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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 LUIS LICEA, individually and on behalf)
of all others similarly situated,)

13 Plaintiff,)

14 vs.)

15 LIQUID WEB, LLC, a Delaware limited)
16 liability company; and DOES 1 through)
17 10, inclusive,)

18 Defendants.)
19)
20)

Case No. 5:20-cv-01310

**DEFENDANT LIQUID WEB, LLC'S
NOTICE OF REMOVAL OF CIVIL
ACTION TO UNITED STATES
DISTRICT COURT UNDER 28 U.S.C.
§§ 1332(D)1441, 1446, & 1453**

*[Filed concurrently with Civil Case Cover
Sheet; Notice of Interested Parties and
Corporate Disclosure Statement]*

(Los Angeles County Superior Court
Case No. 20STCV18957)

Complaint Filed: May 15, 2020

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE**
2 **CENTRAL DISTRICT OF CALIFORNIA:**

3 **PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446,
4 and 1453, Defendant Liquid Web, LLC (“Defendant” or “Liquid Web”) hereby
5 removes to this Court the above-captioned action, pending as Case No. 20STCV18957
6 in the Superior Court of the State of California for the County of Los Angeles (the
7 “Action”). As grounds for removal, Defendant states as follows:

8 1. On May 15, 2020, Plaintiff Luis Licea (“Plaintiff”) filed the Action in the
9 Superior Court of the State of California for the County of Los Angeles (Case No.
10 20STCV18957). The Complaint asserts claims on behalf of Plaintiff and a putative
11 class of “All visually impaired persons within California that, within the applicable
12 statute of limitations period up to and including entry of judgment in this matter,
13 purchased any product or service in response to an offer constituting an ‘Automatic
14 Renewal’ as defined by § 17601(a) of the Business and Professions Code from Liquid
15 Web, LLC, its predecessors, or its affiliates, via the website www.liquidweb.com.”
16 Compl. ¶ 26.

17 According to the Complaint, Defendant made automatic renewal offers for its
18 website hosting subscription plans and related products to consumers, including to
19 Plaintiff and putative class members without setting forth Defendant’s full
20 cancellation policy as set forth in Defendant’s terms and conditions in a “clear and
21 conspicuous manner” as required by Cal. & Bus. Prof. Code § 17602(a)(1). Compl.
22 ¶¶ 21-22.

23 Plaintiff also alleges that, “prior to charging Plaintiff and [putative] Class
24 Members, Defendant failed to obtain [their] affirmative consent to the automatic
25 renewal offer terms or continuous service offer terms as required by Cal. & Bus. Prof.
26 Code § 17602(a)(1), (2).” *Id.* at ¶ 23.

27 Plaintiff alleges, moreover, that because of Defendant’s alleged failure to gather
28 such affirmative consent, “all goods, wares, merchandise, or products sent to Plaintiff

1 and Class Members under the automatic renewal or continuous service agreement are
2 deemed to be an unconditional gift pursuant to Cal. Bus. & Prof. Code § 17603...”
3 Compl. ¶ 24.

4 Plaintiff also alleges that Defendant “has failed, and continues to fail, to provide
5 an acknowledgement that includes the automatic renewal or continuous service offer
6 terms, cancellation policy and information on how to cancel in a manner that is
7 capable of being retained by Plaintiff and Class Members in violation of Cal. & Bus.
8 Prof. Code §§ 17602(a)(3) and 17602(b).” *Id.* at ¶ 25.

9 2. Based on the aforementioned allegations, Plaintiff asserts: (a) three
10 claims for violations of California’s Automatic Renewal Law (Cal. & Bus. Prof. Code
11 §§ 17600-17604); and (b) one claim for violations of California’s Unfair Competition
12 Law (Cal. & Bus. Prof. Code §§ 17200-17204). Compl. ¶¶ 35-59. The Complaint,
13 moreover, seeks damages, restitution, injunctive relief, and attorneys’ fees. *Id.*

14 3. This Action is a civil action over which this Court has original
15 jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), and it is one that may be removed
16 to this Court pursuant to the provisions of 28 U.S.C. §§ 1441, 1446 and 1453. This is
17 a (i) class action; (ii) in at least one member of the class of plaintiffs is a citizen of a
18 state different from that of Defendant; (iii) the number of members of the class of
19 plaintiffs is not less than 100; and (iv) the amount allegedly in controversy exceeds
20 \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2), (d)(5)(B).

21 **CAFA ELEMENTS**

22 4. Covered Class Action. A case satisfies CAFA’s class action requirement
23 if it is “filed under rule 23 of the Federal Rules of Civil Procedure or similar statute
24 authorizing an action to be brought by 1 or more representative persons as a class
25 action.” 28 U.S.C. § 1332(d)(1)(B). The present action satisfies this definition as
26 Plaintiff’s suit is brought is brought “on behalf of himself and a class of others
27 similarly situated consisting of all visually impaired persons in California who, within
28 the applicable statute of limitations period up to and including the date of judgment in

1 this action, purchased subscriptions for products (such as web hosting services and
2 related products) from [Defendant].” Compl. ¶ 1. The Complaint itself is also styled
3 as a “CLASS ACTION COMPLAINT,” and contains an entire section devoted to
4 “Class Allegations.” *Id.* ¶¶ 26-34.

5 5. Diversity. The diversity requirement of § 1332(d) is satisfied when any
6 member of a class of plaintiffs is a citizen of a state different from any defendant.

7 a. A natural person is a citizen of the state in which he or she is domiciled.
8 *Kantor v. Wellesley Galleries Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). The
9 Complaint alleges that Plaintiff is a resident of the state of California. Compl. ¶ 7.
10 The Complaint also alleges that Plaintiff is a member of the putative class, which
11 includes “***all visually impaired persons in California*** who, within the applicable
12 statute of limitations period up to and including the date of judgment in this action,
13 purchased subscriptions for products (such as web hosting services and related
14 products) from [Defendant].” Compl. ¶ 1 (emphasis added); *see also id.* at ¶¶ 26-34.
15 Based on these allegations and on other information available from the public records,
16 Defendant alleges that Plaintiff is, and was as of the commencement of the Action, a
17 citizen of the state of California. But even if Plaintiff is not a citizen of California,
18 Plaintiff alleges that the class consists of “[a]ll visually impaired persons with
19 California...” Compl. ¶ 26. Thus, at least one member of the putative class of
20 plaintiffs is a citizen of a state (California) different from that of Defendant
21 (Delaware) as discussed below.

22 b. The citizenship of a limited liability company for diversity purposes is
23 determined by examining the citizenship of each member of the company. *D.B. Zwirn*
24 *Special Opportunities Fund, L.P. v. Mehrotra*, 661 F.3d 124, 125-126 (1st Cir. 2011);
25 *Rolling Greens MHP, L.P. v. Comcast SCH Holdings, L.L.C.*, 374 F.3d 1020, 1021-
26 1020 (11th Cir. 2004). Defendant is, and was as of the commencement of the Action,
27 a Delaware limited liability company. Compl. ¶ 9. The member of Liquid Web is,
28 and was as of the commencement of the Action, also a citizen of the state of

1 Delaware. Liquid Web, therefore, is a citizen of the state of Delaware and is not a
2 citizen of California.

3 6. The Proposed Class Exceeds 100 Members. Plaintiff defines the putative
4 class as “[a]ll visually impaired persons in California that, within the applicable
5 statute of limitations period up to and including the date of judgment in this action,
6 purchased subscriptions for products (such as web hosting services and related
7 products) from [Defendant].” Compl. ¶ 1; *see also*, Compl. ¶ 26. Further, noting that
8 “there are over 700,000 visually impaired consumers living in California,” Plaintiff
9 estimates “that the total number of Class members is at least in the thousands...”
10 Compl. ¶ 28.

11 7. Amount In Controversy. CAFA requires that the “aggregate[.]” “matter
12 in controversy exceed[.] the sum or value of \$5,000,000, exclusive of interest and
13 costs.” 28 U.S.C. § 1332(d)(2) & 6. A notice of removal need only contain a
14 “plausible allegation” that the amount in controversy exceeds the jurisdictional
15 threshold. *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 553-54
16 (2014) (explaining that the notice of removal under CAFA “need not contain
17 evidentiary submissions,” and “the defendant’s amount-in-controversy allegation
18 should be accepted when not contested by the plaintiff or questioned by the court”).
19 The amount in controversy is determined by accepting plaintiffs’ allegations as true.
20 *See, e.g., Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 402 (9th Cir. 1996)
21 (“[T]he amount in controversy is met by the express allegations of the plaintiff’s
22 complaint.” (quotations omitted)); *Cain v. Hartford Life & Acc. Ins. Co.*, 890 F. Supp.
23 2d 1246, 1249 (C.D. Cal. 2012) (“In measuring the amount in controversy, a court
24 must assume that the allegations of the complaint are true and assume that a jury will
25 return a verdict for the plaintiff on all claims made in the complaint.”). While
26 Defendants deny Plaintiffs are entitled to any of the relief sought in the Complaint, the
27 relief the Complaint seeks through damages, restitution, injunctive relief, and
28 attorneys’ fees exceeds CAFA’s \$5,000,000 amount-in-controversy requirement.

1 a. Damages and Restitution. For Plaintiff and each of the putative class
2 members, the Complaint seeks “full damages and full restitution” as a result of
3 Defendant’s alleged violations of Cal. Bus. & Prof. Code §§ 17200-17203, “in the
4 amount of their subscription agreement payments.” Compl., Prayer For Relief, ¶ G.
5 The Complaint also alleges that restitution should be for the period “from December
6 1, 2010 to the date of such restitution at rates specified by law.” Compl. ¶ 55. The
7 Complaint further alleges that “Defendant should be required to disgorge all the
8 profits and gains it has reaped and restore such profits and gains to Plaintiff and Class
9 Members, from whom they were unlawfully taken.” *Id.*

- 10 • As discussed above, the Complaint alleges that the subscription
11 agreements for website hosting and related products were ordered and
12 automatically renewed through Defendant’s website,
13 www.liquidweb.com. (the “Website”). Compl. ¶¶ 19, 26.
- 14 • In particular, the Complaint alleges that Plaintiff’s subscription
15 agreement was for a VPS Hosting Plan (Compl. ¶¶ 18, 25). According to
16 the Website, the prices for such plans range from \$59 per month to more
17 than \$189 per month depending on the configurations and add-ons
18 selected by the customer. The Complaint depicts a subscription order for
19 a VPS Hosting Plan that would cost \$59 per month. Compl. ¶ 25.
- 20 • As discussed above, Plaintiff alleges that “there are over 700,000 visually
21 impaired consumers living in California,” and “that the total number of
22 Class members is at least in the thousands...” Compl. ¶ 28.

23 Given the: (a) range of the prices of the subscription plans set forth in the
24 Website (from \$59 per month (\$708 per year) to more than \$180 per month (\$2,160
25 per year as set forth in the Website); (b) the time period over which Plaintiff is seeking
26 to recover subscription payments and disgorged profits and gains for himself and the
27 putative class members (the period December 1, 2010 through the date of recovery);
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1 and (c) the alleged number of putative class members (“at least in the thousands”), the
2 aggregate amount in controversy exceeds \$5,000,000.

3 b. Injunctive Relief. Plaintiff also seeks injunctive relief pursuant to Cal.
4 Bus. & Prof. Code § 17203. Compl., Prayer For Relief, ¶ H. Costs of compliance
5 with an injunction are relevant in ascertaining whether the amount in controversy is
6 satisfied. See U.S.C § 1332(d) (excluding only interest and costs from the aggregated
7 amount in controversy); *see also Guglielmino v. McKee Food Corp.*, 506 F.3d 696,
8 700 (9th Cir. 2007). An injunction would impose additional costs on Defendant to
9 extent that it would be required to revise the terms and conditions governing the
10 automatic renewal of its subscription services and cancellation policy and otherwise
11 redesign the Website, its promotional materials, and other sales-related materials.

12 c. Attorneys’ Fees. Plaintiff also seeks attorneys’ fees and costs pursuant to
13 Cal. Civ. Proc. Code § 1021.5. If the class action is successful, the class would be
14 potentially entitled to recover attorneys’ fees. An award of attorneys’ fees, if such
15 fees are specifically authorized by statute, may be considered for purposes of
16 calculating the amount in controversy. *See Kroske v. US Bank Corp.*, 432 F.3d 976,
17 980 (9th Cir. 2005). Courts in the Ninth Circuit consider a reasonable and fair
18 estimate of attorneys’ fees to be twenty-five percent of the total recovery. *See Powers*
19 *v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *Lim v. Helio, LLC*, No. CV 11-9183
20 PSG, 2012 WL 359304, at *3 (C.D. Cal. Feb. 2, 2012). Here, if Plaintiff and/or the
21 putative class succeeds on its claims, recovery of attorneys’ fees may be statutorily
22 authorized. *See* Cal. Civ. Proc. Code § 1021.5 (governing the award of attorneys’ fees
23 to certain successful parties in class actions).

24 As set forth above, the estimated amount in controversy in the instant action
25 (for damages, restitution, injunctive relief and attorneys’ fees) exceeds \$5,000,000.
26 This amount satisfies CAFA’s \$5,000,000 amount-in-controversy requirement based
27 on the allegations of Plaintiff’s Complaint.
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WHEREFORE, Defendant respectfully removes this Action, now pending in the Superior Court for the State of California for the County of Los Angeles, to the United States District Court for the Central District of California.

Dated: June 30, 2020

Respectfully submitted,
SHOOK, HARDY & BACON L.L.P.

By: /s/ Robert E. Feyder

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Attorneys for Defendant
LIQUID WEB, LLC