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9 and Bayer HealthCare Pharmaceuticals Inc.

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 JOANNA GONZALEZ,

15 Plaintiff,

16 vs.

17 BAYER HEALTHCARE
18 PHARMACEUTICALS INC., BAYER
19 HEALTHCARE LLC., WALMART
20 STORE INC., WALMART INC., Does
21 2 through 50 inclusive,

22 Defendants.
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) Case No. 5:18-cv-02631

) **NOTICE OF REMOVAL**

) **JURY TRIAL DEMANDED**

1 Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants and Specially
2 Appearing Defendants Bayer HealthCare LLC and Bayer HealthCare Pharmaceuticals
3 Inc. (collectively, “Bayer”), through undersigned counsel, hereby remove this action from
4 the Superior Court of the State of California, County of San Bernardino, to the United
5 States District Court for the Central District of California. In support of this Notice of
6 Removal, Bayer states the following:

7 **I. THE STATE COURT ACTION**

8 1. Plaintiff filed her complaint in this civil action styled *Joanna Gonzalez v.*
9 *Bayer Healthcare Pharmaceuticals Inc. et al.*, Case No. CIVDS 1825264, in the Superior
10 Court of San Bernardino County on September 26, 2018, and filed an Amendment to
11 Complaint on November 19, 2018. She served the Complaint on Bayer on November 19,
12 2018. Defendant Walmart Inc. (formerly known as “Wal-Mart Stores, Inc.”)
13 (erroneously sued as “WALMART STORE INC.”) (“Walmart”) has not been served as
14 of the filing of this Notice of Removal.

15 2. Plaintiff alleges that she suffered injuries, including chemical burns, as a
16 result of using Coppertone Ultra Guard SPF 50 lotion.

17 3. As set forth more fully below, this case is properly removed to the United
18 States District Court for the Central District of California because the procedural
19 requirements for removal are satisfied and this Court has diversity jurisdiction pursuant to
20 28 U.S.C. § 1332.

21 **II. THE PROCEDURAL REQUIREMENTS OF REMOVAL ARE SATISFIED.**

22 4. Bayer filed this Notice of Removal less than 30 days after being served with
23 the Complaint on November 19, 2018. Accordingly, the removal of this action is timely.
24 *See* 28 U.S.C. § 1446(b).

25 5. The United States District Court for the Central District of California
26 presides in the locality in which the state court action is now pending. It is therefore a
27 proper forum for removal. *See id.* §§ 84(a), 1441(a).

28

1 6. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all summons,
2 process, pleadings, and orders filed in the Superior Court are attached hereto as Exhibits
3 A-I.

4 7. As set forth below and in the Declaration of Keith R. Abrams (attached
5 hereto as Exhibit J) (“Abrams Decl.” or the “Abrams Declaration”) and Exhibits K and L
6 to this Notice, at the time this action was filed in the Superior Court and at all times
7 thereafter, no Defendant was or is a citizen of California. *See id.* § 1446(b)(2).

8 8. A copy of this Notice of Removal is being served on Plaintiff, and a copy is
9 being filed with the Superior Court. *See id.* § 1446(d).

10 9. As Walmart has not been served, this removal is proper without its joinder
11 or consent. *See, e.g., Baiul v. NBC Sports*, 732 F. App’x 529, 531 (9th Cir. 2018)
12 (affirming denial of remand motion where only properly joined and served defendant
13 consented to removal, “which is all that [28 U.S.C.] § 1446(b)(2)(A) requires”); *see also*
14 *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n.1 (9th Cir. 1988) (holding that the
15 unanimity “rule applies . . . only to defendants properly joined and served in the action”);
16 *Salveson v. W. States Bankcard Ass’n*, 731 F.2d 1423, 1429 (9th Cir. 1984) (“Our circuit
17 rule is that a party not served need not be joined.”).

18 10. If any questions arise about this removal, Bayer respectfully requests the
19 opportunity to present briefing, further evidence, and oral argument in support of
20 removal.

21 **III. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT**
22 **MATTER JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332 AND 1441.**

23 11. This Court has subject matter jurisdiction based upon diversity of
24 citizenship, *see* 28 U.S.C. § 1441, because this is a civil action between citizens of
25 different states, and the amount in controversy exceeds the sum of \$75,000, exclusive of
26 interest and costs. *See* 28 U.S.C. § 1332.

27 **A. Complete Diversity Of Citizenship Exists.**

28 12. Plaintiff Gonzalez alleges that she is a citizen of California, Compl. ¶ 1.

1 13. Defendant Bayer HealthCare Pharmaceuticals Inc. is a Delaware corporation
2 with its principal place of business in New Jersey. *See* Compl. ¶ 2; Abrams Decl. ¶ 3.
3 For purposes of removal and diversity jurisdiction, it is therefore a citizen of Delaware
4 and New Jersey. *See* 28 U.S.C. § 1332(c)(1).

5 14. Plaintiff alleges that Defendant Bayer HealthCare LLC is a limited liability
6 company organized under the laws of Delaware with its principal place of business in
7 New Jersey. Compl. ¶ 3. In fact, Bayer HealthCare LLC is a Delaware limited liability
8 company with its headquarters at 100 Bayer Boulevard, Whippany, New Jersey 07981.
9 Abrams Decl. ¶ 4. A limited liability company “is deemed to be a citizen of all states
10 where its members are citizens.” *Tri-County Metro. Transp. v. Butler Block, LLC*, 337 F.
11 App’x 708, 709 (9th Cir. 2009); *accord Johnson v. Columbia Props. Anchorage, LP*, 437
12 F.3d 894, 899 (9th Cir. 2006). The citizenship of Defendant Bayer HealthCare LLC’s
13 members at all times relevant to the Complaint was and is as follows:

- 14 a. Bayer Medical Care Inc. is a Delaware corporation with its principal place of
15 business in Pennsylvania, Abrams Decl. ¶ 5;
- 16 b. Bayer NipponNex Inc. is a Delaware corporation with its principal place of
17 business in New Jersey, *id.*;
- 18 c. Bayer Essure Inc. is a Delaware corporation with its principal place of
19 business in New Jersey, *id.*;
- 20 d. Bayer West Coast Corporation is a Delaware corporation with its principal
21 place of business in New Jersey, *id.*;
- 22 e. Bayer Consumer Care Holdings LLC is a Delaware limited liability
23 company, the citizenship of whose members is as follows:
 - 24 i. Bayer East Coast LLC—the sole common member of Bayer
25 Consumer Care Holdings LLC—is a Delaware limited liability
26 company wholly owned by Bayer US Holding LP; Bayer US Holding
27 LP is a limited partnership between Bayer World Investments B.V.
28 and Bayer Solution B.V., each of which is a private company with

1 limited liability incorporated under Dutch law with its principal place
2 of business in the Netherlands, *id.*; and

3 ii. Bayer HealthCare US Funding LLC—the sole preferred member of
4 Bayer Consumer Care Holdings LLC—has a single member: Bayer
5 World Investments B.V., a private company with limited liability
6 incorporated under Dutch law with its principal place of business in
7 the Netherlands, *id.*;

8 f. Bayer HealthCare US Funding LLC, a Delaware limited liability company
9 whose members, as set forth above, are incorporated in and have their
10 respective principal places of business in Germany and the Netherlands, *id.*;

11 g. Dr. Scholl’s LLC, a Delaware limited liability company whose sole member
12 is Bayer Healthcare US Funding LLC, a Delaware limited liability company
13 whose members, as set forth above, are incorporated in and have their
14 respective principal places of business in Germany and the Netherlands, *id.*;

15 h. Coppertone LLC, a Delaware limited liability company whose sole member
16 is Bayer Healthcare US Funding LLC, a Delaware limited liability company
17 whose members, as set forth above, are incorporated in and have their
18 respective principal places of business in Germany and the Netherlands, *id.*;
19 and

20 i. MiraLAX LLC, a Delaware limited liability company whose sole member is
21 Bayer Healthcare US Funding LLC, a Delaware limited liability company
22 whose members, as set forth above, are incorporated in and have their
23 respective principal places of business in Germany and the Netherlands, *id.*

24 Accordingly Bayer HealthCare LLC is a citizen of Delaware, New Jersey, Pennsylvania,
25 Germany, and the Netherlands.

26 15. Plaintiff alleges that “Defendant WALMART STORE INC. is a Corporation
27 registered and organized in the state of California with its principal executive offices” in
28 Arkansas, Compl. ¶ 4 (Ex. B), and further names “WALMART INC.” in her Amendment

1 to Complaint (Ex. H). In fact, there is no such entity as WALMART STORE INC.
2 “registered and organized” in California. Rather, Defendant Walmart Inc. was formerly
3 known as Wal-Mart Stores, Inc., which Plaintiff erroneously sued as “WALMART
4 STORE INC.” Wal-Mart Stores, Inc. was a Delaware corporation with its headquarters
5 and principle executive offices in Bentonville, Arkansas. Wal-Mart Stores, Inc. changed
6 its name to Walmart Inc. effective February 1, 2018. (Ex. K (Amended Statement by
7 Foreign Corporation with Delaware Certificate). Walmart Inc. is a Delaware corporation
8 with its headquarters and principle executive offices at 702 SW 8th Street, Bentonville,
9 Arkansas 72716. Thus, for diversity purposes, Walmart is citizen of Delaware and
10 Arkansas.

11 16. Accordingly, Defendants are citizens of Delaware, New Jersey,
12 Pennsylvania, Germany, the Netherlands, and Arkansas, whereas Plaintiff is a citizen of
13 California. Complete diversity of citizenship therefore exists between Plaintiff and
14 Defendants, and this Court has jurisdiction under 28 U.S.C. § 1332.

15 **B. The Amount-In-Controversy Requirement Is Satisfied.**

16 17. Although Plaintiff does not—and, under California law, cannot—allege the
17 specific amount that she seeks, *see* Cal Code Civ. Proc. § 425.10(b), it is clear from the
18 facts alleged in the Complaint that she seeks more than \$75,000. *See* 28 U.S.C. §
19 1446(c)(2); *Deutsch v. Turner Corp.*, 324 F.3d 692, 718 n.21 (9th Cir. 2003) (finding “no
20 doubt” that the amount-in-controversy requirement based on the nature of the plaintiff’s
21 alleged injuries and the request for punitive damages).

22 18. Plaintiff alleges that she suffered “serious chemical burns and permanent
23 scars to her cleavage.” Compl. ¶ 21. Plaintiff also requests punitive damages. *Id.* ¶ 41.

24 19. In the demand letter attached to her complaint, Plaintiff demanded \$850,000.
25 Compl. Ex. 3 at 5; *see also* Compl. ¶ 48.

26 20. Moreover—although Bayer denies that any relief is warranted—California
27 courts routinely award damages in excess of \$75,000 in product liability cases where
28 liability is found, further demonstrating that the jurisdictional minimum is satisfied here.

1 *See, e.g., Scott v. C.R. Bard, Inc.*, 231 Cal. App. 4th 763, 766-68 (2014); *Chavez v.*
2 *Mandel*, No. 05CC11502, 2008 WL 7782568 (Cal. Super. Ct. July 18, 2008).

3 21. Thus, given the nature of Plaintiff's alleged injuries, the scope of damages
4 sought, and the lack of any express limitation on the amount of damages sought,
5 Plaintiffs' claims plainly satisfy the jurisdictional amount requirement.

6 **CONCLUSION**

7 WHEREFORE, Bayer respectfully requests that the Court assume jurisdiction over
8 this action, and notice is given that this action is removed from the Superior Court of
9 State of California, County of San Bernardino, to the United States District Court for the
10 Central District of California.

11 **DEMAND FOR JURY**

12 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Civil
13 Rule 38-1, Bayer hereby demands a jury trial in this matter.

14 Dated: December 19, 2018

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