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23 **UNITED STATES DISTRICT COURT**
24 **EASTERN DISTRICT OF CALIFORNIA**

25 ROMAN SCANLON, on behalf of
26 himself, the general public, and those
27 similarly situated,

28 Plaintiff,

v.

29 CURTIS INTERNATIONAL, LTD. and
30 TECHNIColor SA d/b/a
31 TECHNIColor USA, INC.,

32 Defendants.

Case No. 1:19-at-00499

**NOTICE OF REMOVAL BY
DEFENDANTS CURTIS
INTERNATIONAL, LTD. AND
TECHNICOLOR SA**

**(From Superior Court of California,
County of Merced, Case No. 19CV-
01882)**

1 **TO THE CLERK AND TO PLAINTIFF AND HIS ATTORNEYS:**
2 **PLEASE TAKE NOTICE** that Defendants Technicolor SA
3 (“Technicolor”) and Curtis International, Ltd. (“Curtis”), through their undersigned
4 counsel, hereby remove this action from the Superior Court of the State of
5 California for the County of Merced to the United States District Court for the
6 Eastern District of California, Fresno Division. This removal is made pursuant to
7 28 U.S.C. §§ 1332, 1441, 1446, and 1453. The grounds for removal are as
8 follows:

9 **I. STATEMENT OF JURISDICTION**

10 1. This is a civil action for which this Court has original jurisdiction
11 under 28 U.S.C. § 1332, *et seq.*, as amended by the Class Action Fairness Act of
12 2005 (“CAFA”), *see* 28 U.S.C. § 1332(d), and is one that may be removed to this
13 Court, pursuant to 28 U.S.C. § 1441 and for the reasons below.

14 **II. THE REMOVED ACTION**

15 2. On May 3, 2019, Plaintiff Roman Scanlon, acting on his own behalf
16 and purportedly on behalf of others similarly situated, filed *Scanlon v. Curtis*
17 *International, Ltd. and Technicolor SA d/b/a Technicolor USA, Inc.*, No. 19CV-
18 01882, in the Superior Court of California, County of Merced, a court located
19 within this District.

20 3. Defendants Curtis and Technicolor were served pursuant to California
21 Civil Procedure § 415.30 on June 10, 2019. *See* Declaration of John Nadolenco
22 (“Nadolenco Decl.”) at ¶ 3 & Exhibit 7.

23 4. In accordance with 28 U.S.C. § 1446(a), true and accurate copies of
24 the following papers served upon Defendants are being submitted to this Court
25 with this Notice of Removal:

- 26 • The Summons (Nadolenco Decl., Exhibit 2);
27 • Plaintiff’s Class Action Complaint (Nadolenco Decl., Exhibit 3
28 (“Compl.”));

- 1 • The state court Civil Cover Sheet (Nadolenco Decl., Exhibit 4); and
- 2 • The unexecuted Notice and Acknowledgement of Receipt dated May
- 3 21, 2019 (Nadolenco Decl., Exhibit 5).

4 5. None of the Defendants in this action answered Plaintiff’s Complaint
5 in Merced County Superior Court before removal. Nor are Defendants aware of
6 any further proceedings or filings regarding this action in that court. Nadolenco
7 Decl. at ¶ 4.

8 6. With this notice of removal, Defendants have submitted a copy of all
9 process, pleadings, and orders served upon Defendants. *See* Nadolenco Decl. at
10 ¶ 5; 28 U.S.C. § 1446(a).

11 7. Plaintiff alleges that he purchased RCA-brand home-theater
12 projectors, manufactured and distributed by Defendant Curtis under a license from
13 Defendant Technicolor. Compl. ¶¶ 27-28, 43-52. Plaintiff contends that the
14 projectors’ packaging contained false representations regarding the projectors’
15 “lumens” output, a measure of light intensity (or, generally speaking, brightness).
16 *Id.* at ¶¶ 29-42. Plaintiff claims he suffered out-of-pocket losses of “at a minimum,
17 the difference in price between a projector capable of achieving the advertised
18 brightness, and projectors that are not capable of doing so.” *Id.* at ¶ 51, *see also id.*
19 at ¶ 76 (seeking class damages of “the difference between the price consumers paid
20 for the RCA Projectors and the price they would have paid but for Defendants’
21 misrepresentations.”).

22 8. Plaintiff seeks to represent the following putative class:

23 “[A]ll persons, natural or otherwise, who, while residing in California,
24 purchased an RCA Projector.”

25 Compl. ¶ 53.

26 9. On behalf of himself and the putative class, Plaintiff asserts six causes
27 of action against Defendants: (a), fraud, deceit and/or misrepresentation; (b)
28 violation of California’s Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et*

1 *seq.*; (c) false advertising in violation of Cal. Business and Professions Code
2 § 17500, *et seq.*; (d) negligent misrepresentation; (e) unjust enrichment; and, (f)
3 unfair, unlawful and/or deceptive trade practices in violation of California Business
4 and Professions Code § 17200, *et seq.*

5 10. Plaintiff seeks compensatory and punitive damages, restitution,
6 interest, and attorneys' fees and costs. Compl. ¶¶ 87, 88, 96, Prayer §§ A-E.

7 **III. VENUE**

8 11. Venue is proper under 28 U.S.C. § 1441(a) because this Court is the
9 United States District Court for the district and division embracing the place where
10 the state court case was pending.

11 **IV. THE REMOVAL IS TIMELY**

12 12. The removal is timely under 28 U.S.C. § 1446(b).

13 13. Plaintiff filed his Complaint on May 3, 2019. *See* Compl. at 1.
14 Service on Curtis and Technicolor was completed on June 10, 2019. *See*
15 Nadolenco Decl. at ¶ 3.

16 14. Defendants filed this Notice of Removal within thirty (30) days of
17 service, as required by law. *See, e.g., Murphy Bros, Inc. v. Michetti Pipe*
18 *Stringing, Inc.*, 526 U.S. 344, 347-48 (1999); *Thomas v. Facebook, Inc.*, No. 18-
19 cv-00856, 2018 WL 3915585, at *3 (E.D. Cal. Aug. 15, 2018).

20 **V. NOTICE TO ADVERSE PARTY AND STATE COURT**

21 15. At the same time as the filing of this Notice, Defendants are serving
22 written notice of the removal of this case on Plaintiff's counsel identified below.
23 *See* 28 U.S.C. § 1446(d).

24
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1 16. Defendants will also promptly file a copy of this Notice with the Clerk
2 of the Superior Court of California, County of Merced. *Id.*

3 **VI. THIS COURT HAS JURISDICTION UNDER CAFA**

4 17. CAFA confers federal jurisdiction over class actions involving: (a)
5 minimal diversity (*i.e.*, diversity between any defendant and any putative class
6 member); (b) at least 100 putative class members; and (c) at least \$5 million in
7 controversy, exclusive of interests and costs. *See* 28 U.S.C. § 1332(d). Although
8 the burden rests on the removing party to demonstrate that CAFA’s jurisdictional
9 requirements are met, the party opposing jurisdiction under CAFA bears the
10 burden of demonstrating that any exception to CAFA jurisdiction applies. *Serrano*
11 *v. 180 Connect, Inc.*, 478 F.3d 1018, 1021-22 (9th Cir. 2007). This case satisfies
12 CAFA’s requirements.

13 18. The State Action is a putative civil class action, expressly filed
14 “pursuant to section 382 of the California Code of Civil Procedure.” Compl. ¶ 53.

15 **A. The Parties Are Minimally Diverse**

16 19. A putative class action is removable based on diversity jurisdiction if
17 “any member of a class of plaintiffs is a citizen of a State different from any
18 defendant.” 28 U.S.C. § 1332(d)(2)(A). Here, there is sufficient (indeed,
19 complete) diversity of citizenship between the relevant parties in this case.

20 20. Plaintiff alleges that he “is a resident of California” and “currently
21 resides in Merced, CA.” Compl. ¶ 9. He seeks to represent a class of “all persons,
22 natural or otherwise, who, while residing in California, purchased an RCA
23 Projector” *Id.* at ¶ 53. Accordingly, Plaintiff is a California citizen who purports
24 to represent a putative class “well in excess of 1,000” other citizens and residents
25 of California. *Id.* at ¶ 55.

26 21. A corporation is deemed to be a citizen of the state in which it has
27 been incorporated and where it has its principal place of business. 28 U.S.C.
28 § 1332(c)(1). The phrase “principal place of business” “refers to the place where

1 the corporation’s high level officers direct, control, and coordinate the
2 corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010). This is
3 the corporation’s “nerve center.” *Id.* at 81 (internal quotation marks omitted). This
4 “should normally be the place where the corporation maintains its headquarters.”
5 *Id.* at 93.

6 22. Both at the time of the filing of the Complaint and this notice of
7 removal, Technicolor SA was and is a French company with its principal place of
8 business in Paris, France. *See* Compl. ¶ 11. Accordingly, Technicolor is not a
9 citizen of California.

10 23. Both at the time of the filing of the Complaint and this notice of
11 removal, Curtis International Ltd. was and is a Canadian company with its
12 principal place of business in Mississauga, Ontario, Canada. Compl. ¶ 10.
13 Accordingly, Curtis is not a citizen of California.

14 24. Because Plaintiff is a citizen of California, Curtis is a citizen of
15 Canada, and Technicolor is a citizen of France, the parties are minimally diverse.

16 **B. Plaintiff’s Proposed Class Exceeds 100 Members**

17 25. For purposes of removal, the Court looks to a plaintiff’s allegations
18 respecting class size. *See Kuxhausen v. BMW Fin. Servs. NA LLC*, 707 F.3d 1136,
19 1140 (9th Cir. 2013).

20 26. Plaintiff purports to bring a claim on behalf of “all persons, natural or
21 otherwise, who, while residing in California, purchased an RCA Projector.”
22 Compl. ¶ 53. Plaintiff asserts that “[t]he precise number of members in the
23 [proposed] Class is not yet known to Plaintiff, but it is well in excess of 1,000
24 people.” *Id.* at ¶ 55. Thus, as pled, Plaintiff’s proposed class well exceeds 100
25 members. *See* 28 U.S.C. § 1332(d)(5)(B).

26 //

27 //

28 //

1 **C. The Aggregate Amount In Controversy Exceeds Five Million**
2 **Dollars**

3 27. Under CAFA, “the claims of the individual class members shall be
4 aggregated to determine whether the matter in controversy exceeds the sum or
5 value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(6).
6 “[T]he statute tells the District Court to determine whether it has jurisdiction by
7 adding up the value of the claim of each person who falls within the definition of
8 [the] proposed class and determine whether the resulting sum exceeds \$5 million.”
9 *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013).

10 28. To determine the amount in controversy, the Court must assume that
11 the allegations in the operative pleading are true and that a jury will return a verdict
12 for the Plaintiff on all such claims. *See Cain v. Hartford Life & Accident Ins. Co.*,
13 890 F. Supp. 2d 1246, 1249 (C.D. Cal. 2012) (“The ultimate inquiry is what
14 amount is put ‘in controversy’ by the plaintiff’s complaint, not what a defendant
15 will actually owe.”) (emphasis and internal quotation marks omitted).

16 29. Where, as here, “the plaintiff’s complaint does not state the amount in
17 controversy, the defendant’s notice of removal may do so.” *Dart Cherokee Basin*
18 *Operating Co. v. Owens*, 135 S. Ct. 547, 551 (2014). Defendants’ notice of
19 removal “need not contain evidentiary submissions,” but instead “need include
20 only a plausible allegation that the amount in controversy exceeds the jurisdictional
21 threshold.” *Id.* at 551, 554.

22 30. Further, “when a defendant seeks federal-court adjudication, the
23 defendant’s amount-in-controversy allegation should be accepted when not
24 contested by the plaintiff or questioned by the court.” *Id.* at 553. “Once the
25 proponent of federal jurisdiction has explained plausibly how the stakes exceed \$5
26 million, then the case belongs in federal court unless it is legally impossible for the
27 plaintiff to recover that much.” *Rhoades v. Progressive Cas. Ins. Co.*, 410 F.
28 App’x 10, 11 (9th Cir. 2010). Here, if all the allegations in the Complaint are

1 accepted as true and state a viable claim (which, to be clear, Defendants dispute), it
2 is clear that the amount in controversy exceeds \$5 million, exclusive of interest and
3 costs.¹

4 31. Among other claims, Plaintiff brings a claim for restitution under
5 California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200
6 *et seq.*, which provides for a four year statute of limitations. Compl. ¶ 117 and
7 Prayer § E; Cal. Bus. & Prof. Code § 17208.

8 32. The UCL permits a court to award a prevailing plaintiff restitution,
9 “including disgorgement of all money . . . obtained” by means of an unfair
10 business practice. *Kraus v. Trinity Mgmt. Servs. Inc.*, 23 Cal. 4th 116, 129 (2000).

11 33. Thus, pursuant to Plaintiff’s allegations, the estimated amount in
12 controversy with respect to Plaintiff’s restitution claims can be determined by
13 aggregating the total revenue derived from the sales of RCA projectors in
14 California over the previous four years. In that time period, Defendants’ sales of
15 RCA projectors to California residents or to retailers who sell to California
16 residents exceeds \$5,000,000.

17 34. This number does not even take into account the additional mark-up
18 added by retailers of the products, as is necessary to calculate Plaintiff’s requested
19 restitution of the revenue from the sale of RCA projectors from retailers, as well.
20 Thus, the aggregate “amount in controversy” for Plaintiff’s restitution claims well
21 exceeds the threshold established by 28 U.S.C. § 1332(d).

22 35. In addition to Plaintiff’s claim for restitution, the Complaint seeks
23 punitive damages with respect to his fraud claim. Prayer § A. Defendants dispute
24 that such relief is appropriate or can be proved, but those potential damages are
25 part of the amount in controversy, as California law authorizes punitive damages
26

27 _____
28 ¹ Plaintiff alleges that Defendants are jointly liable, a claim that Defendants deny
but that is accepted as true for purposes of removal. (*See* Compl. ¶ 13.)

1 for fraud. See Cal. Civ. Code § 3294; *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945
2 (9th Cir. 2001).

3 36. Furthermore, Plaintiff seeks an award of attorneys' fees pursuant to
4 California Civil Code § 1780(d). See Compl. ¶ 88. Since the amount in
5 controversy may include attorneys' fees if recoverable by statute, they may be
6 considered here in determining whether the requisite amount has been met. See
7 *Conrad Associates v. Hartford Acc. & Indem. Co.*, 994 F. Supp. 1196, 1199 (N.D.
8 Cal. 1998).

9 **VII. RESERVATION OF RIGHTS AND REQUEST FOR ADDITIONAL**
10 **BRIEFING IF NECESSARY**

11 37. By removing this matter, Defendants do not waive any rights they
12 may have. To the contrary, Defendants expressly preserve all rights and objections
13 including, without limitation, all available arguments and affirmative defenses
14 permitted pursuant to Rule 12 of the Federal Rules of Civil Procedure. Defendants
15 do not waive any personal jurisdiction defense, nor do they concede that class
16 certification is appropriate or that Plaintiff is entitled to any recovery whatsoever.
17 "The amount in controversy is simply an estimate of the total amount in dispute,
18 not a prospective assessment of defendant's liability." *Lewis v. Verizon*
19 *Commc'ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010).

20 38. In the event that Plaintiff files a request to remand, or the Court
21 considers remand *sua sponte*, Defendants respectfully request the opportunity to
22 submit additional argument and/or evidence in support of removal.

23 **VIII. CONCLUSION**

24 39. This Notice of Removal is signed pursuant to Rule 11 of the Federal
25 Rules of Civil Procedure. See 28 U.S.C. § 1446(a).

26 40. Defendants hereby remove the above-captioned action from the
27 Superior Court of California, County of Merced, to the United States District Court
28 for the Eastern District of California.

1 Dated: July 9, 2019

MAYER BROWN LLP
A. John P. Mancini
Carmine R. Zarlenga
John Nadolenco

4 by: /s/John Nadolenco
John Nadolenco

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