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9

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

12
13 DAVID EHRMAN, individually and on
behalf of all others similarly situated,
14
Plaintiff,
15
v.
16 COX COMMUNICATIONS, INC. and
17 DOES 1 through 25, inclusive,
18
Defendants.

Case No.
Superior Court Case No.
30-2018-00992300-CU-MC-CXC
**NOTICE OF REMOVAL OF
DEFENDANT COX
COMMUNICATIONS, INC.**

19
20 **TO THE JUDGES OF THE UNITED STATES DISTRICT COURT**
21 **FOR THE CENTRAL DISTRICT OF CALIFORNIA:**

22 Defendant Cox Communications, Inc. ("Defendant"), together with
23 Cox Communications California, LLC (Plaintiff's actual service provider)
24 (collectively "Cox")¹ file this Notice of Removal of this action from Orange County
25

26 ¹ Plaintiff names Cox Communications, Inc. as the defendant in this action.
27 However, Cox Communications California, LLC is the corporate entity that
28 provides Cox services to Plaintiff and other subscribers in California. Because the
(footnote continued)

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1 Superior Court to the United States District Court for the Central District of
2 California pursuant to 28 U.S.C. §§ 1332(a), 1332(d)(2)(A), 1441 and 1446.

3 **INTRODUCTION**

4 1. On or about May 9, 2018, Plaintiff David Ehrman filed a putative class
5 action in the California Superior Court for the County of Orange, Case No. 30-2018-
6 00992300-CU-MC-CXC (the "state court action"). A true and correct copy of
7 Plaintiff's original complaint in the state court action (the "Complaint") is attached
8 as **Exhibit A**.

9 2. On May 25, 2018, Defendant was personally served through its
10 registered agent for service of process with copies of the Complaint, summons, and
11 other case initiating documents filed in the state court action. True and correct
12 copies of all process and pleadings served upon Defendant are attached as
13 **Exhibits A-C**.

14 3. Defendant has filed this notice of removal within the 30-day time
15 period required by 28 U.S.C. § 1446(b).²

16 4. **Jurisdiction**. As explained below, this is a civil putative class action
17 over which this Court has original jurisdiction under 28 U.S.C. § 1332(a) and/or the
18 _____
19 claims raised by Plaintiff arise from or relate to Internet services offered or provided
20 to subscribers in California (and because the purported class consists of California
21 subscribers), Defendant believes that Cox Communications California, LLC is the
22 proper defendant in this action, and that the Complaint should be amended to
23 replace Cox Communications, Inc. with Cox Communications California, LLC. In
24 any event, the replacement and addition of Cox Communications California, LLC is
25 irrelevant to issues pertaining to removal of the action and, where applicable, facts
26 relevant to removal for both entities are addressed herein.

27 ² On June 19, 2018, Defendant was served with a First Amended Class Action
28 Complaint ("FAC") filed in the state court action. A true and correct copy of the
FAC is attached hereto as **Exhibit D**. Because this action is removable based on the
allegations of the original Complaint, this Notice of Removal is made within the
time period for removal based on service of the original Complaint and is based on
the allegations set forth in the original Complaint. The allegations of the FAC do
not alter any grounds for removal contained in the original Complaint.

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1 Class Action Fairness Act ("CAFA"), 28 U.S.C. §1332(d)(2). All of the
2 requirements for diversity jurisdiction under CAFA are satisfied in this case:
3 (1) the putative class consists of at least 100 members; (2) the citizenship of at least
4 one proposed class member is different from that of at least one Defendant; and
5 (3) the aggregated amount in controversy exceeds \$5 million, exclusive of interest
6 and costs. Additionally, because all proposed class members are citizens of
7 California, and the Cox entities are citizens of Delaware and Georgia, there is
8 complete diversity, such that jurisdiction is independently proper under § 1332(a).

9 5. In accordance with 28 U.S.C. § 1446(d), Defendant is filing with the
10 Orange County Superior Court, and serving on Plaintiff, a Notice of Filing of
11 Removal of Action. A true and correct copy of that notice is attached hereto as
12 **Exhibit E.**

13 **I. ALLEGATIONS OF THE COMPLAINT.**

14 6. In the Complaint, Plaintiff alleges as follows:³ Defendant provides,
15 among other things, residential Internet services to Plaintiff and other consumers in
16 California. (Exhibit A, ¶ 4.) Defendant allegedly offers consumers a variety of
17 Internet speed plans, charging prices based on different "tiers" of Internet
18 connection speed. (*Id.*, ¶ 8.) Defendant's advertisements allegedly typically, but not
19 always, identify an Internet connection speed "up to" that which a subscriber may
20 expect to receive service. (*Id.*, ¶ 10.) Defendant allegedly misled Plaintiff and
21 similarly situated consumers by promising to deliver residential Internet service at
22 speeds consumers could rarely, if ever, achieve. (*Id.*, ¶ 7.)

23 7. Based on the foregoing, Plaintiff alleges causes of action for fraud;
24 violation of the False Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*);
25 violation of the Consumers Legal Remedies Act (Cal. Civ. Code § 1750 *et seq.*);

26
27 ³ Any allegation recited by Cox herein is not intended to be, and should not be
28 construed as, an admission of the truth of any allegation in the Complaint.

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1 violation of the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*);
2 and restitution and unjust enrichment. (Exhibit A, ¶¶ 27-62.)⁴

3 8. Plaintiff brings these claims on behalf of himself and a purported class
4 of "all consumers in California who paid for Defendants' residential Internet services
5 within four years from the date this action was filed [May 9, 2014 – May 9, 2018]."
6 (Exhibit A, ¶ 16.)

7 9. In his Prayer for Relief, Plaintiff seeks, among other things, injunctive
8 and declaratory relief, restitution and disgorgement, an award of "actual and
9 punitive damages," and litigation costs and attorneys' fees. (Exhibit A, 15: 4-11.)

10 **II. THERE ARE MORE THAN 100 PUTATIVE CLASS MEMBERS.**

11 10. Plaintiff admits that "there are at least tens of thousands of putative
12 class members." (*Id.*, ¶ 17.)

13 11. According to Cox's business records, as of May 9, 2018, Cox had over
14 832,000 residential Internet subscribers in California. (Declaration of Yvonne
15 Hayes In Support of Defendant's Notice of Removal, filed concurrently herewith
16 ("Hayes Decl.") ¶ 5.)

17 **III. MINIMAL DIVERSITY EXISTS BETWEEN THE PARTIES.**

18 12. As admitted in the Complaint, Plaintiff is a resident of California.
19 (Exhibit A, ¶ 3.) Defendant is informed and believes, and on that basis alleges, that
20 Plaintiff is a citizen of the state in which he resides, as alleged in the Complaint.

21 13. Defendant is informed and believes, and on that basis alleges, that all
22 purported class members are citizens of California, as alleged in the Complaint.
23 (Exhibit A, ¶ 16.)

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26 ⁴ The FAC adds an additional cause of action for "Declaratory and Injunctive
27 Relief" based on the same alleged conduct giving rise to Plaintiff's other causes of
28 action. (Ex. F at 15, ¶¶ 63-67.)

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1 14. At the time this action was filed, and at the time of the filing of this
2 Notice, Defendant Cox Communications, Inc. was and still is a corporation
3 organized and existing under the laws of the State of Delaware, and its principal
4 place of business was and still is Atlanta, Georgia. (Hayes Decl. ¶ 2.) Accordingly,
5 pursuant to 28 U.S.C. § 1332(c)(1), Cox Communications Inc. is a citizen of
6 Delaware and Georgia.

7 15. At the time this action was filed, and at the time of the filing of this
8 Notice, Cox Communications California, LLC was and still is a limited liability
9 company organized and existing under the laws of the State of Delaware, and its
10 principal place of business was and still is Atlanta, Georgia. (Hayes Decl. ¶ 2.) For
11 purposes of diversity jurisdiction, the citizenship of a limited liability company is
12 that of each of its members. *Johnson v. Columbia Properties Anchorage, LP*, 437
13 F.3d 894, 899 (9th Cir. 2000). The sole member of Cox Communications
14 California, LLC is CoxCom, LLC, which, at the time the action was filed, and at the
15 time of the filing of this Notice, was and is a limited liability company organized
16 and existing under the laws of Delaware with its principal place of business in
17 Atlanta Georgia. (Hayes Decl. ¶ 2.) The sole member of CoxCom, LLC is
18 Defendant Cox Communications, Inc. (*Id.*) Accordingly, Cox Communications
19 California, LLC is a citizen of Delaware and Georgia.⁵

20 16. Under 28 U.S.C. § 1332(d)(2)(A), a class action is subject to removal
21 where "any member of a class of plaintiffs is a citizen of a State different from any
22 defendant."

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24 _____

25 ⁵ Some courts, including the Fourth Circuit, analyze citizenship of an LLC for
26 purposes of CAFA like that of a corporation, by assessing its principal place of
27 business and place of incorporation. *Ferrell v. Express Check Advance of S.C., LLC*, 591 F.3d 698, 705 (4th Cir. 2010). Under this test, Cox Communications
28 California, LLC is a citizen of Delaware and Georgia.

1 17. Based on the foregoing, there is complete, and also minimal, diversity
2 between the parties.

3 **IV. THE AMOUNT IN CONTROVERSY EXCEEDS \$5 MILLION IN THE**
4 **AGGREGATE.**

5 18. Under 28 U.S.C. § 1332(d)(2), an action is removable under CAFA
6 only where "the matter in controversy exceeds the sum or value of \$5,000,000 . . ."
7 The "amount in controversy" for a class action being removed under CAFA is based
8 on the *aggregated* claims of the entire class or classes, exclusive of interest and
9 costs. 28 U.S.C. § 1332(d)(6). Where no specific amount is stated, the Court "must
10 assume that the allegations of the complaint are true, and that a jury will return a
11 verdict for the plaintiff on all claims made in the complaint." *Korn v. Polo Ralph*
12 *Lauren*, 536 F.Supp.2d 1199, 1205 (E.D. Cal. 2008). "The ultimate inquiry is what
13 amount is put 'in controversy' by the plaintiff's complaint, not what a defendant will
14 actually owe." *Id.*, citing *Rippee v. Boston Mkt. Corp.*, 408 F.Supp.2d 982, 986
15 (S.D. Cal. 2005).

16 19. When it is unclear from the face of a state court complaint whether the
17 requisite amount in controversy is pled, the removing defendant only needs to make
18 a "plausible allegation" that the amount in controversy exceeds \$5 million. *Dart*
19 *Cherokee Operating Basin Co., LLC v. Owens*, 135 S.Ct. 547, 554 (2014). A
20 removing defendant need not submit any evidence with the notice of removal in
21 support of those allegations. *Id.* While Cox does not admit or accept the truth of the
22 claims alleged in the Complaint, and denies that Plaintiff – or any putative class
23 members – are entitled to any monetary (or other) relief, the amount in controversy
24 according to the allegations of the Complaint satisfies the jurisdictional threshold
25 under 28 U.S.C. § 1332(d)(2). Although the Complaint does not specify the total
26 amount in controversy, assuming for purposes of this Notice of Removal that the
27 allegations of the Complaint are true, it is clear that more than \$5 million has been
28 put in controversy.

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1 20. For his statutory causes of action (two, three, and four), and the
2 purported cause of action for restitution and unjust enrichment (five), Plaintiff seeks
3 "restitution that will restore the full amount of their [purported class members']
4 money or property; [and] disgorgement of Defendants' relevant profits and
5 proceeds." (*Id.*, ¶¶ 39, 45, 56, 62.)

6 21. The Complaint describes a number of Internet speed packages offered
7 by Cox, the lowest of which is "'Essential 30,' which promises speeds of up to
8 30 mpbs [megabits per second]." (*Id.*, ¶ 8.)

9 22. In May 2018, the monthly fee for the "Essential 30" package was
10 \$63.99, while the monthly fee for that package in May 2014 was \$47.99. (Hayes
11 Decl. ¶¶ 6-7.) The lowest speed package offered by Cox during the relevant time
12 period was the "Starter" package. (*Id.*) In May 2018, the monthly fee for the
13 "Starter" package was \$42.99, while the monthly fee for that package in May 2014
14 was \$32.99. (*Id.*)

15 23. Multiplying 832,000 California residential Internet subscribers by the
16 lowest price offered for the lowest speed package during the relevant time period for
17 even a single month (\$32.99) results in a claimed restitution amount of over
18 \$27 million. Given that many subscribers, including Plaintiff, may have purchased
19 packages with higher monthly fees and for more than one month, the amount in
20 controversy is likely higher.

21 24. Moreover, in addition to restitution, Plaintiff also seeks disgorgement
22 of profits, attorneys' fees, and punitive damages. Because Plaintiff has prayed for
23 these additional forms of relief, the amount in controversy calculated above actually
24 understates the amount in controversy. *Rippee*, 408 F.Supp.2d at 984 (calculation of
25 the amount in controversy takes into account claims for punitive damages and
26 attorneys' fees if possibly recoverable as a matter of law).

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CONCLUSION

Because this case is removable pursuant to 28 U.S.C. §§ 1332(a) and (d), further proceedings in the action in the Superior Court for Orange County should be discontinued, and the action should be removed to the United States District Court for the Central District of California.

DATED: June 22, 2018

COBLENTZ PATCH DUFFY & BASS LLP

By: /s/Richard R. Patch

Richard R. Patch
Attorneys for Defendant
COX COMMUNICATIONS, INC.