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9 *Attorneys for Defendant*  
10 SYNAPSE GROUP, INC., and  
11 SYNAPSECONNECT, INC.

12  
13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15  
16 CATHIE CRUZ, individually and on  
behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 SYNAPSE GROUP, INC., a Delaware  
20 corporation; SYNAPSECONNECT,  
INC., a Delaware corporation,

21 Defendants.  
22  
23

CASE NO. '18CV1775L BGS

**NOTICE OF REMOVAL OF  
ACTION  
(28 U.S.C. §§ 1332, 1441, 1446, 1453)**

24 To the plaintiff, her attorney, and the Court:

25 Please take notice that the defendants, Synapse Group, Inc. and  
26 SynapseConnect, Inc., remove this action from the Superior Court of the State of  
27 California for the County of San Diego, where it is now pending, to the United  
28 States District Court for the Southern District of California. The defendants

1 remove this case based on diversity jurisdiction under 28 U.S.C. §§ 1332, 1441,  
2 1446, and 1453. The Court has subject matter jurisdiction under the Class Action  
3 Fairness Act of 2005 (“CAFA”), codified in part at 28 U.S.C. §§ 1332 and 1453.

4 **BACKGROUND**

5 1. On or about June 28, 2018, plaintiff Cathie Cruz filed a complaint  
6 (“Complaint”) in Superior Court in San Diego, entitled *Cruz v. Synapse Group,*  
7 *Inc.*, Case No. 37-2018-00032240-CU-MC-CTL.

8 2. The Complaint, styled as a class action, alleges false advertising,  
9 violation of California’s Consumer Legal Remedies Act, and violations of  
10 California’s Unfair Competition law. (Compl. ¶¶ 41-66.) Cruz bases her claims on  
11 Defendants’ alleged violation of California’s Automatic Renewal Law, California  
12 Business & Professions Code § 17600 *et seq.* (*Id.* ¶¶ 14-27.)

13 3. Cruz served Defendant Synapse Group, Inc. with the summons and  
14 Complaint on July 6, 2018. A copy of the proof of service is attached as Exhibit A.

15 4. Cruz served Defendant SynapseConnect, Inc. with the summons and  
16 Complaint on July 2, 2018. A copy of the proof of service is attached as Exhibit B.

17 5. A copy of all other documents included on the state-court docket is  
18 attached as Exhibit C.

19 6. This Notice of Removal is timely because the defendants filed it within  
20 thirty days of service of the summons and Complaint. *See* 28 U.S.C. § 1446(b).

21 7. The defendants will serve Cruz, through counsel, with this Notice of  
22 Removal and all documents filed in support as required under 28 U.S.C. § 1446(d).

23 8. Removal to this district is proper under 28 U.S.C. §§ 1441(a) and  
24 1446(a) because the state court action was filed in this district.

25 9. The defendants will contemporaneously file a copy of this notice and  
26 related documents with the clerk of the Superior Court under 28 U.S.C. § 1446(d).

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1                   **REMOVAL BASED ON CAFA JURISDICTION**

2           10. Under CAFA, a district court shall have original jurisdiction over a  
3 putative class action in which: (1) the members of the proposed plaintiff class  
4 exceed 100; (2) the matter in controversy exceeds \$5 million, and (3) any member  
5 of the putative class is the citizen of a state different from any defendant. 28 U.S.C.  
6 §§ 1332(d)(2) & (d)(5). This Court has original jurisdiction because Cruz and the  
7 defendants are citizens of different states, the putative class exceeds one hundred  
8 members, and the amount of controversy exceeds \$5 million. 28 U.S.C. § 1332(d).  
9 As the Court has original jurisdiction, the defendants may remove the case to  
10 federal court. 28 U.S.C. § 1441(a).

11           11. This notice need only include “a short and plain statement of the  
12 grounds for removal.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.  
13 Ct. 547, 551 (2014).

14           12. Cruz alleges that she resides in San Diego County. (Compl. ¶ 9.)

15           13. At all relevant times, the defendants were and are corporations  
16 organized and existing under the laws of Delaware. (*See* Declaration of Eileen  
17 Peacock (“Peacock Dec.” ¶2.)

18           14. Synapse’s principal place of business at all relevant times was and is  
19 Connecticut. Synapse’s worldwide headquarters and executive offices are located  
20 at 225 High Ridge Road, East Building, Stamford, Connecticut 06905. (*Id.* ¶ 3.)

21           15. Diversity of citizenship exists between Cruz and the defendants.

22           16. Cruz alleges that the putative class “consists of thousands of  
23 individuals.” (Compl. ¶ 38.)

24           17. The amount in controversy exceeds \$5 million. Cruz seeks injunctive  
25 relief with respect to Synapse’s marketing of its magazine subscriptions (*see, e.g.*,  
26 Compl. ¶¶ 65(a)-(g) & Prayer for Relief ¶¶ 1-3), as well as attorneys’ fees and costs  
27 (Compl. Prayer for Relief ¶¶ 4-5.)  
28

1 18. Complying with Cruz’s request for injunctive relief would cost  
2 Synapse more than \$5 million because injunctive relief would (1) interrupt  
3 Synapse’s business in California, resulting in lost income and profits, (2) require  
4 Synapse to abandon use of its already-purchased IVR phone-tree, (3) require  
5 Synapse to replace the IVR phone-tree with an alternative cancellation system, and  
6 (4) require Synapse to revise its advertising campaign and materials.. (Peacock  
7 Dec. ¶ 7.) *Fefferman v. Dr. Pepper Snapple Grp., Inc.*, No. 313CV00160HKSC,  
8 2013 WL 12114486, at \*4 (S.D. Cal. Mar. 12, 2013) (amount in controversy in  
9 class actions requesting injunction may be determined by cost of compliance);  
10 *Bayol v. Zipcar, Inc.*, 2015 WL 4931756, at \* (N.D. Cal. Aug. 18, 2015) (“[T]he  
11 amount in controversy includes the value of injunctive relief. . . . [A] defendant’s  
12 aggregate cost of compliance with an injunction is appropriately counted toward the  
13 amount in controversy.”).

14 19. Moreover, the attorneys’ fees Cruz seeks under CAFA also count  
15 toward the amount in controversy. (Compl. Prayer for Relief ¶ 4). Attorneys’ fees  
16 count toward the amount in controversy when, as with CAFA, the underlying  
17 statute makes attorneys’ fees available. *See Galt G/S v. JSS Scandinavia*, 142 F.3d  
18 1150, 1156 (9th Cir. 1998) (court must consider attorneys’ fees in determining  
19 jurisdictional threshold under CAFA); *Frederico v. Home Depot*, 507 F.3d 188, 199  
20 (3d Cir. 2007) (same); *Fefferman*, 2013 WL 12114486, at \*4 (considering  
21 attorneys’ fees in determining that the amount in controversy exceeds the  
22 jurisdictional minimum under CAFA). Courts will often look to fee awards in  
23 similar cases to determine the appropriate measure of attorneys’ fees when  
24 evaluating the amount in controversy for cases where injunctive relief is sought.  
25 *See, e.g., Fefferman*, 2013 WL 12114486, at \*4. Counsel in cases implicating  
26 California’s auto-renewal law received \$1.6 million in attorneys’ fees in *Noll v.*  
27 *eBay, Inc.*, 309 F.R.D. 593, 612 (N.D. Cal. 2015), and \$2.3 million in *Williamson v.*  
28

1 *McAfee, Inc.*, No. 5:14-CV-00158-EJD, 2017 WL 6033070, at \*2 (N.D. Cal. Feb. 3,  
2 2017).

3 **RESERVATION OF RIGHTS**

4 20. The defendants deny the Complaints’ allegations as well as the  
5 appropriateness of class certification and file this notice without waiving any  
6 defenses or objections (or anything else that may exist in their favor) in either state  
7 or federal court.

8 21. The defendants reserve the right to amend or supplement this notice.  
9 If any questions arise as to the propriety of removal, the defendants request to be  
10 heard on the matter.

11 22. For the reasons stated above, the defendants request that the Court  
12 remove this action, Case No. 37-2018-00032240-CU-MC-CTL, now pending in  
13 Superior Court in San Diego.

14 Dated: August 1, 2018

Respectfully submitted,

15 BAKER & HOSTETLER LLP

16 By: /s/ Thomas D. Warren

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