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AINS WORTH PET NUTRITION LLC  
11 and THE J.M. SMUCKER COMPANY

12  
13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15

16 LUANNY COHEN, individually and  
on behalf of all others similarly  
17 situated,

18 Plaintiff,

19 vs.

20 AINS WORTH PET NUTRITION  
LLC; and THE J.M. SMUCKER  
21 COMPANY,

22 Defendants.  
23

**Case No. 20-cv-05289**

**DEFENDANTS AINS WORTH PET  
NUTRITION LLC AND THE J.M.  
SMUCKER COMPANY'S NOTICE OF  
REMOVAL**

Complaint Filed: April 29, 2020 in Los  
Angeles Superior Court, Case No.  
20STCV16789  
Complaint Served: May 14, 2020

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

2 **PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1441 and 1446,  
3 Defendants AINSWORTH PET NUTRITION LLC and THE J. M. SMUCKER  
4 COMPANY (“Defendants”), without waiving any defenses it may have, hereby  
5 remove this action to this Court from the Superior Court of the State of California for  
6 the County of Los Angeles on the grounds stated below.

7 **I. INTRODUCTION**

8 1. This case is hereby removed from state court to federal court because at  
9 the time the Complaint was filed, and at this time: (1) complete diversity of  
10 citizenship exists between the parties; and (2) as alleged in the Complaint, the claims  
11 of Plaintiff exceed \$5,000,000 exclusive of interest and costs. Therefore, this Court  
12 has original jurisdiction over the action under 28 U.S.C. §§ 1332(a) or (d).

13 **II. THE STATE COURT ACTION**

14 2. On April 29, 2020, Plaintiff LUANNY COHEN (“Plaintiff”) commenced  
15 this putative California class action as Case No. 20-ST-CV-16789 in the Superior  
16 Court of the State of California for the County of Los Angeles by filing a complaint  
17 (the “Complaint”) captioned *Luanny Cohen, individually and on behalf of all others*  
18 *similarly situated vs. Ainsworth Pet Nutrition LLC and The J.M. Smucker Company*.  
19 A true and correct copy of the Summons and Complaint is attached as **Exhibit 1**.

20 3. The Complaint purports to assert four causes of action against  
21 Defendants for violations of the California False Advertising Law, Bus. & Prof. Code  
22 §§ 17500 *et seq.* (“FAL”), the California Consumer Legal Remedies Act, Civ. Code  
23 §§ 1750 *et seq.* (“CLRA”), the California Unfair Competition Law, Bus. & Prof Code  
24 §§ 17200 *et seq.* (“UCL”), and an alleged Breach of Express Warranty. *See* Ex. 1,  
25 Compl. ¶¶ 85-124.

26 4. The Complaint seeks to certify a class consisting of “[a]ll consumers who  
27 purchased Nutrish Zero Grain dog food in California during the Class Period.” Ex. 1,  
28 Compl. ¶ 78.

1           5. Defendants deny that they engaged in any unlawful conduct or are liable  
2 to Plaintiff.

### 3 **III. TIMELINESS OF REMOVAL**

4           6. The Summons and Complaint were served on Defendants' agent for  
5 service of process on May 14, 2020. *See* Ex. 1, Summons. This Notice of Removal is  
6 filed within thirty (30) days of service and, therefore, removal of the action is timely  
7 pursuant to 28 U.S.C. § 1446(b). *See Murphy Bros., Inc. v. Michetti Pipe Stringing,*  
8 *Inc.*, 526 U.S. 344, 347–48 (1999).

### 9 **IV. BASIS FOR FEDERAL JURISDICTION UNDER 28 U.S.C. § 1332**

10           7. This Court has original jurisdiction of this action under the Class Action  
11 Fairness Act of 2005, codified in pertinent part at 28 U.S.C. § 1332(d)(2) (“CAFA”).  
12 Alternatively, the Court has original jurisdiction under 28 U.S.C. § 1332(a) based on  
13 diversity jurisdiction. As set forth below, this action is properly removable pursuant to  
14 28 U.S.C. § 1441(a), in that this Court has original jurisdiction over the action,  
15 because the aggregated amount in controversy exceeds \$5,000,000, exclusive of  
16 interest and costs, and the action is a class action in which there is a complete  
17 diversity between the parties. 28 U.S.C. § 1332(a); *see also* 28 U.S.C. §§ 1332(d)(2)  
18 & (d)(6). Furthermore, the number of putative class members is greater than 100. *See*  
19 28 U.S.C. § 1332(d)(5)(B).

#### 20 **Diverse Citizenship of the Parties**

21           8. CAFA requires only minimal diversity for the purpose of establishing  
22 federal jurisdiction; that is, at least one purported class member must be a citizen of a  
23 state different from any named defendant. 28 U.S.C. § 1332(d)(2)(A). In the instant  
24 case, the parties are completely diverse because Plaintiff is a citizen of a state that is  
25 different from the state of citizenship the Defendants.

26           9. **Plaintiff's Citizenship.** For purposes of determining diversity, a person  
27 is a “citizen” of the state in which he or she is domiciled. *See Kantor v. Wellesley*  
28 *Galleries, Inc.*, 704 F.2d 1088, 1090 (9th Cir. 1983) (“To show state citizenship for

1 diversity purposes under federal common law a party must ... be domiciled in the  
2 state.”). Residence is prima facie evidence of domicile. *See State Farm Mut. Auto Ins.*  
3 *Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994) (“the place of residence is prima facie  
4 the domicile”). Citizenship is determined by the individual’s domicile at the time that  
5 the lawsuit is filed. *See Armstrong v. Church of Scientology Int’l*, 243 F.3d 546, 546  
6 (9th Cir. 2000) (“For purposes of diversity jurisdiction, an individual is a citizen of his  
7 or her state of domicile, which is determined at the time the lawsuit is filed”) (citing  
8 *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986)). Plaintiff alleges that she resides in  
9 the State of California. Ex. 1, Compl. ¶ 15.

10 10. Plaintiff seeks to represent a class consisting of “[a]ll consumers who  
11 purchased Nutrish Zero Grain dog food in California during the Class Period.” Ex. 1,  
12 Compl. ¶ 78

13 11. **Defendants’ Citizenship.** For diversity purposes, the citizenship of a  
14 corporation is “every state and foreign state by which it has been incorporated and of  
15 the State or foreign state where it has its principal place of business[.]” 28 U.S.C.  
16 § 1332(c)(1). The “principal place of business” means the corporate headquarters  
17 where a corporation’s high level officers direct, control and coordinate its activities on  
18 a day-to-day basis, also known as the corporation’s “never center.” *Hertz Corp. v.*  
19 *Friend*, 559 U.S. 77, 80–81, 92–93 (2010) (rejecting all prior tests in favor of the  
20 “nerve center” test).

21 12. Defendant Ainsworth Pet Nutrition LLC is a Delaware corporation with  
22 its principal place of business in Meadville, Pennsylvania. Ex. 1, Compl. ¶ 16. It is not  
23 now, and was not at the time of the filing of the Complaint, a citizen of the State of  
24 California, for purposes of 28 U.S.C. §1332(c)(1).

25 13. Defendant The J. M. Smucker Company is an Ohio corporation with its  
26 principal place of business in Orville, Ohio. Ex. 1, Compl. ¶ 17. It is not now, and was  
27 not at the time of the filing of the Complaint, a citizen of the State of California, for  
28 purposes of 28 U.S.C. §1332(c)(1).

1                                    **There Are More Than 100 Putative Class Members**

2            14. CAFA requires that the aggregated number of members of all proposed  
3 classes in a complaint be at least 100. 28 U.S.C. § 1332(d)(5)(B). “[U]nder CAFA, the  
4 jurisdictional allegations in the complaint can be taken as a sufficient basis, on their  
5 own, to resolve questions of jurisdiction where no party challenges the allegations.”  
6 *Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 886 (9th Cir. 2013). Here,  
7 Plaintiff alleges that, upon information and belief, there are “many thousands or  
8 millions” of putative class members. Ex. 1, Compl. ¶ 81. Accordingly, the Court may  
9 accept as true for the purposes of this motion that the proposed class contains at least  
10 100 members.

11                                    **The Amount In Controversy Exceeds \$5,000,000**

12            15. CAFA requires that the amount in controversy exceed \$5,000,000,  
13 exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). Under CAFA, the claims of  
14 the individual members in a class action are aggregated to determine if the amount in  
15 controversy exceeds the sum or value of \$5,000,000. 28 U.S.C. § 1332(d)(6). Thus,  
16 the aggregate amount in controversy between the parties well exceeds the minimum  
17 sum of \$75,000 forth in 28 U.S.C. § 1332(a), exclusive of interest and costs. In  
18 addition, Congress intended for federal jurisdiction to be appropriate under CAFA “if  
19 the value of the matter in litigation exceeds \$5,000,000 either from the viewpoint of  
20 the plaintiff or the viewpoint of the defendant, and regardless of the type of relief  
21 sought (*e.g.*, damages, injunctive relief, or declaratory relief).” Senate Judiciary  
22 Committee Report, S. Rep. No. 109-14, at 42 (2005), *reprinted in* 2005 U.S.C.C.A.N.  
23 3, 40. Moreover, the Senate Judiciary Committee’s Report on the final version of  
24 CAFA makes clear that any doubts regarding the maintenance of interstate class  
25 actions in state or federal court should be resolved in favor of federal jurisdiction. S.  
26 Rep. No. 109-14, at 42-43 (“[I]f a federal court is uncertain about whether ‘all matters  
27 in controversy’ in a purported class action do not in the aggregate exceed the sum or  
28 value of \$5,000,000, the court should err in favor of exercising jurisdiction over the

1 case[...] Overall, new section 1332(d) is intended to expand substantially federal court  
2 jurisdiction over class actions. Its provisions should be read broadly, with a strong  
3 preference that interstate class actions should be heard in a federal court if properly  
4 removed by any defendant.”).

5 16. It is well-settled that “the court must accept as true plaintiff’s allegations  
6 as plead in the Complaint and assume that plaintiff will prove liability and recover the  
7 damages alleged.” *Muniz v. Pilot Travel Ctrs. LLC*, 2007 WL 1302504, at \*3 (E.D.  
8 Cal. May 1, 2007) (citations omitted; emphasis original) (denying motion for remand);  
9 *see also Beacon Healthcare Serv. Inc. v. Leavitt* 629 F.3d 981, 984 (9th Cir. 2010)  
10 (“The amount in controversy is judged prospectively: that is, we determine our  
11 jurisdiction by asking whether, assuming the petitioner or plaintiff has stated a cause  
12 of action, he has pled sufficient damages.”).

13 17. Moreover, the United States Supreme Court has held that when a  
14 defendant removes an action pursuant to CAFA, the “defendant’s notice of removal  
15 need include only a *plausible* allegation that the amount in controversy exceeds the  
16 jurisdictional threshold” of \$5 million. *Dart Cherokee Basin Operating Co. v. Owens*,  
17 574 U.S. 81, 89 (2014).

18 18. Although Defendants deny *any* liability as to Plaintiff’s claims, it is  
19 apparent that the amount in controversy here exceeds \$5,000,000.

20 19. **Plaintiff’s request for restitution and compensatory damages.**  
21 Plaintiff seeks, among other things, “actual damages including but not limited to, the  
22 price premium associated with and/or the full retail cost of the Nutrish Zero Grain dog  
23 food, restitution and disgorgement of all money or property wrongfully obtained by  
24 Defendants by means of their herein-alleged unlawful, unfair, and fraudulent business  
25 practices....” Ex. 1. Compl., Prayer for Relief ¶ C. These damages alone could exceed  
26 \$5,000,000.

27 20. Here, Plaintiff has alleged that she purchased Nutrish Zero Grain dog  
28 food from a Rite Aid in Los Angeles, California. Ex. 1, Compl. ¶ 15. Company data

1 reflects that at least \$16.6 Million of the Nutrish Zero Grain dog food was sold by  
2 retailers into the California market in the past three years. Declaration of Andrew  
3 Hodges, ¶ 7.

4       21. **Plaintiff's request for attorneys' fees.** Plaintiff also seeks an award of  
5 attorneys' fees. Ex. 1. Compl., Prayer for Relief ¶ E. A reasonable estimate of fees  
6 likely to be recovered may be used in calculating the amount in controversy.  
7 *Longmire v. HMS Host USA, Inc.*, 2012 WL 5928485, at \*9 (S.D. Cal. Nov. 26, 2012)  
8 (“[C]ourts may take into account reasonable estimates of attorneys’ fees likely to be  
9 incurred when analyzing disputes over the amount in controversy under CAFA.”)  
10 (citing *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1010-11 (N.D. Cal.  
11 2002)).

12       22. In the class action context, courts have found that 25 percent of the  
13 aggregate amount in controversy is a benchmark for attorneys’ fees award under the  
14 “percentage of fund” calculation and courts may depart from this benchmark when  
15 warranted. *See Campbell v. Vitran Exp., Inc.*, 471 F. App’x 646, 649 (9th Cir. 2012)  
16 (attorneys’ fees are appropriately included in determining amount in controversy  
17 under CAFA); *Powers v. Eichen*, 229 F.3d 1249, 1256-57 (9th Cir. 2000); *see also In*  
18 *re Quintas Securities Litigation*, 148 F. Supp. 2d 967, 973 (N.D. Cal. 2001) (noting  
19 that in the class action settlement context the benchmark for setting attorneys’ fees is  
20 25 percent of the common fund). Even under the conservative benchmark of 25  
21 percent of the total recovery, attorneys’ fees on a potential damages award in this case  
22 could be millions of dollars.

23       23. Because diversity of citizenship exists, the size of the putative class  
24 exceeds 100 and the amount in controversy exceeds \$5,000,000, this Court has  
25 original jurisdiction of this action pursuant to 28 U.S.C. § 1332(d)(2). Alternatively,  
26 the Court has original jurisdiction under 28 U.S.C. § 1332(a) based on complete  
27 diversity. This action is, therefore, a proper one for removal to this Court pursuant to  
28 28 U.S.C. § 1441(a).

1 **V. VENUE**

2 24. Venue lies in the United States District Court for the Central District of  
3 California, pursuant to 28 U.S.C. § 1391(a), 1441, and 84(b). This action originally  
4 was brought in Los Angeles Superior Court of the State of California, which is located  
5 in the Central District of California. 28 U.S.C. § 84(b). Therefore, venue is proper  
6 because it is the “district and division embracing the place where such action is  
7 pending.” 28 U.S.C. § 1441(a).

8 **VI. COMPLIANCE WITH STATUTORY REQUIREMENTS**

9 25. This action is a civil action of which this Court has original jurisdiction  
10 under 28 U.S.C. § 1332(a) or (d) and is one which may be removed to this Court by  
11 Defendants pursuant to the provisions of 28 U.S.C. § 1441(a).

12 26. Pursuant to 28 U.S.C. § 1446(a), Defendants attach hereto as Exhibit 1  
13 true and correct copies of the Summons, Complaint and Civil Case Cover Sheet.  
14 These are the only process, pleadings, or orders in the State Court’s file that have been  
15 served on Defendants up to the date of filing this Notice of Removal.

16 27. This Notice of Removal is filed with this Court within 30 days after  
17 personal service of the Summons and Complaint, in accordance with 28 U.S.C. §  
18 1446(b).

19 28. As required by 28 U.S.C. § 1446(d), Defendants will provide written  
20 notice of the filing of this Notice of Removal to Plaintiff’s attorneys of record, and  
21 will promptly file a copy of this Notice of Removal with the Clerk for the Superior  
22 Court of the State of California in and for the County of Los Angeles.

23 **VII. CONCLUSION AND PRAYER**

24 For the foregoing reasons, this case is properly and timely removed to this  
25 Court pursuant to 28 U.S.C. § 1441(a) and (b), and the parties should litigate this  
26 action in this Court.

27 29. By removing this action, Defendants do not waive any defenses that may  
28 exist.



1           30. Defendants reserve the right to submit additional evidence in support of,  
2 and to amend, this Notice of Removal.

3           31. Pursuant to 28 U.S.C. § 1446(d), Defendants shall provide written notice  
4 of the filing of this Notice of Removal to all adverse parties. In addition, a copy of this  
5 Notice of Removal is being filed with the clerk of the court in which the Complaint  
6 was filed.

7           WHEREFORE, for the reasons stated above, Defendants respectfully request  
8 that this Court accept jurisdiction of this action to its conclusion and final judgment to  
9 the exclusion of any further proceedings in the courts of the State of California.

10 Dated: June 12, 2020

WINSTON & STRAWN LLP

11  
12 By: /s/ Megan L. Whipp

Ronald Y. Rothstein

Megan L. Whipp

13 Sean H. Suber

14 *Attorneys for Defendants*

15 AINSWORTH PET NUTRITION LLC and  
16 THE J.M. SMUCKER COMPANY  
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