

1 ANN K. JOHNSTON (SBN 145022)
2 ajohnston@jo-sm.com
3 TED A. SMITH (SBN 159986)
4 tsmith@jo-sm.com
5 JOHNSTON | SMITH, ALC
6 1050 Northgate Drive, Suite 510
7 San Rafael, CA 94903
8 Tel: (415) 891-3321 • Fax: (415) 891-3322

9 Attorneys for Defendant
10 HARTFORD UNDERWRITERS INSURANCE
11 COMPANY

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

14 THOMAS MORRISON,
15 individually, and on behalf of all
16 others similarly situated,

17 Plaintiff,

18 vs.

19 HARTFORD UNDERWRITERS
20 INSURANCE COMPANY, and
21 DOES 1-10, inclusive,

22 Defendants.

CASE NO. 1:20-at-00673

NOTICE OF REMOVAL

(Fed. R. Civ. Proc. §§ 1332(d), 1441,
1446, and 1453(b))

23 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332(d), 1441,
24 1446, and 1453(b), Defendant Hartford Underwriters Insurance Company
25 (“Hartford”) hereby removes to this Court the action captioned as *Thomas*
26 *Morrison v. Hartford Underwriters Insurance Company*, Case No. BCV-20-
27 101826, on the docket of the Superior Court of the State of California for the
28 County of Kern (the “State Action”).

In support of this Notice of Removal, Hartford alleges as follows:

1. On or about August 6, 2020, Plaintiff commenced the State Action by
filing his Class Action Complaint (“Complaint”). A true and correct copy of the
Complaint filed in the State Action is attached as Exhibit 1 hereto.

JOHNSTON | SMITH
A Law Corporation
1050 Northgate Drive, Suite 510
San Rafael, CA 94903

1 month. *Id.* ¶ 25. Plaintiff alleges that he was told by a representative of Hartford that “the premium was doubled because the parts of Plaintiff’s vehicle were becoming more expensive for Defendant to replace.” *Id.* ¶ 26. Plaintiff further alleges that after he complained to the Better Business Bureau, his premium was changed “to its initially represented price.” *Id.* ¶ 28. Plaintiff further alleges that in 2018, his auto insurance premium with Hartford was “doubled again,” and that he was advised by a representative of Hartford that this was because “Plaintiff’s automobile service records show[ed] that Plaintiff had been driving more than he stated he would be driving.” *Id.* ¶ 29. Plaintiff alleges that Hartford’s explanations for the premium increase were “fabricated.” *Id.* ¶ 30. Plaintiff alleges that he subsequently canceled his policy, that Hartford sent him a bill for \$60 “for failing to properly cancel his insurance policy, and failed to refund the remaining balance of Plaintiff’s cancelled insurance policy.” *Id.* ¶ 33.

8. Plaintiff alleges that at the time of purchase, Hartford told him he would be charged a premium of \$200 per month, and that he would not have purchased the policy if he had known that the premium would be doubled from its initial level. *Id.* ¶¶ 36-38, 41. Plaintiff further alleges that Hartford engages in a “policy and practice” of misrepresenting its insurance premiums in order to induce consumers to purchase Hartford’s policies rather than those of its competitors. *Id.* ¶¶ 41-43. Plaintiff contends that this conduct has “a tendency to mislead and deceive a reasonable consumer.” *Id.* ¶ 45. Plaintiff alleges that “all claims in this matter arise from the identical, false, affirmative representations of the services.” *Id.* at ¶ 63.

9. In the Complaint’s First Cause of Action, Plaintiff asserts a claim for violation of the California False Advertising Act (Cal. Bus. & Prof. Code §§ 17500 et seq.). Complaint ¶¶ 72-80. In the Complaint’s Second Cause of Action, Plaintiff asserts a claim for violation of the Unfair Competition Law (Cal. Bus. & Prof.

JOHNSTON | SMITH
A Law Corporation
1050 Northgate Drive, Suite 510
San Rafael, CA 94903

1 Code §§ 17200 et seq.). Complaint ¶¶ 81-98. Plaintiff seeks to certify a putative
2 class defined as:

3 All consumers, who, between the applicable statute of
4 limitations and the present, purchased one or more Class
5 Products in the State of California, and whose insurance
6 premiums were increased excessively to a price higher than
7 advertised or represented by Defendant.

8 Complaint ¶ 57. The term “Class Products” is vaguely defined in the Complaint as
9 automobile insurance policies. *Id.* ¶ 3.

10 10. In his First Cause of Action, Plaintiff seeks “disgorgement and
11 restitution to Plaintiff and all Class Members [of] Defendant’s revenues associated
12 with their false advertising, or such portion of those revenues as the Court may find
13 equitable.” Complaint ¶ 80. Plaintiff also seeks “preliminary and permanent
14 injunctive relief ordering Defendant to cease its false advertising.” *Id.*

15 11. In his Second Cause of Action, Plaintiff seeks “an order requiring
16 Defendant to immediately cease such acts of unlawful, unfair, and fraudulent
17 business practices and requiring Defendant to correct its actions.” Complaint ¶ 98.
18 Plaintiff also seeks “judgment and equitable relief against [Hartford] as set forth in
19 the Prayer for Relief.” *Id.*

20 12. In the Prayer for Relief, Plaintiff seeks *inter alia* an order requiring
21 Hartford to engage in corrective advertising regarding the conduct alleged in the
22 Complaint, compensatory damages in the amount of actual damages suffered by
23 the putative class members or restitution of all funds acquired from Plaintiff and
24 putative class members from “the sale of misbranded Class Products,” punitive
25 damages, and attorneys’ fees provided by statute, common law, or the Court’s
26 inherent power. Complaint ¶ 101.

27 ///

28 ///

1 **JURISDICTION PURSUANT TO CAFA**

2 13. Removal is proper pursuant to CAFA, 28 U.S.C. § 1332(d), where, as
3 here, a putative class action involves minimal diversity of citizenship and an
4 aggregate amount in controversy exceeding \$5 million.

5 14. CAFA applies to “any class action before or after the entry of a class
6 certification order by the court with respect to that action.” 28 U.S.C. § 1332(d)(8).
7 This case is a “class action” pursuant to CAFA because it was brought under a state
8 statute or rule, namely Section 382 of the California Code of Civil Procedure,
9 authorizing an action brought by one or more representative persons as a class
10 action. *See* 28 U.S.C. § 1332(d)(1)(B); Complaint ¶ 17.

11 **Minimal Diversity**

12 15. This case satisfies the minimal diversity requirement of CAFA
13 because at least one member of the putative class is a citizen of a state different
14 from at least one defendant. *See* 28 U.S.C. § 1332(d)(2)(A). The named Plaintiff is
15 an individual citizen of California. Complaint ¶ 19. Hartford is a corporation
16 organized under the laws of Connecticut and with its principal place of business in
17 Connecticut. Complaint ¶ 20.

18 **Amount in Controversy**

19 16. This case satisfies CAFA’s amount in controversy requirement
20 because the matter in controversy exceeds \$5 million, exclusive of interest and
21 costs. CAFA provides that “the claims of the individual class members shall be
22 aggregated to determine whether the matter in controversy exceeds the sum or
23 value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(6). As
24 the Supreme Court has explained, “the statute tells the District Court to determine
25 whether it has jurisdiction by adding up the value of the claim of each person who
26 falls within the definition of [the plaintiff’s] proposed class and determine [sic]
27 whether the resulting sum exceeds \$5 million. If so, there is jurisdiction and the
28

JOHNSTON | SMITH
A Law Corporation
1050 Northgate Drive, Suite 510
San Rafael, CA 94903

1 court may proceed with the case.” *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct.
2 1345, 1348 (2013).

3 17. The Supreme Court has further explained that “no antiremoval
4 presumption attends cases involving CAFA, which Congress enacted to facilitate
5 adjudication of certain class actions in federal court.” *Dart Cherokee Basin*
6 *Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014). To satisfy the statutory
7 requirements for removal, “a defendant’s notice of removal need include only a
8 plausible allegation that the amount in controversy exceeds the jurisdictional
9 threshold.” *Id.* at 554.

10 18. Here, the Complaint seeks, among other relief, “disgorgement and
11 restitution to Plaintiff and all Class Members [of] Defendant’s revenues associated
12 with their false advertising, or such portion of those revenues as the Court may find
13 equitable.” Complaint ¶ 80. The Complaint also seeks “full restitution of all funds
14 acquired from Plaintiff and Class Members from the sale of misbranded Class
15 Products during the relevant class period.” *Id.* ¶ 101(e). Plaintiff alleges that his
16 own auto insurance premium with Hartford allegedly “doubled” in 2018. *Id.*, ¶¶ 25,
17 29-31. Plaintiff further alleges that “[t]he claims of Plaintiff are not only typical of
18 all Class members, they are identical.” *Id.* ¶ 66. The relief sought also includes
19 attorney’s fees. *Id.* ¶ 101(g).

20 19. The proposed class is defined as “[a]ll consumers, who, between the
21 applicable statute of limitations and the present, purchased one or more Class
22 Products in the State of California, and whose insurance premiums were increased
23 excessively to a price higher than advertised or represented by Defendant.”
24 Complaint ¶ 57. The statute of limitations for the False Advertising Act claim is
25 three years, and the statute of limitations for the Unfair Competition Law claim is
26 four years. *Lifeway Foods, Inc. v. Millenium Prods., Inc.*, 2016 WL 7336721, *2
27 (C.D. Cal. Dec. 14, 2016); Cal. Civ. Proc. Code § 338; Cal. Bus. & Prof. Code §
28

1 17208. The term “Class Products” is vaguely defined in the Complaint as
2 automobile insurance policies. Complaint ¶ 3.

3 20. Based on the claims alleged, although the Complaint’s allegations are
4 vague and the proposed class is vaguely defined, the amount in controversy on the
5 claims as alleged easily exceeds the \$5 million threshold for CAFA jurisdiction.
6 While the proposed class encompasses a four-year period, considering only 2018,
7 which is the year in which Plaintiff’s premium allegedly “doubled,” Hartford
8 issued a total of 146,541 automobile insurance policies in California during the
9 year 2018, with a total aggregate written premium for those policies of
10 approximately \$153 million. If merely 4% of the total aggregate written premium
11 during the year 2018 was placed at issue in this lawsuit (and the proposed class
12 encompasses several additional years), that would exceed the \$5 million threshold
13 for CAFA jurisdiction. The Complaint, while vaguely pled, can easily be read to
14 place substantially more than 4% of the total aggregate written premium for 2018
15 potentially at issue. Plaintiff’s allegations seek “full restitution of all funds
16 acquired from Plaintiff and Class Members from the sale of misbranded Class
17 Products during the relevant class period,” Complaint ¶ 101(e), and Plaintiff
18 alleges that his own premium allegedly “doubled” in 2018, and that his claims are
19 allegedly “identical” to those of the putative class members. Complaint, ¶¶ 25, 29-
20 31, 66; *see also Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010)
21 (finding that total amounts billed by defendant represented amount in controversy
22 under CAFA based on allegations claiming liability for “unauthorized” charges;
23 explaining that “[t]he amount in controversy is simply an estimate of the total
24 amount in dispute, not a prospective assessment of defendant’s liability”); *Moore v.*
25 *Addus HealthCare, Inc.*, No. 19-CV-01519-HSG, 2019 WL 3686584, at *5 (N.D.
26 Cal. Aug. 7, 2019) (determining amount in controversy under CAFA based on
27 assumption that allegations were accurate and that named plaintiff was typical of
28 putative class members).

JOHNSTON | SMITH
A Law Corporation
1050 Northgate Drive, Suite 510
San Rafael, CA 94903

1 **Exceptions to CAFA Jurisdiction**

2 21. None of the exceptions to CAFA jurisdiction applies. Hartford is not a
3 citizen of the state in which the action was filed (i.e., California). Accordingly, 28
4 U.S.C. §§ 1332(d)(3) and (d)(4) do not apply. Section 1332(d)(5)(A) does not
5 apply because The Hartford is not a State, State official or other governmental
6 entity against which this Court may be foreclosed from ordering relief. Section
7 1332(d)(5)(B) does not apply because the number of members of the proposed
8 class in the aggregate exceeds 100, as set forth above. Section 1332(d)(9) does not
9 apply because Plaintiffs' claims do not involve securities or the internal affairs or
10 governance of a corporation or other form of business enterprise.

11 22. Accordingly, this Court has original jurisdiction under CAFA.

12 **REMOVAL PROCEDURE**

13 23. A copy of this Notice of Removal is being served upon all known
14 counsel of record, along with a copy of the Notice to the Clerk of Court for the
15 Superior Court of the State of California for the County of Kern, which is being
16 filed simultaneously in that court.

17 24. Pursuant to 28 U.S.C. § 1447(b), true and correct copies of other
18 notices, processes, and proceedings served on Hartford or filed in the State Action
19 are attached hereto, which consist of:

- 20 Exhibit 3 Civil Case Cover Sheet
- 21 Exhibit 4 Notice of Assignment to Judge for All Purposes and Notice of
- 22 Order to Show Cause Re CRC Rule 3.110 and Notice of Case
- 23 Management Conference (all capitals omitted)

24 25. To the knowledge of Hartford, no hearings or proceedings have taken
25 place in the State Action.

26 ///

27 ///

28 ///

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

DATED: September 8, 2020

JOHNSTON | SMITH, ALC

By: /s/ Ted A. Smith
Ann K. Johnston
Ted A. Smith
Attorneys for Defendant
Hartford Underwriters Insurance
Company

Of Counsel:

Wystan M. Ackerman (*pro hac vice* motion to be filed)
Kevin P. Daly (SBN 298542) (request for admission to be submitted)
ROBINSON & COLE LLP
280 Trumbull Street
Hartford, CT 06103
Tel. 860-275-8200
Fax 860-275-8299
wackerman@rc.com
kdaly@rc.com

JOHNSTON | SMITH
A Law Corporation
1050 Northgate Drive, Suite 510
San Rafael, CA 94903

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of California that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of California, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On September 8, 2020, I served the foregoing **NOTICE OF REMOVAL** on the following individuals in the manner indicated:

Attorneys for Plaintiff

Todd M. Friedman
Adrian R. Bacon
Meghan E. George
Thomas E. Wheeler
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
21550 Oxnard Street, Suite 780
Woodland Hills, CA 91367

- Via ECF
- Via U. S. Mail
- Via Overnight Mail
- Via Email
- Via Facsimile
- Via Hand Delivery

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on September 8, 2020, at San Rafael, California.

/s/ Rebecca A. McIntosh
Rebecca A. McIntosh

JOHNSTON | SMITH
A Law Corporation
1050 Northgate Drive, Suite 510
San Rafael, CA 94903