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6 Attorneys for Defendants
7 HOMEAWAY.COM, INC.

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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KAREN MEYER, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

HOMEAWAY.COM, INC., a
Delaware corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No. '17CV2243 JLS KSC

**DEFENDANT HOMEAWAY.COM,
INC.'S NOTICE OF REMOVAL**

Complaint Filed in San Diego Superior
Court: September 29, 2017

Complaint Served on Defendant:
October 4, 2017

(Removed from Superior Court of
California, County of San Diego Case
No. 37-2017-00036668-CU-BC-NC)

1 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446,
2 and 1453, HomeAway.com, Inc. (“Defendant”), by and through their attorneys,
3 remove to this Court the action entitled *Karen Meyer v. HomeAway.com, Inc.*, Case
4 No. 37-207-00036668-CU-BC-NC (the “Action”), which was originally filed in the
5 Superior Court of the State of California for the County of San Diego.

6 **I. INTRODUCTION**

7 1. As set forth below, this Action is properly removed to this Court
8 pursuant to 28 U.S.C. § 1441 because this Court has jurisdiction under the Class
9 Action Fairness Act, 28 U.S.C. § 1332(d) (“CAFA”), in that this Action is a civil
10 action in which the amount in controversy exceeds the sum of \$5,000,000 exclusive
11 of costs and interest, has more than 100 members in the proposed putative class,
12 and is between citizens of different states.

13 2. By filing this notice of removal, HomeAway does not intend to waive,
14 and hereby reserves, any objection as to venue, the legal sufficiency of the claims
15 alleged in the Action, and all other defenses. HomeAway reserves the right to
16 supplement and amend this notice of removal.

17 **II. BACKGROUND**

18 3. On September 29, 2017, plaintiff Karen Meyer (“Plaintiff”)
19 commenced this putative class action by filing a Complaint in the San Diego
20 Superior Court.

21 4. The Complaint alleges violations of the California Consumer Legal
22 Remedies Act (“CLRA”), the California False Advertising Law, California
23 Business & Professions Code § 17500, and the California Unfair Competition Law,
24 California Business & Professions Code § 17200. The Complaint further alleges
25 claims for Breach of Contract and Breach of the Covenant of Good Faith and Fair
26 Dealing.

27 5. These claims arise from the allegation that HomeAway falsely
28 represented that it would provide customers “24/7” customer service in exchange

1 for the Service Fees and improperly refused to adjust the Service Fees to account
2 for “shortened reservations” (together, the “Alleged Practices”). Compl. ¶¶ 2, 7,
3 16-19, 25.

4 6. Plaintiff brings these claims on behalf of herself and a putative class
5 comprised of “[a]ll persons who reside in the state of California who rented a
6 dwelling form HomeAway plus all persons who rented a dwelling in the State of
7 California through HomeAway’s website between January 1, 2014 and the present”
8 (the “Putative Class”). Compl. ¶ 27.

9 7. Plaintiff seeks, among other things, the following: (1) an order
10 enjoining the Alleged Practices; (2) “restitution and restitutionary disgorgement”;
11 (3) “compensatory, consequential, actual, and/or statutory damages in the
12 maximum amount permitted by law or other equitable monetary relief, plus pre and
13 post-judgment interest thereon”; (4) “punitive and exemplary damages”; (5) “costs
14 of suit”; and (6) “attorneys’ fees and costs as permitted by law, including but not
15 limited to California Code of Civil Procedure section 1021.5, California Civil Code
16 sections 1780-1782, and other statutes as may be applicable.” Compl. Prayer for
17 Relief.

18 8. Process was served on Defendant on October 4, 2017, by delivery to
19 an agent authorized by HomeAway to receive process.¹

20 9. HomeAway has not filed an answer or responsive pleading to the
21 Complaint.

22 **III. JURISDICTION**

23 10. CAFA creates federal jurisdiction over lawsuits in which “the matter
24 in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and
25 costs, and is a class action in which . . . any member of a class of plaintiffs is a

26 ¹ The Summons and Complaint, which together comprise “all process, pleadings,
27 and orders served” on HomeAway in this Action, 28 U.S.C. § 1446(a), are attached
28 hereto as Exhibit A along with all other documents filed in the state court
proceeding.

1 citizen of a State different from any defendant,” and involves a putative class that
2 consists of more than 100 members. 28 U.S.C. §§ 1332(d)(2), (5). All of these
3 requirements are met here.

4 **A. Minimal Diversity Exists**

5 11. CAFA requires only minimal diversity, and in class action lawsuits,
6 “[t]he district courts shall have original jurisdiction of any civil action in which . . .
7 any member of a class of plaintiffs is a citizen of a State different from any
8 defendant.” 28 U.S.C. § 1332(d)(2)(A). Diversity of citizenship exists here.

9 12. Plaintiff does not plead her citizenship, but the Putative Class
10 expressly includes California citizens as well as citizens from any state who rented
11 dwellings in California through HomeAway.com. *See* Compl. ¶¶ 7 (“Plaintiff
12 Karen Meyer is a United States citizen”), 27 (Putative Class definition).

13 13. For purposes of diversity, a corporation is deemed to be a citizen of
14 (1) the state under whose laws it is organized; and (2) the state of its “principal
15 place of business.” 28 U.S.C. § 1332(c)(1). Defendant HomeAway is a Delaware
16 corporation with its principal place of business in the State of Texas. Compl. ¶ 8.
17 Thus, for purposes of CAFA jurisdiction, HomeAway is a citizen of Delaware and
18 Texas, and no other state. 28 U.S.C. § 1332(c)(1).

19 14. Accordingly, the minimal diversity requirement is satisfied given that
20 the Putative Class expressly includes California citizens and HomeAway is a citizen
21 of Delaware and Texas.

22 **B. The Amount In Controversy Exceeds \$5,000,000**

23 15. Although HomeAway denies all liability alleged in the Complaint and
24 denies that class treatment is appropriate for this Action, if damages or restitution
25 were awarded on Plaintiff’s claims, the aggregate amount as to the putative class
26 would exceed \$5,000,000 exclusive of interests and costs.

27 16. HomeAway denies Plaintiff’s substantive allegations, denies that
28 Plaintiff is entitled to any of the relief sought in her Complaint, and does not waive

1 any defense with respect to any of Plaintiff's claims. Nonetheless, the amount in
 2 controversy is determined by accepting Plaintiff's allegations as true. *See, e.g.,*
 3 *Cain v. Hartford Life & Accident Ins. Co.*, 890 F. Supp. 2d 1246, 1249 (C.D. Cal.
 4 2012) (citing *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F.
 5 Supp. 2d 993, 1001 (C.D. Cal. 2002) ("In measuring the amount in controversy, a
 6 court must assume that the allegations of the complaint are true and assume that a
 7 jury will return a verdict for the plaintiff on all claims made in the complaint."));
 8 *accord Gyorke-Takatri v. Nestle USA, Inc.*, Case No. 15-cv-03702-YGR, 2015 WL
 9 6828258, at *2 (N.D. Cal. Nov. 6, 2015); *Asturias v. Nationstar Mortgage, LLC*,
 10 Case No. 15-CV-3861 YGR, 2015 WL 6602022, at *1 (N.D. Cal. Oct. 30, 2015).

11 17. Case law is clear that "[t]he amount-in-controversy allegation of a
 12 plaintiff invoking federal-court jurisdiction is accepted if made in good faith.
 13 Similarly, the amount-in-controversy allegation of a defendant seeking federal-
 14 court adjudication should be accepted when not contested by the plaintiff or
 15 questioned by the court." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135
 16 S. Ct. 547, 549-50 (2014) (internal citation omitted).

17 18. Here, Plaintiff seeks, in addition to injunctive relief, compensatory,
 18 consequential, actual, and/or statutory damages in the maximum amount permitted
 19 by law, and requests the Court to "enter an order requiring full restitution or
 20 restitutionary disgorgement of all amounts obtained by Defendants as a result of the
 21 misconduct set forth herein in an amount according to proof at trial." Compl.
 22 Prayer for Relief. Even if this request for restitution were limited to the Service
 23 Fees collected from the Putative Class, it still seeks well in excess of \$5,000,000.
 24 *See Decl. of Bill Bowles in Support of Removal at ¶¶ 6-7.*

25 19. The \$5,000,000 requisite amount in controversy is therefore satisfied.

26 **C. The Putative Class Exceeds 100 Members**

27 20. Plaintiff alleges that the Putative Class "is *so numerous* that joinder of
 28 all members is impracticable." Compl. ¶ 31 (emphasis added).

1 21. Plaintiff further alleges that the Putative Class “consists of thousands
2 of customers in the United States.” Compl. ¶ 31.

3 22. Because the Complaint pleads a Putative Class comprised of thousands
4 of individuals, 28 U.S.C. § 1332(d)(5)’s requirement of at least 100 class members
5 is satisfied.

6 **IV. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED**

7 23. This Court is the proper venue for removal because the Action is
8 pending in the County of San Diego, California, and the United States District
9 Court for the Southern District of California is the “district and division embracing
10 the place where such action is pending.” 28 U.S.C. § 1441(a).

11 24. HomeAway timely filed this notice of removal. HomeAway was
12 served with the Complaint on October 4, 2017. Accordingly, HomeAway filed this
13 Notice of Removal within 30 days of being served. 28 U.S.C. §§ 1446(b); 1453(b).

14 25. As required by 28 U.S.C. § 1446(d), a copy of this notice of removal is
15 being promptly served upon counsel for Plaintiff and a copy is being filed with the
16 Clerk of the Superior Court of the State of California for the County of San Diego.

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Dated: November 3, 2017

MORGAN, LEWIS & BOCKIUS LLP
J. Warren Rissier
Joseph Bias

By /s/ Joseph Bias
Joseph Bias
Attorneys for Defendant
HOMEAWAY.COM, INC.