26. As stated above, Plaintiff alleges violations of the MCPA and additionally asserts claims for common law fraud and unjust enrichment. Plaintiff seeks relief in the form of unspecified economic and compensatory damages as well as treble damages and “all other actual, general, special, incidental, statutory, and consequential damages to which Plaintiff and Class members are entitled.” *See* Complaint at Prayer for Relief (pp. 16-17). Plaintiff’s Complaint alleges that his putative class includes “hundreds of thousands of Maryland individuals” who purchased any suit, dress pants, sport coat, or suit jacket at a discount or in connection with a “buy one get one [or more] free” offer, from JAB within the last three years. *See id.* at ¶¶ 20, 51, 52; Md. Code Ann., Cts. & Jud. Proc. § 5-101.

27. According to JAB’s sales records, Maryland consumers generated over \$11.7 million in net sales for just fiscal year 2016. *Diaz Dec.*, ¶¶ 11-13. In fiscal year 2016, JAB’s Maryland stores generated net sales of \$10,213,758 from sales of suits, sport coats, or dress pants, after adjusting for returns. *Id.* at ¶ 11. In fiscal year 2016, JAB generated net online sales

of \$1,458,028 from sales of suits, sport coats, or dress pants made through JAB's website by customers with Maryland billing addresses, after adjusting for returns. *Id.* at ¶ 12. In fiscal year 2016, JAB's call centers generated net sale proceeds of \$37,367 from the sales of suits, sport coats, or dress pants purchased by customers with Maryland billing addresses, after adjusting for returns. *Id.* at ¶ 13.

28. As stated above, more than half of the suits, sport coats, and dress pants JAB sells in Maryland (and nationwide) are purchased at a discounted rate. *Id.* at ¶ 9. Assuming similar sales figures in each of the last three years, a judgment of \$5 million in actual damages would represent less than 29 percent of JAB's net sales over the course of the three year putative class period. Thus, for purposes of removal, the \$5 million threshold is plausible, given that more than half of JAB's suits, sport coats, and dress pants are purchased at a discount.

29. Alternatively, JAB tracks the average amount spent on each transaction in its stores. The average amount spent at JAB's Maryland stores during fiscal year 2016 was \$432 per customer transaction, with an average of \$267 spent per customer transaction that include purchases of sport coats, \$180 per customer transaction that include purchases of dress pants, and \$414 per customer transaction that include purchases of a suit or suits. Diaz Dec, ¶¶ 14-17. Using these average sales figures and assuming there are 37,500 class members—which is one-half of the total number of customers in 2016, multiplied by three for the three years at issue—if the Court awarded relief in the form of a refund to each putative class member, the purported actual damages would exceed \$5 million even if the lowest amount associated with dress pants is attributed to every member of the class.

30. Plaintiff also seeks attorneys' fees, which should be considered in determining whether the amount in controversy in a diversity action exceeds the jurisdictional threshold. *See*

Missouri State Life Ins. Co. v. Jones, 290 U.S. 199, 202 (1933); *Saval v. BL Ltd.*, 710 F.2d 1027, 1033 (4th Cir.1983). Plaintiff has alleged a claim for relief under the MCPA which authorizes the recovery of attorneys' fees in certain situations. *See* MD. CODE ANN. COM. LAW § 13-408(b). Although JAB denies that Plaintiffs are entitled to any relief whatsoever in this case, much less an award of attorneys' fees, the potential award of attorneys' fees in a case putting (conservatively) more than \$5,000,000 in controversy could be significant.

31. Plaintiff further seeks treble damages. Where recoverable, treble damages should be considered in determining whether the amount in controversy in a diversity action exceeds the jurisdictional threshold. *See, e.g., R.L. Jordan Oil Co. of N.C., Inc. v. Boardman Petroleum, Inc.*, 23 Fed.Appx. 141, 145 n. 3 (4th Cir.2001) ("When calculating the amount in controversy, the district court should consider any special or punitive damages, such as treble damages"); *Marchese v. JPMorgan Chase Bank, N.A.*, 917 F. Supp. 2d 452, 460 (D. Md. 2013). Thus, assuming that Plaintiff prevails on his allegations, if the fact-finder holds JAB responsible for \$1.67 million in actual damages, it could arguably be trebled to reach a total judgment of \$5 million. It only takes an average transaction of \$45 for each of the 37,500 putative class members to exceed this number. Again, the \$5 million threshold is exceeded irrespective of whether the 37,500 just purchased dress pants, the least expensive average transaction that could occur.

32. Accordingly, JAB has alleged herein sufficient information and facts to support a finding that it is plausible that the amount in controversy exceeds \$5 million. JAB has identified numerous allegations in Plaintiff's Complaint that support its good faith estimate and conclusion that it is plausible that the amount in controversy exceeds \$5 million, and JAB has also supplied evidence and data that corroborate the plausibility of this estimate and conclusion.

33. It is important to note that in advancing these arguments for the limited purpose of establishing subject matter jurisdiction before this Court, JAB does not waive any defenses, does not concede any of Plaintiff's allegations or claims, and vigorously denies that it has engaged in any act that violates Maryland law.

COMPLIANCE WITH REMOVAL STATUTES AND PROCEDURE

34. JAB's Notice of Removal is timely. Plaintiff served the Complaint on JAB on April 17, 2017. JAB is filing its Notice of Removal with this Court on May 16, 2017, less than thirty (30) days after receipt of the Complaint. *See* 28 U.S.C. § 1446(b).

35. This Court is the proper court in which to file this Notice of Removal. This Court is part of the "district and division within which [the State Court Action] is pending[.]" i.e., the Circuit Court for Prince George's County, Maryland. *See* 28 U.S.C. § 1446(a).

36. The Notice of Removal is signed pursuant to Rule 11, and *Exhibit A* hereto contains "a copy of all process, pleadings, and orders served upon" JAB. *Id.*

37. JAB attaches as *Exhibit C* a copy of the "Notice of Filing of Notice of Removal," which JAB will promptly serve upon Plaintiff's counsel and will file with the Clerk of the Circuit Court for Prince George's County, Maryland, as required by 28 U.S.C. § 1446(d).

CONCLUSION

WHEREFORE, Defendant Jos. A. Bank Clothiers, Inc. hereby removes this state court action from the Circuit Court for Prince George's County, Maryland, to this Court, which has original diversity jurisdiction pursuant to CAFA. *See* 28 U.S.C. § 1332(d). This action should proceed in the United States District Court for the District of Maryland as an action properly removed thereto.

Dated: May 16, 2017.

Respectfully submitted,

MARCUSBONSIB, LLC

/s/

BRUCE L. MARCUS, ESQ.
Bar No. 06341

/s/

JOSEPH A. COMPOFELICE, JR., ESQ.
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Bruce L. Marcus)

ARMSTRONG TEASDALE LLP

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/s/

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ewalter@armstrongteasdale.com

(signed by Joseph A. Compofelice, Jr. with permission of
Eric M. Walter)

Counsel for Defendant Jos. A. Bank Clothiers, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 16, 2017, a copy of the foregoing was served via email upon and mailed first-class, postage prepaid, to the following parties and counsel:

Beatrice O. Yakubu, Esq.
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Melissa W. Wolchansky, Esq.
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wolchansky@halunenlaw.com

Counsel for Plaintiff

/s/

Joseph A. Compofelice, Jr.

CIVIL COVER SHEET

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

OLUSOLA AKINMEJI,
on behalf of himself and others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Beatrice O. Yakubu, Esq., Cuneo, Gilbert & LaDuca, LLP
4725 Wisconsin Ave., N.W., Washington, D.C. 20016
(202) 789-3960

DEFENDANTS

Jos. A. Bank Clothiers, Inc.

County of Residence of First Listed Defendant Alameda County, CA
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

Bruce L. Marcus, Esq., Joseph A. Compofelice, Jr., Esq.
MarcusBonsib, LLC, 6411 Ivy Lane, Suite 116, Greenbelt, MD 20770
(301) 441-3000

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 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 type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input checked="" 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 checked="" 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 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"/> 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 SOCIAL SECURITY <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <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"/> 490 Securities/Commodities/Exchange <input 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 Constitutional of State Statutes
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS 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			

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 - Transfer ☐ 8 Multidistrict Litigation - Direct File

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(d), 1441, 1446, and 1453

Brief description of cause:

Consumer class action based on Maryland statutory and common law

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 N/A

DOCKET NUMBER N/A

DATE
05/16/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

OLUSOLA AKINMEJI, on behalf of himself and
others similarly situated

Plaintiffs,

v.

JOS. A. BANK CLOTHIERS, INC.

Defendant.

Civil Action No. _____

DECLARATION OF YOLANDA M. DIAZ

State of California :

County of Alameda :

I, Yolanda M. Diaz, having been duly sworn, depose and state as follows:

1. I am over the age of twenty-one (21) years and a resident of the State of California. I am of sound mind and competent to make this declaration.

2. I am employed by Tailored Shared Services, LLC ("TSS"), an affiliate of Jos. A. Bank Clothiers, Inc. ("JAB"), which provides shared services support (including human resources and other administrative services) to JAB. My title is Senior Paralegal, Legal Department. The information contained in this declaration is true and correct to the best of my personal knowledge, information and belief, and I could competently testify about these matters based on personal knowledge and the business records of JAB. JAB's business records were made and kept in the regular course of JAB's business by those whose regular job functions included to make and keep such records. I am authorized to make this declaration and present this testimony on behalf of JAB.

3. JAB is a Delaware corporation with its principal place of business in California.

4. JAB has ten executive officers, nine of whom are located in California and one who is located in Texas. The President and Chief Executive Officer, Chief Financial Officer, Brand President, and six Executive Vice Presidents control and coordinate JAB's corporate activities from its executive office at 6100 Stevenson Blvd., Fremont, California 94538.

5. JAB has six Senior Vice Presidents, four of whom are located in California and two of whom are located in Texas. Four of the Senior Vice Presidents control and coordinate JAB's corporate activities from its executive office at 6100 Stevenson Blvd., Fremont, California 94538.

6. JAB has a Board of Directors that manages the company and makes decisions on major company issues. The Board of Directors consists of three Directors who direct and make business decisions on behalf of JAB from its executive office at 6100 Stevenson Blvd., Fremont, California 94538.

7. There are currently 21 JAB stores in Maryland.

8. JAB offers frequent sales promotions and events to its customers, typically several every month.

9. More than half of the suits, sport coats, and dress pants JAB sells in Maryland (and nationwide) are purchased at a discounted rate.

10. JAB's business records confirm that in fiscal year 2016, approximately 25,811 customers purchased suits, sport coats, or dress pants from JAB's Maryland stores.

11. In fiscal year 2016, JAB's Maryland stores generated net sales of \$10,213,758 from sales of suits, sport coats, or dress pants, accounting for purchases returned post-sale.

12. In fiscal year 2016, 5,341 customers with Maryland billing addresses generated net online sales of \$1,458,028 from sales of suits, sport coats, or dress pants, accounting for purchases returned post-sale.

13. In fiscal year 2016, approximately 220 customers with Maryland billing addresses generated net call center sales of \$37,367 from sales of suits, sport coats, or dress pants, accounting for purchases returned post-sale.

14. JAB tracks the average amount spent on each transaction in its stores. The average amount spent at JAB's Maryland stores during fiscal year 2016 was \$432 per customer transaction.

15. In fiscal year 2016, when a customer purchased a blazer or a sport coat, the average amount spent at JAB's Maryland stores was \$267 per customer transaction.

16. In fiscal year 2016, when a customer purchased dress pants, the average amount spent at JAB's Maryland stores was \$180 per customer transaction.

17. In fiscal year 2016, when a customer purchased a suit or suits, the average amount spent at JAB's Maryland stores was \$414 per customer transaction.

FURTHER DECLARANT SAYETH NOT.

Yolanda M. Diaz
Yolanda M. Diaz
Senior Paralegal, Legal Department

Sworn to before me
this ____ day of May, 2017.

Notary Public

My commission expires: _____

SEE ATTACHED NOTARY FORM

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

On May 15, 2017 before me, Camille Billon, Notary Public
(insert name and title of the officer)

personally appeared Yolanda M. Diaz,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

