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11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**
 13 **WESTERN DIVISION**

16 RICHARD CONN,
 17 Plaintiff,
 18 v.
 19 LG Electronics U.S.A., Inc.,
 20 and DOES 1-100,
 21 Defendants.

No. _____

NOTICE OF REMOVAL

From the Superior Court of California,
 County of Los Angeles, No. BC682080

Compl. Filed: Nov. 1, 2017

1 **TO THE CLERK AND TO PLAINTIFF AND HIS ATTORNEYS:**

2 **PLEASE TAKE NOTICE** that Defendant LG Electronics U.S.A., Inc.
3 (“LG”) hereby removes this action from the Superior Court of the State of
4 California for the County of Los Angeles to the United States District Court for the
5 Central District of California, Western Division. LG is entitled to remove this
6 action to federal court pursuant to 28 U.S.C. §§ 1332(d) and 1441 based on the
7 following:

8 **Commencement of the State Court Action**

9 1. On November 1, 2017, Plaintiff Richard Conn (“Plaintiff”),
10 purportedly acting on his own behalf and on behalf of all others similarly situated,
11 commenced an action in the Superior Court of the State of California in and for the
12 County of Los Angeles, captioned *Conn v. LG Electronics, USA*, No. BC682080
13 (the “State Court Action”). A true and complete copy of the complaint in the State
14 Court Action is attached hereto as Exhibit A (the “Complaint”).

15 2. On November 6, 2017, LG was served with a copy of the Complaint
16 and a summons from the State Court Action. A true and complete copy of the
17 Proof of Service of Summons served upon LG, as filed in the State Court Action, is
18 attached hereto as Exhibit B.

19 **The State Court Action Is Removable**

20 3. The State Court Action is removable to this Court because this Court
21 has original jurisdiction and the Central District of California encompasses the
22 location in which the State Court Action is currently pending (*i.e.*, Los Angeles,
23 California). *See* 28 U.S.C. § 1441(a) (“[A]ny civil action brought in a State court
24 of which the district courts of the United States have original jurisdiction, may be
25 removed by the defendant . . . to the district court of the United States for the
26 district and division embracing the place where such an action is pending.”).

27 4. This Court has original jurisdiction pursuant to the Class Action
28 Fairness Act of 2005 (“CAFA”), *see* 28 U.S.C. § 1332(d), as the State Court

1 Action is a putative civil class action. Indeed, Plaintiff expressly filed the State
2 Court Action “pursuant to Federal Rules of Civil Procedure, Rule 23(a) and
3 23(b)(1), 23(b)(2), and 23(b)(3).” (Ex. A ¶ 31.)

4 5. CAFA was enacted based on Congress’s concern that “cases
5 involving large sums of money, citizens of many different States, and issues of
6 national concern, have been restricted to State courts even though they have
7 national consequences.” 151 Cong. Rec. S1086-01, S1103 (Feb. 8, 2005).
8 CAFA’s purpose is to allow “federal court consideration of interstate cases of
9 national importance under diversity jurisdiction.” 28 U.S.C. § 1711.

10 6. CAFA extends federal jurisdiction over class actions where: (1) any
11 member of the proposed class is a citizen of a state different from any defendant
12 (*i.e.*, minimal diversity exists); (2) there are at least 100 members in all proposed
13 plaintiff classes combined; and (3) the amount in controversy exceeds \$5 million,
14 taking into account all damages and equitable relief sought for all of the purported
15 class members’ claims in the aggregate, exclusive of interest and costs. *See* 28
16 U.S.C. §§ 1332(d). As explained in detail below, each of these requirements is
17 satisfied in this case.

18 **The Minimal Diversity Requirement Is Satisfied**

19 7. A putative class action is removable based on diversity jurisdiction if
20 “any member of a class of plaintiffs is a citizen of a State different from any
21 defendant.” 28 U.S.C. § 1332(d)(2)(A). There is sufficient (and complete)
22 diversity of citizenship between the relevant parties in this case.

23 8. Plaintiff purports to be a citizen and resident of California. (Ex. A
24 ¶¶ 1, 8.)

25 9. LG is incorporated under the laws of Delaware, and its principal place
26 of business is in Englewood Cliffs, New Jersey. (*See* Ex. A ¶ 3 (alleging that LG’s
27 principal place of business is in New Jersey); Ex. C (Delaware Corporation
28 Certificate of Good Standing).) Thus, for purposes of determining diversity

1 jurisdiction, LG is a citizen of Delaware and New Jersey. *See* 28 U.S.C.
2 § 1332(c)(1).¹

3 10. Although the Complaint purports to name Doe defendants, the
4 citizenship of Doe defendants “shall be disregarded” for purposes of the
5 removability analysis. 28 U.S.C. § 1441(b)(1).

6 **Plaintiff’s Proposed Class Exceeds 100 Members**

7 11. For a class action to be removable under CAFA, “the number of
8 members of all proposed plaintiff classes in the aggregate” must be at least 100.
9 28 U.S.C. § 1332(5)(B). This requirement is met here.

10 12. Plaintiff seeks to represent a class of “[a]ll persons in the United
11 States of America and its territories who purchased, new, one of the [12 models of
12 LG Smart TVs identified by Plaintiff],” and plans to expand this class definition to
13 include other TV models identified during discovery. (Ex. A ¶¶ 28–29.) Plaintiff
14 alleges that “numerous consumers in California State, and numerous consumers
15 throughout the United States are believed to be members of this class. Joinder of
16 so many class members in to a single action is impracticable. In fact, given the
17 number of class members, the only way to deliver substantial justice to all
18 members of the class is by means of a single class action.” (*Id.* ¶ 32.)

19 13. Plaintiff’s purported class action extends to all consumers in the
20 United States and its territories who purchased, new, one of the 12 models of LG
21 Smart TVs identified by Plaintiff in the Complaint. Plaintiff alleges that “LG
22 manufactured and sold” the LG Smart TVs in the United States at least during the
23 period “[b]etween approximately 2009 and the present” – an eight-year period.
24 (Ex. A ¶ 14.) The Complaint currently alleges violations of consumer protection
25 laws of 26 states and the District of Columbia. Plaintiff’s proposed class
26 accordingly contains well over 100 members.

27 ¹ The Complaint mistakenly identifies New Jersey as LG’s state of
28 incorporation. (*See* Ex. A ¶ 9; Ex. C.)

1 **The Amount in Controversy Exceeds the Jurisdictional Minimum**

2 14. The amount in controversy exceeds the jurisdictional minimum of
3 \$5,000,000. *See* 28 U.S.C. § 1332(d)(2). Where, as here, “the plaintiff’s
4 complaint does not state the amount in controversy, the defendant’s notice of
5 removal may do so.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.
6 Ct. 547, 551 (2014). To establish the amount in controversy, a notice of removal
7 “need not contain evidentiary submissions.” *Id.* Rather, “a defendant’s notice of
8 removal need include only a plausible allegation that the amount in controversy
9 exceeds the jurisdictional threshold.” *Id.* at 554.

10 15. For purposes of removal only, and without conceding that Plaintiff or
11 the putative class is entitled to any damages or penalties whatsoever, it is apparent
12 that the aggregated claims of the putative class establish that the amount in
13 controversy exceeds the jurisdiction minimum of \$5,000,000, exclusive of interest
14 and costs.

15 16. In a putative class action, “the claims of the individual class members
16 shall be aggregated to determine whether the matter in controversy exceeds the
17 [jurisdiction minimum].” 28 U.S.C. § 1332(d)(6).

18 17. Plaintiff seeks to represent a class of “[a]ll persons in the United
19 States of America and its territories who purchased, new, one of the [12 models of
20 LG Smart TVs identified by Plaintiff],” and plans to expand this class definition to
21 include other TV models identified during discovery. (Ex. A ¶¶ 28–29.)

22 18. Plaintiff alleges in the Complaint that “[n]ew Smart TVs can easily
23 exceed \$1,000 in price[.]” (Ex. A ¶ 26.)

24 19. Plaintiff brought a claim under California’s Unfair Competition Law
25 (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.* (Ex. A ¶¶ 95–99). The UCL
26 provides that a court may award a prevailing plaintiff restitution, which is
27 generally “return [of] money obtained through an unfair business practice.” *See*
28 *Nelson v. Pearson Ford Co.*, 186 Cal. App. 4th 983, 1015, 1018 (2010), *overruled*

1 *in part on other grounds by Raceway Ford Cases*, 2 Cal. 5th 161, 173–76
2 (2016). Thus, potentially at stake in this case is a restitution award of over \$1,000
3 to each of the class members based merely on Plaintiff’s UCL claim. (*See Ex. A*
4 ¶ 32.)

5 20. Plaintiff also brought a claim under California’s Consumer Legal
6 Remedies Act (“CLRA”), Cal. Code Civ. Pro. §§ 1750, *et seq.* (Ex. A ¶¶ 90–94),
7 which allows a court to award restitution “consistent with the purpose of restoring
8 to the plaintiff the amount that the defendant wrongfully acquired.” *Nelson*, 186
9 Cal. App. 4th at 1023. Thus, Plaintiff’s CLRA claim puts a restitution award of
10 over \$1,000 to each of the class members potentially at stake based merely on
11 Plaintiff’s CLRA claim. (*See Ex. A* ¶ 32.)

12 21. In addition, many of Plaintiff’s causes of action under various states’
13 consumer protection laws provides for similar restitutionary relief of potentially
14 over \$1,000 for each class member. *See, e.g., Holeman v. Neils*, 803 F. Supp. 237,
15 242 (D. Ariz. 1992) (“A private individual’s relief under the [Arizona] Consumer
16 Protection Act is his actual damages suffered as a result of the unlawful act or
17 practice. These damages include the consideration paid in the contract and out-of-
18 pocket expenses.”) (citation omitted); Me. Rev. Stat. Ann. tit. 5 § 213 (providing a
19 private right to bring an action for “actual damages, restitution and . . . other
20 equitable relief”); R.I. Gen. Laws § 6-13.1-5 (allowing a court to enter any
21 judgment “necessary to restore to any person in interest any moneys or property,
22 real or personal, that may have been acquired by means of any practice in this
23 chapter declared to be unlawful”).

24 22. Over 5,000 persons in the United States and its territories purchased
25 new Smart TVs with the LG model numbers identified in the Complaint (LD550,
26 LD650, LE3530, LE5400, LE5500, LE7500, LE8500, LX6500, LX9500, PK750,
27 PK950, and PX950) during the period alleged in the Complaint, *i.e.*, from 2009 to
28

1 the present. Based on Plaintiff's allegations and asserted theories of recovery as
2 pled, the amount in controversy easily exceeds \$5,000,000.

3 23. Plaintiff further seeks all "general and special damages sustained" as a
4 result of LG's purported conduct, including "punitive damages." (Compl. ¶ 74; *id.*
5 at Prayer for Relief.) Punitive damages may be considered in calculating the
6 amount in controversy. *See Davenport v. Mutual Ben. Health & Accident Assocs.*,
7 325 F.2d 785, 787 (9th Cir. 1963).

8 24. Plaintiff also seeks attorneys' fees as permitted by law. (Ex. A,
9 Prayer for Relief ¶ 5.) "[W]here an underlying statute authorizes an award of
10 attorneys' fees, either in mandatory or discretionary language, they may be
11 included in the amount in controversy" for purposes of removal. *Galt G/S v. JSS*
12 *Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998). Plaintiff seeks relief under 28
13 state consumer protection and unfair competition statutes, which may provide for
14 attorneys' fees awards to the prevailing party. *See, e.g., Graciano v. Robinson*
15 *Ford Sales, Inc.*, 144 Cal. App. 4th 140, 149 (2006) (the California Consumer
16 Legal Remedies Act, Cal. Code Civ. Pro. §§ 1750, *et seq.*, provides that a court
17 shall award attorneys' fees to a prevailing plaintiff in litigation filed under the
18 Act); *Davis v. Ford Motor Credit Co. LLC*, 179 Cal. App. 4th 581, 600 (2009) (a
19 prevailing plaintiff in a claim under California's Unfair Competition Law, Cal.
20 Bus. & Prof. Code §§ 17200, *et seq.*, "may seek attorney fees as a private attorney
21 general pursuant to Code of Civil Procedure section 1021.5").

22 **LG Satisfies the Requirements of 28 U.S.C. § 1446**

23 25. This Notice of Removal is signed pursuant to Rule 11 of the Federal
24 Rules of Civil Procedure. *See* 28 U.S.C. § 1446(a).

25 26. This Notice of Removal has been filed within thirty days of service of
26 the Complaint and summons on Defendant.

27 27. Concurrently with the filing of this Notice, Defendants will give
28 written notice to all adverse parties and will file a copy of this Notice with the

1 clerk of the Superior Court of the State of California in and for the County of Los
2 Angeles. *See* 28 U.S.C. § 1446(d).

3 28. LG does not waive, and expressly preserves, all objections, defenses,
4 and exceptions authorized by law, including but not limited to those permitted
5 pursuant to Rules 4 and 12 of the Federal Rules of Civil Procedure.

6 WHEREFORE, LG removes the State Court Action to this Court.

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8 Dated: December 6, 2017

Respectfully submitted,

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By /s/ Michael H. Rubin

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