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TRUSTED MEDIA BRANDS, INC.  
7

8 **IN THE UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 DANE TOVEY, individually and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 TRUSTED MEDIA BRANDS, INC., a  
16 Delaware corporation; and DOES 1-50,  
inclusive,

17 Defendants.  
18

CASE NO.: '19CV1643 AJB WVG

**NOTICE OF REMOVAL OF  
ACTION (28 U.S.C. §§ 1332, 1441,  
1446, 1453)**

19 TO THE PLAINTIFF, HIS ATTORNEY, AND THE ABOVE-CAPTIONED  
20 COURT:

21 Please take notice that defendant Trusted Media Brands, Inc. (“Defendant”) removes this action from the Superior Court of the State of California for the County of San Diego, where it is now pending, to the United States District Court for the Southern District of California. Defendant removes this case based on diversity jurisdiction under 28 U.S.C. §§ 1332, 1441, 1446, and 1453. The Court has subject matter jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”), codified in part at 28 U.S.C. §§ 1332 and 1453.  
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BAKER & HOSTETLER LLP  
ATTORNEYS AT LAW  
CLEVELAND

**BACKGROUND**

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2 1. On or about July 26, 2019, Plaintiff Dane Tovey filed a complaint  
3 (“Complaint”) in the Superior Court of San Diego, entitled *Tovey v. Trusted Media*  
4 *Brands, Inc.*, Case No. 37-2019-00038992-CU-BT-CTL.

5 2. The Complaint, which is styled as a putative class action, alleges three  
6 causes of action, including violations of the California Consumer Legal Remedies  
7 Act and California’s Unfair Competition law. (Compl. ¶¶ 28-49.) Plaintiff bases  
8 his claims on Defendant’s alleged violation of California’s Automatic Renewal Law,  
9 California Business and Professions Code § 17600 *et seq.* (*Id.* ¶¶ 10-20.)

10 3. Plaintiff served Defendant with the summons and Complaint on August  
11 1, 2019. A copy of the proof of service is attached as Exhibit A.

12 4. A copy of all other documents included on the state-court docket is  
13 attached as Exhibit B.

14 5. Defendant is also aware that the Superior Court has calendared a case  
15 management conference for December 27, 2019.

16 6. Defendant is not aware of the filing of any other process or pleading.

17 7. This Notice of Removal is timely because the Defendant filed it within  
18 thirty days of service of the summons and Complaint. *See* 28 U.S.C. § 1446(b).

19 8. Defendant will serve Plaintiff, through counsel, with this Notice of  
20 Removal and all documents filed in support as required under 28 U.S.C. § 1446(d).

21 9. Removal to this district is proper under 28 U.S.C. §§ 1441(a) and  
22 1446(a) because the state court action was filed in this district.

23 10. Defendant will contemporaneously file a copy of this notice and related  
24 documents with the clerk of the Superior Court under 28 U.S.C. § 1446(d).

25 **REMOVAL BASED ON CAFA JURISDICTION**

26 11. Under CAFA, a district court shall have original jurisdiction over any  
27 civil action styled as a class action in which: (1) the number of members of the  
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1 proposed plaintiff class is not less than one hundred, in the aggregate; (2) “the matter  
2 in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and  
3 costs”; and (3) “any member of a class of plaintiffs is a citizen of a State different  
4 from any defendant.” 28 U.S.C. §§ 1332(d)(2) & (d)(5). If a state court putative  
5 class action meets all three requirements, the defendant may remove it to federal  
6 court. 28 U.S.C. § 1441(a) (“[A]ny civil action brought in a State court of which the  
7 district courts of the United States have original jurisdiction, may be removed by the  
8 defendant[.]”).

9 12. This notice need only include “a short and plain statement of the  
10 grounds for removal.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.  
11 Ct. 547, 551 (2014).

12 **A. The Proposed Class Consists of at least 100 Members.**

13 13. Plaintiff seeks to certify a class defined as: “All individuals in  
14 California who, within the applicable limitations period, were enrolled by  
15 Defendants in an automatic renewal or a continuous service program. Excluded from  
16 the Class are all employees of Defendants, all employees of Plaintiff’s counsel, and  
17 the judicial officers to whom this case is assigned.” (Compl. ¶ 21.)

18 14. Plaintiff “alleges that the Class consists of at least 100 members.” (*Id.*  
19 ¶ 24.) Were the class to be certified as sought by plaintiff, it would exceed 100  
20 members.

21 15. Accordingly, CAFA’s first requirement is satisfied.

22 **B. The Amount in Controversy Exceeds \$5 Million.**

23 16. Plaintiff’s Complaint does not plead a specific amount of damages.  
24 Accordingly, Defendant “need only include a plausible allegation that the amount in  
25 controversy exceeds the jurisdictional threshold[.]” *Varsam v. Lab Corp. of Am.*, No  
26 14CV2719 BTM JMA, 2015 WL 4199287, at \*1 (S.D. Cal. July 13, 2015). Removal  
27 is proper so long as Defendant establishes by a preponderance of the evidence that  
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1 Plaintiff demands more than \$5 million in damages in the aggregate for himself and  
2 the putative class. *See Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 683 (9th  
3 Cir. 2006) (“Where the complaint does not specify the amount of damages sought,  
4 the removing defendant must prove by a preponderance of the evidence that the  
5 amount in controversy requirement has been met.”). Defendant’s burden of proof  
6 on removal “is not daunting, as courts recognize that . . . a removing defendant is  
7 *not* obligated to research, state, and prove the plaintiff’s claims for damages.” *Korn*  
8 *v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1204–05 (E.D. Cal. 2008)  
9 (emphasis in original) (internal quotations omitted).

10 17. “In measuring the amount in controversy, a court must assume that the  
11 allegations of the complaint are true and that a jury will return a verdict for the  
12 plaintiff on all claims made in the complaint.” *Korn*, 536 F. Supp. 2d at 1205. “The  
13 ultimate inquiry is what amount is put ‘in controversy’ by the plaintiff’s complaint,  
14 not what a defendant will *actually* owe.” *Id.* (emphasis in original); *accord Deehan*  
15 *v. Amerigas Partners, L.P.*, No. 08cv1009 BTM (JMA), 2008 WL 4104475, at \*2  
16 (S.D. Cal. Sept. 2, 2008); *Muniz v. Pilot Travel Centers LLC*, No. CIV. S-07-0325  
17 FCD EFB, 2007 WL 1302504, at \*3 (E.D. Cal. May 1, 2007).

18 18. In the Complaint, Plaintiff seeks damages, injunctive relief, and  
19 attorneys’ fees and costs. (Compl. Prayer for Relief ¶¶ 1-10.) Plaintiff’s request for  
20 damages and attorneys’ fees, exclusive of the cost of compliance with the injunction  
21 he requests, exceeds the \$5 million statutory threshold.

22 19. With respect to damages, Plaintiff seeks “restitution of all amounts that  
23 Defendants charged or caused to be charged to Plaintiff’s and Class members’ credit  
24 cards, debit cards, or third-party payment accounts during the four years preceding  
25 the commencement of this action[.]” (*Id.* ¶ 31.) Moreover, Plaintiff defines the class  
26 as “[a]ll individuals in California who . . . were enrolled by defendants in an  
27 automatic renewal program or a continuous service program.” (*Id.* ¶ 21.)  
28

1           20. As pled by Plaintiff, the Complaint assumes a 100% violation rate and  
2 seeks a 100% refund rate for all amounts collected by defendants on automatic  
3 renewal and continuous service programs for the four years preceding filing of the  
4 Complaint and continuing into the future. (*Id.* ¶¶ 21, 31.) *See Muniz*, 2007 WL  
5 1302504, at \*4 (permitting a defendant to utilize a 100% violation rate when  
6 calculating amount in controversy where plaintiff did not include “fact-specific  
7 allegations that would result in a putative class or violation rate that is discernibly  
8 smaller than 100%”).

9           21. In addition to damages, the attorneys’ fees Plaintiff seeks must be  
10 considered when calculating the amount in controversy under CAFA. *See Galt G/S*  
11 *v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (court must consider  
12 attorneys’ fees in determining jurisdictional threshold under CAFA); *Lowdermilk v.*  
13 *U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 1000 (9th Cir. 2007) (“We have held that  
14 attorneys’ fees were properly included in the amount in controversy in a class  
15 action.”), *overruled on other grounds, Rodriguez v. AT&T Mobility Servs. LLC*, 728  
16 F.3d 975, 977 (9th Cir. 2013); *Yeroushalmi v. Blockbuster, Inc.*, No. CV 05-225-  
17 AHM (RCX), 2005 WL 2083008, at \*3, \*5 & n.4 (C.D. Cal. July 11, 2005) (finding  
18 amount in controversy satisfied based on potential damages and attorneys’ fees  
19 award and cost of injunctive relief). Here, Plaintiff requests attorneys’ fees pursuant  
20 to California Civil Code § 1780(e). (Compl. Prayer for Relief ¶ 4.)

21           22. Courts will often look to fee awards in similar cases to determine the  
22 appropriate measure of attorneys’ fees when evaluating the amount in controversy.  
23 *See, e.g., Fefferman v. Dr. Pepper Snapple Grp., Inc.*, No. 313CV00160HKSC, 2013  
24 WL 12114486, at \*4 (S.D. Cal. Mar. 12, 2013) (denying motion to remand).  
25 Relevant here, counsel in cases implicating California’s auto-renewal law received  
26 \$1.6 million in attorneys’ fees in *Noll v. eBay, Inc.*, 309 F.R.D. 593, 612 (N.D. Cal.  
27

1 2015) and \$2.3 million in *Williamson v. McAfee, Inc.*, No. 5:14-CV-00158-EJD,  
 2 2017 WL 6033070, at \*2 (N.D. Cal. Feb. 3, 2017).

3 23. Here, if Plaintiff succeeds in his request for restitution of the monies  
 4 that Plaintiff and Class members paid to Defendant for automatically renewing or  
 5 continuous-service products during the four years preceding Plaintiff's lawsuit, and  
 6 if the Court were to award him even a fraction of the attorneys' fees awarded in *Noll*  
 7 or *Williamson*, Plaintiff would receive more than \$5 million.

8 24. Further, Defendant's cost of compliance in connection with Plaintiff's  
 9 request for injunctive relief adds to that amount. *Fefferman*, 2013 WL 12114486, at  
 10 \*4 (amount in controversy in class actions requesting injunction may be determined  
 11 by cost of compliance); *Bayol v. Zipcar, Inc.*, 2015 WL 4931756, at \*10 (N.D. Cal.  
 12 Aug. 18, 2015) ("[T]he amount in controversy includes the value of injunctive relief.  
 13 . . . [A] defendant's aggregate cost of compliance with an injunction is appropriately  
 14 counted toward the amount in controversy.").

15 25. Were Defendant to be ordered to comply with Plaintiff's request for  
 16 injunctive relief, Defendant would incur substantial costs. Indeed, complying with  
 17 Plaintiff's request for injunctive relief would interrupt Defendant's business in  
 18 California (and likely elsewhere), resulting in lost income and profits and further  
 19 require Defendant to revise all of its advertising and campaign and materials and  
 20 customer processes.

21 26. Given Plaintiff's request for damages and an award of attorneys' fees,  
 22 and the cost of compliance with the injunction Plaintiff seeks, the amount in  
 23 controversy exceeds \$5 million.

24 **C. The Parties are Citizens of Different States.**

25 27. Plaintiff alleges that he resides in San Diego County. (Compl. ¶ 2.)

26 28. As alleged by Plaintiff, Defendant is a corporation organized and  
 27 existing under the laws of Delaware. (*Id.* ¶ 3.)



1 Dated: August 29, 2019

Respectfully submitted,

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3  
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