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7

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 CHRISTINA WEBB, on behalf of
herself, all others similarly situated, and
12 the general public,

13 Plaintiff,

14 v.

15 TRADER JOE’S COMPANY,

16 Defendant.
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19
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Case No. **'19CV1587 CAB WVG**

[San Diego Superior Court Case No.
37-2019-00035568-CU-BT-CTL]

**DEFENDANT TRADER JOE’S
COMPANY’S NOTICE OF
REMOVAL OF ACTION TO
FEDERAL COURT**

CLASS ACTION

JURY TRIAL DEMANDED

Action Filed: July 10, 2019

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1 PLEASE TAKE NOTICE that Defendant Trader Joe’s Company (“Trader
2 Joe’s”) hereby removes this action from the Superior Court of the State of
3 California for the County of San Diego to the United States District Court for the
4 Southern District of California, pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446, and
5 1453, on the grounds that federal jurisdiction exists under the Class Action Fairness
6 Act (“CAFA”). Here, the proposed plaintiff class consists of over 100 members,
7 minimal diversity exists because Trader Joe’s is a citizen of California and the
8 putative class includes at least one citizen of another state, and the amount in
9 controversy exceeds \$5,000,000. Additionally, this Notice of Removal is timely and
10 fulfills all procedural requirements.

11 **I. PROCEDURAL HISTORY**

12 1. On July 10, 2019, Plaintiff Christina Webb (“Plaintiff”), individually
13 and on behalf of all others similarly situated, filed this action, captioned *Christina*
14 *Webb v. Trader Joe’s Company*, Case Number 37-2019-00035568-CU-BT-CTL, in
15 the Superior Court of the State of California for the County of San Diego (the
16 “Superior Court Action”)¹.

17 2. Pursuant to 28 U.S.C. § 1446(a), Trader Joe’s has attached, as Exhibit
18 1, a copy of all process, pleadings, and orders served upon Trader Joe’s or
19 otherwise filed in the Superior Court Action. True and correct copies of Plaintiff’s
20 Summons and Class Action Complaint (the “Complaint”) are included in Exhibit 1.

21 3. Plaintiff served Trader Joe’s with the Summons and Complaint in the
22 Superior Court Action on July 24, 2019. *See* Ex. 1.

23 4. The Complaint asserts claims against Trader Joe’s relating to its
24 marketing and sale of raw poultry products, including the Trader Joe’s All Natural
25 Boneless Chicken Breasts, Trader Joe’s All Natural Chicken Thighs, and Trader

26 _____
27 ¹ Prior to filing the Superior Court Action, on June 26, 2019, Plaintiff served a CLRA demand
28 letter on Trader Joe’s (“CLRA Demand Letter”). A true and correct copy of the CLRA Demand
Letter is attached as Exhibit 2.

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1 Joe’s All Natural Chicken Wings (hereinafter the “Products”). Compl. ¶¶ 5-6.

2 5. Plaintiff alleges that Trader Joe’s misleadingly labels the Products
3 because the Products allegedly contain more retained water than disclosed on the
4 Products’ label and less poultry product than stated on the net weight label. Compl.
5 ¶ 7. Based on these allegations, Plaintiff and the putative class assert claims for
6 alleged violations of (1) Consumers Legal Remedies Act; (2) California Unfair
7 Competition Law; (3) False Advertising Law; (4) Breach of Express Warranties; (5)
8 Breach of Implied Warranties; (6) Theft by False Pretenses; (7) Unjust Enrichment.
9 *Id.* ¶¶ 129-251.

10 6. Plaintiff purports to bring this action on behalf of a nationwide class of
11 “[a]ll U.S. citizens who purchased the Products in their respective state of
12 citizenship on or after January 1, 2012 and until the Class is certified, for personal
13 use and not for resale [exclusions omitted]” (the “Nationwide Class”); and a
14 subclass of “[a]ll California citizens who purchased the Product in California on or
15 after January 1, 2012 and until the Class is certified, for personal use and not for
16 resale [exclusions omitted].” (the “California Subclass”). *Id.* ¶¶ 118-119.

17 7. The Complaint seeks declaratory relief, injunctive relief, damages,
18 restitution, disgorgement, punitive damages, and recovery of costs and reasonable
19 attorneys’ fees. *Id.*, at 33-34, Prayer For Relief.

20 8. On August 15, 2019, Trader Joe’s filed its Answer to the Complaint in
21 the Superior Court Action. *See* Ex. 1, Trader Joe’s Answer to Class Action
22 Complaint.

23 **II. GROUND FOR REMOVAL**

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

26 10. This Court possesses original jurisdiction under the Class Action
27 Fairness Act, “CAFA,” 28 U.S.C. §§ 1332(d), 1453. CAFA extends federal
28

1 jurisdiction over class actions where: (1) any member of the proposed class is a
2 citizen of a state different from any defendant (*i.e.*, minimal diversity exists); (2)
3 the putative class consists of more than 100 members; and (3) the amount in
4 controversy is \$5 million or more, aggregating all claims and exclusive of interests
5 and costs. *See* 28 U.S.C. §§ 1332(d)(2), 1332 (d)(5)(B). Each of these
6 requirements is met here for the reasons stated below.

7 11. This Action meets the CAFA definition of a class action, which
8 includes “any civil action filed under rule 23 of the Federal Rules of Civil
9 Procedure or similar State statute or rule of judicial procedure authorizing an action
10 to be brought by 1 or more representative persons as a class action” *See* 28 U.S.C
11 §1332(d)(1)(B); Compl. ¶ 117.²

12 **A. Minimal Diversity**

13 12. Minimal diversity exists between Defendant and the members of the
14 putative class under 28 U.S.C. § 1332(d)(2)(A). Under CAFA, minimal diversity is
15 met if “any member of a class of plaintiffs is a citizen of a State different from any
16 defendant.” 28 U.S.C. § 1332(d)(2)(A).

17 13. Trader Joe’s is a citizen of California, because its headquarters and
18 principal place of business is in California. Compl. ¶ 16 (alleging Defendant to be
19 “a California corporation with its headquarters and principal place of business . . .
20 in California”); *See* 28 U.S.C. §1332(c)(1) (deeming the citizenship of a
21 corporation to be where “it has been incorporated and . . . where it has its principal
22 place of business.”); *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) (concluding
23 that the “principal place of business” is the “nerve center . . . where the corporation
24 maintains its headquarters”).

25 14. Plaintiff brings this action on behalf of a nationwide class of “All U.S.

26 ² Despite filing the Superior Court Action in California state court, the Plaintiff’s Complaint
27 purports to bring the action pursuant to “Federal Rules of Civil Procedure 23(a), 23(b)(2), and
28 23(b)(3).” Compl. ¶ 117.

1 citizens who purchased the Products in their respective state of citizenship . . .”
2 Compl. ¶ 118. The Products are sold throughout the United States, including in
3 states other than California. Thus, at least one member of the proposed class is
4 from a state other than California, thereby satisfying minimal diversity for purposes
5 of CAFA jurisdiction. *See* 28 U.S.C. § 1332(d)(2)(A).

6 **B. Number of Class Members**

7 15. Plaintiff alleges that the number of class members is “at a minimum in
8 the tens of thousands.” *Id.* at ¶ 122. Therefore, CAFA’s requirement that the
9 putative class consists of more than 100 members is satisfied. *See* 28 U.S.C. §
10 1332(d)(5)(B).

11 **C. Amount in Controversy**

12 16. The amount in controversy in this action satisfies CAFA’s \$5,000,000
13 jurisdictional threshold. Under CAFA, the claims of all class members are
14 aggregated to determine if the amount in controversy exceeds the “sum or value of
15 \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). “The amount
16 in controversy is simply an estimate of the total amount in dispute, not a
17 prospective assessment of defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*,
18 627 F.3d 395, 400 (9th Cir. 2010). To determine the amount in controversy, courts
19 first look to the complaint and “the sum claimed by the plaintiff controls if the
20 claim is apparently made in good faith.” *Id.* (citation omitted). Accordingly, “in
21 assessing the amount in controversy, a court must assume that the allegations of the
22 complaint are true and assume that a jury will return a verdict for the plaintiff on all
23 claims made in the complaint.” *Campbell v. Vitran Express, Inc.*, 471 F. App’x
24 646, 648 (9th Cir. 2012) (citation omitted). Where a complaint does not specify the
25 amount of damages sought, the removing defendant need only establish that it is
26 more likely than not that the amount in controversy requirement has been met.
27 *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 683 (9th Cir. 2006); *see also Dart*

1 *Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 81 (2014) (“a
2 defendant’s notice of removal need include only a plausible allegation that the
3 amount in controversy exceeds the jurisdictional threshold.”). “The removing
4 party’s burden is ‘not daunting,’ and defendants are not obligated to ‘research, state,
5 and prove the plaintiff’s claims for damages.” *Behrazfar v. Unisys Corp.*, 687 F.
6 Supp. 2d 999, 1004 (C.D. Cal. 2009).

7 17. While Trader Joe’s contends that Plaintiff’s allegations and claims are
8 without merit, and that neither the Plaintiff nor the putative class members are
9 entitled to any relief, the amount in controversy here exceeds the jurisdictional
10 requirement of \$5,000,000. Here, Plaintiff seeks relief on behalf a Nationwide
11 Class and a California Subclass who purchased the Products between January 1,
12 2012 and when the putative class is certified. Compl. ¶¶ 118-19. Plaintiff and the
13 putative class seek, *inter alia*, “[a]n order requiring Defendant to pay restitution to
14 all Class members” (Compl. ¶ 33), “[a]n order requiring Defendant to disgorge to
15 the Class any benefits received from the Class and any unjust enrichment realized
16 as a result of Defendant’s improper conduct” (Compl. ¶ 34), and a “refund” for
17 “California consumers who purchased the [challenged products].” (CLRA Demand
18 Letter at 4). Based on Trader Joe’s records, gross nationwide sales of the Products
19 during the putative class period were in excess of \$5,000,000. In addition, Plaintiff
20 seeks to recover her attorneys’ fees, which contribute to the alleged amount in
21 controversy. *Id.* at 33-34 (Prayer for Relief); *Kroske v. US. Bank Corp.*, 432 F.3d
22 976, 980 (9th Cir. 2005) (including attorney’s fees in amount in controversy); *Galt*
23 *G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155– 56 (9th Cir. 1998) (including
24 attorneys’ fees in calculating the amount in controversy requirement for traditional
25 diversity jurisdiction).

26 18. Plaintiff also seeks punitive damages, which are properly included in
27 the amount in controversy. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir.

1 2001) (“It is well established that punitive damages are part of the amount in
2 controversy in a civil action.”).

3 19. Additionally, Plaintiff also seeks injunctive relief “enjoining
4 Defendant’s unlawful, unfair, and unconscionable practices.” Compl. at 33. The
5 injunctive relief that Plaintiff seeks include (1) revisions to the Product labels; (2)
6 change in manufacturing process to “reduce the amount of retained water within the
7 Products”; (3) a recall of all Products; and (4) corrective advertising campaign.
8 CLRA Demand Letter, at 4. *See, e.g., Bayol v. ZipCar, Inc.*, 2015 WL 4931756, at
9 *10 (N.D. Cal. Aug. 18, 2015) (“[A] defendant’s aggregate cost of compliance with
10 an injunction is appropriately counted toward the amount in controversy.”).

11 20. Accordingly, while Trader Joe’s denies that Plaintiff and any putative
12 class is entitled to relief, the amount in controversy is in excess of the jurisdictional
13 requirement of \$5,000,000. *See Campbell*, 471 F. App’x at 648 (in determining the
14 amount in controversy, “a court must assume that the allegations in the complaint
15 are true and assume that a jury will return a verdict for the plaintiff on all claims
16 made in the complaint.”)

17 **D. No Exception to CAFA Applies**

18 21. Although CAFA contains several exceptions, which, where applicable
19 may prevent the Court from exercising jurisdiction under CAFA, those exceptions
20 do not impose additional jurisdictional requirements. Instead, after an action is
21 removed, Plaintiff bears the burden of showing that an exception to CAFA
22 jurisdiction applies. *See, e.g., Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021-
23 22 (9th Cir. 2007) (“[T]he provisions set forth in §§ 1332(d)(3) and (4) are not part
24 of the prima facie case for establishing minimal diversity jurisdiction under
25 CAFA, but, instead, are exceptions to jurisdiction.”). In any event and despite
26 Plaintiffs conclusory allegations in her complaint, no “local controversy exception”
27 applies here because she seeks to represent a nationwide class of all “all U.S.

1 citizens who purchased the Products in their respective state . . .” Compl. ¶ 118.

2 **III. ALL OTHER STATUTORY REQUIREMENTS FOR REMOVAL**
3 **HAVE BEEN SATISFIED**

4 22. This Notice of Removal is properly filed in the United States District
5 Court for the Southern District of California, because the Superior Court of the
6 State of California for the County of San Diego is located in this judicial district.
7 *See* 28 U.S.C. § 1441(a).

8 23. This Notice of Removal is timely. Neither the Complaint nor the
9 CLRA Demand Letter expressly allege a specific amount in controversy. In this
10 circumstance, the thirty day removal period under § 1446(b) does not apply. *See*
11 *Roth v. CHA Hollywood Med. Ctr., L.P.*, 720 F.3d 1121, 1125 (9th Cir. 2013)
12 (holding that “§ § 1441 and 1446, read together, permit a defendant to remove
13 outside the two thirty-day periods on the basis of its own information, provided that
14 it has not run afoul of either of the thirty-day deadlines.”). However, based on
15 Trader’s Joe’s records, the amount in controversy is in excess of \$5,000,000.

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

18 25. There are no other named defendants in this action other than Trader
19 Joe’s, thus no consent to removal is necessary.

20 26. No previous application has been made for the relief requested herein.

21 27. Pursuant to 28 U.S.C. § 1446(a), a copy of processes, pleadings and
22 orders served upon Defendant in this action, which include the Complaint and
23 Summons, and Answer are attached. *See* Ex. 1.

24 28. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will
25 be promptly served on the Plaintiff and promptly filed with the clerk of the Superior
26 Court of the State of California for the County of San Diego.

27 29. No admission of fact, law, or liability is intended by this Notice of
28

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1 Removal, and Defendant expressly reserves all defenses, counterclaims, and
2 motions otherwise available to it.

3 **IV. CONCLUSION**

4 For the foregoing reasons, this action is within this Court’s original
5 jurisdiction and meets all requirements for removal, such that removal is proper
6 under 28 U.S.C. §§ 1332(d), 1441(a), and 1446. Accordingly, Trader Joe’s
7 respectfully removes this action from the Superior Court for the State of California,
8 County of San Diego, to this Court.

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10 Dated: August_23, 2019

VENABLE LLP

11
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