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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PAUL BLEDSOE, individually and on
behalf of all others similarly situated

Plaintiff,

v.

MCDONALD'S USA, LLC; and
DOES 1 – 10, inclusive,

Defendant.

Case No.

CLASS ACTION

**DEFENDANT'S NOTICE OF
REMOVAL OF ACTION
PURSUANT TO 28 U.S.C.
§§ 1332(d)(2), 1441, 1446, AND 1453**

[Notice of Interested Parties,
Declaration of Neal R. Marder,
Declaration of Jennifer Tyler, and Civil
Cover Sheet filed concurrently]

Date Action Filed: September 28, 2018

*(Los Angeles County Superior Court,
Case No. BC720960)*

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 CENTRAL DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that defendant McDonald’s USA, LLC
4 (“McDonald’s”) hereby removes to this Court the state court action described below,
5 pursuant to 28 U.S.C. §§ 1332(d)(2), 1441, 1446, and 1453. In support thereof,
6 McDonald’s states as follows:

7 **BACKGROUND**

8 1. On September 28, 2018, a putative class action was commenced and is
9 currently pending against McDonald’s in the Superior Court of California, County of
10 Los Angeles, as Case No. BC720960, entitled *Paul Bledsoe, individually and on behalf*
11 *of all others similarly situated, Plaintiff, vs. McDonald’s USA, LLC; and Does 1 – 10,*
12 *inclusive, Defendant.* On October 2, 2018, McDonald’s was served with the Summons,
13 Complaint, Civil Case Cover Sheet, Notice of Service of Process, Notice of Case
14 Assignment, Alternative Dispute Resolution Information Packet, and certain other court
15 forms pertaining to this matter. *See* Declaration of Neal R. Marder (“Marder Decl.”)
16 ¶¶ 2, 3 & Ex. A, B. On October 10, 2018, a Notice of Case Assignment – Unlimited
17 Civil Case was issued in this action. Marder Decl. ¶ 4. There have been no further
18 proceedings in this action and no other pleadings have been filed and served upon or by
19 McDonald’s in this action. Marder Decl. ¶ 5.

20 2. In this action, Plaintiff Paul Bledsoe (“Bledsoe”) alleges that McDonald’s
21 engages in false advertising and deceptive practices in connection with its sales of
22 “combo meals.” Specifically, Bledsoe alleges that while a combo meal consisting of an
23 egg McMuffin, hash browns, and coffee was advertised as costing \$5.10 before tax, in
24 fact, he and other consumers were charged a \$0.29 “drink upcharge” for the coffee.
25 Compl. ¶¶ 6, 25, 29. Bledsoe alleges that on three occasions in September 2017, he
26 purchased combo meals from McDonald’s restaurant locations in Venice, California and
27 Santa Monica, California, and that he paid a drink upcharge on each occasion. *Id.* ¶¶ 18,
28 27, 29. He seeks to represent a class of consumers who purchased any “combo meal”

1 from McDonald’s, which he defines as “meals including a number of entrees or foods at
 2 a specific price.” *Id.* ¶¶ 1,3. These combo meals are also referred to in the Complaint
 3 as the “Class Products.” *Id.* ¶¶ 3, 54. On behalf of himself and others similarly situated,
 4 Bledsoe asserts three claims against McDonald’s: (1) violation of California’s False
 5 Advertising Act, Cal. Bus. & Prof. Code §§ 17500 *et seq.* (“FAL”), (2) violation of
 6 California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*
 7 (“UCL”), and (3) violation of the California Consumer Legal Remedies Act, Cal. Civ.
 8 Code §§ 1750 *et seq.* (“CLRA”). Bledsoe purports to bring these claims on behalf of a
 9 putative class of similarly situated consumers. *See* Compl. ¶ 1 (seeking to represent “a
 10 California class of consumers (‘Class Members’) who changed position, within the
 11 applicable statute of limitations period, as a result of Defendant’s false and misleading
 12 advertisements”); *id.* ¶ 54 (seeking to represent “[a]ll consumers, who, between the
 13 applicable statute of limitations and the present, purchased or attempted to purchase
 14 Class Products, and whose Class Products, namely Defendant’s combo meal, included a
 15 drink upcharge”).

16 3. The Complaint and Summons in this action were served on McDonald’s on
 17 October 2, 2018. Marder Decl. ¶ 3. McDonald’s Notice of Removal is filed within
 18 thirty (30) days of the completion of service, and is therefore timely. *See* 28 U.S.C.
 19 § 1446(b).

20 **DIVERSITY JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT**

21 4. Under 28 U.S.C. § 1441(a), a defendant may remove to federal district
 22 court “any civil action brought in a State court of which the district courts of the United
 23 States have original jurisdiction.” Under the Class Action Fairness Act (“CAFA”), 28
 24 U.S.C. § 1332(d), this Court has original jurisdiction over a putative class action if (1) it
 25 involves 100 or more putative class members, (2) any class member is a citizen of a
 26 state different from any defendant, and (3) the aggregated amount in controversy
 27 exceeds \$5 million (exclusive of costs and interest). *See* 28 U.S.C. §§ 1332(d)(2),
 28 (d)(5), and (d)(6). These requirements are satisfied here.

1 5. Class Size. The Complaint, in combination with Plaintiff’s CLRA demand
2 letter attached to the Complaint as Exhibit A, is unclear as to whether Bledsoe seeks to
3 represent a putative class consisting of all consumers who purchased combo meals from
4 McDonald’s restaurants in California, or nationwide. *See* Compl. ¶ 1 (seeking “redress
5 for a California class of consumers”); *id.* ¶ 15 (alleging that McDonald’s falsely
6 advertised the Class Products “to consumers in California”); *id.* ¶ 54 (seeking to
7 represent “[a]ll consumers” without geographic restriction); Exhibit A to Compl. at 3
8 (“we anticipate a nationwide class”). Even assuming that Bledsoe seeks to represent a
9 California-only class, the putative class greatly exceeds 100 members. Bledsoe’s
10 definition of “combo meal” includes McDonald’s Extra Value Meals. Compl. ¶ 3; *see*
11 *also* <https://www.mcdonalds.com/us/en-us/full-menu/extra-value-meal.html>. During the
12 four years preceding the filing of the Complaint, McDonald’s restaurants in California
13 sold more than 450 million Extra Value Meals. Declaration of Jennifer Tyler (“Tyler
14 Decl.”) ¶ 3; Cal. Bus. & Prof. Code § 17208 (UCL claim is subject to a four-year statute
15 of limitations). Bledsoe contends that it is McDonald’s “policy and practice” to
16 misrepresent the true price of its combo meals. Compl. ¶¶ 38, 39. Accepting Plaintiff’s
17 allegation for the purposes of this Notice only, the putative class could contain hundreds
18 of millions of consumers. Therefore, there is no question that this action involves more
19 than 100 class members, and the class size requirement is amply satisfied.

20 6. Diversity of Citizenship. “[U]nder CAFA, complete diversity is not
21 required; ‘minimal diversity’ suffices.” *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018,
22 1021 (9th Cir. 2007). Minimal diversity exists if any class member is a citizen of a state
23 different from any defendant. 28 U.S.C. § 1332(d)(2).

24 7. Bledsoe is a citizen of the State of California. Compl. ¶ 19.

25 8. McDonald’s is not a citizen of the State of California. Rather, McDonald’s
26 is a citizen of Delaware and Illinois. “[A] corporation shall be deemed to be a citizen of
27 every State . . . by which it has been incorporated and of the State where it has its
28 principal place of business.” 28 U.S.C. § 1332(c)(1). McDonald’s is organized and

1 incorporated under the laws of the State of Delaware and has its principal place of
2 business in Illinois. Compl. ¶ 20.

3 9. Accordingly, minimal diversity exists because Bledsoe is a citizen of
4 California, and McDonald's is a citizen of Illinois and Delaware but not California.

5 10. Amount in Controversy. Without conceding that Bledsoe can prove his
6 claims or that he can properly represent the putative class, McDonald's avers, for
7 purposes of this Notice only, that Bledsoe's claims place more than \$5 million in
8 controversy. "The amount in controversy is simply an estimate of the total amount in
9 dispute, not a prospective assessment of [the] defendant's liability." *Lewis v. Verizon*
10 *Commc'ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (on removal, defendant does not
11 "concede liability for the entire amount" alleged in complaint). As the U.S. Supreme
12 Court has held, a defendant's notice of removal need only include a plausible allegation
13 that the amount in controversy exceeds the jurisdictional threshold. *Dart Cherokee*
14 *Basin Operating Co. v. Owens*, 135 S. Ct. 547, 549, 554 (2014). Moreover, the Ninth
15 Circuit has instructed that removal is proper if, from the allegations of the complaint and
16 the notice of removal, it is more likely than not that the amount in controversy exceeds
17 \$5 million. *Rodriguez v. AT&T Mobility Servs., Inc.*, 728 F.3d 975, 981 (9th Cir. 2013)
18 (overturning previous Ninth Circuit precedent requiring proof of amount in controversy
19 to a "legal certainty" under some circumstances). This standard is satisfied here.

20 11. On behalf of a putative class, Bledsoe seeks to recover, among other things:
21 (1) actual damages or full restitution of "all funds" paid by the putative class for the
22 combo meals during the putative class period; (2) punitive damages; (3) attorneys' fees
23 and costs; and (4) injunctive relief, including an order requiring McDonald's to notify
24 all class members of the alleged misconduct and to engage in corrective advertising.
25 Compl. ¶ 101.

26 12. Based on the potential amount of restitution or actual damages that could
27 be awarded if Bledsoe could establish his claims, the amount in controversy requirement
28 is easily satisfied. During the four-year period preceding the filing of the Complaint,

1 McDonald's restaurants in California sold more than 450 million Extra Value Meals.
2 Based on Bledsoe's allegations that he and other consumers were misled into paying
3 \$0.29 drink upcharges (Compl. ¶ 6), and that it is McDonald's "policy and practice" to
4 misrepresent the true price of its combo meals (*id.* ¶¶ 38, 39), then Bledsoe's claim for
5 restitution or actual damages places more than \$130 million in controversy (450 million
6 \times \$0.29 = \$130,500,000).¹ Indeed, if the alleged upcharge was imposed even 5% of the
7 time (which would be far less frequent than the "policy or practice" Bledsoe alleges),
8 Bledsoe's claim for restitution and actual damages would place more than \$6 million in
9 controversy ($5\% \times 450 \text{ million} \times \$0.29 = \$6,525,000$).

10 13. McDonald's sales of Extra Value Meals nationwide is more than ten times
11 greater than the sales in California alone. Tyler Decl. ¶ 3. Thus, while the amount in
12 controversy requirement is amply satisfied if Bledsoe seeks to represent a California-
13 only class, that conclusion is even more inescapable if he seeks to represent a
14 nationwide class.

15 14. In sum, Bledsoe's claims for restitution and actual damages are more than
16 enough to satisfy the \$5 million amount in controversy requirement. When considering
17 that Bledsoe also asserts claims for his attorneys' fees under the CLRA, punitive
18 damages, and injunctive relief (including corrective advertising), it is even more
19 apparent that Bledsoe's claims in this case place more than \$5 million in controversy.
20 *See Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 794 (9th Cir.
21 2018) (court must include attorneys' fees recoverable by statute or contract when
22
23

24 ¹ In fact, this analysis understates the actual amount that Bledsoe apparently seeks
25 to recover in this action. Whereas the foregoing analysis conservatively assumes that
26 restitution would be limited to the alleged \$0.29 drink upcharge, Bledsoe's complaint
27 seeks recovery of "all funds" paid by class members for the combo meals during the
28 putative class period. Compl. ¶ 101. Taken literally, Bledsoe's complaint appears to
seek restitution of \$5.39 per combo meal sold (\$5.10 plus the \$0.29 drink upcharge),
plus tax. Multiplying that number by 450 million transactions would place the potential
amount of restitution in the billions of dollars, and would require that the alleged
upcharge was imposed only 0.2% of the time to satisfy the \$5 million threshold.

1 assessing whether amount-in-controversy requirement under CAFA is met).²
2 Accordingly, the amount in controversy requirement is satisfied. *See Guglielmino v.*
3 *McKee Foods Corp.*, 506 F.3d 696, 700-01 (9th Cir. 2007) (remand denied under
4 preponderance of the evidence standard where defendant's conservative estimates
5 exceeded the requisite amount).

6 15. There are no grounds that would justify this Court in declining to exercise
7 its jurisdiction pursuant to 28 U.S.C. § 1332(d)(3) or that would require it to decline to
8 exercise jurisdiction pursuant to 28 U.S.C. § 1332(d)(4).

9 **VENUE**

10 16. The United States District Court for the Central District of California is the
11 judicial district embracing the place where this action was filed by Bledsoe and thus is
12 the appropriate court for removal pursuant to 28 U.S.C. § 1441(a).

13 **CONCLUSION**

14 WHEREFORE, McDonald's requests that the above action now pending against
15 it in the Superior Court of California, County of Los Angeles, be removed to this Court.

16 Dated: November 1, 2018

17 Respectfully submitted,

18 **AKIN GUMP STRAUSS HAUER &
19 FELD LLP**

20 By /s/ Neal R. Marder

21 Neal R. Marder

22 Andrew S. Jick

23 Kelly A. Handschumacher

24 Attorneys for Defendant

25 McDonald's USA, LLC

26 ² *See, e.g., Rodriguez v. Cleansource, Inc.*, No. 14-CV-0789-L(DHB), 2014 WL
27 3818304, at *4 (S.D. Cal. Aug. 4, 2014) (denying motion to remand where defendant
28 showed potential damages of \$4.2 million because attorney's fees of 25 percent brought
total amount in controversy to \$5.3 million); *Deaver v. BBVA Compass Consulting &
Benefits, Inc.*, No. 13-cv-00222-JSC, 2014 WL 2199645, at *6 (N.D. Cal. May 27,
2014) (accounting for attorney's fees by adding 25 percent of potential damages to
amount in controversy).