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P.F. CHANG'S CHINA BISTRO, INC.

12 UNITED STATES DISTRICT COURT

13 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

14 CHANSUE KANG, an individual, and on
15 behalf of other members of the general
public similarly situated;

16 Plaintiff,

17 v.

18 P.F. CHANG'S CHINA BISTRO, INC.,
an

19 Arizona corporation; and
20 DOES 1-100, inclusive,

21 Defendants.

Case No.: _____

**DEFENDANT P.F. CHANG'S CHINA
BISTRO, INC.'S FILING OF
NOTICE OF REMOVAL OF CIVIL
ACTION**

Superior Court of the State of California,
County of San Bernardino
Case No. CIVDS 1931220

**[Class Action Fairness Act of 2005; 28
U.S.C. §§ 1332, 1441, 1453, and 1446]**

**Complaint Served: October 25, 2019
Removal Date: November 25, 2019**

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

3 **PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1332(d), 1441(a), 1453,
 4 and 1446, Defendant P.F. CHANG'S CHINA BISTRO, INC., a Delaware corporation
 5 ("P.F. CHANG'S"), erroneously sued as P.F. CHANG'S CHINA BISTRO, INC., an
 6 Arizona corporation, hereby removes the civil action entitled *Chansue Kang, an*
 7 *individual, on behalf of herself and other members of the general public situated v. P.F.*
 8 *Chang's China Bistro, Inc., et al.*, filed on October 23, 2019 in the Superior Court of the
 9 State of California, County of San Bernardino, Case No. CIVDS 1931220, (the "Action"),
 10 to the United States District Court for the Central District of California, Eastern Division.
 11 Removal is proper because this is a putative class action that satisfies the jurisdictional
 12 prerequisites under the Class Action Fairness Act of 2015 ("CAFA"). Here, the proposed
 13 plaintiff classes consist of over 100 members, and minimal diversity exists because P.F.
 14 CHANG's is a citizen of Delaware and Arizona and the named plaintiff is a citizen of
 15 California and the putative classes include citizens of other states. Additionally, the
 16 amount in controversy exceeds \$5,000,000.00. This Notice of Removal is timely because
 17 it has been filed within thirty days of the date P.F. CHANG's was served with the
 18 summons and first amended class action complaint (See 28 U.S.C. § 1446(b).)

19 **I.**

20 **PROCEDURAL BACKGROUND & TIMELINESS OF REMOVAL**

21 1. On October 23, 2019, Plaintiff CHANSUE KANG ("Plaintiff") filed a
 22 summons ("Summons") and class action complaint ("Complaint") in the underlying state
 23 action in the Superior Court of the State of California, County of Bernardino. (Request
 24 for Judicial Notice ("RJN"), **Ex. 1, 2.**)

25 2. The Summons and Complaint were never served on P.F. CHANG's.
 26 (Wingfield Decl., ¶ 2.)

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1 3. On October 24, 2019, Plaintiff filed an amended summons (“Amended
2 Summons”) and First Amended Class Action Complaint (“FAC”) in the Action. (RJN,
3 **Exs. 3, 4.**)

4 4. P.F. CHANG’s registered agent for service of process C.T. Corporation
5 Systems was personally served with Amended Summons and FAC on October 25, 2019.
6 (Wingfield Decl., ¶ 5.)

7 5. In the FAC, Plaintiff seeks to bring this action individually and on behalf of
8 all other persons similarly situated pursuant to Section 382 of the California Code of Civil
9 Procedure. (RJN, Ex. 4, ¶¶ 28 - 37.) The classes which Plaintiff seeks to represent are
10 described as follows:

11 **California Class**

12 All persons in California who purchased Food Products from
13 P.F. Chang’s for personal or household consumption, and not
14 for resale or distribution purposes, that P.F. Chang’s menu
labeled to contain “Krab Mix,” between October 23, 2015 and
the date of judgment in this action. . . .

15 **State Consumer Protection Class**

16 All persons in California, Florida, or New York who purchased
17 Food Products from P.F. Chang’s for personal or household
18 consumption, and not for resale or distribution purposes, that
P.F. Chang’s menu labeled to contain “Krab Mix,” between
October 23, 2015 and the date of judgment in this action. . . .

19 (RJN, Ex. 1, ¶ 28.)

20 6. The FAC contains five causes of action against P.F. CHANG’S for: (1)
21 Unfair, Unlawful, and Fraudulent Business Practices in Violation of Business &
22 Professions Code § 17200, et al. [Plaintiff and California Class against Defendants]; (2)
23 False and Misleading Advertising in Violation of Business & Professions Code § 17500,
24 et seq. [Plaintiff and California Class against Defendants]; (3) Violation of the Consumer
25 Legal Remedies Act, California Civil Code § 1750, et.. seq. [Plaintiff and California Class
26 against Defendants]; (4) Breach of Express Warranty [Plaintiff and California Class
27 against Defendants]; and (5) Violations of Consumer Fraud Laws [Plaintiff, the California
28 Class, and Consumer Protection Class against Defendants]. In summary, the FAC alleges

1 the presence of the words “Krab Mix” on P.F. CHANG’s menus misled customers into
 2 believing certain sushi menu items contained crab meat, when, in fact, no crab meat
 3 existed and “Krab Mix” is nutritionally inferior to crab meat.

4 7. Plaintiff now, on behalf of herself and other similarly situated, seeks: (a)
 5 class certification; (b) preliminary and permanent injunctive relief; (c) an order requiring
 6 P.F. CHANG’S to conduct a corrective advertising and information campaign; (d)
 7 restitution; (e) disgorgement of monies; (f) compensatory damages; (g) punitive damages;
 8 (h) prejudgment interest; (i) expenses, costs, and attorneys’ fees; and (h) such further
 9 relief the court deems just and proper.

10 8. This Notice of Removal is timely, as P.F. CHANG’s is filing it within 30
 11 days of its receipt, through service or otherwise, of a copy of the initial pleading setting
 12 forth the claim for relief upon which the Action is based, which occurred on October 25,
 13 2019. (28 U.S.C. § 1446(b)(1); Fed. R. Civ. P. 6(a)(1)(C).)

14 II.

15 JURISDICTION AND BASIS FOR REMOVAL

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

18 10. This Court possess original jurisdiction over this action under CAFA, 28
 19 U.S.C. § 1332(d), which grants district courts original jurisdiction over class actions: (1)
 20 involving a plaintiff class of 100 or more members; (2) where any member of the proposed
 21 class is a citizen of a state different from any defendant; and (3) the amount in controversy
 22 exceeds \$5,000,000.00 in the aggregate, exclusive of interest and costs. (See 28 U.S.C. §
 23 1332(d)(2); see also *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554
 24 (2014) (explaining that “CAFA’s provisions should be read broadly” (internal quotation
 25 marks omitted).) These conditions are satisfied here for the reasons set forth below.

26 **THE PLAINTIFF CLASS CONSISTS OF OVER 100 MEMBERS**

27 11. This action meets the CAFA definition of a class action, which is “any civil
 28 action filed under [R]ule 23 of the Federal Rules of Civil Procedure or similar State statute

or rule of judicial procedure.” (28 U.S.C. § 1332(d)(1)(B); see RJN, Ex. 4, ¶¶ 28 – 37.) Here, Plaintiff purports to bring claims individually and on behalf of all other persons similarly situated pursuant to Section 382 of the California Code of Civil Procedure. (RJN, Ex. 4, ¶¶ 28 - 37.) Specifically, the classes which Plaintiff seeks to represent and certify are described as follows:

California Class

All persons in California who purchased Food Products from P.F. Chang’s for personal or household consumption, and not for resale or distribution purposes, that P.F. Chang’s menu labeled to contain “Krab Mix,” between October 23, 2015 and the date of judgment in this action. . . .

State Consumer Protection Class

All persons in California, Florida, or New York who purchased Food Products from P.F. Chang’s for personal or household consumption, and not for resale or distribution purposes, that P.F. Chang’s menu labeled to contain “Krab Mix,” between October 23, 2015 and the date of judgment in this action. . . .

12. Plaintiff further alleges that the classes include “thousands of persons who have purchased the Food Products” at issue (i.e., sushi rolls). (RJN, Ex. 4, ¶ 30.)

13. Accordingly, the aggregate number of class members exceeds 100 persons. (See 28 U.S.C. § 1332(d)(5)(B).)

THERE IS MINIMAL DIVERSITY OF CITIZENSHIP

14. Minimal diversity exists between P.F. CHANG’s and the members of the putative class under 28 U.S.C. § 1332(d)(2)(A). Under CAFA, diversity of citizenship is satisfied where “any member of a class of plaintiffs is a citizen of a State different from any defendant.” (28 U.S.C. § 1332(d)(2)(A).)

15. A corporation is “deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” (28 U.S.C. § 1332(c)(1).) “The term ‘principal place of business’ means ‘the place where a corporation’s officers direct, control, and coordinate the corporation’s activities.’” (*Martinez v. Michaels*, 2015 WL 4337059, at *3 (C.D. Cal. July 15, 2015) (quoting *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010).)

1 16. Plaintiff is a citizen of the State of California. (RJN, **Ex. 4**, ¶ 15.)

2 17. Plaintiff alleges P.F. Chang's is an Arizona corporation. (RJN, **Ex. 4**, ¶ 17.)
 3 However, P.F. CHANG'S is a corporation organized and existing under the laws of the
 4 State of Delaware. (RJN, **Ex. 5**; Declaration of Patrick J. Wingfield ("Wingfield Decl.",
 5 ¶ 8.)

6 18. P.F. CHANG's principal place of business is located at 8377 E. Hartford
 7 Drive, Suite 200, Scottsdale, Arizona, 85255. (See 28 U.S.C. § 1332(c)(1).) (RJN, **Ex.**
 8 **4**, ¶ 17.)

9 19. Plaintiff has also brought this action on behalf of a nationwide class of "[a]ll
 10 other persons who purchased the Food Products in states having similar laws regarding
 11 consumer fraud and deceptive trade practices; namely, in Arizona, Texas and New York."
 12 (RJN, **Ex. 4**, ¶ 73.) The "Food Products" at issue (i.e., sushi rolls) are sold in its
 13 restaurants "in California and throughout the rest of the United States." (RJN, **Ex. 4**, ¶¶
 14 17, 73 – 86.)

15 20. For these reasons, at least one member of the proposed class (including
 16 Plaintiff) is from a state other than Delaware and Arizona, thereby satisfying minimal
 17 diversity for purposes of CAFA jurisdiction. (See 28 U.S.C. § 1332(d)(2)(A).)

18 **THE AMOUNT IN CONTROVERSY EXCEEDS \$5,000,000.00**

19 21. The amount in controversy in this action satisfies CAFA's \$5,000,000
 20 jurisdictional threshold. Under CAFA, the claims of the individual class members are
 21 aggregated to determine if the amount in controversy exceeds the required "sum or value
 22 of \$5,000,000, exclusive of interest and costs." (28 U.S.C. § 1332(d)(2).) "The amount in
 23 controversy is simply an estimate of the total amount in dispute, not a prospective
 24 assessment of defendant's liability." (*Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 400
 25 (9th Cir. 2010).) To determine the amount in controversy, courts first look to the
 26 complaint and "the sum claimed by the plaintiff controls if the claim is apparently made
 27 in good faith." (*Id.*) (citation omitted). Accordingly, "in assessing the amount in
 28 controversy, a court must assume that the allegations of the complaint are true and assume

1 that a jury will return a verdict for the plaintiff on all claims made in the complaint.”
 2 (*Campbell v. Vitran Express, Inc.*, 471 F. App’x 646, 648 (9th Cir. 2012) (citation
 3 omitted).) Where a complaint does not specify the amount of damages sought, the
 4 removing defendant need only establish that it is more likely than not that the amount in
 5 controversy requirement has been met. (*Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676,
 6 683 (9th Cir. 2006).) “The removing party’s burden is ‘not daunting,’ and defendants are
 7 not obligated to ‘research, state, and prove the plaintiff’s claims for damages.’”
 8 (*Behrazfar v. Unisys Corp.*, 687 F. Supp. 2d 999, 1004 (C.D. Cal. 2009).)

9 22. While P.F. CHANG’s contends that the allegations of the FAC are without
 10 merit and that neither Plaintiff nor the putative class members have suffered any injury
 11 whatsoever, the amount in controversy here exceeds \$5,000,000.00. Here, Plaintiff seeks
 12 to represent a nationwide class of P.F. CHANG’s customers who purchased the allegedly
 13 deceptive sushi rolls during the putative class period – October 23, 2015 through the date
 14 judgment is entered. (RJN, **Ex. 4**, ¶ 28, 73 – 86.) Plaintiff seeks to recover the full
 15 purchase price of the sushi rolls at issue purchased by consumers throughout the United
 16 States. (RJN, **Ex. 4**, ¶¶ 6, 16, 52, 69, 84 (alleging Plaintiff and class members would not
 17 have purchased the sushi rolls had they known they contained imitation crab instead of
 18 real crab meat); 45, E of the Prayer for Relief (Plaintiff seeks restitution and disgorgement
 19 of “all revenues and profits” received by P.F. Chang’s in connection with the sale of the
 20 sushi rolls at issue.) P.F. CHANG’s gross nationwide sales of the sushi rolls at issue
 21 during the putative class period were in excess of \$5,000,000.00.

22 23. In addition, Plaintiff seeks to recover attorneys’ fees, which contribute to the
 23 alleged amount in controversy. (RJN, **Ex. 4**, ¶ K of the Prayer for Relief; see *Lowdermilk*
 24 *v. U.S. Bank Nat’l Ass’n*, 479 F3d 994, 1000 (9th Cir. 2007) (including attorneys’ fees in
 25 calculating amount in controversy), overruled on other grounds by *Standard Fire Ins. Co.*
 26 *v. Knowles*, 133 S. Ct. 1345 (2013); *Kroske v. US. Bank Corp.*, 432 F.3d 976, 980 (9th
 27 Cir. 2005) (including attorney’s fees in amount in controversy); *Galt G/S v. JSS*
 28 *Scandinavia*, 142 F.3d 1150, 1155–56 (9th Cir. 1998) (including attorneys’ fees in

1 calculating the amount in controversy requirement for traditional diversity jurisdiction).

2 24. Plaintiff also seeks punitive damages. (RJN, **Ex. 4**, ¶¶ 65, 86, H of the Prayer
3 for Relief.) Potential punitive damages are properly included in the amount in
4 controversy. (*Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001) (“It is well
5 established that punitive damages are part of the amount in controversy in a civil action.”))

6 25. Finally, Plaintiff seeks injunctive and equitable relief in the form of: (1)
7 permanently enjoining P.F. CHANG’S from engaging in the alleged unlawful conduct
8 and misleading labeling; and (2) an order requiring P.F. CHANG’S to conduct a corrective
9 advertising and information campaign. (RJN, **Ex. 4**, ¶¶ 10, 45, 56, 63, C and D of the
10 Prayer for Relief.) While the pecuniary value of this relief may be minimal to Plaintiff
11 and the putative class members, it may be costly to P.F. CHANG’S. The cost of
12 compliance with such relief further adds to the amount in controversy. (See, e.g., *Bayol*
13 *v. ZipCar, Inc.*, 2015 WL 4931756, at * 10 (N.D. Cal. Aug 18, 2015) (“[A] defendant’s
14 aggregate cost of compliance with an injunction is appropriate counted toward the amount
15 in controversy.”))

16 26. Thus, while P.F. CHANG’S disputes that it is liable to Plaintiff or any
17 putative class member, or that Plaintiff or any putative class member suffered injury or
18 incurred damages in any manner whatsoever – to the extent Plaintiff seeks to recover
19 compensatory damages, the purchase price of the sushi rolls at issue sold in the United
20 States, attorneys’ fees, punitive damages, and requests injunctive and other equitable
21 relief, the amount in controversy is well in excess of the \$5,000,000 threshold for
22 satisfying CAFA’s jurisdictional prerequisites.

23 **NO EXCEPTION TO CAFA APPLIES**

24 27. Although CAFA contains several exceptions, which, where applicable, may
25 prevent this Court from exercising jurisdiction under CAFA, these exceptions do not
26 impose additional jurisdictional requirements. (See *Serrano v. 180 Connect, Inc.*, 478
27 F.3d 1018, 1023 (9th Cir. 2007) (“[T]he provisions set forth in §§ 1332(d)(3) and (4) are
28 not part of the prima facie case for establishing minimal diversity jurisdictional under

CAFA, but, instead, are exceptions to jurisdiction.”.) Rather, it is Plaintiff’s burden to demonstrate that an exception to CAFA applies. (*Id.* at 1023– 24 (requiring the party seeking remand to demonstrate the applicability of the “home state” and “local controversy” exceptions to CAFA); *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1206 (E.D. Cal. 2008).) Plaintiff here will not be able to demonstrate that an exception to CAFA applies

III.

OTHER PROCEDURAL REQUIREMENTS

28. *Joinder.* P.F. CHANG’s is the only named defendant in the Action. The unidentified Does 1-100 are not required to consent to removal. (*Hafiz v. Greenpoint Mortg. Funding*, 409 F. App’x 70, 72 (9th Cir. 2010).) As such, all defendants have joined in or consented to the removal of this action. 28 U.S.C. § 1446(b)(2)(A).

29. *Consent.* Jurisdiction pursuant to 28 U.S.C. § 1332 requires consent of all defendants. P.F. CHANG’S is the only named defendant in this action, and is the party moving for removal. The unidentified Does 1-100 are not required to consent to removal. (*Hafiz v. Greenpoint Mortg. Funding*, 409 F.App’x 70, 72 (9th Cir. 2010).)

30. *Venue.* Under 28 U.S.C. § 1441(a), venue lies in the Central District of California, Eastern Division, because Plaintiff commenced the Action and filed the complaint and FAC in the Action in the Superior Court of the State of California, County of San Bernardino.

31. *Notice.* Under 28 U.S.C. § 1446(d), contemporaneously with the filing of this Notice of Removal in the United States District Court for the Central District of California, P.F. CHANG’S shall give written notice to Plaintiff, and a copy of this Notice will be filed with the Clerk of the Superior Court of the State of California, County of Solano.

32. *Demand for Jury Trial.* P.F. CHANG’S hereby demands a trial by jury on all issues and all counts of the FAC.

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