

1 DAWN SESTITO (S.B. #214011)  
dsestito@omm.com  
2 R. COLLINS KILGORE (S.B. #295084)  
ckilgore@omm.com  
3 O'MELVENY & MYERS LLP  
400 South Hope Street  
4 18th Floor  
Los Angeles, California 90071-2899  
5 Telephone: +1 213 430 6000  
Facsimile: +1 213 430 6407  
6

7 Attorneys for Defendant  
TRADER JOE'S COMPANY  
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9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 GABRIEL BARRERE, individually,  
and on behalf of all others similarly  
12 situated,

13 Plaintiff,

14 v.

15 TRADER JOE'S COMPANY; and  
16 DOES 1-10, inclusive,

17 Defendant.  
18  
19

Case No. \_\_\_\_\_

**NOTICE OF REMOVAL OF  
DEFENDANT TRADER JOE'S  
COMPANY**

(28 U.S.C. §§ 1332(d), 1441(a))

Los Angeles County Superior Court  
Case No. 19STCV12693

Complaint Filed: April 12, 2019  
Removal Date: May 17, 2019

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1           **PLEASE TAKE NOTICE** that Defendant Trader Joe’s Company (“Trader  
2 Joe’s”) hereby removes this action pursuant to U.S.C. §§ 1332(d), 1441(a), and 1446,  
3 from the Superior Court for the State of California for the County of Los Angeles to  
4 the United States District Court for the Central District of California. Removal is  
5 proper because this is a putative class action that satisfies the jurisdictional  
6 prerequisites under the Class Action Fairness Act (“CAFA”). Here, the proposed  
7 plaintiff class consists of over 100 members, and minimal diversity exists because  
8 Trader Joe’s is a citizen of California and the putative class includes citizens of other  
9 states. Additionally, the amount in controversy exceeds \$5,000,000. This Notice of  
10 Removal is timely because it has been filed within thirty days of the date that Trader  
11 Joe’s was served with the summons and complaint. *See* 28 U.S.C. § 1446(b).

12           **PROCEDURAL BACKGROUND AND TIMELINESS OF REMOVAL**

13           1.       On April 12, 2019, Plaintiff Gabriel Barrere (“Plaintiff”) filed a  
14 putative class action against Trader Joe’s in the Superior Court for the State of  
15 California, County of Los Angeles, captioned *Barrere v. Trader Joe’s Company*,  
16 Case No. 19STCV12693 (the “Superior Court Action”).

17           2.       Plaintiff served Trader Joe’s with the Superior Court Action Summons  
18 and Complaint on April 17, 2019. This Notice of Removal is therefore timely  
19 because it has been filed within thirty days of the date of service on Trader Joe’s. *See*  
20 28 U.S.C. § 1446(b).

21           3.       Pursuant to 28 U.S.C. § 1446(a), Trader Joe’s has attached as **Exhibit 1**  
22 a copy of all process, pleadings, and orders served upon Trader Joe’s in the Superior  
23 Court Action.

24           4.       Plaintiff purports to bring this action on behalf of “all purchasers of  
25 Trader Joe’s Dried Fruit brand products (the “Product”) sold at retail outlets  
26 throughout California and the United States.” Compl. ¶ 2. Specifically, Plaintiff  
27 seeks to represent a putative class consisting of “[a]ll persons who purchased the  
28 Product in United States for personal use and not for resale during the time period

1 from 4 years before the date of filing of this complaint, through the present.” *Id.*  
2 ¶ 70.

3 5. Plaintiff alleges that Trader Joe’s deceptively misrepresented the  
4 amount of dried fruit contained in the packaging of the Product and claims that 69%  
5 of the empty space in the Product’s packaging is nonfunctional slack-fill. *Id.* ¶¶ 2–  
6 3.

7 6. On behalf of Plaintiff and the putative class, the Complaint alleges  
8 claims against Trader Joe’s for violation of California’s (1) False Advertising Law,  
9 Cal. Bus. & Prof. Code § 17500, *et seq.* and (2) Unfair Competition Law, Cal. Bus.  
10 & Prof. Code § 17200 *et seq.* See Compl. ¶¶ 57–121.

11 7. Plaintiff seeks restitution and/or disgorgement, injunctive relief, and  
12 attorneys’ fees and costs. *Id.* at 19–20 (Prayer for Relief).

13 **JURISDICTION AND BASIS FOR REMOVAL**

14 8. This action is removable pursuant to 28 U.S.C. § 1441(a) because this  
15 is an action over which this Court has original jurisdiction.

16 9. This Court possesses original jurisdiction over this action under CAFA,  
17 28 U.S.C. § 1332(d), which grants district courts original jurisdiction over class  
18 actions (1) involving a plaintiff class of 100 or more members; (2) where any member  
19 of the proposed class is a citizen of a state different from any defendant; and (3) the  
20 amount in controversy exceeds \$5,000,000 in the aggregate, exclusive of interests  
21 and costs. See 28 U.S.C. § 1332(d)(2); *see also Dart Cherokee Basin Operating Co.*  
22 *v. Owens*, 135 S. Ct. 547, 554 (2014) (explaining that “CAFA’s provisions should be  
23 read broadly” (internal quotation marks omitted)). These conditions are satisfied  
24 here for the reasons set out below.

25 **The Putative Class Consists of Over 100 Members**

26 10. This action meets the CAFA definition of a class action, which is “any  
27 civil action filed under [R]ule 23 of the Federal Rules of Civil Procedure or similar  
28 State statute or rule of judicial procedure.” 28 U.S.C. § 1332(d)(1)(B). Plaintiff

1 purports to bring this action on behalf of “all purchasers of [the Product] sold at retail  
2 outlets throughout California and the United States.” Compl. ¶¶ 2, 70. Plaintiff also  
3 alleges that the number of class members is in the “hundreds of thousands or more  
4 throughout California” and that “hundreds of thousands of units of the Product have  
5 been sold in California” during the putative class period. *Id.* ¶ 25. Accordingly, the  
6 aggregate number of class members exceeds 100 persons. *See* 28 U.S.C.  
7 § 1332(d)(5)(B).

### 8 **There is Minimal Diversity of Citizenship**

9 11. Minimal diversity exists between Trader Joe’s and the members of the  
10 putative class under 28 U.S.C. § 1332(d)(2)(A). Under CAFA, diversity of  
11 citizenship is satisfied where “any member of a class of plaintiffs is a citizen of a  
12 State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

13 12. A corporation is “deemed to be a citizen of every State and foreign state  
14 by which it has been incorporated and of the State or foreign state where it has its  
15 principal place of business.” 28 U.S.C. § 1332(c)(1). “The term ‘principal place of  
16 business’ means ‘the place where a corporation’s officers direct, control, and  
17 coordinate the corporation’s activities.’” *Martinez v. Michaels*, 2015 WL 4337059,  
18 at \*3 (C.D. Cal. July 15, 2015) (quoting *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93  
19 (2010)).

20 13. Trader Joe’s is a California corporation with its headquarters located in  
21 Monrovia, California. *See* Compl. ¶ 5 (alleging that Trader Joe’s is a “corporation  
22 headquartered in Monrovia, California” and “maintains its principal business” in  
23 Monrovia, California). Accordingly, Trader Joe’s is a citizen of California for  
24 diversity purposes.

25 14. Plaintiff has brought this action on behalf of a nationwide class of “all  
26 purchasers of [the Product] sold at retail outlets throughout California and the United  
27 States.” Compl. ¶¶ 2, 70 (seeking to represent a class consisting of “[a]ll persons  
28 who purchased the Product in United States for personal use and not for resale during

1 the time period from 4 years before the date of filing of this complaint, through the  
2 present”). The Product is sold throughout the United States, including in states other  
3 than California. Thus, at least one member of the proposed class is from a state other  
4 than California, thereby satisfying minimal diversity for purposes of CAFA  
5 jurisdiction. *See* 28 U.S.C. § 1332(d)(2)(A).<sup>1</sup>

### 6 **The Amount in Controversy Exceeds \$5,000,000**

7 15. The amount in controversy in this action satisfies CAFA’s \$5,000,000  
8 jurisdictional threshold. Under CAFA, the claims of the individual class members  
9 are aggregated to determine if the amount in controversy exceeds the required “sum  
10 or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2).  
11 “The amount in controversy is simply an estimate of the total amount in dispute, not  
12 a prospective assessment of defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*,  
13 627 F.3d 395, 400 (9th Cir. 2010). To determine the amount in controversy, courts  
14 first look to the complaint and “the sum claimed by the plaintiff controls if the claim  
15 is apparently made in good faith.” *Id.* (citation omitted). Accordingly, “in assessing  
16 the amount in controversy, a court must assume that the allegations of the complaint  
17 are true and assume that a jury will return a verdict for the plaintiff on all claims made  
18 in the complaint.” *Campbell v. Vitran Express, Inc.*, 471 F. App’x 646, 648 (9th Cir.  
19 2012) (citation omitted). Where a complaint does not specify the amount of damages  
20 sought, the removing defendant need only establish that it is more likely than not that  
21 the amount in controversy requirement has been met. *Abrego Abrego v. Dow Chem.*  
22 *Co.*, 443 F.3d 676, 683 (9th Cir. 2006). “The removing party’s burden is ‘not

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23 <sup>1</sup> Even a class made up of “all persons who purchased the Product and all other  
24 substantially similar products which are package[d] and sold in opaque boxes in the  
25 State of California” (Compl. ¶¶ 43, 71), would include non-California residents  
26 such that minimal diversity is satisfied. *See Broadway Grill, Inc. v. Visa Inc.*, 856  
27 F.3d 1274, 1276 (9th Cir. 2017) (reasoning that a class defined to include “all  
28 California individuals, businesses and other entities who accepted Visa-branded  
cards in California” satisfies minimal diversity because it includes both California  
and non-California *citizens*).

1 daunting,’ and defendants are not obligated to ‘research, state, and prove the  
2 plaintiff’s claims for damages.’” *Behrazfar v. Unisys Corp.*, 687 F. Supp. 2d 999,  
3 1004 (C.D. Cal. 2009).

4 16. While Trader Joe’s contends that the allegations in the Complaint are  
5 without merit and that neither Plaintiff nor the putative class members have suffered  
6 any injury whatsoever, the amount in controversy here exceeds \$5,000,000. Here,  
7 Plaintiff seeks to represent a nationwide class of Trader Joe’s customers who  
8 purchased the allegedly deceptive Product during the putative class period—  
9 April 12, 2015 to the present. *See* Compl. ¶¶ 43, 70. Specifically, Plaintiff alleges  
10 that the number of class members is in the “hundreds of thousands or more.” *Id.* ¶ 45.  
11 Plaintiff seeks to recover the full purchase price of the Product, which he allegedly  
12 purchased for approximately \$3.95. *See, e.g., id.* ¶¶ 4, 32, 52 (alleging that Plaintiff  
13 would not have purchased the Product had he known it allegedly contained  
14 nonfunctional slack fill); *id.* ¶¶ 4, 24 (alleging that Plaintiff made a one-time purchase  
15 of the Product in 2018 and paid “approximately \$3.95 for the Product”). Trader Joe’s  
16 gross nationwide sales of the Product during the putative class period were in excess  
17 of \$5,000,000.

18 17. In addition, Plaintiff seeks to recover his attorneys’ fees, which also  
19 contribute to the alleged amount in controversy. *Id.* at 19–20 (Prayer for Relief); *see*  
20 *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 1000 (9th Cir. 2007) (including  
21 attorneys’ fees in calculating amount in controversy), *overruled on other grounds by*  
22 *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345 (2013); *Kroske v. US. Bank Corp.*,  
23 432 F.3d 976, 980 (9th Cir. 2005) (including attorneys’ fees in amount in  
24 controversy); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155–56 (9th Cir. 1998)  
25 (including attorneys’ fees in calculating the amount in controversy requirement for  
26 traditional diversity jurisdiction).

27 18. Finally, Plaintiff seeks an injunction “enjoining Defendant from  
28 continuing to engage in the unlawful conduct and practices described herein.”



1 Compl. at 19–20 (Prayer for Relief). The cost of compliance with such an injunction  
2 further adds to the amount in controversy. *See, e.g., Bayol v. ZipCar, Inc.*, 2015 WL  
3 4931756, at \*10 (N.D. Cal. Aug. 18, 2015) (“[A] defendant’s aggregate cost of  
4 compliance with an injunction is appropriately counted toward the amount in  
5 controversy.”).

6 19. Thus, while Trader Joe’s disputes that it is liable to Plaintiff or any  
7 putative class member—or that Plaintiff or any putative class member suffered injury  
8 or incurred damages in any amount whatsoever—to the extent Plaintiff seeks to  
9 recover the purchase price of the Product sold in the United States and attorneys’  
10 fees, and requests injunctive relief, the amount in controversy is well in excess of the  
11 \$5,000,000 threshold for satisfying CAFA’s jurisdictional prerequisites.

#### 12 **No Exception to CAFA Applies**

13 20. Although CAFA contains several exceptions, which, where applicable,  
14 may prevent the Court from exercising jurisdiction under CAFA, these exceptions do  
15 not impose additional jurisdictional requirements. *See Serrano v. 180 Connect, Inc.*,  
16 478 F.3d 1018, 1023 (9th Cir. 2007) (“[T]he provisions set forth in §§ 1332(d)(3)  
17 and (4) are not part of the prima facie case for establishing minimal diversity  
18 jurisdictional under CAFA, but, instead, are exceptions to jurisdiction.”). Rather, it  
19 is Plaintiff’s burden to demonstrate that an exception to CAFA applies. *Id.* at 1023–  
20 24 (requiring the party seeking remand to demonstrate the applicability of the “home  
21 state” and “local controversy” exceptions to CAFA); *Korn v. Polo Ralph Lauren*  
22 *Corp.*, 536 F. Supp. 2d 1199, 1206 (E.D. Cal. 2008). Plaintiff here will not be able  
23 to demonstrate that an exception to CAFA applies.

#### 24 **OTHER PROCEDURAL REQUIREMENTS**

25 21. *Venue*. Plaintiff filed this action in the Superior Court of the State of  
26 California, County of Los Angeles. This action is thus properly removed to the  
27 United States District Court for the Central District of California, Western Division,  
28 which embraces Los Angeles County within its jurisdiction. 28 U.S.C. §§ 1441(a),

1 1446(a).

2 22. *Joinder*. Because there are no other named defendants in this action, no  
3 consent to removal is necessary. The Doe defendants, who have not been named or  
4 served, need not consent to this Notice of Removal. *See Doe v. Rose*, 2016 WL  
5 81471, at \*2 (C.D. Cal. Jan. 7, 2016) (“For almost a century the Ninth Circuit has  
6 held that the parties who have not been served need not join or consent to removal.”).

7 23. *Notice*. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of  
8 Removal is being filed with the Clerk of Court for the Superior Court for the State of  
9 California, County of Los Angeles and served upon Plaintiff’s counsel.

10 **CONCLUSION**

11 For the reasons stated above, this action is within this Court’s original  
12 jurisdiction and meets all requirements for removal, such that removal is proper under  
13 28 U.S.C. §§ 1332(d), 1441(a), and 1446. Accordingly, Trader Joe’s respectfully  
14 removes this action from the Superior Court for the State of California, County of  
15 Los Angeles, to this Court.

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17  
18 Dated: May 17, 2019

DAWN SESTITO  
R. COLLINS KILGORE  
O’MELVENY & MYERS LLP

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20  
21 By:         /s/ Dawn Sestito          
22 Dawn Sestito  
23 Attorneys for Defendant  
24 TRADER JOE’S COMPANY  
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