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THE JUICE PLUS+ COMPANY, LLC

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 CHRISTINE LUNSFORD, on behalf of
herself and all others similarly situated,

15 Plaintiff,

16 vs.

17 THE JUICE PLUS+ COMPANY, LLC,
18 NATURAL ALTERNATIVES
INTERNATIONAL, INC., and DOES 1-
19 10, inclusive,

20 Defendants.

Case No. 20-12

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C.
§§ 1332(d) AND 1441**

State Action Filed: November 22, 2019

State Action Served: December 2, 2019

1 the ARL from Defendants, their predecessors, or their affiliates, via the website
2 www.juiceplus.com.” *Id.* at ¶ 24. Plaintiff estimates that “the Class includes thousands
3 of members.” *Id.* at ¶ 26.

4 4. Plaintiff seeks declaratory relief, injunctive relief, restitution damages,
5 and attorneys’ fees. *Id.* at Prayer for Relief. Plaintiff seeks full restitution to Plaintiff
6 and Class Members “for all monies paid by Class Members under the subscription
7 agreements from their inception, to the date of such restitution at rates specified by
8 law.” *Id.* at ¶ 60. Plaintiff also seeks declarations that the alleged violations are,
9 indeed, violations, and an injunction requiring Juice Plus to remedy them. *Id.* at Prayer
10 for Relief at ¶¶ A-I.

11 **Removal Is Proper and Timely**

12 5. Removal is Timely. This Notice of Removal is timely because it is being
13 filed within thirty days of receipt of a copy of the Complaint and Summons, which
14 occurred on December 2, 2019. *See* Exhibit A; 28 U.S.C. § 1446(b)(2)(B).

15 6. Removal to Proper Court. The Class Action was filed in the Superior
16 Court of the State of California for the County of Los Angeles. This Court (the U.S.
17 District Court or the Central District of California) is the “district and division”
18 encompassing that state court. 28 U.S.C. § 1446(a).

19 7. Pleadings, Process and Orders. Pursuant to 28 U.S.C. § 1446(a), copies
20 of all of the process, pleadings, and orders served upon or obtained by Juice Plus to
21 date (the “State Court File”) are attached as Exhibit A (the Summons, Complaint,
22 Civil Case Cover Sheet, Civil Case Cover Sheet Addendum, and Notice of Case
23 Assignment Unlimited Civil Case), Exhibit B (Minute Order), Exhibit C (Certificate
24 of Mailing), Exhibit D (Initial Status Conference Order), Exhibit E (Proof of Service
25 of Summons to the Juice Plus+ Company, LLC), Exhibit F (Proof of Service of
26 Summons to National Alternatives International, Inc.), and Exhibit G (Proof of
27 Service of Court Order and Initial Status Conference Order).

1 8. Filing and Service. A copy of this Notice of Removal will be filed with
2 the Clerk of the Superior Court of the State of California for the County of Los
3 Angeles and also will be served on Plaintiff through her counsel of record in
4 accordance with 28 U.S.C. § 1446(d).

5 9. Consent to Removal. Although consent of the other Defendants is not
6 required for removal under CAFA, 28 U.S.C. § 1453(b), Defendant National
7 Alternatives, Inc. (“NAI”) does consent to this removal. Fortin Decl. (Ex. H) ¶ 5.

8 **This Court Has CAFA Diversity Jurisdiction**

9 10. Congress passed the Class Action Fairness Act (“CAFA”) “primarily to
10 curb perceived abuses of the class action device” *United Steel, Paper & Forestry,*
11 *Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int’l Union, AFL-CIO, CLC v.*
12 *Shell Oil Co.*, 602 F.3d 1087, 1090 (9th Cir. 2010). “To achieve its purposes, CAFA
13 provides expanded original diversity jurisdiction” *Id.* Under CAFA, there is no
14 presumption against removal jurisdiction. *Dart Cherokee Basin Operating Co., LLC v.*
15 *Owens*, 574 U.S. 81, 89 (2014).

16 11. This Court has original CAFA jurisdiction because the Class Action is a
17 putative class action in which at least one member of the putative class is a citizen of a
18 state different from defendant Juice Plus, the number of putative class members
19 exceeds 100, and the amount allegedly in controversy exceeds \$5,000,000. 28 U.S.C.
20 §§ 1332(d)(2), (d)(5)(B).

21 12. This Is a Covered Class Action. The Class Action was “filed under rule
22 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial
23 procedure authorizing an action to be brought by 1 or more representative persons as a
24 class action.” 28 U.S.C. § 1332(d)(1)(B). Specifically, the Complaint is styled as a
25 “CLASS ACTION” and brought on behalf of Plaintiff “and all others similarly
26 situated” pursuant to California Code of Civil Procedure § 382, which is California’s
27 analogue to Rule 23 of the Federal Rules of Civil Procedure. Compl. (Ex. A) ¶ 20.

1 The Complaint expressly and repeatedly seeks relief “on behalf of” a class. *Id.* at ¶¶ 3,
2 56, 62-63.

3 13. Minimal Diversity Is Satisfied. CAFA’s diversity requirement is satisfied
4 so long as any member of the putative class is a citizen of a state different from any
5 defendant. 28 U.S.C. § 1332(d)(2)(A). Here, Plaintiff alleges that she is a citizen of
6 California, Compl. (Ex. A) ¶ 12, and that the other members of the putative class are
7 also citizens of California, *id.* at ¶ 24. Plaintiff alleges that “Juice Plus is a Tennessee
8 limited liability company with its principal place of business” in Tennessee. *Id.* at
9 ¶ 14. Juice Plus is in fact an LLC, so this Court must look to the citizenship of each of
10 its members. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894,899 (9th Cir.
11 2006).

12 14. As stated in the Declaration of Douglas Sean Hopkins, filed herewith,
13 Juice Plus has two members: JP Intermediate B, LLC, which is a Delaware LLC, and
14 NSA Incentive Plus, Inc., which is a corporation incorporated in Tennessee. Hopkins
15 Decl. (Ex. I) ¶¶ 3-5. The principal place of business for both members is 140 Crescent
16 Drive, Collierville, Tennessee 38017. *Id.* at ¶¶ 4-5.

17 15. The Proposed Class Exceeds 100 Members. Plaintiff acknowledges that,
18 due to the large number of Juice Plus customers, the putative class is comprised of
19 “thousands of members.” Compl. (Ex. A) ¶ 26.

20 16. The Amount in Controversy Exceeds \$5,000,000. “The amount in
21 controversy is simply an estimate of the total amount in dispute, not a prospective
22 assessment of defendant’s liability” or a concession of liability. *Lewis v. Verizon*
23 *Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010). Where, as here, a complaint does
24 not affirmatively allege that the amount in controversy is *less* than \$5,000,000, a
25 removing defendant merely needs to allege plausible grounds that the amount in
26 controversy exceeds the jurisdictional minimum. *Dart Cherokee*, 574 U.S. at 89
27 (rejecting argument that a defendant must submit evidence to support alleged amount
28 in controversy in notice of removal).

1 Without conceding that Juice Plus is liable to Plaintiff or the putative class, in
2 light of the allegations in the Complaint, CAFA’s amount in controversy requirement
3 is readily satisfied. As discussed in the Declaration of Sean Douglas Hopkins, over the
4 last four years, 101,899 customers with California shipping addresses have purchased
5 Juice Plus products that are subject to automatic reordering. Hopkins Decl. (Ex. I) ¶ 6.
6 Given that Plaintiff seeks full restitution for the entire class, and the minimum cost for
7 a single shipment of any Juice Plus product is \$68, *id.* at ¶ 6, the amount in
8 controversy requirement is satisfied. Plaintiff also seeks additional declaratory and
9 injunctive relief, as well as attorneys’ fees and costs, all of which are included in
10 determining whether the amount in controversy requirement is met. *See, e.g., Kroske*
11 *v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005) (“The amount in controversy
12 includes the amount of damages in dispute, as well as attorney’s fees, if authorized by
13 statute or contract”); *Luna v. Kemira Specialty, Inc.*, 575 F. Supp. 2d 1166, 1171
14 (C.D. Cal. 2008) (“[I]n determining the amount in controversy, we may also include
15 the value of the requested injunctive relief to either party.”)

16 17. No CAFA Exceptions. Although Juice Plus has no burden or obligation
17 to rule out exceptions to CAFA jurisdiction, this case does not fall within any of the
18 exceptions to CAFA jurisdiction because, among other reasons, Juice Plus is not a
19 citizen of California. 28 U.S.C. § 1332(c), (d)(3), (d)(4); Compl. (Ex. A) ¶ 13.
20 Moreover, Defendant NAI is only a contract manufacturer of Juice Plus’s products
21 and has no involvement in marketing or selling the products to consumers. Fortin
22 Decl. (Ex. H) ¶¶ 3-4; Hopkins Decl. (Ex. I) ¶¶ 7-8. Its conduct does not form a
23 “significant basis for the claims asserted by the proposed plaintiff class.” 28 U.S.C.
24 § 1332(d)(4)(A)(i)(II)(bb). The local controversy exception to CAFA diversity
25 jurisdiction, therefore, does not apply.

26 18. Reservation of Rights. Juice Plus reserves any and all defenses to the
27 claims and allegations asserted against it in the Class Action, all of which it disputes
28

1 and denies, including but not limited to any and all contractual rights and defenses.
2 This Notice of Removal is filed without prejudice to the exercise of any such rights.

3 **WHEREFORE**, Juice Plus respectfully removes this action, now pending in
4 the Superior Court for the County of Los Angeles, to the United States District Court
5 for the Central District of California.

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January 2, 2020

Respectfully submitted,

SIDLEY AUSTIN LLP

By: /s/ Amy P. Lally
Amy P. Lally
An Attorney for Defendant
THE JUICE PLUS+ COMPANY, LLC