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8 Woodbolt Distribution, LLC

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
11

12 GUSTAVO LOPEZ, individually,
13 and on behalf of other members of
14 the general public similarly situated,

15 Plaintiff,

16 vs.

17 WOODBOLT DISTRIBUTION,
18 LLC, a Delaware limited liability
19 company,

20 Defendant.

Case No. 2:18-cv-5963

**NOTICE OF REMOVAL OF CIVIL
ACTION TO UNITED STATES
DISTRICT COURT UNDER 28
U.S.C. §§ 1446 AND 1453**

Filed concurrently with:

- (1) Notice to Adverse Parties;
- (2) Civil Case Cover Sheet;
- (3) Corporate Disclosure Statement;
- (4) Notice of Interested Parties;
- (5) Proof of Service

1 Defendant Woodbolt Distribution, LLC (“Woodbolt”) hereby gives notice
2 that it is removing the captioned case, originally filed in the Superior Court of the
3 State of California for the County of Los Angeles, Case No. BC702265, to the
4 United States District Court for the Central District of California, Western Division.
5 Woodbolt removes the case pursuant to 28 U.S.C. §§ 1446 and 1453, on the
6 grounds set forth below.

7 1. On April 30, 2018, plaintiff Gustavo Lopez (“Plaintiff”), acting
8 individually and on behalf of a putative class of persons he seeks to represent, filed
9 this action in Los Angeles County Superior Court.

10 2. Woodbolt was served with a copy of the summons and complaint in
11 this action on June 7, 2018. Woodbolt, therefore, timely filed this notice of
12 removal within 30 days of receiving the summons and complaint. *See* 28 U.S.C. §
13 1446(b).

14 3. The Complaint; Summons; Civil Case Cover Sheet Addendum; Court
15 Order Regarding Newly Filed Class Action; Initial Status Conference Order; Notice
16 of Case Assignment; Alternative Dispute Resolution Packet; and Early
17 Organizational Meeting Stipulation constitute all state court pleadings and orders
18 served on Woodbolt. Copies of these documents are attached as Exhibit A.

19 4. The removal of this action terminates all proceedings in Los Angeles
20 County Superior Court. *See* 28 U.S.C. § 1446(d).

21 5. Woodbolt removes this action pursuant to the Class Action Fairness
22 Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d), and 28 U.S.C. § 1453, on the basis
23 that (a) this action is a proposed “class action” as defined in 28 U.S.C. §
24 1332(d)(1)(B); (b) Plaintiff is a citizen of a State (California) different from the
25 State of which Woodbolt is a citizen (Delaware and Texas); and (c) the alleged
26 amount in controversy exceeds \$5,000,000.

1 **REMOVAL JURISDICTION UNDER 28 U.S.C. § 1453(B)**

2 6. Woodbolt removes this action pursuant to CAFA, specifically 28
3 U.S.C. § 1453(b).

4 **A. Proposed Class Action**

5 7. Plaintiff alleges that this case is brought as a class action. Complaint,
6 ¶¶ 1, 30-38. Plaintiff seeks certification of the putative class under Federal Rules of
7 Civil Procedure 23. *Id.* ¶ 30. This action, therefore, is a proposed “class action”
8 under 28 U.S.C. § 1332(d)(1)(B), defined as “any civil action filed under Rule 23 of
9 the Federal Rules of Civil Procedure or similar State statute or rule of judicial
10 procedure authorizing an action to be brought by 1 or more representative persons
11 as a class action.”

12 **B. Minimal Diversity**

13 8. Under 28 U.S.C. § 1332(d)(2)(A), a district court may assert
14 jurisdiction over a class action in which “any member of a class of plaintiffs is a
15 citizen of a State different from any defendant.” Such minimal diversity exists
16 among the parties. Plaintiff was, as of the time of the filing of the Complaint, a
17 California citizen. *Id.* ¶ 5. Plaintiff seeks to represent a putative class that consists
18 of “all individuals who purchased Cellucor C4 Pre-Workout powders in California
19 packaged in 30- and 60-serving size containers or substantially similar packaging.”
20 *Id.* ¶ 31.

21 9. Woodbolt is a limited liability company organized under the laws of
22 the State of Delaware, with its principal place of business in the State of Texas.
23 Complaint, ¶ 8. Under 28 U.S.C. § 1332(d)(10), for the purposes of removal, “an
24 unincorporated association shall be deemed to be a citizen of the State where it has
25 its principal place of business and the State under whose laws it is organized.”

26 10. Accordingly, there is minimal diversity between Plaintiff and the
27 putative class he seeks to represent, and Woodbolt, thereby satisfying the
28 requirement of minimal diversity under 28 U.S.C. § 1332(d)(2)(A).

1 **C. Amount in Controversy**

2 11. This is an “action in which the matter in controversy exceeds the sum
3 or value of \$5,000,000.” 28 U.S.C. § 1332(d)(2). “In any class action, the claims
4 of the individual class members shall be aggregated to determine whether the
5 matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest
6 and costs.” 28 U.S.C. § 1332(d)(6).

7 12. When a plaintiff fails to plead a specific amount of damages and if the
8 amount in controversy is not “facially apparent” from the complaint, “the court may
9 consider facts in the removal petition” to determine the amount at issue. *Kroske v.*
10 *US Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005) (quoting *Singer v. State Farm*
11 *Mut. Ins. Co.*, 113 F.3d 373, 377 (9th Cir. 1997)). “[A] defendant's notice of
12 removal need include only a plausible allegation that the amount in controversy
13 exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v.*
14 *Owens*, 135 S. Ct. 547, 554 (2014); *Ibarra v. Manheim Investments, Inc.*, 775 F.3d
15 1193, 1197 (9th Cir. 2015).

16 13. Woodbolt denies any liability in this case and intends to oppose class
17 certification vigorously and to defend the case on the merits. Woodbolt reserves all
18 rights in this regard. For purposes of jurisdictional requirements for removal only,
19 Woodbolt avers that the allegations in Plaintiff’s Complaint put in controversy, in
20 the aggregate, an amount that exceeds \$5,000,000.

21 14. Plaintiff asserts claims under the California Consumer Legal Remedies
22 Act (CLRA), False Advertising Law, Business & Professions Code § 17500, *et seq.*
23 (FAL), and Unfair Competition Law, Business & Professions Code § 17200, *et seq.*
24 Complaint, ¶¶39-68. Plaintiff’s claims are based on the theory that Woodbolt’s
25 packaging for its Cellucor C-4 Pre-Workout products product contained non-
26 functional slack-fill. Specifically, Plaintiff alleges that “the packing only contains
27 50% of the amount of product compared to what packing could potentially hold.”
28 Complaint, ¶ 54.

1 15. Among other remedies, Plaintiff seeks compensatory, statutory, and
2 exemplary damages, restitution, disgorgement of ill-gotten profits, and attorneys'
3 fees. Complaint, ¶¶ 49, 50, 58, 68, 69.

4 16. The putative class includes “all individuals who purchased Cellucor
5 C4 Pre-Workout powders in California packaged in 30- and 60-serving size
6 containers or substantially similar packaging.” Complaint, ¶ 31. The statute of
7 limitations under the UCL and FAL is 4 years. Cal. Bus. & Prof. Code § 17208. In
8 the four years preceding the Complaint, Woodbolt’s sales of Cellucor C-4 Pre-
9 Workout powders in California exceeded \$5,000,000. Thus, Plaintiff seeks in
10 excess of \$5,000,000 in monetary relief (including damages and restitution) on
11 behalf of the putative class members. Woodbolt disputes that Plaintiff is entitled to
12 recover these sums even if Plaintiff prevails on the class claims. Woodbolt further
13 disputes and disagrees that it violated any law. Nevertheless, the aggregate amount
14 sought by Plaintiff exceeds the jurisdictional amount specified in 28 U.S.C. §
15 1332(d)(6).

16 17. Plaintiff also seeks exemplary damages [Complaint, ¶ 69], which are
17 recoverable under the CLRA. Cal. Civ. Code § 1780(a)(4). “It is well established
18 that punitive damages are part of the amount in controversy in a civil action.”
19 *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001).

20 18. In addition to seeking damages, Plaintiff seeks attorneys’ fees.
21 Complaint, ¶ 69. A prevailing plaintiff under the CLRA may recover attorneys’
22 fees. Cal. Civ. Code § 1780(e). Plaintiff also seeks to recover attorneys’ fees under
23 Code of Civil Procedure § 1021.5. Claimed attorneys’ fees, aggregated on a class-
24 wide basis, may be factored into the amount-in-controversy calculation. *Galt G/S v.*
25 *JSS Scandinavia*, 142 F.3d 1150, 1155 (9th Cir. 1998) (“Where an underlying
26 statute authorizes an award of attorneys’ fees . . . such fees may be included in the
27 amount in controversy”).
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Dated: July 9, 2018

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