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10 Attorneys for Defendant
11 Walmart Inc.

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JEREMIAH ADOLPHUS, individually
15 and on behalf of all others similarly
16 situated,

17 Plaintiff,

18 v.

19 WALMART INC.; and DOES 1 – 10,
20 inclusive,

21 Defendant.

CASE NO. 2:19-CV-10983

**DEFENDANT WALMART INC.'S
NOTICE OF REMOVAL PURSUANT
TO 28 U.S.C. § 1332(d)(2)**

Removal Filed: December 31, 2019
State Action Filed: August 16, 2019

1 **TO THE COURT, ALL PARTIES, AND THEIR**
2 **ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that defendant Walmart Inc. (“Walmart”) hereby
4 removes the above-captioned action, *Jeremiah Adolphus v. Wal-Mart, Inc.*, Case No.
5 19STCV28638, from the California Superior Court for the County of Los Angeles to the
6 United States District Court for the Central District of California pursuant to 28 U.S.C.
7 §§ 1332(a), 1332(d), and 1446(b) on the grounds articulated below. Walmart hereby
8 provides “a short and plain statement of the grounds for removal” pursuant to 28 U.S.C.
9 § 1446(a).¹

10
11 **STATEMENT OF JURISDICTION**

12 1. This Court has original jurisdiction over this action under the Class Action
13 Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). In relevant part, CAFA grants
14 district courts original jurisdiction over civil class actions filed under federal or state law
15 in which any member of an alleged class of plaintiffs is a citizen of a state different from
16 any defendant, where the putative class size exceeds 100 persons, and where the amount
17 placed in controversy for the putative class members in the aggregate exceeds the sum
18 or value of \$5,000,000, exclusive of interest and costs. As set forth below, this case
19 meets all of CAFA’s requirements for removal and is timely and properly removed by
20

21 ¹ A notice of removal “need not contain evidentiary submissions.” *Dart Cherokee*
22 *Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551 (2014); *see also Arias v.*
23 *Residence Inn*, 936 F.3d 920, 925 (9th Cir. 2019) (vacating remand order where district
24 court deprived defendant of a fair opportunity to submit proof after filing notice of
25 removal); *Janis v. Health Net, Inc.*, 472 F. App’x 533, 534 (9th Cir. 2012) (“Nothing in
26 28 U.S.C. § 1446 requires a removing defendant to attach evidence of the federal court’s
27 jurisdiction to its notice of removal. Section 1446(a) requires merely a ‘short and plain
28 statement of the grounds for removal.’”). Rather, “if the plaintiff contests the defendant’s
allegation . . . both sides submit proof and the court decides, by a preponderance of the
evidence, whether the amount-in-controversy requirement has been satisfied.” *Dart*
Cherokee, 135 S. Ct. at 553-554.

1 the filing of this Notice.
2

3 **VENUE**

4 2. The action was filed in the Los Angeles County Superior Court. Venue
5 properly lies in this Court pursuant to 28 U.S.C. §§ 84(a), 1391(a), and 1441(a).
6

7 **SERVICE ON THE STATE COURT**

8 3. Pursuant to 28 U.S.C. § 1446(d), contemporaneously with the filing of the
9 Notice in this Court, written notice of such filing will be given by the undersigned to
10 Plaintiff's counsel of record and a copy of the Notice will be filed with the Clerk of the
11 Los Angeles County Superior Court.
12

13 **PLEADINGS, PROCESS, AND ORDERS**

14 4. On or about August 16, 2019, plaintiff Jeremiah Adolphus ("Plaintiff"), on
15 behalf of himself and allegedly on behalf of others similarly situated, filed his Complaint
16 in this action. A true and correct copy of the Summons and Complaint filed in the Los
17 Angeles County Superior Court is attached hereto as Exhibit A.

18 5. On or about November 20, 2019, Plaintiff filed a First Amended Complaint
19 ("FAC"). Walmart received service of the FAC on December 2, 2019. A true and correct
20 copy of the FAC filed in the Los Angeles County Superior Court is attached hereto as
21 Exhibit B.²

22 6. On December 26, 2019, Walmart filed an Answer to the FAC. A true and
23 correct copy of the Answer filed in the Los Angeles County Superior Court is attached
24 hereto as Exhibit C.

25 7. According to the FAC, Plaintiff and the members of the proposed class are
26 or were customers of Walmart with respect to the purchase of "Class Products." [FAC,
27 _____

28 ² In accordance with 28 U.S.C. § 1446(a), Walmart also attaches the remainder
of the state court file as Exhibit D.

1 ¶ 16.] By “Class Products,” Plaintiff means bill paying services offered by non-party
2 CheckFreePay. [*Id.*, ¶ 3] Walmart serves as the agent for CheckFreePay in those services
3 by taking in bill payments, in the form of cash or debit cards transactions, and
4 transmitting those funds to CheckFreePay, which then pays the customers’ bills. [*Id.*, ¶¶
5 26-28].

6
7 **TIMELINESS OF THE REMOVAL**

8 8. This removal is timely. As the Ninth Circuit Court of Appeal has held,
9 CAFA removal is timely at any time so long as: (1) the face of the complaint does not
10 plainly allege all elements needed for traditional diversity (including the amount in
11 controversy), and (2) plaintiff has not served some other “paper” which concedes all
12 elements needed for traditional diversity. *See Roth v. CHA Hollywood Med. Ctr., L.P.*,
13 720 F.3d 1121, 1125 (9th Cir. 2013) (holding that a removing defendant may remove
14 “on the basis of its own information, provided that it has not run afoul of either of the
15 thirty-day deadlines” set forth in 28 U.S.C. § 1446(b)(1) and (b)(3)); *id.* at 1126 (“[A]
16 defendant’s subjective knowledge cannot convert a non-removable action into a
17 removable one such that the thirty-day time limit of § 1446(b)(1) or (b)(3) begins to run
18 against the defendant”); *see also Rea v. Michaels Stores Inc.*, 742 F.3d 1234, 1238 (9th
19 Cir. 2014) (“We also recently held in *Roth v. CHA Hollywood Medical Center, L.P.*, that
20 the two 30–day periods are not the exclusive periods for removal In other words,
21 as long as the complaint or ‘an amended pleading, motion, order or other paper’ does
22 not reveal that the case is removable, the 30-day time period never starts to run and the
23 defendant may remove at any time.”); *Taylor v. Cox Commc'ns Cal., LLC*, 2016 WL
24 7422717, at *1 (9th Cir. Dec. 23, 2016) (“We also hold that Defendants’ second Notice
25 of Removal was timely. ‘A CAFA case may be removed [by a defendant] at any time,
26 provided that neither of the two thirty-day periods under § 1446(b)(1) and (b)(3) has
27 been triggered.’”).

28 9. Here, neither the Complaint nor the FAC plainly alleges all elements

1 needed for removal, and Plaintiff has not served some other “paper” that concedes all
2 elements needed for removal. For example, no amount in controversy is, or has been,
3 stated in any paper received from Plaintiff.³
4

5 ORIGINAL JURISDICTION PURSUANT TO CAFA

6 10. This Court has jurisdiction over this case under CAFA, 28 U.S.C.
7 § 1332(d), and this case may be removed pursuant to 28 U.S.C. § 1441(a). Specifically,
8 this is a putative civil class action wherein: (1) the proposed class contains at least 100
9 members; (2) no defendant is a state, state official, or other governmental entity; (3) the
10 total amount in controversy for all class members exceeds \$5,000,000; and (4) there is
11 diversity between at least one putative class member and one defendant. CAFA
12 authorizes removal of such actions in accordance with 28 U.S.C. § 1446.

13 The Proposed Class Contains At Least 100 Members

14 11. Plaintiff alleges that he brings this action on behalf of himself and “[a]ll
15 consumers, who, between the applicable statute of limitations and the present, purchased
16 Class Products and whose Class Products did not properly transfer the funds.” [FAC, ¶
17 55.] Plaintiff’s claims focus on bill payments processed through Walmart and
18 CheckFreePay that allegedly were rejected by creditors, and Plaintiff alleges that “the
19 proposed class is composed of thousands of persons.” [*Id.*, ¶ 59.]

20 Walmart Is Not a Governmental Entity

21 12. Walmart is not a state, state official, or other governmental entity.

22 Minimum Diversity Exists

23 13. CAFA’s diversity requirement is satisfied when at least one putative class
24 member is a citizen of a state of which a defendant is not a citizen. 28 U.S.C. §§
25 1332(d)(2), 1453.
26

27 ³ Even if the FAC had alleged all elements needed for removal, such as an
28 estimate of the amount in controversy, this removal would be timely under 28 U.S.C.
1446(b)(3) because Walmart received service of the FAC on December 2, 2019.

1 14. For diversity purposes, a corporation “shall be deemed a citizen of any State
2 by which it has been incorporated and of the State where it has its principal place of
3 business.” 28 U.S.C. § 1332(c)(1). To determine a corporation’s principal place of
4 business, courts apply the “nerve center” test, which deems the principal place of
5 business to be the state in which the corporation’s officers direct, control, and coordinate
6 the corporation’s activities. *The Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010);
7 *3123 SMB LLC v. Horn*, 880 F.3d 461, 465 (2018). A corporation’s principal place of
8 business will typically be where the corporation maintains its headquarters. *Hertz*, 130
9 S. Ct. at 1192.

10 15. Here, as Plaintiff alleges in the FAC, Walmart is a corporation incorporated
11 under the laws of the State of Delaware, and has its corporate headquarters, where its
12 officers reside and direct, control, and coordinate the corporation’s activities, in the State
13 of Arkansas. [FAC, ¶¶ 2, 21.] Thus, Walmart is a citizen of the State of Delaware, where
14 it is incorporated, and the State of Arkansas, where it has its principal place of business.

15 16. For CAFA removal, “[c]itizenship of the members of the proposed plaintiff
16 classes shall be determined . . . as of the date of filing of the complaint or amended
17 complaint, or, if the case stated by the initial pleading is not subject to Federal
18 jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or
19 other paper, indicating the existence of Federal jurisdiction.” 28 U.S.C. § 1332(d)(7).

20 20. Whether measured as of the date of Plaintiff’s filing of the Complaint or
21 FAC, minimal diversity is satisfied. At the time of the filing of the Complaint and as of
22 the time of the filing of the FAC, one or more members of the putative class were and
23 are citizens of a state other than Delaware and Arkansas (the states of citizenship of
24 Walmart). Meanwhile, Plaintiff was and is a citizen and resident of the State of
25 California. [FAC, ¶ 16.] Plaintiff further alleges additional facts supporting minimal
26 diversity, including that Walmart advertised to consumers in California, that Walmart
27 purportedly violated California law based on those advertisements, and that Plaintiff is
28 a putative class member. [*Id.*, ¶ 20.]

The Amount in Controversy on the Putative Class Claims
Exceeds \$5,000,000

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3 21. This jurisdictional element concerns “what amount is put ‘in controversy’
4 by the plaintiff’s complaint, not what a defendant will actually owe.” *Korn, Korn v. Polo*
5 *Ralph Lauren Corporation*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (quoting
6 *Rippee v. Boston Market Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005)). “In
7 measuring the amount in controversy, ‘a court must assume that the allegations of the
8 complaint are true and assume that a jury will return a verdict for the plaintiff on all
9 claims made in the complaint.’” *Korn*, 536 F. Supp. 2d at 1205 (quoting *Kenneth*
10 *Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal.
11 2002). The analysis includes potential general and special damages, and penalties, as
12 well as attorneys’ fees if recoverable by statute or contract. *See, e.g., Richmond v.*
13 *Allstate Ins. Co.*, 897 F. Supp. 447, 449-450 (S.D. Cal. 1995); *Miller v. Michigan Millers*
14 *Ins. Co.*, 1997 WL 136242 at *4-5 (N.D. Cal., 1997); 28 U.S.C. §§ 1332(d)-(e), 1453,
15 1711-1715.

16 22. Moreover, in calculating the amount placed in controversy, defenses that a
17 defendant may assert — such as a statute of limitation — are not considered. *See Riggins*
18 *v. Riggins*, 415 F.2d 1259, 1262 (9th Cir. 1969) (“[T]he possibility of such a defense
19 being valid does not affect the jurisdiction of the district court to hear and determine the
20 controversy”); *Hernandez v. Towne Park, Ltd.*, 2012 WL 2373372, at *10 (C.D. Cal.,
21 June 22, 2012) (“the fact that [defendant] may assert a limitations defense does not limit
22 the relief sought in the complaint”); *Lara v. Trimac Transp. Servs. (Western) Inc.*, 2010
23 WL 3119366, at *3 (C.D. Cal., August 6, 2010) (“affirmative defenses . . . may not be
24 invoked to demonstrate that the amount in controversy is actually less than the
25 jurisdictional limits.”).

26 23. Though Walmart concedes no liability on Plaintiff’s claims whatsoever,
27 assuming for purposes of removal that all of Plaintiff’s allegations are true and that
28

1 Plaintiff will gain a full recovery on them, Plaintiff’s putative class claims place in
2 controversy a sum greater than \$5,000,000.

3 24. In the FAC, Plaintiff asserts claims for: (1) violation of the False
4 Advertising Law (Cal. Bus. & Prof. Code § 17500, *et seq.*); (2) violation of the Unfair
5 Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*); and (3) violation of the
6 Consumers Legal Remedies Act (Cal. Civ. Code § 1770, *et seq.*). Plaintiff pursues all
7 claims on behalf of the putative class.

8 25. In support of the asserted claims, Plaintiff alleges, among other things, that
9 Walmart “is engaged in selling and providing payment services through [non-party]
10 CheckFreePay.” [FAC, ¶ 2.] According to the FAC, based on advertising from and
11 representations made by Walmart, Walmart customers purchase CheckFreePay’s bill-
12 payment services “under the impression that [Walmart] would assist in facilitating a
13 payment to a third party” on customers’ behalf. [*Id.*, ¶ 6.] For example, Plaintiff states
14 that he provided funds to Walmart to purchase bill-payment services through
15 CheckFreePay “to pay for his monthly mortgage to his mortgage provider,” but his
16 payments were rejected and he was not notified. [*Id.*, ¶¶ 3, 26.] Plaintiff thus alleges that
17 Walmart “has violated California consumer protection statutes, including the Unfair
18 Competition Law, False Advertising Law, and the Consumer[s] Legal Remedies Act.”
19 [*Id.*] The statute of limitations on the Unfair Competition Law and False Advertising
20 Law claims is four years, and the statute of limitations on the Consumers Legal
21 Remedies Act claim is three years. *See* Cal. Bus. & Prof. Code § 17208; Cal. Civ. Code
22 § 1783.

23 26. As a result of the alleged practices, Plaintiff seeks “disgorgement and
24 restitution to Plaintiff and all Class Members [of] Defendant’s revenues associated with
25 their false advertising, or such portion of those revenues as the Court may find
26 equitable.” [*Id.*, ¶ 79.] Plaintiff also seeks damages and punitive damages, as well as all
27 reasonable and necessary attorneys’ fees and costs. [*Id.*, ¶ 102.]
28

1 27. Restitution and Disgorgement/Damages. Without admitting that Plaintiff is
2 entitled to any monetary relief, Walmart understands third-party payees may have
3 declined more than \$5 million in payments attempted to be made through bill payment
4 services provided by CheckFreePay for persons in California during the period from
5 January 2016 to October 2019.

6 28. Other Unquantified Claims for Monetary Relief. Plaintiff also seeks relief
7 for “suffer[ing] emotional distress, wasted time, loss of money, and anxiety,” and
8 punitive damages, as noted. [*Id.*, ¶ 40.] These claims place in controversy still greater
9 sums. *See, e.g., Kroske v. US Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005) (emotional
10 distress damages may be considered in determining amount in controversy); *Gibson v.*
11 *Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001) (“It is well established that punitive
12 damages are part of the amount in controversy in a civil action.”).

13 29. Prospective Injunctive Relief. In addition, Plaintiff seeks classwide
14 prospective injunctive relief and declaratory relief barring future alleged wrongdoing
15 and damage. “In actions seeking declaratory or injunctive relief, it is well established
16 that the amount in controversy is measured by the value of the object of the litigation.”
17 *Hunt v. Washington State Apple Advertising Com'n*, 432 U.S. 333, 347 (1977); *Luna v.*
18 *Kemira Specialty, Inc.*, 575 F. Supp. 2d 1166, 1172 (C.D. Cal. 2008) (same). The
19 “amount in controversy” requirement is satisfied where either plaintiff can gain or
20 defendant can lose the jurisdictional amount. *See In re Ford Motor Co./Citibank (South*
21 *Dakota)*, 264 F. 3d 952, 958 (9th Cir. 2001) (holding that, for purposes of calculating
22 amount in controversy, “[t]he value of the thing sought to be accomplished by the action
23 may be related to either or any party to the action”). Here, Plaintiff seeks an “order
24 requiring [Walmart], at its own cost, to notify all Class Members of the unlawful and
25 deceptive conduct,” as well as an “order requiring [Walmart] to engage in corrective
26 advertising regarding the conduct.” [FAC, ¶ 102.] Plaintiff’s request for prospective
27 injunctive relief thus increases the amount placed in controversy on the claims.

1 representative for the proposed class, and does not admit that Plaintiff or the putative
2 class members are entitled to recover any form of monetary or injunctive relief. Walmart
3 also in no way admits that the instant action satisfies the requirements for class
4 certification under Rule 23 of the Federal Rules of Civil Procedure. However, this action
5 meets all of CAFA's requirements for removal.

6 32. WHEREFORE, the action is hereby removed to this Court from the Los
7 Angeles County Superior Court.

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Respectfully submitted,

Dated: December 31, 2019

GREENBERG TRAURIG, LLP

By: /s/ Lisa M. Simonetti
Lisa Simonetti
Alex Linhardt

Attorneys for Defendant Walmart Inc.