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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NICK LOWRY, on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

ADDITECH, INC., a Texas corporation,

Defendant.

No.

**DEFENDANT’S NOTICE OF  
REMOVAL OF CIVIL ACTION**

(King County Superior Court  
Case No. 19-2-00613-7 SEA)

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446, and 1453, Defendant Additech, Inc. (“Defendant” or “Additech”) hereby removes the above-captioned action from the Superior Court of the State of Washington in and for King County<sup>1</sup> to this Court on the ground of original jurisdiction based on 28 U.S.C. § 1332(d). The following statement is submitted in accordance with 28 U.S.C. § 1446.

**I. STATE COURT ACTION**

1. On or about January 8, 2019, Plaintiff Nick Lowry (“Plaintiff”) filed a Class Action Complaint (the “Complaint”) in the Superior Court of the State of Washington in and for King County, entitled *Nick Lowry, on behalf of himself and all others similarly*

<sup>1</sup> A true and correct copy of the Civil Cover Sheet is attached hereto as Exhibit E.

1 *situated v. Additech, Inc., a Texas corporation*, Case No. 19-2-00613-7 SEA (the “State  
2 Court Action”), a true and correct copy of which is attached hereto as Exhibit A.

3 2. Plaintiff seeks to represent a class consisting of “All persons who purchased  
4 Additech’s Fuel System Cleaner or Diesel Guard products in Washington State, at any time  
5 after January 7, 2015.” Ex. A at ¶ 56. The Complaint asserts that Plaintiff, and the putative  
6 class members, purchased Additech’s products that allegedly “did not deliver the benefits  
7 promised by Additech.” *Id.* at ¶¶ 55, 56.

8 3. The Complaint asserts two causes of action against Additech: (1) Violation  
9 of Washington’s Consumer Protection Act, RCW 19.86, *et seq.* – Non-*Per Se* Deceptive  
10 Business Practices; and (2) Violation of the Washington Consumer Protection Act, RCW  
11 19.86 *et seq.* – Non-*Per Se* Unfair Business Practices. Ex. A at ¶¶ 64-85.

12 4. A copy of the Summons (a true and correct copy of which is attached hereto  
13 as Exhibit D), Complaint (Exhibit A), and Civil Cover Sheet (Exhibit E) were served on  
14 Defendant’s registered agent for service on or about January 22, 2019.

15 5. Defendant is the only defendant in the State Court Action. There are no  
16 unserved defendants, and as such, Defendant is the only defendant that need consent to this  
17 removal.

18 **II. JURISDICTION PURSUANT TO THE CLASS ACTION**  
19 **FAIRNESS ACT IS SATISFIED**

20 6. The Class Action Fairness Act of 2005 (“CAFA”) grants federal district  
21 courts original jurisdiction over civil class action lawsuits filed under federal or state law in  
22 which any member of a putative class of plaintiffs is a citizen of a state different from any  
23 defendant, where the matter in controversy exceeds \$5,000,000, exclusive of interest and  
24 costs, and where the number of putative class members exceeds 100. 28 U.S.C.  
25 §§ 1332(d)(1)(B), (d)(2)(A), and (d)(5)(B); *see Kuxhausen v. BMW Fin. Servs. NA LLC*,  
26 707 F.3d 1136, 1139 (9th Cir. 2013) (“Federal jurisdiction under CAFA has three elements:

1 (1) there must be minimal diversity of citizenship between the parties, (2) the proposed  
2 class must have at least 100 members and (3) the amount in controversy must exceed the  
3 sum or value of \$5,000,000.”) (internal citation and quotation omitted).

4 7. There is no presumption against removal under CAFA. *Dart Cherokee*  
5 *Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554, 190 L. Ed. 2d 495 (2014) (“no  
6 antiremoval presumption attends cases invoking CAFA, which Congress enacted to  
7 facilitate adjudication of certain class actions in federal court”). To the contrary, “CAFA’s  
8 provisions should be read broadly, with a strong preference that interstate class actions  
9 should be heard in a federal court if properly removed by any defendant.” *Id.* at 554  
10 (quoting S. Rep. No. 109-14, p. 43 (2005)).

11 8. This action satisfies all requirements for removal under CAFA, as set forth  
12 below. Further, while there are a number of exceptions to this rule of original jurisdiction  
13 contained in 28 U.S.C. § 1332(d)(3)-(5), none of the exceptions are applicable here, as  
14 demonstrated below.

15 **A. Minimum Diversity Exists.**

16 9. Under 28 U.S.C. § 1332(d)(2)(A), a district court may assert jurisdiction  
17 over a class action in which “any member of a class of plaintiffs is a citizen of a State  
18 different from any defendant.”

19 10. Plaintiff alleges that he is domiciled in the State of Washington (Ex. A at  
20 ¶ 10) and is therefore a citizen of Washington for jurisdictional purposes.<sup>2</sup>

21 11. Additech is a corporation and is therefore deemed to be a citizen of the state  
22 in which it has been incorporated and the state where it has its principal place of business.  
23 28 U.S.C. § 1332(c)(1). A corporation’s principal place of business is generally its  
24 headquarters. *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93, 130 S. Ct. 1181, 175 L. Ed. 2d

25 \_\_\_\_\_  
26 <sup>2</sup> As for the citizenship of the putative class Plaintiff seeks to represent, that class is comprised of individuals who purchased Additech’s products in the state of Washington. Ex. A at ¶ 56.

1 1029 (2010) (the “principal place of business’ is best read as referring to the place where a  
2 corporation’s officers direct, control, and coordinate the corporation’s activities,” and in  
3 practice, the principal place of business “should normally be the place where the  
4 corporation maintains its headquarters – provided that the headquarters is the actual center  
5 of direction, control, and coordination”).

6 12. As Plaintiff alleges, Additech is “a Texas corporation” with its headquarters  
7 and principal place of business in Texas. Ex. A at ¶ 11. The State of Texas’s Comptroller  
8 of Public Accounts search website further shows that Additech is a Texas corporation with  
9 its corporate headquarters and principal place of business located in Sugar Land, Texas.  
10 See URL at <https://mycpa.cpa.state.tx.us/coa/coaSearchBtn>.

11 13. Consequently, Additech’s citizenship is diverse from Plaintiff’s and the  
12 minimum diversity requirement under CAFA is satisfied.

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

14 14. CAFA authorizes the removal of class actions in which, among the other  
15 factors mentioned above, the aggregate amount in controversy for all class members  
16 exceeds five million dollars (\$5,000,000.00). See 28 U.S.C. § 1332(d). Here, the  
17 allegations in Plaintiff’s Complaint and the claimed damages exceed the jurisdictional  
18 minimum.

19 15. A plaintiff’s complaint is a court’s “first source of reference in determining  
20 the amount in controversy.” *LaCrosse v. Knight Transp. Inc.*, 775 F.3d 1200, 1202 (9th  
21 Cir. 2015) (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289, 58 S.  
22 Ct. 586, 82 L. Ed. 845 (1938)). Here, in determining the amount in controversy for  
23 purposes of removal, the ultimate inquiry is what amount is put “in controversy” by  
24 Plaintiff’s Complaint—not what a court or jury might later determine to be the actual  
25 amount of damages, if any. See *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1198 n.1  
26 (9th Cir. 2015) (defendants “are not stipulating to damages suffered” in a removal petition,

1 “but only estimating the damages that are in controversy,” because “jurisdiction must be  
2 analyzed on the basis of pleadings filed at the time of removal”).

3 16. Plaintiff brings this action on behalf of himself and a putative class defined  
4 as: “All persons who purchased Additech’s Fuel System Cleaner or Diesel Guard products  
5 in Washington State, at any time after January 7, 2015.” Ex. A at ¶ 56. Additionally,  
6 Plaintiff alleges that there are more than 1,000 people in the purported class. *Id.* at ¶ 57.

7 17. Plaintiff alleges that he and the purported class “suffered injury in fact and  
8 lost money,” and that they are entitled to “recovery of actual damages, treble damages,  
9 attorneys’ fees, costs of suit, and such further relief as the Court may deem proper.” Ex. A  
10 at ¶¶ 71, 73, 83, 85. Given the four-year damages period and treble damages alleged by  
11 Plaintiff, as well as the attorneys’ fees<sup>3</sup> and costs of suit, the damages in this matter could  
12 easily exceed the \$5,000,000 threshold.

13 18. “[A] defendant’s notice of removal need include only a plausible allegation  
14 that the amount in controversy exceeds the jurisdictional threshold. Evidence establishing  
15 the amount is required by § 1446(c)(2)(B) only when the plaintiff contests, or the court  
16 questions, the defendant’s allegation.” *Dart Cherokee*, 135 S. Ct. at 554. This standard  
17 applies to complaints like the Complaint in this action, which does not allege or seek a  
18 specific amount of damages: “When plaintiffs favor state court and have prepared a  
19 complaint that does not assert the amount in controversy...the Supreme Court has said that  
20 a defendant can establish the amount in controversy by an unchallenged, plausible assertion  
21 of the amount in controversy in its notice of removal.” *Ibarra*, 775 F.3d at 1197-98 (citing  
22 *Dart Cherokee*, 135 S. Ct. at 554-55).

23 19. Additech alleges that the amount in controversy exceeds \$5,000,000 only for  
24 the purposes of establishing subject matter jurisdiction under CAFA. Additech’s

25 \_\_\_\_\_  
26 <sup>3</sup> In determining whether a Complaint meets the amount in controversy requirement, the Court should also  
consider potentially available attorney’s fees. *See, e.g., Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156  
(9th Cir. 1998); *Goldberg v. C.P.C. Int’l, Inc.*, 678 F.2d 1365, 1367 (9th Cir. 1982).

1 allegations are not admissions of liability or damages with respect to any aspect of this case,  
2 or to the proper legal test(s) applicable to Plaintiff's allegations, or whether a class action is  
3 proper. *LaCrosse*, 775 F.3d at 1203 ("Even when defendants have persuaded a court upon  
4 a CAFA removal that the amount in controversy exceeds \$5 million, they are still free to  
5 challenge the actual amount of damages in subsequent proceedings and at trial.") (quoting  
6 *Ibarra*, 775 F.3d at 1198 n.1). While Additech denies the validity and merit of all of  
7 Plaintiff's claims and the demands for monetary and other relief that flow from them  
8 (assuming them to be accurate for purposes of this removal only), "a reasonable person,  
9 reading the complaint... would conclude that [Plaintiff] was seeking damages in an amount  
10 greater than the minimal jurisdictional amount of this Court." *See* LCR 101(a).

11 20. Additech reserves the right to provide evidence as to the above calculations  
12 and all other amounts sought by Plaintiff in the Complaint should Plaintiff challenge or  
13 should the Court question the amount in controversy.

#### 14 C. Size of the Purported Class.

15 21. The Complaint alleges that the number of putative class members exceeds  
16 1000. *See* Ex. A at ¶ 57. Therefore, the aggregate membership of the proposed class is at  
17 least 100, as required under CAFA. *See* 28 U.S.C. § 1332(d)(5)(B).

### 18 III. NO CAFA EXCEPTIONS APPLY

19 22. CAFA contains exceptions to its grant of original jurisdiction for when the  
20 primary defendants are citizens of the State in which the action was originally filed (28  
21 U.S.C. §§ 1332(d)(3) and (d)(4)), and for when the defendants are government entities or  
22 the putative class numbers less than 100 in the aggregate (28 U.S.C. § 1332(d)(5)).

23 23. Because Additech is neither a citizen of the state of Washington nor a  
24 government entity (*see* Ex. A at ¶ 11), and because the putative class numbers more than  
25 100 in the aggregate (*see* Ex. A at ¶ 57), the exceptions to jurisdiction set forth in CAFA do  
26 not apply.

**IV. REMOVAL IS TIMELY**

24. As set forth above, the Complaint was served on Defendant’s agent for service of process on January 22, 2019. This Notice of Removal is timely in that it has been filed within thirty days of the date of service of the Complaint consistent with 28 U.S.C. § 1446(b).

**V. ADDITECH PROVIDED NOTICE TO PLAINTIFF**

25. Pursuant to 28 U.S.C. § 1446(d), promptly after filing the Notice of Removal, Additech will give written notice to Plaintiff’s counsel of record: Beth E. Terrell and Benjamin M. Drachler at Terrell Marshall Law Group, 936 North 34th Street, Suite 300, Seattle, Washington 98103; and, Daniel L. Warshaw, Michael H. Pearson, Eric J. Mont at Pearson, Simon & Warshaw LLP, 15165 Ventura Boulevard, Suite 400, Sherman Oaks, California 91403.

26. In addition, a copy of this Notice of Removal will be filed with the Clerk of the Court for the Superior Court of Washington for King County.

**VI. VENUE**

27. Venue lies in the United States District Court in and for the Western District of Washington, pursuant to 28 U.S.C. §§ 1391(a) and 1441(a), because the King County Superior Court, where the suit was originally filed, is located within the District. Plaintiff also alleges injury in this district. *See* Ex. A at ¶¶ 55, 56, 71, 83.

**VII. INTRADISTRICT ASSIGNMENT**

28. Pursuant to LCR 3(d)(1), this action is properly removed to the Seattle Division of the Western District of Washington because the claims arose in Snohomish County, Washington. *See* Ex. A at ¶¶ 52, 55.

**VIII. ATTACHMENT OF PLEADINGS**

29. As required by 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon Additech and found in the files of the Superior Court of the State of Washington for King County are attached hereto. *See* chart below.

Exhibit	Document
A	Class Action Complaint
B	Order Setting Civil Case Schedule
C	Case Information Cover Sheet and Area Designation
D	Summons
E	Case Assignment Area Designation and Case Information Cover Sheet
F	Notice Regarding Assigned Judge
G	Notice of Appearance (Terrell Marshall Law Group)
H	Motion for Limited Admission of Daniel L. Warshaw Pursuant to APR 8(b) <i>Pro Hac Vice</i>
I	Notice of Hearing re Motion for Limited Admission of Daniel L. Warshaw Pursuant to APR 8(b) <i>Pro Hac Vice</i>
J	Motion for Limited Admission of Michael H. Pearson Pursuant to APR 8(b) <i>Pro Hac Vice</i>
K	Notice of Hearing re Motion for Limited Admission of Michael H. Pearson Pursuant to APR 8(b) <i>Pro Hac Vice</i>
L	Motion for Limited Admission of Eric J. Mont Pursuant to APR 8(b) <i>Pro Hac Vice</i>
M	Notice of Hearing re Motion for Limited Admission of Eric J. Mont Pursuant to APR 8(b) <i>Pro Hac Vice</i>
N	Declaration of Service
O	Order Granting Motion for Limited Admission of Daniel L. Warshaw Pursuant to APR 8(b) <i>Pro Hac Vice</i>
P	Order Granting Motion for Limited Admission of Eric J. Mont Pursuant to APR 8(b) <i>Pro Hac Vice</i>
Q	Order Granting Motion for Limited Admission of Michael H. Pearson Pursuant to APR 8(b) <i>Pro Hac Vice</i>
R	Notice of Appearance (Yarmuth LLP)



Exhibit	Document
S	Service of Process Receipt <sup>4</sup>
T	Plaintiff's First Set of Interrogatories and Requests for Production of Documents Propounded to Defendant Additech, Inc.

WHEREFORE, having provided notice as is required by law, the above-entitled action should be removed from the Superior Court of the State of Washington in and for King County, to this Court.

DATED: February 19, 2019.

**YARMUTH LLP**

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*Attorneys for Defendant*

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<sup>4</sup> Exhibits S and T were served upon Additech but are not part of the court file.

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record who receives CM/ECF notification:

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*Attorneys for Plaintiff Nick Lowry*

Dated: February 19, 2019 at Seattle, Washington.

*s/Kelly M. Kennedy*  
Kelly M. Kennedy, Legal Assistant