

1 Daniel J. Herling (SBN 103711)
2 djherling@mintz.com
3 MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.
4 44 Montgomery Street, 36th Floor
5 San Francisco, California 94104
6 Telephone: 415-432-6000
7 Facsimile: 415-432-6001

8 Nicole V. Ozeran (SBN 302321)
9 nvozeran@mintz.com
10 MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.
11 2029 Century Park East, Suite 3100
12 Los Angeles, CA 90067
13 Telephone: 310-586-3200
14 Facsimile: 310-586-3202
15 Attorneys for Defendant Benihana, Inc.

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **WESTERN DIVISION**

19 YOUNGSUK KIM, an individual, and on
20 behalf of other members of the general
21 public similarly situated,

22 Plaintiff,

23 vs.

24 BENIHANA, INC., and DOES 1-100,
25 inclusive,

26 Defendants.

Case No.:

**NOTICE OF REMOVAL OF
ACTION FROM STATE COURT
TO FEDERAL COURT**

1 TO THE CLERK AND ALL PARTIES TO THIS ACTION:

2 PLEASE TAKE NOTICE that Defendant Benihana, Inc. (“Defendant”)
3 hereby removes to this Court the State Court Action described below.

4 **INTRODUCTION**

5 1. This motion is made following the conference of counsel pursuant to
6 L.R. 7-3 which took place on November 4, 2019.

7 2. On September 26, 2019, Plaintiff Youngsuk Kim (“Plaintiff”) filed a
8 class action complaint in the Superior Court of the State of California, County of San
9 Bernardino (“the State Court Action”), against Defendant, styled as *Youngsuk Kim*
10 *vs. Benihana, Inc.* (hereinafter “the Complaint”). The State Court Action has been
11 accorded Case Number CIV DS 1928920. Copies of the Complaint and civil case
12 cover sheet are attached hereto as **Exhibit A.**

13 3. The Summons purports that the Complaint and Summons were
14 personally served on Defendant’s registered agent for service of process, Corporate
15 Creations, on October 14, 2019. A copy of the executed Summons is attached hereto
16 as **Exhibit B.**

17 4. On October 17, 2019, the Court noticed the Case Management
18 Conference for the State Court Action to take place on December 11, 2019 at 8:30
19 a.m. in Department S26 of the Superior Court of California, County of San
20 Bernardino. A copy of the Notice of Case Assignment and Case Management
21 Conference is attached hereto as **Exhibit C.**

22 5. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b)
23 in that it is being filed within thirty (30) days of the initial service of copies of the
24 Summons and Complaint on Defendant. No previous Notice of Removal has been
25 filed with this Court.

26 **THE PARTIES**

27 6. Defendant is a Delaware corporation with its principal place of business
28

1 in Florida. Compl. ¶ 17; Declaration of Nicole Thaug at ¶ 5, attached hereto as
2 **Exhibit D**.

3 7. According to the Complaint, Plaintiff is a citizen of California. Compl.
4 ¶ 15.

5 8. On information and belief, no persons or entities not identified as a
6 named party in the Complaint have been named or served in this action and,
7 accordingly, the consent of any persons or entities other than Defendants is not
8 needed for removal.

9 **VENUE**

10 9. Venue is appropriate in the United States District Court for the Central
11 District of California pursuant to 28 U.S.C. § 1441(a), as this removal is brought in
12 the district embracing the State Court Action.

13 **DIVERSITY JURISDICTION UNDER THE CLASS ACTION FAIRNESS**

14 **ACT OF 2005**

15 10. This action is a civil action that may be removed pursuant to 28 U.S.C.
16 §§ 1446(a) and 1453(b) because this Court has diversity jurisdiction under the Class
17 Action Fairness Act of 2005 (“CAFA”). *See* 28 U.S.C. § 1332(d).

18 11. Defendant is incorporated in Delaware with its principal place of
19 business in Florida. Compl. ¶ 17; **Exhibit D** at ¶ 5; *see* 28 U.S.C. § 1332(c).

20 12. Plaintiff is a citizen of California. Compl. ¶ 15.

21 13. The citizenship of the other putative class members are those persons
22 who purchased the products identified in the Complaint in California, New York,
23 Arizona, and Texas. Compl. ¶ 28.

24 14. Minimal diversity under CAFA is established because Plaintiff is not a
25 resident of Delaware or Florida, and the putative class is not limited to citizens of
26 Delaware or Florida. *See* 28 U.S.C. § 1332(d)(2)(A).

27 15. Plaintiff alleges that thousands of people have purchased the products
28

1 identified in the Complaint, thus the putative class exceeds 100 people, the minimum
2 number required for jurisdiction under CAFA. *See* Compl. ¶ 30; 28 U.S.C. §
3 1332(d)(5)(B).

4 16. Finally, although the Complaint is silent as to the specific amount of
5 monetary relief sought by the proposed class, the relief requested by the
6 representative Plaintiff and Defendant's records demonstrate that the aggregate
7 amount in controversy exceeds \$5,000,000. **Exhibit D** at ¶ 4; 28 U.S.C. §
8 1332(d)(2), (6).

9 17. The Complaint seeks compensatory damages, punitive damages,
10 restitution, and statutory damages. Compl. ¶¶ 65, 86. These damages satisfy the
11 amount in controversy requirement. 28 U.S.C. § 1332(d)(6).

12 CONCLUSION

13 18. Defendant will promptly serve Plaintiff with this Notice of Removal and
14 will promptly file a copy of this Notice of Removal with the clerk of the Court for
15 the Superior Court of the State of California, County of San Bernardino, as required
16 under 28 U.S.C. § 1446(d).

17 WHEREFORE, pursuant to 28 U.S.C. § 1441(a) and in accordance with the
18 procedures set forth in 28 U.S.C. § 1446, Defendants respectfully request that the
19 above-captioned action pending in the Superior Court of the State of California,
20 County of San Bernardino, be removed to this Court.

21
22 Dated: November 13, 2019

Respectfully submitted,

23 MINTZ LEVIN COHN FERRIS GLOVSKY AND
24 POPEO P.C.

25 */s/Daniel J. Herling*

26 By: Daniel J. Herling
27 Nicole V. Ozeran

28 Attorneys for Defendant Benihana, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I filed the foregoing **NOTICE OF REMOVAL OF ACTION FROM STATE COURT TO FEDERAL COURT** electronically on November 13, 2019, with the Clerk of the United States District Court in the CM/ECF system, which will serve a notice of the filing upon all counsel or parties of record on the email addresses listed on the court website.

/s/Daniel J. Herling

Daniel J. Herling

93224440v.1