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 15 YP, LLC and Dex Media, Inc.

17 UNITED STATES DISTRICT COURT  
 18 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

19 CONNIE LOPEZ dba BUILDING  
 20 BLOCKS PRESCHOOL, and all others  
 21 similarly situated,

22 Plaintiff,

23 v.

24 YP HOLDINGS, LLC, YP, LLC, DEX  
 25 MEDIA, INC., DAMIEN  
 26 HALIBURTON; and DOES 1 through  
 27 10, inclusive,

28 Defendants.

Case No. 2:18cv8791

**CLASS ACTION**

**DEFENDANTS YP HOLDINGS,  
 LLC, YP, LLC AND DEX MEDIA,  
 INC.’S NOTICE OF REMOVAL OF  
 ACTION**

[Complaint Filed: June 25, 2018]

1 TO THE ABOVE-CAPTIONED COURT AND TO PLAINTIFF CONNIE  
2 LOPEZ dba BUILDING BLOCKS PRESCHOOL AND HER/ITS COUNSEL OF  
3 RECORD:

4 PLEASE TAKE NOTICE that Defendants YP Holdings, LLC, YP, LLC, and  
5 Dex Media, Inc., now collectively known as Dex Media, Inc.<sup>1</sup> (“Dex Media”)  
6 hereby provide notice of the removal to the United States District Court for the  
7 Central District of California of the following lawsuit filed on June 25, 2018, in the  
8 Superior Court for the County of Ventura: *Connie Lopez dba Building Blocks*  
9 *Preschool v. Dex Media, et al.*, Case No. 56-2018-00514106-CU-BT-VTA. The  
10 following is a short, plain statement of the grounds for removal provided pursuant to  
11 28 U.S.C. § 1446(a).

12 **I.**

13 **DESCRIPTION OF THE ACTION**

14 On June 25, 2018, Connie Lopez dba Building Blocks Preschool (“Plaintiff”)   
15 filed a Complaint, on behalf of a putative class, against Dex Media in the Superior   
16 Court for the County of Ventura (the “State Court Action”). A copy of the   
17 Complaint is attached as **Exhibit C**. The Complaint alleges claims on behalf of a   
18 putative class for violations of California’s automatic renewal law, Cal. Bus. & Prof.   
19 §§ 17600-17604; and violations of California’s unfair competition law, Cal. Bus. &   
20 Prof. Code §§ 17200-17204, based on alleged automatic renewals of advertising   
21 purchased from Defendant Dex Media.

22 Specifically, Plaintiff alleges that “[t]his is a class action pursuant to   
23 California Code of Civil Procedure § 382, seeking restitution, injunctive, and/or   
24 other equitable relief . . . available under California Business and Professions Code   
25 (‘Cal. Bus. & Prof. Code’) §§ 17602, 17603, 17604, 17535, and 17200 et seq., and   
26

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27 <sup>1</sup> Effective December 31, 2017, YP, LLC was merged into YP Holdings, LLC, which was   
28 merged into Dex Media, Inc., the surviving corporation.

1 California Civil Code § 1750, on behalf of Plaintiff and all other similarly situated  
2 individuals (whether businesses or biological human beings) who entered into an  
3 advertising contract with YP, LLC or any other of the Defendants.” [Complaint ¶  
4 1.] Plaintiff alleges that:

5 “Defendants made an automatic renewal or continuous service offer to  
6 consumers in and throughout California and ...failed to present  
7 automatic offer terms, or continuous service terms, in a clear and  
8 conspicuous manner . . ., charged Plaintiff . . . and Class Members’  
9 credit cards, debit cards, third party account, . . . without first obtaining  
10 Plaintiff and Class Member affirmative consent . . ., and failed to  
11 provide an acknowledgment that includes the automatic renewal or  
continuous service offer terms, cancellation policy, and information  
regarding how to cancel in a manner that is capable of being retained  
by the consumer . . . .”

12 [Complaint ¶ 2.] She alleges that “[a]s a result, all services provided to Plaintiff  
13 and Class Members under the automatic renewal or continuous service agreement is  
14 deemed to be an unconditional gift,” and seeks restitution and injunctive relief in  
15 connection with the alleged automatic renewal of advertising. [*Id.*]

16 Based on these and similar factual allegations, Plaintiff asserts causes of  
17 action for: (1) violations of California’s automatic renewal law, Cal. Bus. & Prof. §§  
18 17600-17604; (2) violations of California’s unfair competition law, Cal. Bus. &  
19 Prof. Code §§ 17200-17204; (3) injunctive relief and restitution pursuant to Cal.  
20 Bus. & Prof. Code § 17535, and (4) for money had and received, and (5) asserts an  
21 individual claim for negligent misrepresentation against defendant Damien  
22 Halliburton. [*Id.*, ¶¶ 41-83.]

23 Plaintiff seeks relief on behalf of a class, specifically, “all persons who  
24 entered into an ‘Advertising Contract’ with Defendant and to whom Defendant  
25 continuously charges and renews their advertising agreement in California,” for a  
26 period of four years prior to the filing of the Complaint. [*Id.* ¶ 39.] Plaintiff seeks  
27 “full restitution of the amount of the monies improperly paid to Defendants,” over a  
28 4-year class period, and “retention of the goods purchased through such

1 Subscriptions as an ‘unconditional gift’”. [*Id.* ¶¶ 39, 45, 49, 52, *Prayer for Relief*  
2 (6).] On behalf of the class, Plaintiff also seeks disgorgement “of profits realized  
3 from its unlawful business practices.” [*Id.* ¶ 60.] Plaintiff further seeks an award of  
4 “all damages owed,” and pre-judgment interest, attorneys’ fees and enforcement of  
5 statutory penalty provisions. [*Id.* ¶¶ 60, 67-8, *Prayer for Relief* (e-f), (i), (k).]  
6 Plaintiff also seeks declaratory and injunctive relief on behalf of the putative class.  
7 [*Id.*, *Prayer for Relief*, (4), (5), (9).]

8 Plaintiff alleges that all Defendants “acted in all respects pertinent to this  
9 action as the agent of the other Defendants, . . . and/or the acts of each Defendant  
10 are legally attributable to the other Defendants,” and refers to all Defendants  
11 collectively throughout the Complaint. [*Id.* ¶¶ 18-19.]

12 Dex Media was served with the Summons and Complaint on September 12,  
13 2018. There are no other named defendants whose consent would be required for  
14 removal. *See* 28 U.S.C. § 1453(b). This Court has jurisdiction over this proceeding  
15 pursuant to 28 U.S.C. § 1332(d) (the Class Action Fairness Act).

## 16 II.

### 17 **BASIS FOR REMOVAL (CAFA JURISDICTION)**

#### 18 **A. Diversity of Citizenship Exists.**

19 The Class Action Fairness Act provides that “[t]he district courts shall have  
20 original jurisdiction of any civil action in which the matter in controversy exceeds  
21 the sum or value of \$5,000,000, exclusive of interest and costs, and is *a class action*  
22 *in which (A) any member of a class of plaintiffs is a citizen of a State different*  
23 *from any defendant . . . .*” 28 U.S.C. § 1332(d)(2)(A) (emphasis added). Only  
24 minimal diversity is required. It is thus sufficient if the plaintiff and only one  
25 defendant are citizens of different states. *Id.* In this case, Plaintiff and Dex Media  
26 are diverse.

27 Plaintiff alleges that she is a citizen of California and that Dex Media is  
28 headquartered in Texas. Dex Media is a Delaware corporation with its principal

1 place of business in Texas. [Decl. of Steele, ¶ 3, *See Exhibit A*]. Dex Media is thus  
2 deemed a citizen of Texas and Delaware. *See* 28 U.S.C. §§ 1332(c)(1) (“[A]  
3 corporation shall be deemed to be a citizen of any State by which it has been  
4 incorporated and of the State where it has its principal place of business.”) and  
5 1332(d)(2)(A).

6 Plaintiff further seeks to represent herself and “all persons who entered into  
7 an ‘Advertising Contract’ with Defendant and to whom Defendant continuously  
8 charges and renews their advertising agreement in California,” for a period of four  
9 years prior to the filing of the Complaint. [*Id.* ¶ 39.] Because Plaintiff is a citizen  
10 of California and Dex Media is a citizen of Texas and Delaware, the requirement of  
11 minimal diversity is met, as at least one plaintiff and one defendant are citizens of  
12 different states.

13 **B. The Amount in Controversy Exceeds \$5,000,000.**

14 The assessment of whether the amount-in-controversy requirement is satisfied  
15 “is not confined to the face of the complaint.” *Valdez v. Allstate Ins. Co.*, 372 F.3d  
16 1115, 1117 (9th Cir. 2004). The appropriate measure of the jurisdictional amount in  
17 controversy is “the litigation value of the case assuming that the allegations of the  
18 complaint are true and assuming a jury returns a verdict for the plaintiff on all  
19 claims made in the complaint.” *Jackson v. American Bankers Ins. Co. of Florida*,  
20 976 F. Supp. 1450, 1454 (S.D. Ala. 1997) (citing *Burns v. Windsor Ins. Co.*, 31 F.3d  
21 1092, 1096 (11th Cir. 1994)). It is not determined by “the low end of an open-ended  
22 claim,” but by “a reasonable reading of the value of the rights being litigated.”  
23 *Angus v. Shiley, Inc.*, 989 F.2d 142, 146 (3d Cir. 1993); *see also Hunt v. Washington*  
24 *State Apple Advertising Comm’n*, 432 U.S. 333, 347 (1977) (superseded in part on  
25 other grounds). Further, to establish the amount in controversy, defendants need not  
26 concede liability (*i.e.*, that the automatic renewal provisions are unlawful), but must  
27 show only that the amount potentially at issue (*i.e.*, the amount of damages that  
28

1 Plaintiff could recover is greater than \$5 million). *See Lewis v. Verizon Commc 'ns,*  
2 *Inc.*, 627 F.3d 395, 400 (9th Cir. 2010).

3 The amount-in-controversy requirement is met here because the aggregate  
4 amount sought by the putative class exceeds the \$5 million threshold for diversity  
5 jurisdiction under 28 U.S.C. § 1332(d). Plaintiff seeks “disgorgement of revenue”  
6 for the sale of advertising over a 4-year class period. [Complaint, *Prayer for Relief*  
7 ¶¶ 39, 45, 49, 52, *Prayer for Relief* (6).] During those four-years, YP entered into  
8 significantly more than 100 contracts with customers in the state of California  
9 through December 31, 2017. [Steele Decl. ¶ 2, *See Exhibit A*]. Each of these  
10 contracts contain an automatic renewal provision. *Id.* Sales of products sold and  
11 renewed under these contracts exceed \$5 million. *Id.* Therefore, Plaintiff seeks an  
12 excess of \$5 million in restitution and disgorgement along with punitive damages,  
13 interest and attorneys’ fees. There can be no dispute that these amounts exceed \$5  
14 million.

15 In any event, as the Supreme Court recognized in *Dart Cherokee Basin*  
16 *Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014), a notice of removal under  
17 the Class Action Fairness Act does not need to attach evidence regarding the amount  
18 in controversy. Given that the removal statute requires a notice “containing a short  
19 and plain statement of the grounds for removal,” the Court held that the notice “need  
20 include only a plausible allegation that the amount in controversy exceeds the  
21 jurisdictional threshold.” *Id.* Evidence is required only if the Plaintiff files a motion  
22 to remand, or the Court requests an evidentiary showing. *Id.* Here, Dex Media has  
23 made a plausible allegation that the amount in controversy exceeds the jurisdictional  
24 threshold. No further showing is required to support this Notice of Removal. *Id.*;  
25 *Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d 975, 982 (9th Cir. 2013).

26 In sum, both of the predicates for diversity jurisdiction under 28 U.S.C. §  
27 1332(d)—diversity of citizenship and more than \$5 million in controversy—exist,  
28 and jurisdiction is proper in this Court.

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**III.**

**THE NOTICE OF REMOVAL IS PROCEDURALLY PROPER**

Based on the foregoing, this action is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d), and is one that may be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446. In accordance with the requirements of 28 U.S.C. § 1446(a), a copy of the Complaint and all other papers served on Dex Media in the State Court Action as of the filing of this Notice of Removal are attached hereto as **Exhibits B through G**. This Notice of Removal is filed within the time provided by 28 U.S.C. § 1446(b) because it has been filed within thirty (30) days after Dex Media was served with a copy of the initial pleading in this action. There are no other named defendants whose consent would be required for removal.

**IV.**

**CONCLUSION**

For all of the reasons set forth above, Dex Media respectfully requests that this Court proceed with this matter as if it had been originally filed herein.

Dated: October 12, 2018

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By           /s/ Shannon Z. Petersen          

SHANNON Z. PETERSEN  
SARAH A. K. BLITZ

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YP, LLC and Dex Media, Inc.