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10 *Attorneys for Defendants Philosophy, Inc.,*  
11 *Philosophy Mezzanine Corp., and Coty, Inc.*

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

14 VIVIAN BOGDANIC, on behalf of herself and all  
15 others similarly situated,

16 Plaintiff,

17 v.

18 PHILOSOPHY, INC., an Arizona company,  
19 PHILOSOPHY MEZZANINE CORP., a Delaware  
20 corporation, and COTY, INC., a Delaware  
21 company,

22 Defendants.

Civil Case No.:

**DEFENDANTS' NOTICE OF REMOVAL**

1 PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. § 1441 and 1453, Defendants  
2 Philosophy, Inc., Philosophy Mezzanine Corp., and Coty, Inc. hereby notice removal of the above-  
3 captioned state court civil action pending in Superior Court of the State of California, County of Marin  
4 (Case No. Civ 1702773), to the United States District Court for Northern District of California. This  
5 Court has subject matter jurisdiction under the Class Action Fairness Act (“CAFA”), 28 U.S.C.  
6 §§ 1332(d).

7 In further support of this Notice of Removal, Defendants state as follows:

8 **PROCEDURAL HISTORY**

9 1. On July 31, 2017, Plaintiff Vivian Bogdanic filed this action in the Superior Court of the  
10 State of California, County of Marin. A true and correct copy of the Complaint is attached as **Exhibit 1**.  
11 Plaintiff filed proofs of service stating that she served the Complaint on Philosophy, Inc. and Coty, Inc.  
12 on August 2, 2017, and on Philosophy Mezzanine Corp. on August 3, 2017. *See* Register of Actions  
13 (attached as **Exhibit 2**). Plaintiff also served on Defendants copies of the civil cover sheet, notice of  
14 case management conference, ADR notice, and summons, which are attached as **Exhibits 3, 4, 5, and 6**,  
15 respectively. Exhibits 1-6 constitute all the process, pleadings, and papers that have been served on  
16 Defendants. *See* Ex. 2.

17 2. Plaintiff alleges that products from Defendants’ miracle worker product line were  
18 mislabeled in violation of the Food, Drug & Cosmetic Act (“FDCA”). The FDCA, however, does not  
19 provide a private right of action, so Plaintiff has instead alleged that Defendants violated the unlawful  
20 and fraudulent prongs of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200. She  
21 brings her claims individually and on behalf of a class of California consumers who purchased the  
22 products. She seeks, for herself and the putative class, restitution of the entire purchase price of the  
23 products or, in the alternative, restitution in the form of the price premium they allegedly paid.

24 **PARTIES**

25 3. Plaintiff is Vivian Bogdanic, a resident of Corte Madera, California. *See* Ex. 1, ¶ 10.

26 4. Defendant Philosophy, Inc. used to be an Arizona corporation with its principal place of  
27 business in Phoenix, Arizona. On June 14, 2016, Philosophy, Inc. converted into a Delaware limited  
28 liability company and changed its name to Coty International LLC. Coty International LLC is wholly

1 owned by Coty Global 2 B.V., which is incorporated in the Netherlands, where it has its principal place  
2 of business.

3 5. Defendant Philosophy Mezzanine Corp. was a Delaware corporation, but it merged out of  
4 existence on January 4, 2016, into Coty International LLC.

5 6. Defendant Coty, Inc. is a Delaware corporation with its principal place of business in  
6 New York, New York.

7 **TIMELINESS OF REMOVAL**

8 7. Defendants were served on August 2 and 3, 2017. *See supra* ¶ 1. This notice of removal  
9 has been filed within 30 days of service. This notice is therefore timely pursuant to 28 U.S.C. § 1446(b)  
10 and Federal Rule of Civil Procedure 6(a). *See Murphy Bros, Inc. v. Michetti Pipestringing, Inc.*, 526  
11 U.S. 344, 347-48 (1999) (time for removal runs from receipt of formal service of process, including a  
12 summons).

13 **BASIS FOR REMOVAL JURISDICTION**

14 **A. Jurisdiction**

15 8. Plaintiff’s claims give rise to jurisdiction under CAFA, 28 U.S.C. § 1332(d). Defendants  
16 also invoke all other grounds for removal that exist under applicable law.

17 9. This Court has jurisdiction over this action under CAFA, 28 U.S.C. § 1332(d), because  
18 this case is (1) a proposed class action within the meaning of CAFA, in which (2) “any member of a  
19 class of plaintiffs is a citizen of a State different from any defendant,” (3) the “number of members of all  
20 proposed plaintiff classes in the aggregate is [not] less than 100,” and (4) “the matter in controversy  
21 exceeds the sum or value of \$5,000,000, exclusive of interests and costs.” *See* 28 U.S.C. § 1332(d)(2),  
22 (d)(5)(B).

23 **B. CAFA’s “class action” requirement is satisfied.**

24 10. CAFA defines a “class action” to include “any civil action filed under rule 23 of the  
25 Federal Rules of Civil Procedure or similar State statute . . . authorizing an action to be brought by 1 or  
26 more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B). This case qualifies as a class  
27 action removable under Section 1332(d)(1)(B). Plaintiff’s Complaint, which is styled as a “Class Action  
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1 Complaint,” states that she “brings this action on behalf of herself and all other similarly situated  
2 California consumers pursuant to C.C.P. § 382 and Cal. Civ. Code § 1781.” Ex.1, ¶ 31.

3 11. Specifically, Plaintiff seeks to represent “[a]ll consumers who, within the applicable  
4 statute of limitations period, purchased Ultimate Miracle Worker Products in California.” *Id.*

5 **C. CAFA’s minimal diversity requirement is satisfied.**

6 12. CAFA’s minimal diversity requirement is satisfied when “any member of a class of  
7 plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). This  
8 requirement is satisfied here because (a) Plaintiff is a resident of California and seeks to represent a class  
9 of California consumers, and (b) none of the defendants is a citizen of California. Defendants are not  
10 incorporated in California and do not have their principal places of business here. *See supra* ¶¶ 4-6.  
11 Because the defendants are diverse from the Plaintiff, CAFA’s minimal diversity requirement is  
12 satisfied.

13 **D. CAFA’s amount-in-controversy requirement is satisfied.**

14 13. CAFA jurisdiction requires that “the matter in controversy [must] exceed[] the sum or  
15 value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). “In any class action, the  
16 claims of the individual class members shall be aggregated to determine whether the matter in  
17 controversy” meets the \$5,000,000 threshold. *Id.* § 1332(d)(6).

18 14. Plaintiff seeks restitution for each class member “of all money they paid for Defendants’  
19 illegally sold Products.” Ex. 1, ¶ 49; *see also* Ex. 1, Prayer for Relief (“Plaintiff prays for a judgment  
20 . . . [a]warding restitution to Plaintiff and the proposed Class members of all monies paid for the  
21 Products . . .”). Although she references four specific products in the Complaint, *see* Ex. 1, ¶ 1, she  
22 generally challenges Defendants’ line of products and “reserves the right to add additional products  
23 upon completion of discovery.” *Id.* & n.1.

24 15. Defendants have conducted an analysis of sales of their miracle worker products in  
25 California in the last four years and determined that such sales total well in excess of \$5 million.

26 16. If the putative class is awarded the restitution sought in the Complaint, the analysis  
27 described above demonstrates that the amount awarded would be well in excess of \$5 million, exclusive  
28 of interest and costs.



1           24.     Removal to the San Francisco Division of the Northern District of California is proper  
2 because it is the division within which the state action is pending. *See id.*

3                                   **NOTICE TO STATE COURT AND PLAINTIFF**

4           25.     Counsel for Defendants certify that, pursuant to 28 U.S.C. § 1446(d), this Notice of  
5 Removal will be filed with the Clerk of the Superior Court of the State of California, County of Marin,  
6 and served on counsel for Plaintiff promptly.

7                               WHEREFORE, the case now pending in the Superior Court of the State of California,  
8 County of Marin, No. Civ 1702773, is hereby removed to the United States District Court for the  
9 Northern District of California pursuant to 28 U.S.C. §§ 1441, 1453.

10 DATED: August 31, 2017

11 By: /s/ Kathryn E. Cahoy  
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