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9 **PINNACLE FOODS GROUP, LLC**

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

BARBARA MORENO, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

PINNACLE FOODS GROUP, LLC and
DOES 1-25, Inclusive

Defendants.

Case No.: 5:18-cv-02473

**DEFENDANT PINNACLE FOODS
GROUP, LLC'S NOTICE OF
REMOVAL OF CLASS ACTION (28
U.S.C. §§ 1332, 1446, & 1453).**

[Filed concurrently with Declaration of
Caroline Wright]

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO ALL**
 2 **INTERESTED PARTIES:**

3 PLEASE TAKE NOTICE that Defendant Pinnacle Foods Group, LLC
 4 (“Pinnacle”) hereby removes to this Court, pursuant to 28 U.S.C. §§ 1332, 1446, and
 5 1453, as amended in relevant part by the Class Action Fairness Act of 2005 (“CAFA”),
 6 the action entitled *Moreno vs. Pinnacle Foods Group, LLC*, originally filed in the
 7 Superior Court of the State of California, County of San Bernardino and assigned Case
 8 No. CIVDS1827269 (the “State Court Action”). The grounds for removal are set forth
 9 herein.

10 **I. INTRODUCTION**

11 On or about October 19, 2018, Plaintiff Barbara Moreno (“Plaintiff”) commenced
 12 the State Court Action, alleging causes of action on a representative basis for (1)
 13 negligent misrepresentation; (2) violations of the Consumers Legal Remedies Act,
 14 California Civil Code § 1750, *et seq.*, (3) violations of the False Advertising Law,
 15 California Business & Professions Code § 17500, *et seq.*; and (4) violations of the
 16 Unfair Competition Law, California Business & Professions Code § 17200 *et seq.*
 17 Plaintiff alleges that she and members of a nationwide putative class purchased All
 18 Natural Log Cabin Syrup, and that the product was mislabeled as “all natural” in
 19 violation of Federal Drug Administration and state regulations. A copy of the
 20 Complaint is attached hereto as Exhibit “A.” On October 26, 2018, Plaintiff effectuated
 21 service of the Complaint on Pinnacle. (Exhibit B).

22 **II. THIS COURT HAS JURISDICTION UNDER CAFA**

23 Pinnacle removes the State Court Action pursuant to CAFA, codified under 28
 24 U.S.C. § 1332(d).¹ CAFA provides the Court with original jurisdiction of this action

25 ¹ While Pinnacle removes this State Court Action pursuant to CAFA, Pinnacle does not
 26 consent to this Court’s jurisdiction over the claims of the putative nationwide class and
 27 purchasers outside of California. By removing, Pinnacle does not waive any personal
 28 jurisdiction defense. *Freeney v. Bank of Am. Corp.*, No. CV1502376MMMPJWX,
 2015 WL 4366439, at *20 (C.D. Cal. July 16, 2015) (collecting cases and explaining

1 and permits Pinnacle to remove the State Court Action from the California state court
2 to this Court.

3 CAFA vests district courts with original jurisdiction over class actions when the
4 aggregate amount in controversy for all putative class members exceeds \$5 million
5 (exclusive of interest and costs), and when any member of the putative class of plaintiffs
6 is a citizen of a state different from any defendant. 28 U.S.C. § 1332(d)(2).

7 These requirements are satisfied here, as set forth below:

8 **A. Class Action.**

9 The State Court Action is a class action as defined by CAFA. According to
10 CAFA:

11 [T]he term “class action” means any civil action filed under
12 rule 23 of the Federal Rules of Civil Procedure or similar
13 State statute or rule of judicial procedure authorizing an
action to be brought by 1 or more representative persons as a
class action.

14 28 U.S.C. § 1332(d)(1)(B).

15 Plaintiff’s Complaint alleges a putative class action on behalf of herself and a
16 proposed nationwide class defined as: “All persons located within the United States
17 who purchased All Natural Log Cabin Syrup labeled as ‘all natural’ at any time during
18 the four years preceding the filing of this Complaint [the ‘Nationwide Class’].” (*See*
19 *Exhibit A, ¶¶ 26-33*).

20 **B. Removal Under CAFA.**

21 CAFA provides that a class action against a non-governmental entity may be
22 removed if: (1) the number of proposed class members is not less than 100; (2) any
23 member of the proposed plaintiff class is a citizen of a state different from any
24 defendant; and (3) the aggregate amount in controversy exceeds \$5 million, excluding
25 interests and costs. 28 U.S.C. § 1332(d), (d)(5), and § 1453(b).

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28 that “A defendant’s election to remove a case to federal court does
not waive a personal jurisdiction defense.”)

1 **1. The Number of Proposed Class Members is At Least 100.**

2 While Plaintiff does not allege a specific number of potential putative class
3 members in the Complaint, she does allege that “the proposed Class is so numerous that
4 individual joinder of all of its members is impracticable...Plaintiff believes that the total
5 number of Class members is at least in the hundreds of thousands.” (Exhibit A, ¶ 28).

6 As set forth in the concurrently filed Declaration of Caroline Wright, the Brand
7 Manager – Syrups Portfolio for Pinnacle, Pinnacle sells the All Natural Log Cabin
8 Syrup in all fifty states. (Wright Decl., ¶ 4). More than one million containers of All
9 Natural Log Cabin Syrup, were sold nationwide within the four-year period prior to the
10 filing of the Complaint. (Wright Decl., ¶ 4). From October 2014 to October 2018, the
11 total dollar volume of Pinnacle’s All Natural Log Cabin Syrup sold nationwide
12 exceeded \$5 million. (Wright Decl., ¶ 5).

13 Thus, it is certain that the number of putative class members who purchased All
14 Natural Log Cabin Syrup in the Complaint exceeds 100. (Wright Decl., ¶ 4).

15 **2. Diversity of Citizenship Under CAFA.**

16 “[U]nder CAFA, complete diversity is not required; ‘minimal diversity’
17 suffices.” *Serrano v. 1800 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007).
18 Furthermore, under CAFA’s minimal diversity, the diversity of unnamed putative class
19 members is also considered. 28 U.S.C. § 1332(d)(1)(D)-(d)(2)(A). Accordingly,
20 “minimal diversity” is met when “any member of a class of plaintiffs is a citizen of a
21 State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). That requirement is
22 met here because Plaintiff is a citizen of California and defendant Pinnacle is a citizen
23 of states other than California.

24 An individual is a citizen of the state where he or she resides. 28 U.S.C. §
25 1332(a)(1). Plaintiff Barbara Moreno in an individual and resides in California, as such,
26 is a citizen of the State of California. (*See* Exhibit A, ¶ 1). Additionally, Plaintiff brings
27 this action on behalf of a putative nationwide class, therefore members of the putative
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1 class likely reside in every state where All Natural Log Cabin Syrup is sold. 28 U.S.C.
2 § 1332(d)(1)(D)-(d)(2)(A); Exhibit A, ¶ 26.

3 Pinnacle is not a citizen of California. The Ninth Circuit Court of Appeals holds
4 that a limited liability corporation is a citizen of where its members are citizens: “We
5 therefore join our sister circuits and hold that, like a partnership, an LLC is a citizen of
6 every state of which its owners/members are citizens.” *Johnson v. Columbia Properties*
7 *Anchorage, LP*, 437 F. 3d 894, (9th Cir. 2006) (affirming denial of plaintiff’s motion to
8 remand); *Oganesyanyan v. AT & T Mobility Services, LLC*, 2014 WL 4665272 at *3 (C.D.
9 Cal. Sep. 28, 2014) (denying plaintiff’s motion to remand because the company
10 declarant providing the defendant LLC’s citizenship information was “smore than
11 sufficient to establish complete diversity between parties.”)

12 Pinnacle is a Delaware limited liability corporation with its principal place of
13 business in New Jersey. (Exhibit A, ¶ 2; Wright Decl., ¶ 2). Pinnacle Foods, Inc. is the
14 sole member of Pinnacle. (Wright Decl., ¶ 3). Pinnacle Foods, Inc. is neither a resident
15 of California, nor does it have a principal place of business in California. (Wright Decl.,
16 ¶ 3). Pinnacle Foods, Inc. is a Delaware corporation with a principal places of business
17 in Illinois. (Wright Decl., ¶ 3).

18 Because at least one member of the proposed class of plaintiffs is a citizen of a
19 state different from Pinnacle, within the meaning of 28 U.S.C. § 1332(d)(2)(A),
20 CAFA’s diversity of citizenship requirement is satisfied. Additionally, minimal
21 diversity is also established because Plaintiff seeks to represent a nationwide class. 28
22 U.S.C. § 1332(d)(1)(D)-(d)(2)(A).

23 The diversity that exists in this action not only satisfies the minimal diversity of
24 citizenship requirement under CAFA, but also precludes the applicability of exceptions
25 in 28 U.S.C. § 1332(d)(4)(A)-(B). There is no “local” defendant at home in California.
26 Moreover, Plaintiff here purports to represent a putative class of *nationwide* class
27 members and Plaintiff alleges *nationwide* wrongful conduct. (Exhibit A, ¶ 26).
28 Accordingly, § 1332(d)(3) does not apply here. *See, e.g., Marino v. Countrywide*

1 *Financial Corp.*, 26 F.Supp.3d 949, 954-955 (C.D. Cal. 2014) (rejecting application of
 2 exceptions to CAFA when conduct and injuries are alleged to be nationwide, even if
 3 the proposed class is limited to citizens of a single state).

4 **3. Amount in Controversy.**

5 CAFA's third requirement — that the aggregate amount in controversy, exclusive
 6 of interest and costs, exceed \$5 million — is also satisfied. 28 U.S.C. § 1332(d)(2).
 7 Although Pinnacle asserts that the allegations in the Complaint are without merit and
 8 that neither Plaintiff, nor the putative class members have suffered any injury,
 9 the amount in controversy here exceeds \$5 million. Plaintiff's lawsuit seeks damages,
 10 restitution and declaratory and injunctive relief and attorneys' fees, in the aggregate,
 11 which are worth more than CAFA's \$5 million threshold. *See* Exhibit A, Prayer for
 12 Relief.

13 When removal is sought under CAFA, the amount in controversy requirements
 14 should be "interpreted expansively." *Yeroushalmi v. Blockbuster, Inc.*, No. 05-225,
 15 2005 WL 2083008, at *3 (C.D. Cal. July 11, 2005) citing S. Rep. No. 109-14, at 42
 16 (2005). "In measuring the amount in controversy, a court must assume that the
 17 allegations of the complaint are true and that a jury will return a verdict for plaintiff on
 18 all claims made in the complaint." *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d
 19 1199, 1205 (E.D. Cal. 2008). If the court is uncertain whether the amount in
 20 controversy exceeds \$5 million, the "court should err in favor of exercising jurisdiction
 21 over the case." *Yeroushalmi*, 2005 WL 2083008, at *3 citing S. Rep. No. 109-14, at 42
 22 (2005). If a plaintiff fails to plead an amount in controversy in a class action complaint,
 23 as is the case here, a defendant seeking removal "must prove by only a preponderance
 24 of the evidence that the damages claimed exceed \$5,000,000." *Lowdermilk v. U.S. Bank*
 25 *Nat'l Assoc.*, 479 F.3d 994, 998 (9th Cir. 2007), *overruled on other grounds*
 26 *by Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345 (2013). *Abrego Abrego v. Dow*
 27 *Chem. Co.*, 443 F.3d 676, 683 (9th Cir. 2006) (confirming the removing defendant need
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1 only establish that it is more likely than not that the amount in controversy has been
2 met).

3 Plaintiff seeks restitution and damages. *See* Exhibit A, Prayer for Relief.² From
4 October 2014 to October 2018, sales of Pinnacle’s All Natural Log Cabin Syrup
5 nationwide exceeded \$5 million. (Wright Decl., ¶ 5). *See Watkins v. Vital Pharm., Inc.*,
6 720 F.3d 1179 (9th Cir. 2013) (per curium) (holding that a declaration stating that the
7 total sales of the product at issue exceeded \$5 million during the class period was
8 sufficient to meet CAFA’s amount in controversy requirement.) This alone is sufficient
9 to establish the amount in controversy. *Id.*

10 Plaintiff also seeks to recover her attorneys’ fees, however, which additionally
11 contributes to the alleged amount in controversy. Exhibit A, Prayer for Relief; *see*
12 *Lowdermilk*, 479 F.3d at 1000 (including attorneys’ fees in amount in controversy
13 calculation); *Kroske v. US. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005) (including
14 attorney’s fees in amount in controversy).

15 And, the Court must also consider “the potential cost to the defendant of
16 complying with an injunction” when determining the amount in controversy for CAFA
17 purposes. *Harris v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 104101, at *19 (C.D.
18 Cal. Aug. 16, 2015); *Bayol v. ZipCar, Inc.*, 2015 WL 4931756, at *10 (N.D. Cal. Aug.
19 18, 2015) (“[A] defendant’s aggregate cost of compliance with an injunction is
20 appropriately counted toward the amount in controversy.”).

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23 ² Plaintiff’s own allegations further support Pinnacle’s calculation of the amount in
24 controversy for purposes of removal. Plaintiff alleges there are “*at least in the hundreds*
25 *of thousands* of putative class members. (*Id.* ¶ 28). She asserts that “Plaintiff and
26 members of the putative class would not have purchased or would have paid less for the
27 product had they know that they were not as represented.” (Exhibit A, ¶ 69 (emphasis
28 added)). Plaintiff also alleges that each syrup sells “for approximately \$8.50 based on
the preceding false advertising claims.” (*Id.* ¶ 24). When considered together with
Plaintiff’s prayers for additional damages, injunctive relief, and attorneys’ fees –as well
as Pinnacle’s declaration establishing that the sales at issue and relief sought each
exceed \$5 million – it is clear that the CAFA amount in controversy requirement is met.

1 In this case, Plaintiff requests relief that, if granted, would cost Pinnacle in excess
 2 of \$5 million. (Wright Decl., ¶ 6). Accordingly, while Pinnacle rejects Plaintiff's
 3 allegations as meritless, CAFA's requirement that the aggregate amount in controversy
 4 exceeds \$5 million is met here.

5 **III. PINNACLE TIMELY FILED ITS NOTICE OF REMOVAL AND**
 6 **SATISFIED ALL PROCEDURAL REQUIREMENTS**

7 **A. This Notice of Removal is Timely Filed.**

8 This notice of removal is timely pursuant to 28 U.S.C. §§ 1446(b) and 1453(b),
 9 because it is filed within thirty (30) days after service of the Complaint on Pinnacle.
 10 Here, Pinnacle was served with the Summons and Complaint on October 24, 2018.
 11 (Exhibit B). Therefore, notice is timely pursuant to 28 U.S.C. § 1446(b).

12 **B. Pinnacle Has Satisfied all Procedural Requirements.**

13 Venue is proper. Plaintiff filed this action in the Superior Court of the State of
 14 California, County of San Bernardino. Accordingly, this action is properly removed to
 15 this Court, which embraces San Bernardino County within its jurisdiction. 28 U.S.C.
 16 §§ 1441(a), 1446(a).

17 And, Pinnacle is the only defendant served. Does 1-25, the Doe defendants, have
 18 not been named or served and need not consent to this Notice of Removal. *See Soliman*
 19 *v. Philip Morris, Inc.*, 311 F.3d 966, 971 (9th Cir. 2002).

20 Finally, Pinnacle provided notice. Section 1446(a) requires a removing party to
 21 provide this Court with a copy of all "process, pleadings and orders" served on it in the
 22 State Court Action. True and correct copies of these documents are listed below:

- 23 • Complaint (Exhibit A)
- 24 • Service of Process Transmittal on Pinnacle (Exhibit B)
- 25 • Summons to Pinnacle (Exhibit C)

26 Pursuant to 28 U.S.C. section 1446(d), Pinnacle is filing a copy of the Notice of
 27 Removal with the Clerk of San Bernardino County Superior Court and serving Plaintiff
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1 with the same. A copy of the Notice to the Superior Court (which is being served on
2 Plaintiff), without exhibits, is attached hereto as Exhibit “D.”

3 **IV. CONCLUSION**

4 WHEREFORE, Pinnacle respectfully submits that (1) CAFA applies to this
5 action because the proposed class contains at least 100 members, (2) at least one
6 member of the proposed class is a citizen of a state different than Pinnacle’s state of
7 citizenship and no other CAFA exceptions apply, (3) the aggregate amount in
8 controversy exceeds \$5 million, and (4) the procedural requirements under 28 U.S.C.
9 § 1446 are met. For these reasons, this action is properly removed to this Court.

10
11 DATED: November 26, 2018

RACHEL E.K. LOWE
ALSTON & BIRD LLP

12
13 /s/ Rachel E. K. Lowe
14 Rachel E. K. Lowe
15 Attorneys for Defendant
PINNACLE FOODS GROUP, LLC
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