

1 ANDREW S. TULUMELLO, SBN 196484
 2 atulumello@gibsondunn.com
 3 CHANTALE FIEBIG, *pro hac vice forthcoming*
 cfiebig@gibsondunn.com
 4 ARIANNA M. SCAVETTI, *pro hac vice forthcoming*
 ascavetti@gibsondunn.com
 5 GIBSON, DUNN & CRUTCHER LLP
 1050 Connecticut Avenue, N.W.
 6 Washington, DC 20036
 Telephone: 202.955.8500
 7 Facsimile: 202.467.0539
 8
 9 *Counsel for Defendant Frito-Lay North America, Inc.*

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

14 TAMI SVENSRUD

15 Plaintiff,

17 v.

18 FRITO-LAY NORTH AMERICA,
 19 INC., a Delaware Corporation, and
 20 DOES 1-10

21 Defendant.

Case No.: 8-20-cv-00714

NOTICE OF REMOVAL

(Removal from the Superior Court of
 California for the County of Orange,
 No. 30-2020-01136526-CU-NP-CXC)

Action Filed: March 4, 2020

23 PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332, 1441, 1446,
 24 and 1453, Defendant Frito-Lay North America, Inc. (“Frito-Lay”) hereby gives notice
 25 of removal of this action from the Superior Court of California for the County of
 26 Orange to the United States District Court for the Central District of California.
 27 Removal is proper because (1) this Court has jurisdiction over the case, and (2) the
 28

1 Central District of California is the district in which the state court litigation is
2 pending. Frito-Lay appears specifically and only for the purpose of removal, and
3 preserves any and all defenses available under Rule 12 of the Federal Rules of Civil
4 Procedure. In support of this Notice of Removal, Frito-Lay states as follows:

5 1. Named Plaintiff, Tami Svensrud, filed a complaint (the “Complaint”) on
6 March 4, 2020, in the Superior Court of California for the County of Orange, bearing
7 the case number 30-2020-01136526-CU-WP-CXC (the “Removed Action”).
8 Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the Complaint, Superior
9 Court Summons, Superior Court Civil Case Cover Sheet, Superior Court Notice of
10 Case Assignment, and Superior Court Docket Sheet are attached as Exhibits A–E
11 respectively. This notice of removal has been timely filed within the period allowed
12 for removal under 28 U.S.C. §§ 1446(b) and 1453(b).

13 2. On March 11, 2020, Plaintiff served the Complaint and summons on
14 Frito-Lay’s registered agent for service of process in California. Cal. Civ. Proc. Code
15 § 416.10; *see also Yamaha Motor Co. v. Superior Court*, 174 Cal. App. 4th 264, 272
16 (2009)(“a summons may be served on a corporation by delivering a copy of the
17 summons and the complaint to the person designated as agent for service of process”)
18 (internal quotation omitted).

19 3. The Complaint asserts claims for violations of California’s Unfair
20 Competition Law (Cal. Bus. & Prof. Code § 17200, et. seq.), False Advertising Law
21 (Cal. Bus. & Prof. Code § 17500, et seq.), and Consumers Legal Remedies Act (Cal.
22 Civ. Code § 1750, et. seq.), based on Plaintiff’s contention that Frito-Lay’s labeling
23 of its Ruffles Cheddar & Sour Cream Flavored Potato Chips (the “Product”) violates
24 applicable laws and regulations. Compl. ¶¶ 47-65.

25 4. Plaintiff brings a putative class action on behalf of “all persons who
26 purchased Defendant’s product in California within the last four years for personal
27 consumption.” Compl. ¶¶ 11, 37.

1 5. As set forth more fully below, this Court has jurisdiction over this matter,
2 and it is properly removed pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453.

3 **JURISDICTION UNDER CAFA**

4 6. The Class Action Fairness Act of 2005 (“CAFA”), Pub. L. 109-2, 119
5 Stat. 4 (partially codified at 28 U.S.C. § 1332(d)), vests federal courts with diversity
6 jurisdiction over any (1) purported class action in which (2) “any member of a class
7 of plaintiffs is a citizen of a State different from any defendant,” (3) the proposed
8 class contains at least 100 members, and (4) the amount in controversy is at least
9 \$5,000,000 in the aggregate. 28 U.S.C. § 1332(d)(2), (d)(5). Each of these four
10 requirements is satisfied in this case.

11 7. First, the case is a purported class action. *See* Compl. ¶¶ 35-46 (“Class
12 Action Allegations”).

13 8. Second, this case satisfies the minimal diversity requirement: that “any
14 member” of the plaintiff class be a citizen of a state different from “any defendant.”
15 28 U.S.C. § 1332(d)(2)(A). Plaintiff is a citizen and resident of California. Compl.
16 ¶ 9. Frito-Lay North America, Inc. is a Delaware corporation and has its principal
17 place of business in Texas. Compl. ¶ 10.

18 9. Third, the putative class consists of at least 100 members. Plaintiff seeks
19 to represent all persons who purchased the Product in California over a four-year
20 period, Compl. ¶ 37, and acknowledges that “the size is obviously over 100 given the
21 popularity of Ruffles brand potato chips,” *id.* ¶ 39.

22 10. Fourth, the amount in controversy exceeds \$5,000,000, exclusive of
23 costs and interest. Unlike other bases for removal, a defendant need not show that the
24 named plaintiff or any class member in particular has an amount at stake in excess of
25 the jurisdictional amount; rather, the defendant need only show that the aggregate
26 amount in controversy exceeds \$5,000,000. 28 U.S.C. § 1332(d)(6).

27 11. Here, among other relief, Plaintiff seeks “restitution and disgorgement
28

1 of Defendant’s revenues” from Ruffles Cheddar & Sour Cream Potato Chips across
2 California over the last four years. Compl., Prayer for Relief ¶ 6.

3 12. Plaintiff also asserts that the putative class members may be entitled to
4 refunds of their purchases up to the full purchase price, based on her allegation that
5 as a result of the purportedly unlawful practices, Plaintiff “would not have purchased
6 the product or would not have paid the full purchase price.” Compl. ¶ 12; *see also id.*
7 ¶ 41 (alleging that Frito Lay caused Plaintiff and the class members to “suffer[] the
8 same injuries and damages”)

9 13. Plaintiff also seeks individual and class-wide damages, including,
10 “compensatory, general, statutory, exemplary, and any other damages legally
11 available according to proof on certain causes of action.” Compl., Prayer for Relief
12 ¶ 6.

13 14. Thus, Plaintiff seeks monetary relief on behalf of all putative class
14 members, amounting up to the full purchase price of the Product, as well as
15 disgorgement amounting to any benefits received by Frito-Lay resulting from sales of
16 the Product to putative class members.

17 15. Attached hereto as Exhibit F is the Declaration of Boyd Smythe, Senior
18 Director of Revenue Management Strategy at Frito-Lay (the “Smythe Declaration”).
19 The Smythe Declaration establishes that, contrary to Plaintiff’s conclusory assertions
20 in the Complaint (*see* ¶ 17), the amount in controversy far exceeds \$5,000,000. In his
21 Declaration, Mr. Smythe states that Frito-Lay’s annual sales revenues from Ruffles
22 Cheddar & Sour Cream Potato Chips in California was in excess of \$5,000,000 *each*
23 *year* in 2016, 2017, 2018, and 2019. Smythe Decl. ¶¶ 3-6. In light of Plaintiff’s
24 claims stating she seeks up to a full refund of the Product’s purchase price on behalf
25 of the putative California class, as well as disgorgement of revenue Frito-Lay obtained
26 from sales in California over the full four-year putative class period, the amount in
27 controversy in the action is clearly greater than \$5,000,000.

28

1 16. The Smythe Declaration establishes that the requisite minimum amount
2 in controversy is easily satisfied. Thus, the fourth and final requirement of CAFA is
3 satisfied and removal is proper.¹

4 **REMOVAL PROCEDURES**

5 17. The CAFA removal statute states that class actions may be removed to
6 federal court “in accordance with section 1446.” 28 U.S.C. § 1453(b).

7 18. Consistent with 28 U.S.C. § 1446, Frito-Lay is providing this Notice of
8 Removal, which contains the requisite “short and plain statement of the grounds for
9 removal.” 28 U.S.C. § 1446(a). This Notice of Removal has been prepared and
10 signed by an authorized attorney pursuant to Rule 11 of the Federal Rules of Civil
11 Procedure. *Id.*

12 19. Pursuant to 28 U.S.C. § 1446(d), counsel for Plaintiff will be served with
13 a copy of this Notice of Removal, and a copy of this Notice of Removal will be filed
14 with the Clerk of the Superior Court of California for the County of Orange.

15 20. By filing this Notice of Removal, Frito-Lay expressly preserves and does
16 not waive any defenses that may be available to it. Moreover, by seeking to prove
17 that the amount in controversy is greater than the jurisdictional amount, Frito-Lay
18 does not concede that the jurisdictional amount is recoverable. Rather, Frito-Lay
19 denies that any amount or relief is recoverable by Plaintiff or the putative class.

20 21. Consistent with the requirements of the statute, copies of all process,
21 pleadings, and orders served upon Frito-Lay North America, Inc. in the Removed
22

23 ¹ Moreover, in addition to seeking monetary relief, Plaintiff also seeks
24 injunctive relief, including “an order requiring Defendant to immediately cease such
25 acts of unlawful, unfair and fraudulent business practices and requiring Defendant to
26 engage in a corrective advertising campaign.” Compl. ¶ 65. “The amount in
27 controversy may include damages . . . and the cost of complying with an injunction[.]”
28 *Chavez v. JP Morgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018) (internal
quotation marks omitted). The injunctive relief sought by Plaintiff further confirms
that the amount in controversy exceeds the jurisdictional amount.

1 Action are attached hereto as Exhibit C. 28 U.S.C. § 1446(a).

2 22. Service on Frito-Lay was completed on March 11, 2020 upon Plaintiff's
3 delivery of its summons by process server pursuant to Cal. Civ. Proc. Code § 415.10.
4 This Notice is filed within 30 days of service and is therefore timely pursuant to 28
5 U.S.C. § 1446(b).

6 23. WHEREFORE, Frito-Lay removes the state court action from the
7 Superior Court of California for the County of Orange to the United States District
8 Court for the Central District of California.

9
10
11 Dated: April 10, 2020

Respectfully submitted,

12 GIBSON, DUNN & CRUTCHER LLP,
13

14
15 By: s/ Andrew S. Tulumello

Andrew S. Tulumello

16
17 *Counsel for Defendant Frito-Lay North*
18 *America, Inc.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, Andrew S. Tulumello, hereby certify that I electronically filed the foregoing Notice of Removal with the Court’s CM/ECF system. Notice of this filing will be served by overnight mail, with courtesy copies sent via email, to the following parties:

Aashish Y. Desai
The Desai Law Firm
3200 Bristol Street, Ste. 650
Costa Mesa, CA 92626

Counsel for Plaintiff Tami Svensrud

Dated: April 10, 2020

/s/ Andrew S. Tulumello
Andrew S. Tulumello