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7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION
11

12 JIALU WU, individually and on behalf
13 of all others similarly situated;

14 Plaintiff,

15 vs.

16 ITALK GLOBAL
17 COMMUNICATIONS, INC., a Texas
18 corporation;

19 Defendant.
20

CASE No. 2:20-cv-7150

NOTICE OF REMOVAL

[Diversity Jurisdiction, 28 U.S.C. §§
1332(d)(2), 1441, 1446 and 1453]

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES, AND
2 THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT Defendant iTalk Global Communications,
4 Inc. (“Defendant”) hereby removes this action to the United States District Court for
5 the Central District of California, and in support thereof, respectfully submits the
6 following:

7 **STATEMENT OF THE CASE**

8 1. Plaintiff seeks to certify a class of “[a]ll persons in California who
9 purchased an iTalkBB [sic] or other similar service from Defendant via Defendant's
10 website as part of an automatic renewal plan or continuous service offer for products
11 and services from Defendant within the four years prior to the filing of this
12 Complaint.” Declaration of Michael Williams (“Williams Decl.”), Ex. 1
13 (“Complaint”) ¶ 45.

14 2. Plaintiff seeks, on behalf of himself and the purported class, restitution,
15 disgorgement, injunctive relief, and attorneys’ fees and costs.

16 3. The Class Action Complaint was filed on July 6, 2019 and served on
17 July 10, 2019, and is removable under the Class Action Fairness Act of 2005
18 (“CAFA”), 28 U.S.C. §§ 1332(d)(2) and 1453(b). Defendant has satisfied all
19 procedural requirements of 28 U.S.C. § 1446 and thereby removes this action to the
20 United States District Court for the Northern District of California pursuant to 28
21 U.S.C. §§ 1332, 1441, 1446, and 1453.

22 **THE REQUIREMENTS FOR REMOVAL**

23 **UNDER CAFA ARE SATISFIED**

24 4. CAFA fundamentally changed the legal standards governing removal
25 jurisdiction for class actions. Congress explicitly stated that CAFA’s “provisions
26 should be read broadly, with a strong preference that interstate actions should be
27 heard in a federal court,” on the grounds that state courts were not adequately
28 protecting defendants against class action abuses. S. Rep. No. 109-14, at *43

1 (2005). Rather than emphasizing a strict constructionist view of the statute against
2 removal jurisdiction, Congress instructed district courts to “err in favor of exercising
3 jurisdiction.” *Id.* at *42-43; *see also Dart Cherokee Basin Operating Co., LLC v.*
4 *Owens*, 574 U.S. 81 (2014) (“no antiremoval presumption attends cases invoking
5 CAFA, which Congress enacted to facilitate adjudication of certain class actions in
6 federal court”) (citation omitted). As shown below, this action satisfies the
7 requirements for diversity jurisdiction under CAFA.

8 5. ***Class Action.*** This lawsuit is a class action as defined by 28 U.S.C. §
9 1332(d)(1)(B). CAFA defines a “class action” as “any civil action filed under rule
10 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial
11 procedure authorizing an action to be brought by 1 or more representative persons as
12 a class action.” *Id.* Plaintiff styles his complaint a “Class Action” and alleges that
13 he brings it “individually and on behalf of all others similarly situated.” Williams
14 Decl., Ex. 1 ¶ 2.

15 6. ***Diversity of Citizenship.*** Plaintiff alleges in his complaint that
16 Defendant is a “Limited Liability Company formed under the laws of the State of
17 Texas, with headquarters in Washington and Virginia.” Williams Decl., Ex. 1 ¶ 11.
18 Plaintiff alleges that he is a resident and citizen of the County of Los Angeles, State
19 of California. *Id.* ¶ 10. Because at least one member of the proposed class is from a
20 state other than Texas, Washington, or Virginia, the diversity requirement of 28
21 U.S.C. § 1332(d)(2)(A) is met.

22 7. ***Amount in Controversy.*** “[A] defendant's notice of removal need
23 include only a plausible allegation that the amount in controversy exceeds the
24 jurisdictional threshold. Evidence establishing the amount is required by §
25 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the
26 defendant's allegation.” *Dart Cherokee*, 574 U.S. 81. Here, the matter in
27 controversy exceeds the sum or value of \$5 million, exclusive of interest and costs,
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1 satisfying the amount-in-controversy requirement of 28 U.S.C. § 1332(d)(2). The
2 Complaint seeks relief that includes:

- 3 a. Injunctive relief;
- 4 b. Restitution;
- 5 c. Disgorgement;
- 6 d. Attorneys’ fees and costs.

7 *See Williams Decl., Ex. 1 at Prayer for Relief.*

8 Plaintiff asserts one cause of action for violation of California Business and
9 Professions Code § 17200. *Id.* ¶¶ 59-75. Plaintiff’s purported harm is premised on
10 allegations that he and the putative class have “lost money and/or property” because
11 Defendant failed to follow California requirements set forth under Cal. Bus. & Prof.
12 Code §§ 17600, *et seq.*, for “making automatic renewal offers and continuous
13 service offers.” *Id.* ¶ 64. Plaintiff’s claim under California Business and
14 Professions Code § 17200 has a four-year statute of limitations period. *Perez v.*
15 *Nidek Co.*, 657 F. Supp. 2d 1156, 1166 (S.D. Cal. 2009), *aff’d*, 711 F.3d 1109 (9th
16 Cir. 2013) (“[C]laims under Cal. Bus. & Prof. Code § 17200 are subject to a four-
17 year statute of limitations[.]”) (quotations and citation omitted).

18 The remedy of restitution that Plaintiff seeks is available for alleged
19 violations of section 17200. *See, e.g., Feitelberg v. Credit Suisse First Bos., LLC*,
20 134 Cal. App. 4th 997, 1012 (2005) (“[T]wo remedies are available to redress
21 violations of the UCL: injunctive relief and restitution.”). An order for restitution is
22 one “compelling a UCL defendant to return money obtained through an unfair
23 business practice to those persons in interest from whom the property was taken,
24 that is, to persons who had an ownership interest in the property or those claiming
25 through that person.” *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th
26 1134, 1144–45 (2003). Here, Plaintiff seeks “all funds acquired by means of any act
27 or practice” held to be “an unlawful, fraudulent, or unfair business act or practice, in
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1 violation of laws, statutes or regulations, or constituting unfair competition[.]”
2 Williams Decl., Ex. 1 at Prayer for Relief.

3 Plaintiff seeks restitution for the \$57 per year that he paid Defendant for
4 internet television services from 2017-2019 and the \$74.99 that he paid for the
5 services in 2020, which amounts to a total of \$245.99 *Id.* ¶¶ 32-34. Plaintiff alleges
6 that he “believes the Class members number in the hundreds of thousands, if not
7 more.” *Id.* ¶ 46. Plaintiff alleges that the “material circumstances surrounding this
8 [purchase] experience by Plaintiff were the same, or nearly the same, as the other
9 class members Plaintiff proposes to represent,” and that all class members “were
10 required to pay, and did pay” for the services as he did. *Id.* ¶ 43. These allegations
11 plausibly suggest at least 200,000 class members (since there are allegedly
12 “hundreds of thousands” of them) seek restitution of approximately \$245.99, which
13 means the amount in controversy equals \$49,998,000.¹

14 Even if Plaintiff were to claim he is not seeking one-hundred percent of the
15 sales amount in restitution (contrary to the complaint’s assertions that he and the
16 class seek “all funds acquired” from the services at issue), the amount in controversy
17 would need to be reduced by more than 90% to fall below the threshold amount.
18 Courts have repeatedly rejected such unreasonable reductions in assessing the
19 amount in controversy in CAFA removal cases. *See, e.g., Allred v. Kellogg Co.*,
20 2018 WL 332904, at *3 (S.D. Cal. Jan. 9, 2018) (rejecting plaintiff’s argument that

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22 ¹ Of course, Defendant denies that a class is the proper vehicle for Plaintiff’s
23 claims, that any calculations herein are relevant to the amount of actual damages, or
24 that Defendant is liable for any claims. However, “[w]hen measuring the amount in
25 controversy, a court must assume that the allegations of the complaint are true and
26 that a jury will return a verdict for the plaintiff on all claims made in the complaint. .
27 . . The ultimate inquiry is what amount is put ‘in controversy’ by the plaintiff’s
28 complaint, not what a defendant will actually owe.” *Stern v. RMG Sunset, Inc.*,
2018 WL 2296787, at *5 (S.D. Cal. May 21, 2018) (quotations and citations
omitted).

1 defendant could not assume the class members sought “a full restitution award” and
2 holding that even if defendant’s “assumptions were reduced by 50%, . . . \$5 million
3 is easily exceeded.”); *Schneider v. Ford Motor Co.*, 756 F. App’x 699, 701 (9th Cir.
4 2018) (rejecting plaintiff’s argument that the amount in controversy fell below the
5 jurisdictional threshold where such argument would require the court to reduce
6 defendant’s valuation “by 99.84 percent of the original amount calculated”);
7 *Carrera v. First Am. Home Buyers Prot. Co.*, 2013 WL 12114623, at *3 (S.D. Cal.
8 Sept. 6, 2013) (rejecting plaintiff’s argument that the amount in controversy fell
9 below the jurisdictional threshold where such argument would require the court to
10 reduce defendant’s valuation “by over 99%”).

11 In addition, Plaintiff’s Complaint seeks recovery of attorneys’ fees. Although
12 Defendant does not concede this type of relief would be recoverable under the
13 claims pleaded, attorneys’ fees can be properly considered for purposes of
14 determining CAFA jurisdiction. *See, e.g., Stern v. RMG Sunset, Inc.*, 2018 WL
15 2296787, at *5 (S.D. Cal. May 21, 2018) (“[T]he Court finds that Defendants have
16 met their burden to show that Plaintiff’s restitution, punitive damages, and
17 attorney’s fees exceeds \$5,000,000.”). “Twenty-five percent is the Ninth Circuit
18 benchmark in common fund cases.” *Stern*, 2018 WL 2296787 at *5. An attorneys’
19 fee award would increase the amount in controversy to \$62,497,500.²

23 ² This does not even include the cost to Defendant if injunctive relief is ordered
24 requiring changes to its policies and processes for making automatic renewal offers
25 and continuous service offers to the public. The cost of complying with such an
26 order is another cognizable component of the amount-in-controversy calculation.
27 *See Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018) (“The
28 amount in controversy may include damages ... and the cost of complying with an
injunction”).

1 court suit be stayed; and that Defendant obtain all additional relief to which it is
2 entitled.

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DATED: August 10, 2020

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SULLIVAN, LLP



Bv _____
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