

1 Matthew Borden, Esq. (SBN: 214323)  
2 [borden@braunhagey.com](mailto:borden@braunhagey.com)  
3 Amit Rana, Esq. (SBN: 291912)  
4 [rana@braunhagey.com](mailto:rana@braunhagey.com)  
5 BRAUNHAGEY & BORDEN LLP  
6 220 Sansome Street, Second Floor  
7 San Francisco, CA 94104  
8 Telephone: (415) 599-0210  
9 Facsimile: (415) 276-1808

10 ATTORNEYS FOR DEFENDANT  
11 YummyEarth Inc.

12  
13 **UNITED STATES DISTRICT COURT**  
14  
15 **CENTRAL DISTRICT OF CALIFORNIA**  
16

17 SUMMER SANDOVAL, individually,  
18 and on behalf of all others similarly  
19 situated,

20 Plaintiff,

21 v.

22 YUMMYEARTH INC. and DOES 1-  
23 25, inclusive,

24 Defendant(s).

Case No. 5:17-cv-01832

**DEFENDANT YUMMY EARTH  
INC.'S NOTICE OF REMOVAL**

25  
26  
27  
28

---

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

3 **PLEASE TAKE NOTICE** that Defendant YummyEarth Inc.  
4 (“YummyEarth”) hereby removes this action from the Superior Court in the State of  
5 California for San Bernardino County to the United States District Court for the  
6 Central District of California pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. This  
7 action is a suit between citizens of different states and Plaintiff alleges that the  
8 amount of damages and restitution she is seeking to recover is “hundreds of  
9 thousands of dollars.” (FAC ¶¶ 21-22.) In accordance with 28 U.S.C. § 1446(a), set  
10 forth below is a statement of the grounds for removal.

11 **I. THE COMPLAINT AND STATE COURT PROCEEDINGS**

12 1. On May 22, 2017, Plaintiff Summer Sandoval filed an action against  
13 Yummy Earth, entitled *Sandoval v. YummyEarth Inc.*, Case No. CIVDS 1709943, in  
14 the Superior Court in the State of California for San Bernardino County. Plaintiff did  
15 not serve this complaint on YummyEarth, and YummyEarth was not aware that it  
16 had been filed.

17 2. On July 25, 2017, Plaintiff filed a First Amended Complaint (“FAC”)  
18 against YummyEarth in the Superior Court in the State of California for San  
19 Bernardino County.

20 3. On August 11, 2017, Defendant became aware of the lawsuit when it  
21 was served with a copy of the First Amended Complaint and Summons. True and  
22 correct copies of the First Amended Complaint and Summons are attached as  
23 **Exhibit A.**

24 **II. JURISDICTION AND VENUE**

25 4. As is set forth below, this is a civil action over which this Court has  
26 jurisdiction pursuant to 28 U.S.C. § 1332 (diversity), and is an action which may be  
27 removed to this Court pursuant to the provisions of 28 U.S.C. § 1441 in that it is a  
28 civil action between citizens of different states, the amount in controversy sought by

1 Plaintiff exceeds the sum of \$75,000 and YummyEarth is not a citizen of California,  
2 the forum state.

3 5. Venue is proper in this Court because this Court embraces the County of  
4 San Bernardino where the underlying state court action was filed. 28 U.S.C. §  
5 1441(a).

### 6 **III. DIVERSITY JURISDICTION EXISTS OVER THIS ACTION**

7 6. Diversity jurisdiction exists where (1) the amount in controversy  
8 exceeds \$75,000, exclusive of interest and costs, and (2) the suit is between citizens  
9 of different states. *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090  
10 (9th Cir. 2003); 28 U.S.C. § 1332(a)(1) (District Court “shall have original  
11 jurisdiction of all civil actions where the matter in controversy exceeds the sum or  
12 value of \$75,000, exclusive of interest and costs, and is between citizens of different  
13 States”).

#### 14 **A. The Amount in Controversy Exceeds \$75,000**

15 7. The amount in controversy is based on the relief a plaintiff theoretically  
16 could obtain if he or she was successful on all her claims. *Campbell v. Vitran Exp.,*  
17 *Inc.* 471 F. App’x 646, 648 (9th Cir. 2012).

18 8. “A defendant’s notice of removal need include only a plausible  
19 allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*  
20 *Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

21 9. Here, it is facially apparent from Plaintiff’s own pleading that the  
22 amount of damages and restitution she seeks would amount to “hundreds of  
23 thousands of dollars.” (FAC ¶ 21-22.)

24 10. Under Supreme Court and Ninth Circuit law, “if the state court  
25 complaint expressly seeks more than \$75,000, removal on the basis of diversity will  
26 be allowed unless the amount set forth in the initial complaint was stated in bad faith.  
27 Because plaintiff instituted the case in state court, there is a strong presumption  
28 plaintiff did not inflate the claim to support removal.” *B. O’Connell & K.*

1 Stevenson, FED. CIV. PROC. BEFORE TRIAL § 2:2389 (Rutter 2017) (collecting cases).  
2 As the Supreme Court has explained, “the status of the case as disclosed by the  
3 plaintiff’s complaint is controlling in the case of a removal.” *St. Paul Mercury*  
4 *Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 291 (1938). *See also Sanchez v.*  
5 *Monumental Life Ins. Co.*, 102 F.3d 398, 402-03 (9th Cir. 1996) (jurisdictional facts  
6 stated in plaintiff’s state-court complaint control unless plaintiff can prove to a “legal  
7 certainty” that his pleading was inaccurate).

8 11. Here, Plaintiff alleges that as a result of the complained of actions,  
9 “Defendant has wrongfully taken hundreds of thousands of dollars from consumers”  
10 and seeks to “recover the funds taken by this unlawful practice.” (FAC ¶¶ 21-22;  
11 Prayer For Relief ¶¶ 3-4 (seeking “damages suffered by Plaintiff and Class  
12 members” and “restitution to Plaintiff and Class members of all monies wrongfully  
13 obtained by the Defendant.”).)

14 12. Plaintiff also seeks “an injunction ordering Defendant to cease and  
15 desist from engaging in the unfair, unlawful, and/or fraudulent practices alleged in  
16 the Complaint,” which Plaintiff contends results in Defendant taking “hundreds of  
17 thousands of dollars from consumers.” (FAC ¶ 21; Prayer for Relief ¶ 4.)

18 13. While YummyEarth denies the allegations set forth in the FAC and  
19 maintains that Plaintiff is not entitled to any of the relief she seeks, in determining  
20 the amount in controversy, “a court must assume that the allegations in the complaint  
21 are true and assume that a jury will return a verdict for the plaintiff on all claims  
22 made in the complaint.” *Campbell*, 471 F. App’x at 648 (9th Cir. 2012) (citing  
23 *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993,1001  
24 (C.D. Cal. 2002)).

25 14. Defendant also is submitting a sworn declaration of its officer in support  
26 of removal attesting to satisfaction of the amount in controversy. In the four-year  
27 period for which Plaintiff seeks damages and restitution, YummyEarth sold over  
28

1 \$1,000,000 of YumEarth Organic Vitamin C Pops in the United States. (Declaration  
2 of Michael Sands (“Sands Decl.”) ¶ 4.)

3 15. Based on the allegations in the complaint, the amount in controversy  
4 requirement is satisfied.

5 **B. The Suit is between Citizens of Different States**

6 16. A suit is between citizens of different states for diversity jurisdiction  
7 purposes when all plaintiffs are diverse from all defendants. *Weeping Hollow Avenue*  
8 *Trust v. Spencer*, 831 F.3d.3d 1110, 1112 (9th Cir. 2016).

9 17. A natural person has the citizenship of the place of his domicile. *Kanto*  
10 *v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). Corporate parties  
11 can have the citizenship of the state of incorporation and the citizenship of the state  
12 of its principle place of business. *Bank of Calif. Nat’l Ass’n v. Twin Harbors Lumber*  
13 *Co.*, 465 F.2d 489, 491-92 (9th Cir. 1972).

14 18. Here, Plaintiff is a citizen of the State of California. (FAC ¶ 1.)

15 19. Defendant YummyEarth is a New Jersey corporation with its principle  
16 place of business in Connecticut. (FAC ¶ 2); (Sands Decl. ¶ 2.)

17 20. Therefore, the suit is between citizens of different states.

18 **C. All Procedural Requirements are Satisfied**

19 21. 28 U.S.C. § 1441(a) allows civil actions brought in state court to be  
20 removed to the district court “embracing the place where such action is pending.”  
21 The Complaint was filed in the Superior Court of California for the County of San  
22 Bernardino. This District is the proper venue for this action upon removal pursuant to  
23 28 U.S.C. § 1441(a) because it is the District that embraces the country where the  
24 state court action was pending.

25 22. Pursuant to 28 U.S.C. § 1446(b)(1), this Notice of Removal is timely.  
26 YummyEarth became aware of the lawsuit when it was served with the FAC on  
27 August 11, 2017. Notice of Removal must be filed on or before September 11, 2017.  
28

1 23. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and  
2 orders from state court are attached hereto as **Exhibit B**.

3 24. Defendants will serve written notice of the removal of this action upon  
4 all parties and will file such notice with the Clerk of the Superior Court of California  
5 for the County of San Bernardino.

6 **CONCLUSION**

7 25. WHEREFORE, Defendant YummyEarth hereby removes this case  
8 from the California Superior Court for the County of San Bernardino to this federal  
9 district court.

10  
11 Dated: September 8, 2017

Respectfully Submitted,  
BRAUNHAGEY & BORDEN LLP

12  
13  
14 By: /s/ Matthew Borden  
Matthew Borden

15 *Attorneys for Defendant*  
16 *YummyEarth Inc.*

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28