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ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
04/12/2019
Clerk of the Court
BY: VANESSA WU
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SAN FRANCISCO

12 CHRISTINA LABAJO, HOWARD CLARK,
13 and BERRY SAIZON,

14 Plaintiffs,

15 vs.

16 GENERAL NUTRITION CORPORATION and
17 DOES 1-100,

18 Defendants.

Case No.: CGC-19-574459

**NOTICE OF FILING OF NOTICE OF
REMOVAL**

19 PLEASE TAKE NOTICE that Defendant General Nutrition Corporation has filed a Notice of
20 Removal of this case from the Superior Court of the State of California for the County of San
21 Francisco pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, containing a statement of facts which
22 entitle this matter to be removed to the United States District Court for the Northern District of
23 California.
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1 The grounds for removal are set forth in the Notice of Removal, a copy of which is attached
2 as Exhibit "1," which includes copies of the documents which were filed in the Superior Court of the
3 State of California for the County of San Francisco and/or were served on Defendant.
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6 Dated: April 12, 2019

Respectfully Submitted,

7 COZEN O'CONNOR

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9 By: /s/ Andrew M. Hutchison
10 Andrew M. Hutchison
11 Attorneys for Defendant
12 General Nutrition Corporation
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EXHIBIT 1

1 Andrew M. Hutchison (SBN 289315)
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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
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12 CHRISTINA LABAJO, HOWARD CLARK, and
BERRY SAIZON

13 Plaintiffs,
14

15 vs.

16 GENERAL NUTRITION CORPORATION and
DOES 1-100,

17 Defendants.
18

Case No.:

NOTICE OF REMOVAL

19 PLEASE TAKE NOTICE that Defendant hereby removes this action, currently pending in
20 the Superior Court for the State of California for the County of San Francisco, Case No. CGC-19-
21 574459, to the United States District Court for the Northern District of California, pursuant to 28
22 U.S.C. §§ 1332, 1441, and 1446. As set forth more fully below, the case is properly removed to this
23 Court pursuant to 28 U.S.C. § 1441 because Defendant satisfies the procedural requirements for
24 removal under 28 U.S.C. § 1446, and this Court has subject matter jurisdiction over this action
pursuant to 28 U.S.C. § 1332. In support of removal, Defendant avers:

25 **THE STATE COURT ACTION**

- 26 1. Plaintiffs Christina Labajo, Howard Clark, and Berry Saizon are alleged to be
27 residents and citizens of the State of California. (See Exhibit "A," Complaint at ¶¶ 7-9.)
28 2. Plaintiffs filed their Complaint on March 12, 2019.

1 13. Complete diversity, therefore, exists because Plaintiffs are citizens of California and
2 Defendant is a citizen of Pennsylvania.

3 14. This action also satisfies the amount in controversy requirement of 28 U.S.C. §
4 1332(a).

5 15. A “notice of removal need include only a plausible allegation that the amount in
6 controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v.*
7 *Owens*, 135 S. Ct. 547, 554 (2014).

8 16. In the Ninth Circuit, the amount of controversy is defined as “the amount at stake in
9 the underlying litigation,” which “includes, *inter alia*, damages (compensatory, punitive, or
10 otherwise) and the cost of complying with an injunction, as well as attorneys’ fees awarded under
11 fee shifting statutes.” *Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644, 648-49 (9th Cir.
12 2016).

13 17. The Ninth Circuit has recently concluded that, in determining the amount in
14 controversy, future attorneys’ fees are to be considered. *Fritsch v. Swift Transportation Company of*
15 *Arizona, LLC*, 899 F.3d 785, 794 (9th Cir. 2018).

16 18. Plaintiffs’ California Consumer Legal Remedies Act claim seeks an award of
17 attorneys’ fees. (*See* Exhibit “A,” at ¶ 126.)

18 19. The costs of complying with Plaintiffs’ requested injunction, in addition to the
19 attorneys’ fees which have been incurred and which will be incurred in the future, cause the amount
20 of controversy to be well in excess of \$75,000, exclusive of interests and costs.

21 20. Accordingly, this Court has original jurisdiction over this action pursuant to 28
22 U.S.C. § 1332.

23 **REMOVAL JURISDICTION**

24 21. This action is properly removed pursuant to 28 U.S.C. §§ 1441 and 1446.

25 22. Under Section 1441(a), “any civil action brought in a State court of which the district
26 courts of the United States have original jurisdiction, may be removed by the defendant or the
27 defendants, to the district court of the United States for the district and division embracing the place
28 where such action is pending.” 28 U.S.C. § 1441(a).

1 23. Plaintiffs filed this action in Superior Court for the State of California for the County
2 of San Francisco. The Northern District of California is the judicial district embracing the County of
3 San Francisco, the place where the state action was brought and, therefore, is the proper district court
4 to which this case should be removed. See 28 U.S.C. §§ 1441(a), 1446(a).

5 24. Under Section 1446(b), the notice of removal shall be filed within thirty (30) days
6 after the “receipt by the defendant, through service or otherwise, of a copy of the initial pleading
7 setting forth the claim for relief.” 28 U.S.C. § 1446(b)(1).

8 25. Plaintiffs served Defendant on March 13, 2019. This Notice of Removal is being
9 filed within thirty (30) days of service. Therefore, this Notice of Removal is timely filed pursuant to
10 28 U.S.C. § 1446(b).

11 26. Because Defendant is the only defendant in this matter, no consent of any other party
12 is necessary pursuant to § 1446(b)(2)(A). The citizenship of “defendants sued under fictitious names
13 shall be disregarded.” 28 U.S.C. § 1441(b)(1).

14 27. Further, pursuant to § 1446(a), Defendant is simultaneously filing with this Notice of
15 Removal copies of all process, pleadings, and orders. (See Exhibit “B”.)

16 28. Additionally, Defendant is filing a copy of this Notice of Removal with the Superior
17 Court for the State of California for the County of San Francisco. 28 U.S.C. § 1446(d).

18 29. Defendant reserves the right to raise all defenses and objections in this action after the
19 action is removed to this Court.

20 WHEREFORE, Defendant hereby removes this action now pending against it in the Superior
21 Court for the State of California for the County of San Francisco to the United States District Court
22 for the Northern District of California.

23 Dated: April 12, 2019

Respectfully Submitted,

COZEN O’CONNOR

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25
26 By: /s/ Andrew M. Hutchison
27 Andrew M. Hutchison
28 Attorneys for Defendant
General Nutrition Corporation