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

11 DONALD LOLLOCK, by and through his
Guardian ad Litem, KATHLEEN LOLLOCK;
12 ZAREEN KHAN as Special Administrator for
the Estate of Abdulwafi Khan; FRANK
13 PEARSON; JO ELLA NASHADKA; and
JANE BURTON-WHITAKER; on their own
14 behalves, and on behalf of others similarly
situated,

15 Plaintiff,

16 v.

17 OAKMONT SENIOR LIVING, LLC, and
18 DOES 1-100,

19 Defendants.

Case No.

NOTICE OF REMOVAL

(Formerly Superior Court of California for the
County of Alameda Case No. RG17875110)

Judge:

Hahn Loeser & Parks, LLP
One America Plaza
600 W. Broadway, Suite 1500
San Diego, CA 92101
Tel: (619) 810-4300 · Fax: (619) 810-4301

20 **PLEASE TAKE NOTICE THAT**, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446,
21 Oakmont Senior Living LLC hereby removes this action from the Superior Court of California for
22 the County of Alameda to the United States District Court for the Northern District of California.

23 **I. BACKGROUND ON INITIAL SUPERIOR COURT FILINGS**

24 1. On September 13, 2017, Plaintiffs Donald Lollock, by and through his Guardian ad
25 Litem, Kathleen Lollock; Zareen Khan as Special Administrator for the Estate of Abdulwafi Khan;
26 Frank Pearson; Jo Ella Nashadka; and Jane Burton-Whitaker (“Plaintiffs”) filed in the Superior
27 Court of California for the County of Alameda a civil action entitled *Donald Lollock, et al. v.*
28 *Oakmont Senior Living, LLC*, Case No. RG17875110 (“the State Court Proceedings”). A copy of

1 the Complaint, as filed, is attached hereto as Exhibit 1.

2 2. The Complaint asserts three causes of action: (a) violation of the Consumers Legal
3 Remedies Act; (b) unlawful, unfair, and fraudulent business practices, and (c) elder financial abuse.

4 3. Oakmont Senior Living LLC (“Oakmont”) was served with Summons and the
5 Complaint on September 20, 2017.

6 4. To the best of Oakmont’s knowledge, no Doe Defendant has been served with
7 Summons or the Complaint as of the time of this removal. Furthermore, the consent of unknown
8 Doe Defendants is not required for removal. (*United Computer Sys. v. AT&T Info. Sys.*, 298 F.3d
9 756, 762 (9th Cir. 2002) [“Although the usual rule is that all defendants in an action in a state court
10 must join in a petition for removal, the ‘rule of unanimity’ does not apply to ‘nominal, unknown, or
11 fraudulently joined parties.’”] (citations omitted); *Green v. Am. Online (AOL)*, 318 F.3d 465, 470
12 (3d Cir. 2003) [disregarding the general rule that all defendants must consent to removal where the
13 non-joining defendants are doe defendants].) As a result, Oakmont is entitled to remove the State
14 Court Proceedings without obtaining the consent of any of the Doe Defendants.

15 **II. REMOVAL PURSUANT TO FEDERAL DIVERSITY JURISDICTION**

16 5. The State Court Proceedings may be removed to this Court in accordance with 28
17 U.S.C. § 1441 because this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) on
18 the basis of diversity. Specifically, the State Court Proceedings are a class action in which the
19 matter in controversy exceeds the sum or value of \$5,000,0000, the number of members of the
20 proposed class exceeds 100 persons, and at least one member of the proposed class of Plaintiffs is a
21 citizen of a State different from the Defendant Oakmont.

22 **A. Class Action With A Proposed Class Exceeding 100 Persons**

23 6. 28 U.S.C. § 1332(d)(1)(B) defines the term “class action” for the purpose of federal
24 court jurisdiction to mean “any civil action filed under rule 23 of the Federal Rules of Civil
25 Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought
26 by 1 or more representative persons as a class action.” Plaintiffs brought the State Court
27 Proceedings as a proposed class action pursuant to California Code of Civil Procedure § 382,
28 which authorizes class actions in California state courts. (Exhibit 1, ¶¶ 1, 88.) Plaintiffs allege that

1 the proposed class exceeds 4,000 individuals. (*Id.* at ¶¶ 89, 92.)

2 **B. Amount In Controversy**

3 7. “In any class action, the claims of the individual class members shall be aggregated
4 to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive
5 of interest and costs.” (28 U.S.C. § 1332(d)(6).) “Generally, ‘the sum claimed by the plaintiff
6 controls if the claim is apparently made in good faith.’” (*Ibarra v. Manheim Invs., Inc.*, 775 F.3d
7 1193, 1197 (9th Cir. 2015) (quoting *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283,
8 288-289 (1938)).) Here, Plaintiffs allege that each class member is “entitled to statutory damages
9 of up to \$5,000 pursuant to California Civil Code section 1780(b).”¹ (Exhibit 1, ¶ 117.) Given the
10 proposed class of 4,000 individuals, the amount in controversy based on California Civil Code §
11 1780 (b) alone is \$20,000,000 (\$5,000 X 4,000 proposed class members). But Plaintiffs also seek
12 to treble the \$20,000,000 in alleged damages pursuant to California Civil Code section 3345, as
13 well as seeking an award of punitive damages—both of which put the amount in controversy
14 substantially above 28 U.S.C. 1332(d)(2)’s \$5,000,000 threshold. (*Id.* at 118.)

15 8. Accordingly, the amount in controversy in this litigation is in excess of \$5,000,000.

16 **C. Diversity Of Citizenship**

17 9. “Citizenship of the members of the proposed plaintiff classes shall be determined
18 for purposes of [diversity jurisdiction] as of the date of filing of the complaint or amended
19 complaint[.]” (28 U.S.C. § 1332 (d)(7).) Plaintiffs filed the State Court Proceedings on September
20 13, 2017.

21 10. Oakmont was formed in California in November, 2000, and has its principal place
22 of business in Windsor, California. (Declaration of Joe Lin, ¶ 2; Exhibit 3: Oakmont Senior Living
23

24 ¹ California Civil Code § 1780(a) provides that a consumer who suffers damages is entitled to restitution, an injunction,
25 punitive damages, and actual damages. California Civil Code § 1780(b) provides that a consumer who is a senior
26 citizen or disabled person may additionally seek \$5,000 based on economic damage resulting from the defendant’s
27 conduct. Plaintiffs bring a claim for elder abuse based on the allegation that Plaintiffs and the putative class members
28 were at all relevant times elders and dependent adults as defined by the California Welfare and Institutions Code.
(Exhibit 1, ¶ 134; Cal. Civ. Code §§ 1761(f) [defining a “senior citizen” as “a person who is 65 years of age or older”],
1761(g) [defining a “disabled person” as “a person who has a physical or mental impairment that substantially limits
one or more major life activities”]; Cal. W&I Code §§ 15610.27 [defining “elder” as a person “65 years of age or
older”], 15610.23 [defining “dependent adult” as a person “who has physical or mental limitations that restrict his or
her ability to carry out normal activities”].) Thus, Plaintiffs claim that all proposed class members are entitled to the
\$5,000 in additional statutory damages under California Civil Code § 1780(b).

1 LLC’s 2016 California Secretary of State Statement of Information.) As “an unincorporated
 2 association shall be deemed to be a citizen of the State where it has its principal place of business
 3 and the State under whose laws it is organized,” Oakmont is a California citizen. (28 U.S.C. §
 4 1332(d)(10); *Marroquin v. Fargo*, 2011 U.S. Dist. LEXIS 10510, at *4 (S.D. Cal. 2011) [finding
 5 an LLC to be an “unincorporated association” for the purpose of diversity jurisdiction under 28
 6 U.S.C. § 1332(d)]; *Roling v. E*Trade Sec., LLC*, 756 F. Supp. 2d 1179, 1184-1185 (N.D. Cal.
 7 2010) [same].)

8 11. Plaintiffs’ proposed class consists of “the named Plaintiffs and all similarly situated
 9 persons, and/or the successors-in-interest to the estates of similarly situated persons, who resided or
 10 reside at one of the California assisted living facilities owned and/or operated by Oakmont under
 11 the Oakmont name from September 13, 2013, through the present (the ‘Class Period’), and who
 12 contracted with Oakmont for services for which Oakmont was paid money.” (Exhibit 1, ¶ 89.)
 13 Oakmont’s records for individuals that fit the proposed class definition reveal that many of the
 14 proposed class members did not reside in California as of the date of filing of the State Court
 15 Proceedings, but instead were domiciled in many different states, including Colorado, Connecticut,
 16 Kansas, Louisiana, Massachusetts, Maine, Michigan, Nevada, New Hampshire, New Jersey,
 17 Oklahoma, Oregon, Pennsylvania, Texas, Virginia, and Washington. (Declaration of Nicole
 18 Wesner, ¶¶ 2-3.) As such, numerous members of the proposed class of Plaintiffs are citizens of a
 19 State different from Oakmont.

20 12. This is a civil action over which this Court has original subject matter jurisdiction
 21 pursuant to 28 U.S.C. § 1332(d) since the State Court Proceedings are a class action in which the
 22 matter in controversy exceeds the sum or value of \$5,000,0000, the number of members of the
 23 proposed class exceeds 100 persons, and at least one member of the class of Plaintiffs is a citizen
 24 of a State different from Oakmont. Consequently, this action is removable pursuant to 28 U.S.C. §
 25 1441.

26 **III. ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN**
 27 **SATISFIED**

28 13. Oakmont received service of Summons and the Complaint on September 20, 2017.

1 Removal is therefore timely in accordance with 28 U.S.C. § 1446(b).

2 14. Pursuant to the requirements of 28 U.S.C. § 1446(a), Oakmont has attached to this
3 Notice of Removal true and correct copies of all the process, pleadings, orders, and documents
4 from the State Court Proceedings that, to the best of Oakmont’s knowledge, have been filed in the
5 State Court Proceedings. Exhibit 1 is a true and correct copy of the Complaint from the State
6 Court Proceedings. Exhibit 2 contains true and correct copies of all other process, pleadings,
7 orders, and documents from the State Court Proceedings.

8 15. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because
9 the United States District Court for the Northern District of California is the federal district
10 embracing the Superior Court of California for the County of Alameda, where the State Court
11 Proceedings were originally filed.

12 16. Intradistrict Assignment: Pursuant to Local Rule 3-2(c)-(d) this action should be
13 assigned to the San Francisco Division or the Oakland Division of the Northern District of
14 California as the action arose in Alameda and/or Sonoma Counties.

15 17. Pursuant to 28 U.S.C. § 1446(b), Oakmont will give written notice of the filing of
16 this Notice of Removal to all adverse parties and will file a copy of this Notice of Removal with
17 the Clerk of Court for the Superior Court of California for the County of Alameda.

18 WHEREFORE, Oakmont hereby gives notice that Civil Action No. RG17875110, which
19 was previously pending in the Superior Court of California for the County of Alameda, is hereby
20 removed to the Northern District of California. By this Notice of Removal, Oakmont does not
21 waive any objections it may have as to service, jurisdiction, venue, or any other defense or
22 objection it may have to this action. Oakmont intends no admission of fact, law, or liability by this
23 Notice of Removal and expressly reserves all defenses, motions, and/or pleas.

24 Dated: October 16, 2017

HAHN LOESER & PARKS LLP

25
26 By: /s/ Gabe P. Wright
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27 Kyle T. Overs
28 Attorneys for Oakmont Senior Living LLC

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