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8 TRADER JOE'S COMPANY

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 JESSICA CESTA, individually and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 TRADER JOE'S COMPANY, and  
16 DOES 1 through 10, inclusive,

17 Defendants.  
18  
19

Case No. CV \_\_\_\_\_

**NOTICE OF REMOVAL OF  
DEFENDANT TRADER JOE'S  
COMPANY**

(28 U.S.C. §§ 1332(d), 1441(a))

Los Angeles County Superior Court  
Case No. BC689087

Complaint Served: January 8, 2018  
Removal Date: February 5, 2018

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1           **PLEASE TAKE NOTICE** that Defendant Trader Joe’s Company (“Trader  
2 Joe’s”) hereby removes this action pursuant to U.S.C. §§ 1332(d), 1441(a), and 1446,  
3 from the Superior Court for the State of California for the County of Los Angeles to  
4 the United States District Court for the Central District of California. Removal is  
5 proper because this is a putative class action that satisfies the jurisdictional  
6 prerequisites under the Class Action Fairness Act (“CAFA”). Here, the proposed  
7 plaintiff class consists of over 100 members, and minimal diversity exists because  
8 Trader Joe’s is a citizen of California and the putative class includes citizens of other  
9 states. Additionally, the amount in controversy exceeds \$5,000,000. This Notice of  
10 Removal is timely because it has been filed within thirty days of the date Trader Joe’s  
11 was served with the summons and complaint. *See* 28 U.S.C. § 1446(b).

12           **PROCEDURAL BACKGROUND AND TIMELINESS OF REMOVAL**

13           1.       On January 5, 2018, Plaintiff Jessica Cesta (“Plaintiff”) filed a putative  
14 class action against Trader Joe’s in the Superior Court for the State of California,  
15 County of Los Angeles, captioned *Cesta v. Trader Joe’s Company, et al.*, Case  
16 No. BC 689087 (the “Superior Court Action”).

17           2.       Plaintiff served Trader Joe’s with the Superior Court Action Summons  
18 and Complaint on January 8, 2018. This Notice of Removal is therefore timely  
19 because it is filed within thirty days of service on Trader Joe’s. *See* 28  
20 U.S.C. § 1446(b).

21           3.       Pursuant to 28 U.S.C. § 1446(a), Trader Joe’s has attached as **Exhibit 1**  
22 a copy of all process, pleadings, and orders served upon Trader Joe’s in the Superior  
23 Court Action.

24           4.       Plaintiff purports to bring this action on behalf of all purchasers of  
25 Trader Joe’s Vitamin E Oil (the “Product”). Compl. ¶ 1. Specifically, she seeks to  
26 represent a putative class consisting of “[a]ll persons who purchased the Product in  
27 United States for personal use and not for resale during the time period  
28 January 5, 2014 through the present.” *Id.* ¶ 23.

1 5. Plaintiff alleges that Trader Joe’s deceptively marketed the Product  
2 because the Product allegedly represents that it is “made exclusively of Vitamin E  
3 oil” but consists “mostly of other oils such as soybean oil, used as a filler oil, and  
4 coconut oil.” *Id.* ¶¶ 2, 13.

5 6. On behalf of Plaintiff and the putative class, the Complaint alleges  
6 claims against Trader Joe’s for violation of California’s (1) Consumers Legal  
7 Remedies Act, Cal. Civ. Code § 1750, *et seq.*; (2) False Advertising Law, Cal. Bus.  
8 & Prof. Code § 17500, *et seq.*; and (3) Unfair Competition Law, Cal. Bus. & Prof.  
9 Code § 17200 *et seq.* See Compl. ¶¶ 33–70.

10 7. Plaintiff seeks damages, restitution and/or disgorgement, punitive  
11 damages, injunctive relief, and attorneys’ fees and costs. *Id.* at 14 (Prayer for Relief).

12 **JURISDICTION AND BASIS FOR REMOVAL**

13 8. This action is removable pursuant to 28 U.S.C. § 1441(a) because this  
14 is an action over which this Court has original jurisdiction.

15 9. This Court possesses original jurisdiction over this action under CAFA,  
16 28 U.S.C. § 1332(d), which grants district courts original jurisdiction over class  
17 actions (1) involving a plaintiff class of 100 or more members; (2) where any member  
18 of the proposed class is a citizen of a state different from any defendant; and (3) the  
19 amount in controversy exceeds \$5,000,000 in the aggregate, exclusive of interests  
20 and costs. See 28 U.S.C. § 1332(d)(2); *see also Dart Cherokee Basin Operating Co.*  
21 *v. Owens*, 135 S. Ct. 547, 554 (2014) (explaining that “CAFA’s provisions should be  
22 read broadly” (internal quotation marks omitted)). These conditions are satisfied  
23 here for the reasons set out below.

24 **The Plaintiff Class Consists of Over 100 Members**

25 10. This action meets the CAFA definition of a class action, which is “any  
26 civil action filed under [R]ule 23 of the Federal Rules of Civil Procedure or similar  
27 State statute or rule of judicial procedure.” 28 U.S.C. § 1332(d)(1)(B); *see*  
28 Compl. ¶¶ 23–32. Plaintiff purports to bring claims on behalf of “[a]ll persons who

1 purchased the Product in United States for personal use and not for resale during the  
2 time period January 5, 2014 through the present.” *Id.* ¶ 23. Plaintiff also alleges that  
3 the number of class members is in the “hundreds of thousands or more throughout  
4 the United States and California.” *Id.* ¶ 25. Accordingly, the aggregate number of  
5 class members exceeds 100 persons. *See* 28 U.S.C. § 1332(d)(5)(B).

### 6 **There is Minimal Diversity of Citizenship**

7 11. Minimal diversity exists between Trader Joe’s and the members of the  
8 putative class under 28 U.S.C. § 1332(d)(2)(A). Under CAFA, diversity of  
9 citizenship is satisfied where “any member of a class of plaintiffs is a citizen of a  
10 State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

11 12. A corporation is “deemed to be a citizen of every State and foreign state  
12 by which it has been incorporated and of the State or foreign state where it has its  
13 principal place of business.” 28 U.S.C. § 1332(c)(1). “The term ‘principal place of  
14 business’ means ‘the place where a corporation’s officers direct, control, and  
15 coordinate the corporation’s activities.’” *Martinez v. Michaels*, 2015 WL 4337059,  
16 at \*3 (C.D. Cal. July 15, 2015) (quoting *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93  
17 (2010)).

18 13. Trader Joe’s is a California corporation with its headquarters located in  
19 Monrovia, California. *See* Compl. ¶ 4 (alleging that Trader Joe’s is a “corporation  
20 headquartered in Monrovia, California” and “maintains its principal business” in  
21 Monrovia, California). Accordingly, Trader Joe’s is a citizen of California for  
22 diversity purposes.

23 14. Plaintiff has brought this action on behalf of a nationwide class of “[a]ll  
24 persons who purchased the Product in the United States. *Id.* ¶ 23. The Product is  
25 sold throughout the United States, including in states other than California. Thus, at  
26 least one member of the proposed class is from a state other than California, thereby  
27 satisfying minimal diversity for purposes of CAFA jurisdiction. *See* 28 U.S.C.  
28 § 1332(d)(2)(A).

**The Amount in Controversy Exceeds \$5,000,000**

15. The amount in controversy in this action satisfies CAFA’s \$5,000,000 jurisdictional threshold. Under CAFA, the claims of the individual class members are aggregated to determine if the amount in controversy exceeds the required “sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). “The amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010). To determine the amount in controversy, courts first look to the complaint and “the sum claimed by the plaintiff controls if the claim is apparently made in good faith.” *Id.* (citation omitted). Accordingly, “in assessing the amount in controversy, a court must assume that the allegations of the complaint are true and assume that a jury will return a verdict for the plaintiff on all claims made in the complaint.” *Campbell v. Vitran Express, Inc.*, 471 F. App’x 646, 648 (9th Cir. 2012) (citation omitted). Where a complaint does not specify the amount of damages sought, the removing defendant need only establish that it is more likely than not that the amount in controversy requirement has been met. *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 683 (9th Cir. 2006). “The removing party’s burden is ‘not daunting,’ and defendants are not obligated to ‘research, state, and prove the plaintiff’s claims for damages.’” *Behrazfar v. Unisys Corp.*, 687 F. Supp. 2d 999, 1004 (C.D. Cal. 2009).

16. While Trader Joe’s contends that the allegations in the Complaint are without merit and that neither Plaintiff nor the putative class members have suffered any injury whatsoever, the amount in controversy here exceeds \$5,000,000. Here, Plaintiff seeks to represent a nationwide class of Trader Joe’s customers who purchased the allegedly deceptive Product during the putative class period—January 5, 2014 to the present. Compl. ¶ 23. Specifically, Plaintiff alleges that the number of class members is in the “hundreds of thousands or more throughout the United States and California.” *Id.* ¶ 25. Plaintiff seeks to recover the full purchase price of

1 the Product, which she allegedly purchased for approximately \$7.00. *See id.* ¶¶ 28,  
2 44, 45, 58, 70 (alleging that Plaintiff would not have purchased the Product had she  
3 known it allegedly contained a blend of oils rather than exclusively Vitamin E oil);  
4 *id.* ¶ 17 (alleging that Plaintiff paid “approximately \$7.00 for the Product” in or  
5 around October 2015).<sup>1</sup> Trader Joe’s gross nationwide sales of the Product during  
6 the putative class were in excess of \$5,000,000.

7 17. In addition, Plaintiff seeks to recover her attorneys’ fees, which  
8 contribute to the alleged amount in controversy. *Id.* at 14 (Prayer for Relief); *see*  
9 *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 1000 (9th Cir. 2007) (including  
10 attorneys’ fees in calculating amount in controversy), *overruled on other grounds by*  
11 *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345 (2013); *Kroske v. US. Bank Corp.*,  
12 432 F.3d 976, 980 (9th Cir. 2005) (including attorney’s fees in amount in  
13 controversy); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155–56 (9th Cir. 1998)  
14 (including attorneys’ fees in calculating the amount in controversy requirement for  
15 traditional diversity jurisdiction).

16 18. Plaintiff also seeks punitive damages. Compl. at 14 (Prayer for Relief).  
17 Potential punitive damages are properly included in the amount in  
18 controversy. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001) (“It is  
19 well established that punitive damages are part of the amount in controversy in a civil  
20 action.”).

21 19. Finally, Plaintiff seeks an injunction “enjoining Defendants from  
22 continuing to engage in the unlawful conduct and practices described herein.”  
23 Compl. at 14 (Prayer for Relief). The cost of compliance with such an injunction  
24 further adds to the amount in controversy. *See, e.g., Bayol v. ZipCar, Inc.*, 2015 WL  
25 4931756, at \*10 (N.D. Cal. Aug. 18, 2015) (“[A] defendant’s aggregate cost of  
26 compliance with an injunction is appropriately counted toward the amount in  
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28 <sup>1</sup> Trader Joe’s actually sells the Product in its retail stores for \$3.99.

1 controversy.”).

2 20. Thus, while Trader Joe’s disputes that it is liable to Plaintiff or any  
3 putative class member—or that Plaintiff or any putative class member suffered injury  
4 or incurred damages in any amount whatsoever—to the extent Plaintiff seeks to  
5 recover the purchase price of the Product sold in the United States, attorneys’ fees,  
6 and punitive damages, and requests injunctive relief, the amount in controversy is  
7 well in excess of the \$5,000,000 threshold for satisfying CAFA’s jurisdictional  
8 prerequisites.

### 9 **No Exception to CAFA Applies**

10 21. Although CAFA contains several exceptions, which, where applicable,  
11 may prevent the Court from exercising jurisdiction under CAFA, these exceptions do  
12 not impose additional jurisdictional requirements. *See Serrano v. 180 Connect, Inc.*,  
13 478 F.3d 1018, 1023 (9th Cir. 2007) (“[T]he provisions set forth in §§ 1332(d)(3)  
14 and (4) are not part of the prima facie case for establishing minimal diversity  
15 jurisdictional under CAFA, but, instead, are exceptions to jurisdiction.”). Rather, it  
16 is plaintiff’s burden to demonstrate that an exception to CAFA applies. *Id.* at 1023–  
17 24 (requiring the party seeking remand to demonstrate the applicability of the “home  
18 state” and “local controversy” exceptions to CAFA); *Korn v. Polo Ralph Lauren*  
19 *Corp.*, 536 F. Supp. 2d 1199, 1206 (E.D. Cal. 2008). Plaintiff here will not be able  
20 to demonstrate that an exception to CAFA applies.

### 21 **OTHER PROCEDURAL REQUIREMENTS**

22 22. *Venue*. Plaintiff filed this action in the Superior Court of the State of  
23 California, County of Los Angeles. This action is thus properly removed to the  
24 United States District Court for the Central District of California, Western Division,  
25 which embraces Los Angeles County within its jurisdiction. 28 U.S.C. §§ 1441(a),  
26 1446(a).

27 23. *Joinder*. Because there are no other named defendants in this action, no  
28 consent to removal is necessary. The Doe defendants, who have not been named or

1 served, need not consent to this Notice of Removal. *See Soliman v. Philip Morris,*  
2 *Inc.*, 311 F.3d 966, 971 (9th Cir. 2002).

3 24. *Notice.* Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of  
4 Removal is being filed with the Clerk of Court for the Superior Court for the States  
5 of California, County of Los Angeles and served upon counsel for Plaintiff.

6 **CONCLUSION**

7 For the reasons stated above, this action is within this Court's original  
8 jurisdiction and meets all requirements for removal, such that removal is proper under  
9 28 U.S.C. §§ 1332(d), 1441(a), and 1446. Accordingly, Trader Joe's respectfully  
10 removes this action from the Superior Court for the State of California, County of  
11 Los Angeles, to this Court.

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13  
14 Dated: February 5, 2018

DAWN SESTITO  
R. COLLINS KILGORE  
O'MELVENY & MYERS LLP

17 By: /s/ Dawn Sestito  
18 Dawn Sestito  
19 Attorneys for Defendant  
20 TRADER JOE'S COMPANY  
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