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7 Attorneys for Defendant
 8 COSTCO WHOLESALE CORPORATION

9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

11 MADELENE TEPERSON,
 12 individually and on behalf of all
 others similarly situated,

13 Plaintiff,

14 v.

15 COSTCO WHOLESALE
 16 CORPORATION; and DOES 1-10,
 17 inclusive,

18 Defendants.

Case No. **'18CV2646 BAS AGS**

CLASS ACTION

NOTICE OF REMOVAL

1 Pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446 and 1453, defendant Costco
2 Wholesale Corporation (“Costco”) gives notice of the removal of the above-
3 captioned matter to the United States District Court for the Southern District of
4 California. As grounds for removal, Costco states as follows:

5 **NATURE OF THE REMOVED CASE**

6 1. On October 22, 2018, Plaintiff Marlene Teperson (“Plaintiff”) filed the
7 putative class action titled *Marlene Teperson v. Costco Wholesale Corporation*, in
8 the Superior Court of California, County of San Diego, and was assigned Case
9 Number 37-2018-00053514-CU-MC-CTL (“State Court Action”).

10 2. Costco was served with the complaint in the State Court Action on
11 October 24, 2018.

12 3. Plaintiff alleges that she purchased a bottle of Kirkland Signature
13 Extra Strength Glucosamine and Chondroitin product (the “Product”) at a Costco
14 store in San Diego, California on March 24, 2017 for \$22.99. (Complaint ¶¶ 11-
15 12.) Plaintiff further alleges that she relied on the Product’s joint health
16 representations when she purchased the Product, and was allegedly injured because
17 the Product allegedly cannot provide the advertised benefits. (*Id.* at ¶ 12.)

18 4. Based upon the foregoing, Plaintiff alleges causes of action against
19 Costco for: (1) violation of California Business & Professions Code § 17200
20 (“UCL”), (2) violation of California’s Consumers Legal Remedies Act, California
21 Civil Code §§ 1750 *et seq.* (“CLRA”), and (3) breach of express warranty.
22 (Complaint ¶¶ 92-127.)

23 5. Plaintiff seeks to represent a class defined as: “All persons in
24 California who purchased Defendant’s Kirkland Signature Extra Strength
25 Glucosamine and Chondroitin Product for personal use between May 28, 2015 and
26 the date notice is disseminated.” (Complaint ¶ 81.)
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FEDERAL JURISDICTION EXISTS UNDER THE CLASS ACTION FAIRNESS ACT, 28 U.S.C. § 1332(D)(2) (“CAFA”)

6. CAFA grants district courts original jurisdiction over class actions where there is minimal diversity, the putative class contains at least 100 members, and the amount in controversy exceeds \$5 million. 28 U.S.C. § 1332(d)(2), (5). For notice of removal purposes, the defendant need only make “a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014).

Diversity of Citizenship Under CAFA is Satisfied

7. Plaintiff is a citizen of the State of California. (Complaint ¶ 10.)

8. Defendant Costco is a Washington corporation with its principal place of business located in the State of Washington. (Complaint ¶ 14.) Costco is therefore a citizen of the State of Washington.

9. Because Plaintiff and defendant Costco are citizens of different states, the minimal diversity requirement of CAFA is satisfied. *See* 28 U.S.C. § 1332(d)(2)(A) (diversity in a class action exists when “any member of a class of plaintiffs is a citizen of a State different from any defendant).

10. Plaintiff’s proposed class “contains many thousands of members.” (Complaint ¶¶ 81, 84.) Therefore, the putative class has more than 100 members, satisfying the numerical threshold for CAFA. *See* 28 U.S.C. § 1332(d)(5)(B).

The Amount in Controversy Requirement of CAFA is Satisfied

11. Costco denies that Plaintiff or members of the proposed class are entitled to any relief, but for amount-in-controversy purposes, the Court must assume that Plaintiff and the proposed class will succeed on their claims. *See Lewis v. Verizon Comm’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (“The amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of defendant’s liability”). Under this standard, and for the reasons below, Plaintiff’s complaint meets the \$5 million amount-in-controversy

1 requirement. *See* 28 U.S.C. § 1332(d)(2).

2 12. Plaintiff alleges that the Product is “worthless” because it allegedly
3 “cannot provide the advertised benefits.” (Complaint ¶¶ 5, 13.) The Product
4 Plaintiff purchased cost \$22.99, and Plaintiff alleges that she, and putative class
5 members, were damaged in the amount of the full purchase price of the Product.
6 (*Id.* ¶¶ 12, 103-104, 116, 127.) Plaintiff seeks restitution of “all money obtained
7 from Plaintiff and the other members of the Class” and disgorgement of money
8 paid by Plaintiff and putative class members to Costco for the Product. (*Id.* ¶¶ 106,
9 117; Request for Relief at ¶¶ B, D.)

10 13. Costco’s California sales of the Product, Kirkland Signature Extra
11 Strength Glucosamine and Chondroitin, from May 28, 2015 (the beginning of the
12 putative class period) to the present total over \$5 million. Consequently, the
13 threshold amount in controversy requirement for diversity jurisdiction is satisfied
14 based on Plaintiff’s claims for restitution and disgorgement alone. 28 U.S.C. §
15 1332(d)(2).

16 14. Plaintiff also seeks attorneys’ fees, and intends to seek punitive
17 damages and statutory damages under the CLRA. (Complaint ¶¶ 119-120; Request
18 for Relief at ¶ E.) Costco denies that Plaintiff or the putative class are entitled to
19 attorneys’ fees, punitive damages, or statutory damages, however they are properly
20 included in the amount in controversy. *See, e.g., Adkins v. J.B. Hunt Transport,*
21 *Inc.*, 293 F. Supp. 3d 1140, 1147–48 (E.D. Cal. 2018). For amount-in-controversy
22 purposes, courts commonly consider punitive damages at a one-to-one ratio to
23 economic damages (*see Sloan v. 1st Am. Auto. Sales Training*, No. 2:16-cv-5341,
24 2017 WL 1395479, at *3 (C.D. Cal. Apr. 17, 2017)), and assume that attorneys’
25 fees will be equal to 25% of economic damages (*see Heejin Lim v. Helio, LLC*, No.
26 11-cv-9183, 2012 WL 359304, at *3 (C.D. Cal. Feb. 2, 2012)). Consequently,
27 these additional claims for relief further put this matter over the \$5 million CAFA
28 threshold for this Court to properly exercise jurisdiction.

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REMOVAL IS PROCEDURALLY PROPER

15. This notice of removal is timely under 28 U.S.C. § 1446(b)(1), as the date of filing is within 30 days of the date of service of the summons and Complaint on Costco (October 24, 2018).

16. Venue is proper in the Southern District of California under 28 U.S.C. § 1441(a) because the State Court Action is pending within this judicial district.

17. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all of the pleadings filed in the State Court Action are attached hereto as **Exhibit A** (Complaint and related documents) and **Exhibit B** (Costco’s Answer).

18. A copy of the written notice required by 28 U.S.C. § 1446(d), attached hereto as **Exhibit C**, is being filed in the State Court Action and will be served on Plaintiff.

CONCLUSION

19. Pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446, and 1453, Defendants hereby remove the above-captioned matter to the United States District Court for the Central District of California.

Dated: November 19, 2018 MANATT, PHELPS & PHILLIPS, LLP
Robert H. Platt
Adrienne E. Marshack

By: /s/ Robert H. Platt
Robert H. Platt
Attorneys for Defendant
COSTCO WHOLESALE
CORPORATION

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