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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WEIMIN CHEN, for Himself as a Private
Attorney General, and All Others Similarly
Situated,

Plaintiff,

v.

LAMPS PLUS, INC., and DOES 1-20,
inclusive,

Case No.

CLASS ACTION

**DEFENDANT LAMPS PLUS, INC.’S
NOTICE OF REMOVAL**

[28 U.S.C. § 1332(d)(2)]

PLEASE TAKE NOTICE that Defendant Lamps Plus, Inc. (“Lamps Plus”), the defendant in the above-referenced action, which was originally commenced in the Superior Court of Washington for King County, captioned *Weimin Chen v. Lamps Plus, Inc.*, Case No. 19-2-00381-2 SEA, hereby invokes the removal jurisdiction of the United States District Court for the Western District of Washington, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, 1453 and Federal Rule of Civil Procedure, Rule 81(c), asserting original federal jurisdiction under 28 U.S.C. §§ 1332(d)(2) and 1453(b). This Court has original jurisdiction over the action pursuant to the Class Action Fairness Act of 2005 (“CAFA”) for the following reasons:

1
2
3 **I.**

4 **JURISDICTION**

5 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1332, 1441,
6 1446, and 1453. In particular, this Court has jurisdiction under CAFA, codified in part at 28
7 U.S.C. §§ 1332(d)(2) and 1453(b), because it is styled as a class action in which: (1) the number
8 of members of the proposed plaintiff class is not less than one hundred, in the aggregate; (2) the
9 matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs; and
10 (3) minimal diversity exists between the plaintiffs and defendant, i.e., any member of the class of
11 plaintiffs is a citizen of a state different from the defendant. 28 U.S.C. §§ 1332(d)(2) and (d)(4).
12 Paragraphs 3 through 25 below provide a detailed basis for this removal. Lamps Plus has also
13 satisfied all procedural requirements of 28 U.S.C. § 1446 and thus removes the action to the
14 United States District Court for the Western District of Washington, pursuant to
15 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

16 **II.**

17 **PROPER DISTRICT**

18 2. Pursuant to 28 U.S.C. § 1446(a), this case should be assigned to the Western
19 District of Washington, because the civil action on which this removal is based was filed in King
20 County, Washington.

21 **III.**

22 **STATEMENT OF THE CASE**

23 3. On January 4, 2019, Weimin Chen (“Plaintiff”) filed a class action complaint
24 (“Complaint”) alleging that Lamps Plus committed violations of Washington’s Consumer
25 Protection Act, RCW 19.86, arising from purported advertisements and statements regarding the
26 pricing of merchandise at Lamps Plus’s stores. Complaint, ¶¶ 1-76, and Prayer for Relief, pp. 24-
25.

4. Plaintiff seeks to certify a class of:

1 [a]ll persons who purchased in the State of Washington within the
2 applicable limitations period from Lamps, Plus, Inc. one or more
3 Lamps Plus proprietary and exclusive products which Lamps Plus,
Inc. advertised or promoted by displaying or otherwise
disseminating a “Compare “ or “Compare At” reference price.

4 Complaint, ¶ 77.

5 5. Plaintiff, on behalf of himself and the alleged class, seeks a judgment awarding
6 Plaintiff and the proposed Class members damages as well as “disgorgement or restitution,”
7 including “all revenues, profits and/or unjust enrichment” in the form of “actual damages . . .
8 estimated to be \$10 million” along with “additional damages up to an amount not to exceed three
9 times the actual damages . . . estimated to be \$30 million.” *Id.*, Prayer for Relief, p. 24.

10 6. Plaintiff served a copy of the Complaint upon Lamps Plus on January 8, 2019.

11 **IV.**

12 **THE REQUIREMENTS FOR REMOVAL UNDER CAFA ARE SATISFIED**

13 7. CAFA was enacted “to facilitate adjudication of certain class actions in federal
14 court.” *Dart Cherokee Basin Operating co. v. Owens*, 135 S.Ct. 547, 554 (2014). The Supreme
15 Court has held, that there is no presumption against removal of CAFA actions and the statute’s
16 provisions “should be read broadly, with a strong preference that interstate class actions should be
17 heard in a federal court if properly removed by any defendant.” *Id.*

18 8. To invoke removal jurisdiction, a defendant’s notice of removal need only include
19 “a short and plain statement of the grounds for removal.” *Dart*, 135 S.Ct. at 553. “Congress . . .
20 intended to simplify the pleading requirements for removal and to clarify that courts should apply
21 the same liberal rules [to removal allegations] that are applied to other matters of pleading.” *Id.*
22 (internal quotations omitted). In determining whether the requirements of removal have been
23 satisfied, this Court may also rely upon the allegations of Plaintiff’s Complaint, taken as true for
24 purposes of removal. *Levine v. BIC USA, Inc.*, 2007 U.S. Dist. LEXIS 60952, *16-17 (S.D. Cal.
25 Aug. 19, 2007) (applying allegations in complaint that amount in controversy did not exceed
26 \$74,999.99 as to each putative class member to determine that the \$5 million jurisdictional

1 threshold under CAFA was satisfied); *Korn v. Ralph Lauren Corp.*, 536 F.Supp.2d 1199, 1203
2 (E.D. Cal. 2008) (“plaintiff is bound by the allegations in the complaint that assert defendant’s
3 citizenship” for diversity purposes). A defendant need *not* submit evidentiary support with its
4 notice of removal. *Dart*, 135 S.Ct. at 551 (“A statement ‘short and plain’ need not contain
5 evidentiary submissions.”).

6 9. For cases involving class allegations, CAFA confers original jurisdiction on a
7 district court where (1) the number of members of the proposed plaintiff class is not less than one
8 hundred, in the aggregate; (2) the amount in controversy exceeds \$5,000,000 (exclusive of interest
9 and costs), and (3) any member of the class is a citizen of a state different from any defendant.
10 28 U.S.C. § 1332(d)(2).

11 **A. Timeliness**

12 10. Plaintiff’s Complaint was filed on January 4, 2019. Plaintiff served the summons
13 and Complaint upon Lamps Plus on January 8, 2019. Lamps Plus filed this notice within thirty
14 days of service of the summons and Complaint. Accordingly, this notice is timely filed pursuant
15 to 28 U.S.C. § 1446(b). *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 US 344, 354
16 (1999).

17 **B. Venue**

18 11. This action was originally brought in the Superior Court of Washington for King
19 County. Pursuant to 28 U.S.C. § 1441(a) removal to this District is proper because the Superior
20 Court of Washington for King County is geographically located within the boundaries of the
21 Western District of Washington.

22 **C. Plaintiff’s Case Is Styled as a Class Action**

23 12. The term “class action” is defined under the statute as “any civil action filed under
24 rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure
25 authorizing an action to be brought by 1 or more representative persons as a class action.”
26 28 U.S.C. § 1332(d)(1)(B). Plaintiff styles his Complaint as a class action. Plaintiff purports to

1 bring it “on behalf of himself and all others similarly situated,” alleging a putative class and class
2 allegations, and seeking an order certifying the proposed class. Complaint, ¶¶ 77-85; and Prayer
3 for Relief, pp. 24-25. Although Lamps Plus disputes that Plaintiff can meet the requirements
4 under Federal Rule of Civil Procedure 23 for certifying his purported class, and disputes any
5 amount owing to Plaintiff or the alleged class, this lawsuit qualifies as a “class action” under
6 CAFA.

7 **D. Minimal Diversity Exists**

8 13. Removal is proper where at least one class member is diverse from at least one
9 defendant. 28 U.S.C. § 1332(d). As alleged in the Complaint, Plaintiff resides in King County,
10 Washington. Complaint, ¶ 6.

11 14. For diversity purposes, a corporation is deemed to be a citizen of the state in which
12 it has been incorporated and the state where it has its principal place of business.
13 28 U.S.C. § 1332(c)(1). The Complaint alleges that Lamps Plus is a California corporation with
14 its principal place of business in California. Complaint, ¶ 7.

15 15. Plaintiff’s purported class includes “[a]ll persons who purchased in the State of
16 Washington within the applicable limitations period from Lamps, Plus, Inc. one or more Lamps
17 Plus proprietary and exclusive products which Lamps Plus, Inc. advertised or promoted by
18 displaying or otherwise disseminating a “Compare “ or “Compare At” reference price.”
19 Complaint, ¶ 77.

20 16. Although Plaintiff purports to assert his claims against numerous “Doe”
21 defendants, the citizenship of fictitious and unknown defendants should be disregarded for
22 purposes of establishing removal jurisdiction under 28 U.S.C. § 1332; *Fristoe v. Reynolds Metals*
23 *Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) (“unknown defendants sued as ‘Does’ need not be joined
24 in a removal petition.”). Thus, the existence of Doe defendants 1 through 20, named in Plaintiff’s
25 Complaint, does not deprive this Court of jurisdiction.

26

1 **E. The Amount in Controversy Exceeds \$5 Million**

2 17. The claims of the individual members in a class action are aggregated to determine
3 if the amount in controversy exceeds the sum or value of \$5,000,000. 28 U.S.C. § 1332(d)(6).
4 The Supreme Court recently held that where a complaint does not explicitly specify the amount in
5 controversy, a defendant’s notice of removal need include only a plausible allegation that the
6 amount in controversy exceeds the jurisdictional threshold under CAFA. *Dart*, 135 S.Ct. at 554.
7 Here, Plaintiff purports to represent a class of all Washington purchasers for the “applicable
8 limitations period” and alleges actual damages of \$10 million along with additional damages of
9 \$30 million. Complaint, Prayer for Relief, p. 24. The amount in controversy allegation in a
10 defendant’s notice of removal should be accepted as true when not contested by a plaintiff or
11 questioned by the court. *Dart*, 135 S.Ct at 553. If the court is uncertain about whether all matters
12 in controversy meet the \$5,000,000 jurisdictional threshold under CAFA, “the court should err in
13 favor of exercising jurisdiction over the case.” *Kearns v. Ford Motor Co.*, 2005 U.S. Dist. LEXIS
14 41614, *19 (C.D. Cal. Nov. 18, 2005) (citing Senate Judiciary Committee Report, S. REP. No.
15 109-14).

16 18. Lamps Plus denies that Plaintiff and the putative class have been harmed in any
17 way or that they are entitled to any damages, disgorgement, or restitution. Lamps Plus further
18 disputes Plaintiff’s apparent method for calculating purported damages, disgorgement, or
19 restitution, as well as Plaintiff’s claim that he and the purported class are entitled to disgorgement
20 and restitution of profits and unjust enrichment that Lamps Plus retained from Plaintiff and the
21 Class members, and denies any liability to Plaintiff or any member of the class he purports to
22 represent. Complaint, Prayer for Relief, p. 24. However, for the purposes of determining the
23 amount in controversy under CAFA, Plaintiff’s allegations place at issue an amount greater than
24 CAFA’s \$5 million jurisdictional threshold.

25 19. Plaintiff alleges that he and the putative class are entitled to damages and restitution
26 related to Lamps Plus’s pricing practices for all Lamps Plus branded merchandise purchased in the

1 State of Washington “within the applicable limitations period” *See* Complaint, ¶¶ 77; Prayer for
2 Relief, p. 24-25. Specifically, Plaintiff alleges that the price tags on Lamps Plus’s proprietary
3 products contain a “significantly higher reference price – typically over 30% higher – in order to
4 fool customers into believing that competing retailers are selling those exact same products at the
5 higher price.” Complaint, ¶¶ 2, 68-76. Plaintiff alleges that Lamps Plus has engaged in these
6 practices in its stores and on its website. *Id.* at ¶¶ 1, 4, 15-35. Based on this, Plaintiff seeks
7 damages and restitution amounting to “all profit” that Lamps Plus has earned from the sale of
8 these advertised products to anyone in the putative class. *Id.* at ¶ 93; Prayer for Relief, p. 24-25.
9 Although Lamps Plus disputes these allegations and Plaintiff’s alleged damages, the amount in
10 controversy pled in the Complaint in the form of actual damages, disgorgement, restitution and
11 statutory damages exceeds \$50,000,000, far in excess of the \$5,000,000 in controversy
12 requirement in CAFA. *Id.*, Prayer for Relief p. 24.

13 20. Additionally, Plaintiff seeks attorney’s fees and prejudgment interest. Complaint,
14 Prayer for Relief, p. 25. Although Lamps Plus denies that Plaintiff is entitled to such interest and
15 fees, the Court should take attorney’s fees into account in ascertaining the amount in controversy
16 even where an award is discretionary. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th
17 Cir. 1998).

18 21. Plaintiff also seeks declaratory and injunctive relief. Complaint, ¶¶ 96-105; Prayer
19 for Relief, p. 24-25. The cost of complying with injunctive relief may be considered in
20 determining the amount in controversy. *BEMI, LLC v. Anthropologie, Inc.*, 301 F.3d 548, 553
21 (7th Cir. 2002).

22 22. Finally, although Lamps Plus denies that Plaintiff, or the purported class members
23 are entitled to any relief, in determining the amount in controversy, the Court must assume that
24 allegations of the Complaint are true and that Plaintiff will ultimately prevail on all claims made in
25 the Complaint. *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F.Supp.2d 993,
26 1001 (C.D. Cal. 2002); *see also Korn v. Polo Ralph Lauren Corp.*, 536 F.Supp.3d 1199, 1204-05

1 (E.D. Cal. 2008) (“the ultimate inquiry is what amount is put ‘in controversy’ by the plaintiff’s
2 complaint, not what a defendant will *actually* owe.”). Therefore, Plaintiff’s broadly alleged
3 claims for monetary, injunctive, and declaratory relief place more than \$5,000,000 at issue in this
4 action.

5 **F. The Putative Class Far Exceeds 100 Members**

6 23. CAFA requires that the proposed class includes at least 100 members.
7 28 U.S.C. § 1332(d)(5)(B). Although Lamps Plus disputes Plaintiff’s class allegations, and denies
8 that the class is ascertainable, the Complaint alleges that the “Class easily comprises 10,000
9 Washington State residents” and that “Class members are so numerous that joinder of all members
10 is impracticable.” Complaint, ¶ 79. Lamps Plus disputes Plaintiff’s characterization of how it
11 advertises the low prices of its exclusive products. Nonetheless, the number of individuals who
12 purchased a Lamps Plus exclusive item at an advertised discount price in the State of Washington
13 far exceeds 100. Therefore, CAFA’s class size requirement is satisfied.

14 **G. Notice to the Clerk of the State Court and to Adverse Parties, Submission of Process,**
15 **Pleadings and Orders on File in State Court**

16 24. Copies of this Notice of Removal promptly will be served on counsel of record for
17 Plaintiff and filed with the Clerk of the Superior Court of Washington for King County as required
18 under 28 U.S.C. § 1446(d). In compliance with 28 U.S.C. § 1446(a), a true and correct copy of
19 the Complaint is attached as Exhibit 1 hereto, and true and correct copies of the remaining
20 pleadings, process, and orders served or filed in this action are attached as Exhibit 2.

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