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 20 BLUE APRON, LLC

21 UNITED STATES DISTRICT COURT
 22 CENTRAL DISTRICT OF CALIFORNIA

23 KEEFE FERRANDINI, an
 24 individual; on behalf of herself and
 25 all others similarly situated,

26 Plaintiff,

27 vs.

28 BLUE APRON, LLC; and DOES 1
 through 10, inclusive,

Defendant.

Case No.

[Los Angeles County Superior Court,
 Case No. 19STCV32164]

**NOTICE OF REMOVAL BY
 DEFENDANT BLUE APRON, LLC,
 PURSUANT TO 28 U.S.C. § 1332(d)**

**[DIVERSITY JURISDICTION
 UNDER CLASS ACTION FAIRNESS
 ACT]**

Complaint filed: September 11, 2019
 Date Removed: October 23, 2019

1 PLEASE TAKE NOTICE that Defendant Blue Apron, LLC (“Blue Apron”)
2 hereby removes the above-captioned state court action from Los Angeles County
3 Superior Court, Case No. 19-ST-CV-32164 (the “Action”), to this Court pursuant to
4 28 U.S.C. § § 1441 and 1446. The grounds for removal are as follows:
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6 1. A defendant has a right of removal where an action is brought in a state
7 court over which the district court has original jurisdiction.
8

9 2. This Court has original jurisdiction over this action pursuant to 28 U.S.C.
10 § 1332(d), and the action may be removed to this Court under 28 U.S.C. § 1441
11 because (1) the Action is brought on behalf of a putative class consisting of more than
12 100 members; (2) minimal diversity exists between the parties; and (3) the amount in
13 controversy exceeds \$5,000,000.
14

15 3. Venue is proper in this district because Los Angeles County Superior
16 Court is within the Central District of California, and Blue Apron has complied with
17 the procedural requirements of 28 U.S.C. § 1446.
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19
20 **BACKGROUND**

21 4. On September 23, 2019, Plaintiff served a Summons and Complaint on
22 Blue Apron. A true and correct copy of that Summons and Complaint is attached
23 hereto as Exhibit A.
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25 5. Plaintiff alleges in her Complaint that Blue Apron misrepresented that its
26 meals delivered to its subscribers contain “responsibly sourced, quality ingredients,”
27 “higher-quality ingredients,” or “highest-quality ingredients” because one of the meals
28

1 she received included an ingredient that later was the subject of a voluntary recall
2 “due to the potential presence of Salmonella bacteria.” (Compl. ¶¶ 10, 13–14.)

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4 6. Plaintiff brings this Action on behalf of herself and a proposed class
5 defined to include “[a]ll persons or entities who purchased Defendant’s Salmonella
6 contaminated food in California.” (*Id.* ¶ 17.)

7
8 7. Plaintiff asserts claims under California’s Consumer Legal Remedies
9 Act, Cal. Civ. Code § 1750 *et seq.*; Song-Beverly Consumer Warranty Act, Cal. Civ.
10 Code §§ 1792 and 1791.1; and Unfair Competition Law, Cal. Bus. & Prof. Code
11 § 17200 *et seq.* (Compl. ¶¶ 26–45.) She seeks compensatory damages and/or
12 restitution, punitive damages, injunctive relief, and attorneys’ fees. (*Id.* at 9 (Prayer
13 for Relief).)

14
15 **REMOVAL IS PROPER IN THIS CASE**

16
17 **I. THE COURT HAS ORIGINAL JURISDICTION PURSUANT TO CAFA,**
18 **28 U.S.C. § 1332(D).**

19 8. Under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d),
20 federal district courts have original jurisdiction over any putative class action in which
21 (1) there are at least 100 putative class members, (2) any putative class member is a
22 citizen of a state different from any defendant, and (3) the aggregated claims of the
23 members of the putative class exceed \$5 million. *See Jordan v. Nationstar Mortg.,*
24 *LLC*, 781 F.3d 1178, 1182 (9th Cir. 2015); 28 U.S.C. § 1332(d). Here, all three
25 requirements are met.
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1 **a. The putative class consists of more than 100 members.**

2 9. CAFA defines “class action” as “any civil action filed under rule 23 of
3 the Rules of Civil Procedure or similar state statute or rule of judicial procedure
4 authorizing an action to be brought by 1 or more representative persons as a class
5 action.” 28 U.S.C. § 1332(d)(1)(B).
6

7 10. Here, the Complaint is titled “Class Action Complaint” and is brought by
8 Plaintiff on behalf of herself and “all others similarly situated.” (Compl. at 1.) Under
9 the heading “Numerosity of the Class,” Plaintiff does not estimate the number of class
10 members but alleges that the class members are “so numerous that joinder is
11 impracticable.” (*Id.* ¶ 20.)
12

13 11. Blue Apron sold meal kits containing the recalled tahini product to more
14 than 100 customers in California. (*See* Declaration of John O’Hara in Support of
15 Notice of Removal ¶ 4.)
16

17 12. By a preponderance of the evidence, the putative class consists of more
18 than 100 members.
19

20 **b. Minimal diversity exists between the parties.**

21 13. CAFA requires that only “minimal diversity” exist; that is, the
22 citizenship of at least one putative class member must differ from that of at least one
23 defendant. *See* 28 U.S.C. §§ 1332(d)(2)(A).
24

25 14. The Complaint alleges that Plaintiff is a citizen of California and a
26 resident of Los Angeles County. (Compl. ¶ 6.) Plaintiff both resides in California
27
28

1 and, upon information and belief, has the intention to remain there. Plaintiff brings
2 this instant class action on behalf of all persons purchased Defendant's Salmonella
3 contaminated food in California," (*id.* ¶ 17), further establishing her California
4 residence. Because Plaintiff is domiciled in California, she is a citizen of California
5 for purposes of determining diversity.
6

7 15. For purposes of diversity of citizenship, a business organized as a
8 corporation is "deemed to be a citizen of a State by which it has been incorporated"
9 and also a citizen "of the State where it has its principal place of business."
10 *Wachovia Bank v. Schmidt*, 546 U.S. 303, 306 (2006) (citing U.S.C. 28 § 1332(c)(1)).
11
12 A business organized as an unincorporated limited liability corporation is deemed to
13 be a citizen of the State of each of its members. *See Johnson v. Columbia Properties*
14 *Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) ("[A]n LLC is a citizen of every
15 state of which its owners/members are citizens."); *Americold Realty Trust v. Conagra*
16 *Foods, Inc.*, 136 S. Ct. 1012, 1016 (2016) ("So long as ... an entity is unincorporated,
17 we apply our 'oft-repeated rule' that it possesses the citizenship of all its members.").

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21 16. Defendant Blue Apron, LLC is a limited liability company whose sole
22 member is Blue Apron Holdings, Inc. Blue Apron Holdings, Inc. is a corporation
23 organized and existing under the laws of the State of Delaware and maintains its
24 principal place of business in the State of New York. Pursuant to 28 U.S.C.
25 § 1332(c)(1), Blue Apron Holdings, Inc. is deemed a citizen of both Delaware and
26 New York. Because a limited liability corporation is deemed to be a citizen of the
27
28

1 State of each of its members, Blue Apron LLC is deemed a citizen of both Delaware
2 and New York.

3 17. Defendants “Does 1 through 10” are fictitious names and are thus
4 disregarded for purposes of determining diversity. 28 U.S.C. § 1441(b)(1).
5

6 18. CAFA’s minimal diversity requirement is satisfied because Plaintiff and
7 Blue Apron are citizens of different “States.” *See* 28 U.S.C. §§ 1332(d)(2)(A).
8

9 **c. The amount in controversy requirement is satisfied.**

10 19. This Action meets CAFA’s amount-in-controversy requirement because
11 Plaintiff’s Complaint seeks relief that, in the aggregate, exceeds CAFA’s \$5 million
12 jurisdictional threshold.
13

14 20. Under CAFA, the “claims of the individual class members must be
15 aggregated.” 28 U.S.C. § 1332(d)(6). “[T]he [CAFA] statute tells the District Court
16 to determine whether it has jurisdiction by adding up the value of the claim of each
17 person who falls within the . . . proposed class and determine whether the resulting
18 sum exceeds \$5 million.” *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1348
19 (2013). If the Court is uncertain whether the amount in controversy exceeds \$5
20 million, then “the court should err in favor of exercising jurisdiction over the case.” S.
21 Rep. No. 109-14, at 42 (2005).
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23
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25 21. A notice of removal “need include only a plausible allegation that the
26 amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin*
27 *Operating Co. LLC v. Owens*, 135 S. Ct. 547, 554 (2014). Evidence is only required
28

1 if “the plaintiff contests, or the court questions, the defendant’s allegation.” *Id.*

2 22. Although the Complaint does not demand a specific dollar amount in
3 damages, the preponderance of the evidence demonstrates that the matter in
4 controversy with respect to aggregated claims of the proposed class exceeds
5 \$5,000,000. *See* 28 U.S.C. § 1446(c)(2)(B) (requisite amount in controversy may be
6 demonstrated by “preponderance of the evidence”).
7
8

9 23. Plaintiff seeks restitution of amounts California consumers paid to Blue
10 Apron, “including but not limited to, the cost of the food, the cost of replacement,
11 and/or medical expenses.” (Compl. ¶ 39; *id.* at 9–10 (Prayer for Relief).) As
12 described in the O’Hara Declaration filed in support of this Notice of Removal, the
13 sales of Blue Apron meals in California that contained the recalled tahini product
14 exceeded \$1.5 million. (*See* O’Hara Decl. ¶ 4.) Thus, the restitution amount in
15 controversy exceeds \$1.5 million.
16
17

18 24. Plaintiff also seeks, on behalf of herself and the proposed class,
19 compensatory damages such as cost of replacement and/or medical expenses, punitive
20 damages, injunctive relief, and attorneys’ fees (which Plaintiff may recover if she
21 prevails on either her CLRA or Song-Beverly Consumer Warranty Act claims, *see*
22 Cal. Civ. Code § 1780(e); Cal. Civ. Code § 1794(d)). (Compl. at 9–10.) Each of
23 these amounts should be considered with respect to the amount in controversy.
24
25 *Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 793 (9th Cir.
26 2018) (“Among other items, the amount in controversy includes damages
27
28

1 (compensatory, punitive, or otherwise), the costs of complying with an injunction, and
2 attorneys' fees awarded under fee-shifting statutes or contract.”).

3 25. Replacement food would likely equal the cost of the Blue Apron meals,
4 and medical expenses would also be substantial. Thus, the compensatory damages at
5 issue equal (if not exceed) the restitution amount, bringing the total amount in
6 controversy to at least \$3 million.
7

8 26. A punitive damages award could equal (if not exceed) the compensatory
9 damages, bringing the total amount at issue to at least \$4.5 million. *See Bayol v.*
10 *Zipcar, Inc.*, 2015 WL 4931756, at *9 (N.D. Cal. Aug. 18, 2015) (in putative
11 consumer class action alleging violations of the CLRA and UCL, using a
12 “conservative 1:1 ratio for punitive to compensatory damages, and using Zipcar’s
13 estimate of late fees collected from California residents as a conservative estimate of
14 compensatory damages,” for amount-in-controversy analysis).
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18 27. A reasonable attorneys' fee award would be 25% of the class award's
19 common fund (including restitution, compensatory and punitive damages), which
20 would bring the total amount at issue to at least \$5.6 million. *See id.* at 10 (using 25%
21 of total damages as the “benchmark estimate” of attorneys' fees for amount-in-
22 controversy analysis).
23
24

25 28. The costs of complying with an injunction, which could require Blue
26 Apron to modify its marketing, advertising, and packaging, could amount to several
27 hundred thousand dollars.
28

1 29. Together, the amounts put in controversy by Plaintiff's request for class-
2 wide restitution, compensatory damages, punitive damages, injunctive relief, and
3 attorneys' fees will, by a preponderance of the evidence, exceed \$5,000,000. *See id.*
4 (where compensatory damages were estimated at \$2.8 million, finding that addition of
5 punitive damages, attorneys' fees, and cost of injunctive relief raised total amount in
6 controversy above \$7 million). Accordingly, CAFA's amount in controversy
7 requirement is satisfied. *See* 28 U.S.C. § 1332(d)(2).
8
9

10 **d. No CAFA exceptions apply.**

11 30. This action does not fall within any exclusion to removal jurisdiction
12 under 28 U.S.C. § 1332(d) and Plaintiff has the burden of proving otherwise. *See*
13 *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007).
14

15 **II. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE**
16 **SATISFIED.**

17 31. This Notice of Removal is filed with this Court within 30 days after
18 Plaintiff served Blue Apron with the Complaint and is therefore timely pursuant to 28
19 U.S.C. § 1446(b)(1).
20

21 32. The United States District Court for the Central District of California is
22 the federal judicial district encompassing the Los Angeles County Superior Court,
23 where Plaintiff originally filed this suit, making this the proper federal district for
24 removal of this case to federal court. 28 U.S.C. § 1441(a).
25
26

27 33. Attached as Exhibit B is a copy of all process, pleadings, papers, or
28 orders that have been filed in this action in the Los Angeles County Superior Court.

1 34. Pursuant to 28 U.S.C. § 1446(d), Blue Apron will promptly file a copy of
2 this Notice of Removal with the clerk of the Los Angeles County Superior Court and
3 will serve a copy of same upon counsel for Plaintiff.
4

5 **III. NON-WAIVER OF DEFENSES.**

6 35. If any question arises as to the propriety of the removal of this action, or
7 in the event the Court considers remand *sua sponte*, Defendant requests the
8 opportunity to brief any disputed issues and to present oral argument in support of its
9 position that this action is properly removable. *See Dart Cherokee Basin Operating*
10 *Co.*, 135 S. Ct. at 554.
11

12 36. Nothing in this Notice of Removal shall be interpreted as a waiver or
13 relinquishment of Defendant's right to assert any defense or affirmative matter,
14 including, without limitation, the defenses of (a) lack of jurisdiction over the person;
15 (b) improper venue; (c) insufficiency of process; (d) insufficiency of service of
16 process; (e) improper joinder of claims and/or parties; (f) failure to state a claim; (g)
17 failure to join an indispensable party(ies); (h) lack of standing; or (i) any other
18 procedural or substantive defense available under state or federal law.
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22 37. Blue Apron reserves the right to amend or supplement this Notice of
23 Removal.
24

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1 WHEREFORE, Defendant hereby removes the above-captioned case to this Court.

2 Dated: October 23, 2019

FAEGRE BAKER DANIELS LLP

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4
5 */s/ Rita Mansuryan*

TARIFA B. LADDON

RITA MANSURYAN

7 Attorneys for Defendant

8 BLUE APRON, LLC

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