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10 Attorneys for Defendant
11 WALMART INC.

12 UNITED STATES DISTRICT COURT
13
14 CENTRAL DISTRICT OF CALIFORNIA

15 SOFIA MAYNEZ, an individual, on
16 behalf of herself and all others
17 similarly situated,

18 Plaintiff,

19 v.

20 WALMART, INC., a Delaware
21 Corporation; and DOES 1-50,
22 inclusive,

23 Defendant.

Case No. 2:20-cv-0023

**DEFENDANT WALMART
INC.'S NOTICE OF REMOVAL
OF CIVIL ACTION FROM
STATE COURT**

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1 **TO PLAINTIFF SOFIA MAYNEZ AND ALL ATTORNEYS OF**
2 **RECORD, AND THE CLERK OF THE ABOVE-ENTITLED COURT:**

3 PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332, 1441,
4 1446, and/or 1453, Defendant Walmart Inc. (“Walmart”) hereby removes this
5 action from the Superior Court of the State of California, County of Los
6 Angeles, to the United States District Court for the Central District of
7 California. In support of this Notice of Removal, Walmart avers as follows:

8 **PROCEDURAL HISTORY AND PLAINTIFF’S ALLEGATIONS**

9 1. On October 16, 2019, Plaintiff Sofia Maynez filed a putative
10 nationwide class action complaint against Walmart in *Maynez v. Walmart,*
11 *Inc.*, Case No. 19STCV36866, in the Superior Court of the State of California,
12 County of Los Angeles (the “State Court Action”). (See Exhibit 1 at 16-28
13 (“Complaint”).)

14 2. In the State Court Action, Plaintiff alleges that the prices for
15 certain items advertised in Walmart’s mobile application (or “Walmart app,”
16 as used in Plaintiff’s Complaint) are higher than the actual prices for the same
17 items in the physical Walmart store(s) Plaintiff visited. (See Complaint at ¶ 1.)
18 On this basis, Plaintiff asserts claims for (1) violation of California’s Unfair
19 Competition Law (“UCL”) under California Business & Professions Code
20 § 17200, *et seq.*; (2) violation of California’s Consumer Legal Remedies Act
21 (“CLRA”) under California Civil Code § 1750, *et seq.*; (3) violation of
22 California’s False Advertising Law (“FAL”) under California Business &
23 Professions Code § 17500, *et seq.*

24 3. Plaintiff seeks to assert these claims on behalf of a putative
25 nationwide class of “[a]ll users of [Walmart’s] e-commerce app who viewed
26 on the app a quoted price for an item on sale at one of [Walmart’s] stores, and
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1 whom purchased the quoted item at that store at a price higher than the price
2 listed on [Walmart’s] e-commerce app at the time of purchase, from four years
3 prior to the filing of the complaint to the present.” (Complaint at ¶ 17(2).)
4 Plaintiff also seeks to certify a so-called “Injunctive Relief Class,” defined as
5 “[a]ll users of [Walmart’s] e-commerce app who view on the app a quoted
6 price for an item on sale at one of [Walmart’s] stores, and whom are offered
7 the quoted item at that store at a price higher than the price listed on
8 [Walmart’s] e-commerce app, at the time of the attempted purchase. (*Id.* at
9 ¶ 17(1).)

10 **JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT**

11 4. This Court has original jurisdiction over this matter under 28
12 U.S.C. § 1332(d), part of the Class Action Fairness Act (“CAFA”). Under
13 § 1332(d), federal courts have original diversity jurisdiction over a class action
14 whenever: (1) “any member of a [putative] class of plaintiffs is a citizen of a
15 State different from any defendant,” 28 U.S.C. § 1332(d)(2)(A); (2) “the
16 matter in controversy exceeds the sum or value of \$5,000,000, exclusive of
17 interest and costs,” 28 U.S.C. § 1332(d)(2); and (3) the number of members of
18 all proposed plaintiff classes in the aggregate exceeds 100. *See* 28 U.S.C. §
19 1332(d)(5)(B). The Ninth Circuit has recognized that “Congress intended
20 CAFA to be interpreted expansively.” *Ibarra v. Manheim Invs., Inc.*, 775 F.3d
21 1193, 1197 (9th Cir. 2015) (citing S. Rep. No. 109-14, at 42 (Feb. 28, 2005)).
22 Even more recently, the Ninth Circuit reiterated the Supreme Court’s
23 admonition that “no antiremoval presumption attends cases invoking CAFA.”
24 *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 922 (9th Cir. 2019) (quoting
25 *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014)).
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1 5. All three requirements of CAFA jurisdiction are satisfied in this
2 case.

3 **A. Minimal Diversity Exists**

4 6. First, minimal diversity exists because Plaintiff and Walmart, the
5 only named parties in this case, are citizens of different states.

6 7. According to her Complaint, Plaintiff is a citizen of California.
7 (Complaint at ¶ 1.)

8 8. Walmart, on the other hand, is a Delaware Corporation with its
9 principal place of business in Arkansas. (*Id.*) Under 28 U.S.C. § 1332(c)(1),
10 “a corporation shall be deemed to be a citizen of every State . . . by which it
11 has been incorporated and of the State . . . where it has its principal place of
12 business.” Thus, Walmart is a citizen of Delaware and Arkansas.

13 9. Because Plaintiff is a citizen of California and Walmart is a
14 citizen of Delaware and Arkansas, the diversity requirement for CAFA
15 jurisdiction is satisfied. *See* 28 U.S.C. § 1332(d)(2) (requiring only “minimal
16 diversity” under which “any member of a class of plaintiffs is a citizen of a
17 State different from any defendant”).

18 **B. The Amount In Controversy Exceeds \$5,000,000**

19 10. Although Walmart does not concede that either Plaintiff or any
20 putative class member is entitled to any recovery from Walmart whatsoever,
21 for purposes of removal jurisdiction, Plaintiff’s Complaint places in
22 controversy more than \$5,000,000. *See* 28 U.S.C. § 1332(d)(6). A notice of
23 removal must include “only a plausible allegation that the amount in
24 controversy exceeds the jurisdictional threshold.” *Fritsch v. Swift Transp. Co.*
25 *of Arizona, LLC*, 899 F.3d 785, 788 (9th Cir. 2018) (citations omitted). “In
26 measuring the amount in controversy, a court must assume that the allegations
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1 of the complaint are true and that a jury will return a verdict for the plaintiff
2 on all claims made in the complaint.” *Korn v. Polo Ralph Lauren Corp.*, 536
3 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (citations omitted). “The ultimate
4 inquiry is what amount is put ‘in controversy’ by the plaintiff’s complaint, not
5 what a defendant will actually owe.” *Id.* (citations omitted).

6 11. The gravamen of Plaintiff’s Complaint is that Walmart has
7 misrepresented and/or falsely advertised pricing to consumers like Plaintiff,
8 resulting in overpayment for products. (Complaint at ¶¶ 1, 9-16.) Specifically,
9 Plaintiff alleges that she paid \$12.54 for Huggies Wipes that were advertised
10 at \$5.44 in the Walmart app, and that she paid \$31.84 for Huggies Pull Ups
11 that were advertised at \$8.97 in the Walmart app. (*Id.* at ¶¶ 1, 16.) As a result,
12 in total, Plaintiff allegedly paid \$29.97 more for these two items than the prices
13 advertised in the Walmart app.

14 12. For this asserted wrong, Plaintiff seeks recovery of “restitution
15 and disgorgement of all money and property wrongfully obtained by”
16 Walmart, “[a]n award of general damages,” “[a]n award of special damages,”
17 and “[e]xemplary damages in light of Walmart’s fraud, malice, and conscious
18 disregard for the rights of Plaintiff and putative class members,” among other
19 things. (Complaint at p. 26.) Plaintiff also seeks “attorneys’ fees and expenses
20 pursuant to all applicable laws” and “costs of suit.” (*Id.*)

21 13. Even assuming that Plaintiff seeks recovery of only \$29.97 for
22 each putative class member in this case (the amount of harm Plaintiff
23 purportedly suffered from overpayment), the amount in controversy well
24 exceeds \$5,000,000 based on the allegations in Plaintiff’s Complaint. To wit,
25 Plaintiff alleges that the putative classes consist of “hundreds of thousands” of
26 Walmart customers, “if not more.” (Complaint at ¶ 18.) Plaintiff further
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1 asserts that Walmart “is a multinational corporation” that “sell[s] goods to
2 consumers throughout the country.” (*Id.* at ¶ 2.) Thus, even presuming
3 Plaintiff means only 200,000 putative class members when she seeks to
4 represent “hundreds of thousands” of Walmart customers, the damages sought
5 on behalf of this hypothetical class would be \$5,994,000 ($\$29.97 \times 200,000$).
6 *See* 28 U.S.C. § 1332(d)(6) (“In any class action, the claims of the individual
7 class members shall be aggregated to determine whether the matter in
8 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and
9 costs.”).

10 14. Moreover, Plaintiff’s class definition is not limited to consumers
11 who, like Plaintiff, purchased only Huggies Wipes or Huggies Pull Ups.
12 Plaintiff seeks to represent a nationwide class of “[*a*ll users of [Walmart’s] e-
13 commerce app who view on the app a quoted price for *an item* on sale at one
14 of Defendant’s stores, and whom are offered the *quoted item* at that store at a”
15 higher price. (*Id.* at ¶ 17 (emphasis added).) Plaintiff does not otherwise
16 define or explain what she means by “item” as that term is used in the
17 Complaint. Thus, *any item* for sale by Walmart via the Walmart app and in its
18 brick-and-mortar stores may be at issue based on Plaintiff’s class definition.
19 No matter how calculated, the prospective damage or restitutionary figure for
20 Plaintiff’s putative claim easily exceeds \$5,000,000 across potentially tens of
21 thousands of items advertised for sale by Walmart. (*See, e.g.,*
22 www.walmart.com/search/.)

23 15. Plaintiff’s claims for “special” and/or “exemplary” (punitive)
24 damages must also be factored into the amount in controversy analysis. *See*
25 *Fritsch*, 899 F.3d at 793 (“Among other items, the amount in controversy
26 includes damages (compensatory, punitive, or otherwise), the costs of
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1 complying with an injunction, and attorneys' fees awarded under fee-shifting
2 statutes or contract."). If Plaintiff was awarded even a single (1X) multiplier,
3 that figure alone would exceed \$5,000,000, based on the general damages
4 sought in Plaintiff's Complaint.

5 16. Plaintiff's requests for attorney fees should also be factored in to
6 the amount in controversy for removal purposes. *Id.* Using a 25% attorney-
7 fee (contingency) benchmark that is common within this District, Plaintiff's
8 claims place at least an additional \$1,498,500 (\$5,994,000 x .25) in
9 controversy as to attorneys' fees alone. *Salcido v. Evolution Fresh, Inc.*, No.
10 2:14-cv-09223-SVW-PLA, 2016 WL 79381, at *8 (C.D. Cal. Jan. 6, 2016)
11 (approving use of 25% of amount in controversy for attorneys' fees calculation
12 on removal); *Dittmar v. Costco Wholesale Corp.*, No. 14-cv-1156-LAB-JLB,
13 2015 WL 7106636, at *5 (S.D. Cal. Nov. 13, 2015) (explaining that "Ninth
14 Circuit authority supports a 25% benchmark").

15 17. Finally, Walmart would incur considerable expenses in
16 complying with Plaintiff's requested injunctive relief, should any liability be
17 established. *See Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644,
18 649 (9th Cir. 2016) (explaining that the amount in controversy includes the
19 "costs of complying with an injunction"). Plaintiff's requested injunctive
20 relief appears aimed at requiring Walmart to alter and transform the way it
21 advertises product pricing in the Walmart app and at each of Walmart's store
22 locations, an undertaking that would likely require Walmart to expend
23 substantial resources. (*See, e.g.*, Complaint at ¶ 35.)

24 18. Simply put, even using the conservative figures noted above and
25 derived from Plaintiff's Complaint, the instant putative nationwide class action
26 places well more than \$5,000,000 at controversy in this case.

1 **C. Plaintiff's Classes Include More Than 100 Putative Members**

2 19. The “number of members of all proposed plaintiff classes in the
3 aggregate” is greater than 100. *See* 28 U.S.C. § 1332(d)(5). As mentioned
4 above, Plaintiff asserts that her proposed classes consist of “hundreds of
5 thousands” of Walmart customers, “if not more.” (Complaint at ¶ 18.)

6 **WALMART'S REMOVAL IS PROCEDURALLY PROPER**

7 20. Walmart was served with the Complaint on December 3, 2019,
8 by personal service. Consistent with 28 U.S.C §1446(a), attached hereto as
9 Exhibit 1 are true and correct copies of all process, pleadings, and orders
10 served on Walmart in this action.

11 21. Removal of this action by Walmart is timely because Walmart
12 files this Notice of Removal within 30 days of service of the Complaint. *See*
13 28 U.S.C. §1446(b)(2).

14 22. Walmart is the only defendant that has been named and served in
15 this action, and thus each defendant that has been named and served with the
16 Complaint consents to the removal of this action.

17 23. Plaintiff filed this case in the Superior Court of California, County
18 of Los Angeles. Therefore, this case may properly be removed to the Central
19 District of California, Western Division. 28 U.S.C. §§ 84(c)(2), 1441(a).

20 24. Consistent with 28 U.S.C. §1446(d), Walmart will promptly
21 provide written notice of removal of this action to Plaintiff and will promptly
22 file a copy of this Notice of Removal with the Clerk of the Superior Court of
23 the State of California, County of Los Angeles.

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Dated: January 2, 2020

JONES DAY

By: /s/ Edward S. Chang
Edward S. Chang

Attorneys for Defendant
WALMART INC.