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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

PATRICK VENIERIS, individually and  
on behalf of all other similarly situated,

Plaintiff,

vs.

PVH RETAIL STORES LLC, an Arizona  
Limited Liability Company d/b/a  
TOMMY HILFIGER COMPANY  
STORE and/or TOMMY HILFIGER,

Defendant.

Case Number \_\_\_\_\_

**NOTICE OF REMOVAL**

In accordance with the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. 109-2, 199 Stat. 4, codified in pertinent part at 28 U.S.C. §§ 1332, 1441 and 1446, Defendant PVH Retail Stores LLC (“PVH Retail”) gives notice that it has removed to this Court the lawsuit captioned *Venieris v. PVH Retail Stores, LLC*, Case No. CV 2018-005427, filed in the Superior Court in the State of Arizona in and for the County of Maricopa (the “Action”). In support of this Notice of Removal, PVH Retail states:

**I. PROCEDURAL BACKGROUND**

1. On August 30, 2018, Plaintiff Patrick Venieris filed his Class Action Complaint on behalf of himself and an alleged putative class (“Complaint”). *See* Ex. 1, Compl.

2. Plaintiff alleges that PVH Retail deceptively and misleadingly advertises and displays its Tommy Hilfiger brand apparel as being sold at a discounted price by including a pre-discounted price on the tags. *See* Compl. ¶¶ 1-2.

1 3. Plaintiff alleges a putative class of

2 All Arizona residents who, within the applicable statute of limitations and going  
3 forward from the date of filing of this Complaint (“Class Period”), purchased  
4 any product bearing a false Tagged Price at one of Defendant’s Outlet Stores  
5 located in the State of Arizona.

6 *See* Compl. ¶ 3, 29.

7 4. On or around September 7, 2018, PVH Retail’s agent for service of  
8 process in Arizona received by United States mail a copy of the Complaint in this  
9 action. On September 18, 2018, Plaintiff formally served PVH Retail’s agent for  
10 service of process in Arizona with a copy of the Complaint. Although mailing a copy  
11 of the Complaint to PVH Retail’s agent for service of process did not effect service, for  
12 purposes of this removal, PVH Retail is considering September 7, 2018 as the date of  
13 its receipt of a copy of the Complaint. Accordingly, as required under 28 U.S.C.  
14 § 1446, this Notice of Removal is filed within 30 days of PVH Retail’s “receipt . . .  
15 through service or otherwise, of a copy of the initial pleading setting forth the claim for  
16 relief upon which such action or proceeding is based” and is therefore timely. *See* 28  
17 U.S.C. § 1446(b)(1).

18 5. Pursuant to Local Rule of Civil Procedure 3.6(b), PVH Retail attaches a  
19 complete copy of the Maricopa County Superior Court record as Exhibit 2 and verifies  
20 that Exhibit 2 constitutes a true and complete copy of all pleadings and other  
21 documents filed in Maricopa County Superior Court in this matter. *See* Ex. 2, Verified  
22 State Court Records; Ex. 3, Declaration of Heather Stanton.

23 6. PVH Retail also attaches as Exhibit 4 a copy of the Notice of Filing for  
24 Notice of Removal which is being filed with the Clerk of the Superior Court in the  
25 State of Arizona in and for the County of Maricopa in this matter today.

26 7. PVH Retail is filing a copy of this Notice of Removal with the Clerk of  
27 the Maricopa County Superior Court today pursuant to 28 U.S.C. §1446(d) and Local  
28 Rule of Civil Procedure 3.6(a). PVH Retail is also providing Plaintiff with written  
notice of the filing of this Notice of Removal today through its counsel.

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1 8. Venue lies in the United States Court for the District of Arizona pursuant  
2 to 28 U.S.C. §§ 1441 and 1391(a) because a substantial part of the events that Plaintiff  
3 alleges give rise to his claims occurred in this District and because the original state  
4 court venue of Plaintiff's Complaint lies in Maricopa County.

5 **II. JURISDICTION PURSUANT TO 28 U.S.C. § 1332(d)**

6 9. This Court has original jurisdiction of this Action under 28 U.S.C. §  
7 1332(d) because: (a) this Action was filed by one or more representative persons as a  
8 putative class action; (b) the proposed class of plaintiffs exceeds 100 persons in the  
9 aggregate; (c) there is minimal diversity, i.e., any member of the class of plaintiffs is a  
10 citizen of a State different from any defendant; and (d) the aggregate matter in  
11 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.  
12 Thus, this action is properly removed to this Court by PVH Retail pursuant to 28  
13 U.S.C. § 1441(a).

14 10. *First*, Plaintiff filed this putative class action as a representative of the  
15 putative class under Federal Rule of Civil Procedure 23(a), 23(b)(2), and 23(b)(3). *See*  
16 28 U.S.C. § 1332(d)(1)(B); Compl. ¶ 29.

17 11. *Second*, the proposed class as alleged exceeds 100 persons in the  
18 aggregate. *See* 28 U.S.C. § 1332(d)(5)(B); Compl. ¶ 31.

19 12. *Third*, minimal diversity exists between the proposed class members and  
20 PVH Retail. Plaintiff is a citizen of the State of Arizona. Compl. ¶ 6. Defendant PVH  
21 Retail was, at the time of receipt and of service of the Complaint, and still is a limited  
22 liability company incorporated in the State of Delaware with its principal place of  
23 business in the State of New York. Minimal diversity is satisfied because at least one  
24 member of the proposed class, including Plaintiff himself, is a citizen of a State other  
25 than either Delaware or New York. *See* 28 U.S.C. § 1332(d)(2)(A).

26 13. *Fourth*, and finally, although the Complaint does not specify the dollar  
27 amount of damages Plaintiff seeks on behalf of himself and the putative class, PVH  
28 Retail is informed and believes in good faith that the matter in controversy exceeds the

1 sum of \$5,000,000, inclusive of alleged putative damages, equitable relief and potential  
2 attorneys' fee awards, but exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2),  
3 (d)(6).

4 14. Plaintiff requests the following damages from PVH Retail: (1) damages  
5 resulting from PVH Retail's alleged false advertising; (2) restitution and disgorgement  
6 of PVH Retail's profits and unjust enrichment; (3) exemplary and punitive damages;  
7 (4) post-judgment interest on the judgment at the rate provided by law from the date of  
8 judgment until paid; (5) injunctive, equitable, and declaratory relief as needed to  
9 effectuate the court's orders and judgment; (6) prospective or affirmative injunctive  
10 and declaratory relief; and (7) such other relief as deemed just and equitable. *See*  
11 Compl. ¶¶ 58-60. Plaintiff also seeks certification of the proposed alleged class, as  
12 alleged in the Complaint. *See id.* ¶¶ 29-41.

13 15. While it is difficult, based on Plaintiff's allegations, to determine exactly  
14 how Plaintiff would attempt to calculate damages in this case, Plaintiff has specifically  
15 alleged that he will seek "damages, disgorgement and restitution to Plaintiff and the  
16 *Class of all of Defendants' revenues associated with the practice at issue,*" in addition  
17 to punitive damages, injunctive relief and attorneys' fees. *See id.* ¶¶ 58-60 (emphasis  
18 added). PVH Retail's sales revenue from its Arizona outlet stores alone exceeded \$5  
19 million for the one year *before* the Complaint was filed (the relevant statute of  
20 limitations period). Thus, based on Plaintiff's allegation that he will seek  
21 "disgorgement" of all "revenues" associated Plaintiff's allegations, and the fact that  
22 PVH Retail's sales revenue from its Arizona outlet stores alone exceeds \$5 million, it  
23 is PVH Retail's good faith belief that Plaintiff's allegations have placed at least  
24 \$5,000,000 in controversy.

25 16. Moreover, that amount in controversy number is before any of Plaintiff's  
26 requested exemplary or punitive damages are considered, and before any amount is  
27 included as part of a calculation for attorneys' fees, which Plaintiff alleges are  
28 recoverable.

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1 17. Accordingly, Plaintiff’s Complaint, including the requested punitive and  
2 exemplary damages, along with the potential attorneys’ fees at issue, exceed the  
3 \$5,000,000 amount in controversy required under 28 U.S.C. § 1332(d)(2) and vest this  
4 Court with original jurisdiction. *See Dart Cherokee Basin Operating Co., LLC v.*  
5 *Owens*, 135 S. Ct. 547, 554 (2014).

6 **III. THIS COURT SHOULD ACCEPT REMOVAL**

7 18. Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, PVH Retail respectfully  
8 requests the Court to accept this Notice of Removal, assume jurisdiction of this case,  
9 and issue such further orders and processes which may be required to bring before it all  
10 parties necessary for the disposition of the same.

11 DATED this 4th day of October, 2018.

12 LEWIS ROCA ROTHGERBER CHRISTIE LLP

13  
14 By: /s/Joshua Grabel  
15 Joshua Grabel  
16 Heather Stanton  
*Attorneys for PVH Retail Stores LLC*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of October, 2018, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Michael C. McKay, [mmckay@mckaylaw.us](mailto:mmckay@mckaylaw.us)  
Kathryn Honecker, [khonecker@roselawgroup.com](mailto:khonecker@roselawgroup.com)  
Jonathan Udell, [judell@roselawgroup.com](mailto:judell@roselawgroup.com)

s/ Joshua Gabel

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