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6
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ANHEUSER-BUSCH
8 INBEV WORLDWIDE, INC.

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 DENISE ANGIANO; CHARLEY
13 KARPINSKI, individually and on
behalf of all others similarly situated,

14 Plaintiffs,

15 v.

16 ANHEUSER-BUSCH INBEV
17 WORLDWIDE, INC., a Delaware
18 corporation; and DOES 1 to 100,
inclusive,

19 Defendant.

Case No. 2:21-CV-435

[Assigned to Hon. _____]

**DEFENDANT'S NOTICE OF
REMOVAL**

20 Complaint Filed: November 24, 2020

1 Defendant Anheuser-Busch InBev Worldwide, Inc. (“Defendant”), by its
 2 counsel, hereby gives notice of removal of this action, pursuant to 28 U.S.C.
 3 §§ 1332(d), 1441, and 1453, from the Superior Court of the State of California for
 4 the County of Los Angeles to the United States District Court for the Central
 5 District of California, and respectfully states:

6 I. BACKGROUND

7 1. On November 24, 2020, plaintiffs Denise Angiano and Charley
 8 Karpinski (“Plaintiffs”) filed a putative class action complaint in the Superior Court
 9 of the State of California for the County of Los Angeles, captioned *Denise Angiano*
 10 *et al. v. Anheuser-Busch InBev Worldwide, Inc.*, Case No. 20STCV45069 (the
 11 “Complaint”). Defendant was served with the Complaint on December 16, 2020. A
 12 true copy of the Summons and Complaint are attached hereto, respectively, as
 13 **Exhibit 1** and **Exhibit 2**.

14 2. The Complaint asserts seven class causes of action for (1) intentional
 15 misrepresentation, (2) negligent misrepresentation, (3) violation of California False
 16 Advertising Law, California Business and professions Code § 17500, (4) violation
 17 of the Consumers Legal Remedies Act, California Civil Code § 1750 (“CLRA”),
 18 (5) violation of California Business and Professions Code § 25200 for allegedly
 19 mislabeling non-alcoholic beer bottles and packages, (6) violation of California
 20 Business and Professions Code § 17200 for unfair competition, and (7) negligence.
 21 (Compl. ¶¶ 33-89.)

22 3. By their Complaint, Plaintiffs allege that, “as a result of Defendant’s
 23 deceptive and misleading practice of labeling Beck’s beer bottles and packages as
 24 ‘non-alcoholic,’ without more, Plaintiffs and Class Members were induced to
 25 purchase Beck’s beer, which is not devoid of alcohol,” and “[b]ut for Defendant’s
 26 deceptive and misleading practices, Plaintiffs and the Class Members would not
 27 have purchased Beck’s beer.” (Compl. ¶ 2.) Plaintiffs further allege that Defendant
 28 “failed to include the warning ‘contains less than 0.5 percent (or .5%) alcohol by

1 volume' in conjunction with the use of 'non-alcoholic' in readily legible printing or
 2 on a completely contrasting background as required by 27 CFR 7.71(e)," that this
 3 omission to the labelling on the bottle and packaging was deceptive and misleading,
 4 caused "[t]housands of consumers to purchase and consume Beck's beer under the
 5 false belief that they are not consuming any amount of alcohol," and that
 6 "Defendant has made millions of dollars in fraudulent sales to individuals."
 7 (Compl. ¶¶ 4-5, 22.)

8 4. Plaintiffs seek injunctive relief, as well as compensatory and
 9 restitutionary damages for them and their alleged Class, in addition to costs and
 10 litigation expenses. (Compl., Prayer for Relief ¶¶ 1-5.)

11 **GROUND FOR REMOVAL**

12 5. Plaintiffs' claims are removable because the Class Action Fairness Act
 13 ("CAFA") provides this Court with jurisdiction. *See* 28 U.S.C. §§ 1332(d), 1453.
 14 CAFA extends federal jurisdiction over class actions where: (1) any member of a
 15 class of plaintiffs is a citizen of a state different from any defendant, (2) the putative
 16 class consists of more than 100 members, and (3) the amount in controversy
 17 exceeds \$5,000,000. 28 U.S.C. § 1332(d). This includes any class action filed under
 18 Federal Rule of Civil Procedure 23 or "similar State statute or rule of judicial
 19 procedure," such as California Code of Civil Procedure § 382. 28 U.S.C.
 20 § 1332(d)(1)(B). (*See also* Compl. ¶ 25.) As set forth below, each of these
 21 requirements are readily satisfied.

22 6. Because CAFA was enacted to facilitate federal courts' adjudication of
 23 certain class actions, "no antiremoval presumption attends cases invoking CAFA."
 24 *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014);
 25 *see also Greene v. Harley-Davidson, Inc.*, 965 F.3d 767, 772 (9th Cir. 2020);
 26 *Jordan v. Nationstar Mortg. LLC*, 781 F.3d 1178, 1184 (9th Cir. 2015) (reversing
 27 remand order "[i]n light of the Supreme Court's clear statement in *Dart Cherokee*
 28 that Congress intended for no antiremoval presumption to attend CAFA cases").

A. Minimal Diversity Is Satisfied

7. Although diversity removal ordinarily requires complete diversity between plaintiffs and defendants, removal of a class action under CAFA only requires “minimal diversity” — *i.e.*, at least one member of a class of plaintiffs must be diverse from one defendant. *See* 28 U.S.C. § 1332(d)(2)(A). This requirement is readily satisfied here.

8. Plaintiffs both are admitted citizens of California. (Compl. ¶¶ 6-7.) They seek to represent a putative class of other California residents. (*Id.* at ¶ 25.)

9. As pled, the Complaint establishes Defendant Anheuser-Busch InBev Worldwide, Inc. as a Delaware corporation with its principal place of business in St. Louis, Missouri. (Compl. ¶¶ 1, 8; *see also* Declaration of Thomas Larson (“Larson Decl.”) ¶¶ 3-4.)¹

10. The “principal place of business” of a corporation is the corporation’s “nerve center”— *i.e.*, the place where a corporation’s high level officers direct, control and coordinate its activities on a day-to-day basis. *Hertz Corp. v. Friend*, 559 U.S. 77, 91-95 (2010) (rejecting all prior tests in favor of the “nerve center” test). Here, Defendant’s nerve center is in Missouri because its headquarters are located in Missouri, and it maintains its administrative offices, corporate records and files in Missouri. (Larson Decl. ¶ 4.) For diversity purposes under CAFA,

¹ Plaintiffs erroneously named the wrong defendant in their action. Anheuser-Busch InBev Worldwide, Inc. does not sell Beck’s non-alcoholic beer (“Beck’s NA”) in California. Rather, it is sold by Anheuser-Busch, LLC, which is its indirect, wholly-owned subsidiary. (Larson Decl. ¶ 4.) Rather than requiring the courts and Plaintiffs to endure significant motion practice and service of process issues, Defendant has simply identified the error and asked Plaintiffs to dismiss the inappropriate party and substitute Anheuser-Busch, LLC in its place. If Plaintiffs refuse to do so, Defendant reserves its right to challenge jurisdiction. For purposes of this Removal Petition, the proper defendant is Anheuser-Busch, LLC, which we will refer to as “Anheuser-Busch.” Like Anheuser-Busch InBev Worldwide, Inc., the subsidiary Anheuser-Busch, LLC is a citizen of Missouri and Delaware—not California. (*Id.*)

1 Defendant is a citizen of Delaware and Missouri. (*See* Compl. ¶¶ 1, 8; Larson Decl.
2 ¶ 4.) Under no circumstances is Defendant a citizen of California.²

3 11. Accordingly, minimal diversity of citizenship exists under CAFA. *See*
4 28 U.S.C. § 1332(d)(2)(A).

5 **B. Putative Class Members Exceed 100**

6 12. Plaintiffs purport to bring this action on behalf of themselves and “[a]ll
7 persons residing in the State of California who purchased a Beck’s non-alcoholic
8 beer under the belief that the beverage does not contain any alcohol from the period
9 starting four years from the date of the filing of th[e] Complaint to the date of
10 certification.” (Compl. ¶ 25.)³ Plaintiffs also allege “the number of Class Members
11 is at least in the thousands.” (*Id.* ¶ 27.)

12 13. Thus, the putative class that Plaintiffs purport to represent consists of
13 at least 100 individuals.

14 **C. The Amount in Controversy Exceeds \$5,000,000**

15 14. CAFA further requires that, for the district court to exercise
16 jurisdiction, the matter in controversy must “exceed[] the sum or value of
17 \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). When
18 determining the amount in controversy, “the claims of the class members shall be
19 aggregated.” 28 U.S.C. § 1332(d)(6). The U.S. Supreme Court has held that, as
20 specified in 28 U.S.C. § 1446(a), a defendant’s notice of removal need include only
21 “a plausible allegation that the amount in controversy exceeds the jurisdictional
22 threshold”; the notice need not contain evidentiary submissions. *Dart Cherokee*,
23 135 S. Ct. at 553.

24 _____
25 ² As a wholly owned subsidiary of Defendant, Anheuser-Busch, LLC’s citizenship
26 is the same as Defendant: Delaware and Missouri, not California. *See Johnson v.*
27 *Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Anheuser-
28 Busch’s officers direct the day-to-day operations of its business from the St. Louis
headquarters. (Larson Decl. ¶ 4.)

³ Defendant maintains that Plaintiffs’ claims are without merit and that Defendant is
not liable to Plaintiffs or the putative class members.

1 15. Plaintiffs, on behalf of the putative class, assert that “Defendant has
2 made millions of dollars in fraudulent sales” (Compl. ¶ 5) and they and the class
3 thus are entitled to restitutionary damages because, “[b]ut for Defendant’s deceptive
4 and misleading practices, Plaintiffs and the Class Members would not have
5 purchased Beck’s beer.” (Compl. ¶ 2.)

6 16. Although Defendant denies Plaintiffs’ allegations and denies that
7 Plaintiffs or the class they purport to represent are entitled to the relief requested,
8 the Complaint’s allegations, theories, and prayer for relief place in controversy an
9 amount in excess of the \$5 million removal threshold set by CAFA.

10 17. Plaintiffs’ restitutionary claim alone exceeds \$5 million. Plaintiffs seek
11 restitutionary damages on behalf of themselves and the Class Members, which they
12 intend to encompass anyone residing in California who purchased Beck’s NA in
13 California at any time after November 24, 2016 through the present. (Compl.
14 ¶¶ 25-26.)

15 18. Defendant’s wholly owned, indirect subsidiary Anheuser-Busch, LLC
16 sells its products, including Beck’s NA, to wholesalers, not retailers or consumers.
17 (Declaration of Jeffrey Perkowski (“Perkowski Decl.”) ¶ 4.) This is part of what is
18 often called the “three-tiered” system, where manufacturers sell their products to
19 wholesalers, who then sell to retailers. (*Id.*) Retailers ultimately then sell to the
20 final consumer. (*Id.*) Anheuser-Busch tracks in detail its sales to wholesalers,
21 including sales volume in barrels and revenue per barrel by state, including for the
22 sale of Beck’s NA in California. (*Id.* ¶ 5.) Anheuser-Busch, LLC’s sales revenue
23 for sales of Beck’s NA to wholesalers in California for the time period November
24 2016 through November 2020, based on calculating the volume sold (in barrels) by
25 revenue per barrel, is well in excess of \$5 million. (*Id.* ¶ 6; *see also* Compl. ¶ 5
26 (“Defendant has made millions of dollars in fraudulent sales.”).) Given the
27 expected mark-up at each “tier” of the “three-tiered” system referenced above, the
28

1 overall retail sales to consumers of Beck’s NA in California for the time period
 2 November 2016 through November 2020 is even higher. (*Id.* ¶ 7; *see* Compl. ¶ 5.)

3 19. The foregoing estimation—which present “a plausible allegation that
 4 the amount in controversy exceeds the jurisdictional threshold,” *Dart Cherokee*,
 5 135 S. Ct. at 553—does not even include Plaintiffs’ unspecified alleged
 6 compensatory damages, any multiplier, and the litigation expenses, which typically
 7 include attorneys’ fees, sought in the Complaint, adding to the amount in
 8 controversy. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir.
 9 1998) (“We hold that where an underlying statute authorizes an award of attorneys’
 10 fees, either with mandatory or discretionary language, such fees may be included in
 11 the amount in controversy.”). The amount in controversy therefore exceeds
 12 CAFA’s \$5,000,000 threshold requirement.⁴

13 20. The complaint also seeks injunctive relief, the cost of which also is
 14 included in the amount in controversy. *Chavez v. JP Morgan Chase & Co.*, 888
 15 F.3d 413, 416 (9th Cir. 2018) (“The amount in controversy may include ‘damages
 16 (compensatory, punitive, or otherwise) and the cost of complying with an
 17 injunction, as well as attorneys’ fees awarded under fee shifting statutes.’”) (quoting *Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644, 648 (9th Cir.
 18 2016)).

20 21. Plaintiffs’ complaint (Compl. at pp. 16-17) asserts a claim under
 21 Business and Professions Code § 25200 that Defendant “has failed to meet the
 22 requirements of federal malt beverage regulations contained in Part 7.71 of Title 27
 23

24 ⁴ Although the amount in controversy based on the Complaint exceeds \$5,000,000,
 25 Defendant reserves its right to challenge the actual amount of damages, if any, in
 26 subsequent proceedings and at trial. *Ibarra v. Manheim Investments, Inc.*, 775 F.3d
 27 1193, 1198 n.1 (9th Cir. 2015) (“Even when defendants have persuaded a court
 28 upon a CAFA removal that the amount in controversy exceeds \$5 million, they are
 still free to challenge the actual amount of damages in subsequent proceedings and
 at trial. This is so because they are not stipulating to damages suffered, but only
 estimating the damages that are in controversy.”).

of the [United States] Code of Federal Regulations,” which is the mechanism by which the Department of Treasury’s Alcohol and Tobacco Tax and Trade Bureau governs the labeling for beverages in the “Non-Alcoholic” category that are sold throughout the United States.⁵ Plaintiffs’ complaint seeks “affirmative injunctive relief” to change the TTB-approved label Anheuser-Busch uses nationally to mandate “an exact percentage of alcohol by volume.” (Compl. at p. 20.)

III. COMPLIANCE WITH REMOVAL STATUTE AND LOCAL RULES

22. This Notice of Removal was properly filed in the United States District Court for the Central District of California, Central District, because the Superior Court of the State of California for the County of Los Angeles is located in this judicial district. *See* 28 U.S.C. § 1441(a).

23. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. *See* 28 U.S.C. § 1446(a).

24. Plaintiffs filed their Complaint on November 24, 2020 and initiated service on Defendant’s registered agent for service of process on December 16, 2020. Accordingly, this Notice of Removal is timely under 28 U.S.C. § 1446(b), as it is filed within 30 days of service. *See* Fed. R. Civ. P. 6(a)(1)(C).

25. In the Complaint, in addition to the named Defendant, Plaintiffs also sued Defendant DOES 1 to 100 under fictitious names. For purposes of removal, “the citizenship of defendants sued under fictitious names shall be disregarded.” U.S.C. § 1441(a).⁶

⁵ Plaintiffs allege that they bought a product whose label “did not contain the statement ‘contains less than 0.5 percent (or 0.5%) alcohol by volume.’” (Compl. ¶ 70.) This is flatly untrue. The label for Beck’s NA states on the front and back of the bottle, as required by TTB’s regulation, that the product “contains less than 0.5% alc by vol.”

⁶ Further, because the basis for federal jurisdiction is CAFA, which requires only minimal diversity, there is no need for consent to federal jurisdiction by any additional defendants, known or unknown. *See* 28 U.S.C. § 1453(b) (“A class action may be removed to a district court of the United States in accordance with section 1446 . . . except that such action may be removed by any defendant without the consent of all defendants.”).

