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13 Attorneys for Defendant PLUM, PBC
 14 (erroneously sued as PLUM, INC.)

15 **UNITED STATES DISTRICT COURT**
 16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 MAYRA MOORE, individually and on
 18 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 PLUM, INC. D/B/A PLUM
 22 ORGANICS, a California corporation;
 23 and DOES 1 through 10, inclusive,

24 Defendants.

Case No. '21 CV0624 LAB LL

NOTICE OF REMOVAL

JURY TRIAL DEMANDED

1 **TO THE UNITED STATES DISTRICT COURT FOR THE**
2 **SOUTHERN DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND HER**
3 **COUNSEL OF RECORD:**

4 **PLEASE TAKE NOTICE** that Defendant Plum, PBC¹ (erroneously sued as
5 Plum, Inc.) (“Plum”) hereby removes *Moore v. Plum, Inc. d/b/a Plum Organics, a*
6 *California corporation, et al.*, Case No. 37-2021-00014695-CU-MC-CTL, from the
7 Superior Court of the State of California in and for the County of San Diego, to the
8 United States District Court for the Southern District of California, pursuant to 28
9 U.S.C. § 1441 governing the removal of civil actions and § 1453 governing the
10 removal of class actions. Removal to the Southern District of California is based on
11 federal diversity jurisdiction under the diversity jurisdiction requirements of the
12 Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). As required by 28 U.S.C. §
13 1446(a), process, pleadings, and orders filed in the action to date are attached to the
14 Declaration of Keri E. Borders (“Borders Decl.”). Pursuant to 28 U.S.C. § 1446(a),
15 Plum provides the following short and plain statement of the grounds for removal.

16 **I. INTRODUCTION**

17 1. On April 5, 2021, Plaintiff Mayra Moore filed a putative class action
18 complaint in the San Diego County Superior Court against Plum, entitled *Moore v.*
19 *Plum, Inc. d/b/a Plum Organics, a California corporation, et al.*, Case No. 37-
20 2021-00014695-CU-MC-CTL.

21 2. Plum is not aware of Plaintiff having served it in this matter. Borders
22 Decl. at ¶ 7. Although nothing has been served on Plum as far as Plum is aware, in
23 accordance with 28 U.S.C. § 1446(a), true and correct copies of “all process,
24 pleadings, and orders” filed in this action are attached hereto. Specifically:

- 25 • The Class Action Complaint, attached to the Borders Decl. at **Ex. 1**;
- 26 • The Civil Case Cover Sheet, attached to the Borders Decl. at **Ex. 2**;

27 _____
28 ¹ Plum, Inc. converted its corporate status to a public benefit corporation in 2013
and was renamed Plum, PBC.

- 1 • The Original Summons, attached to the Borders Decl. at **Ex. 3**; and
- 2 • All other documents on file in the Superior Court, attached to the
- 3 Borders Decl. at **Ex. 4**.

4 *Id.* at ¶¶ 3-6.

5 3. Plaintiff is a consumer who allegedly purchased twelve types of baby
6 food products manufactured, distributed, labeled, and advertised by Plum. Compl.
7 at ¶¶ 10, 12. Plaintiff contends that the baby food contained heavy metals, despite
8 the fact that the baby food is advertised as being organic, non-GMO, free from
9 artificial preservatives, and safe and suitable for consumption by infants and small
10 children. *Id.* at ¶¶ 1, 11. Plaintiff contends that she “would not have purchased the
11 products” had Plum disclosed that the products contained any level of toxic heavy
12 metals. *Id.* at ¶ 11. In addition to challenging the products she purchased, plaintiff
13 also challenges other Plum baby food products “that contain, or are at risk of
14 containing, heavy metals.” *Id.* at ¶ 16.

15 4. Plaintiff seeks to represent the following putative class:

16 All persons within the State of California who purchased Plum
17 Organic’s Baby Food Products for household or business use during
18 the applicable statute of limitations and who have not received a
refund or credit for their purchase(s).

19 *Id.* at ¶ 48.

20 5. Plaintiff asserts five causes of action: (a) violation of California’s
21 Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (b)
22 violation of California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code
23 §§ 17500, *et seq.*; (c) violation of California’s Consumer Legal Remedies Act
24 (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*; (d) breach of express warranty; and (e)
25 breach of implied warranty. Compl. at ¶¶ 57-100.

26 6. As set forth herein, based on the allegations of the Complaint and other
27 evidence collected by Plum, this Court has subject matter jurisdiction under the
28

1 Class Action Fairness Act, 28 U.S.C § 1332(d). Therefore, this action may be
2 removed to this Court, pursuant to 28 U.S.C. § 1441.

3 7. Plum has not answered the Complaint in San Diego County Superior
4 Court prior to removal, and Plum is not aware of any further proceedings or filings
5 regarding this action in that court. Borders Decl. at ¶ 8. Plum need not secure
6 consent from the “Doe” defendants prior to removal. 28 U.S.C. § 1453(b) (“[S]uch
7 action may be removed by any defendant without the consent of all defendants.”);
8 *see, e.g., United Comput. Sys., Inc. v. AT&T Corp.*, 298 F.3d 756, 762 (9th Cir.
9 2002) (the consent requirement “does not apply to” “unknown” parties).

10 **II. REMOVAL IS PROPER UNDER CAFA**

11 8. “[A]ny civil action brought in a State court of which the district courts
12 of the United States have original jurisdiction, may be removed by the defendants
13 ... to the district court for the district and division embracing the place where such
14 action is pending.” 28 U.S.C. § 1441(a); *see also id.* § 1453(b).

15 9. CAFA confers district courts with original jurisdiction over a putative
16 class action if the number of members of all proposed plaintiff classes aggregates to
17 100 or more, the aggregate amount in controversy exceeds \$5 million exclusive of
18 interest and costs, and “any member of [the] class of plaintiffs is a citizen of a state
19 different from any defendant.” *Id.* § 1332(d)(2). Although the burden rests on the
20 removing party to demonstrate that CAFA’s jurisdictional requirements are met, the
21 party opposing jurisdiction under CAFA bears the burden of demonstrating that any
22 exception to CAFA jurisdiction applies. *Serrano v. 180 Connect, Inc.*, 478 F.3d
23 1018, 1021-22 (9th Cir. 2007). This action satisfies each of CAFA’s requirements.

24 **A. This Is A Covered Class Action**

25 10. CAFA defines a “class action” as “any civil action” filed under a
26 “State statute or rule of judicial procedure” that, “similar” to Federal Rule of Civil
27 Procedure 23, authorizes “an action to be brought by 1 or more representative
28 persons as a class action.” *Id.* § 1332(d)(1)(B).

1 11. This action meets CAFA’s definition of a class action. Plaintiff
2 purports to bring this action on behalf of “all others similarly situated,” and
3 identifies a putative class of California consumers who purchased Plum baby food.
4 Compl. at ¶ 48. Plaintiff brings these claims pursuant to California’s class action
5 statute, Cal. Civ. Proc. Code § 382, and alleges that each of the class-action
6 requirements is met. Compl. at ¶¶ 48, 51-56.

7 **B. The Proposed Class Exceeds 100 Members**

8 12. For purposes of removal, the Court looks to a plaintiff’s allegations
9 respecting class size. *See Kuxhausen v. BMW Fin. Servs. NA LLC*, 707 F.3d 1136,
10 1140 (9th Cir. 2013).

11 13. Plaintiff purports to bring a claim on behalf of “[a]ll persons within the
12 State of California who purchased Plum Organic’s Baby Food Products for
13 household or business use during the applicable statute of limitations . . .” Compl. ¶
14 at 48. Plaintiff alleges that “[t]he number of individuals who purchased the
15 Products during the relevant time period is at least in the thousands.” *Id.* at ¶ 51; *see*
16 *Roppo v. Travelers Commercial Ins. Co.*, 869 F.3d 568, 581 (7th Cir. 2017) (“[The
17 defendant] may rely on the estimate of the class number set forth in the
18 complaint.”). Accordingly, the number of members of all proposed plaintiff classes
19 in the aggregate exceeds the 100-member requirement. *See* 28 U.S.C.
20 § 1332(d)(5)(B).

21 **C. The Parties Are Minimally Diverse**

22 14. CAFA’s minimal diversity requirement is met if “any member of [the]
23 class of plaintiffs” is “a citizen of a State different from any defendant.” 28 U.S.C.
24 § 1332(d)(2)(A). A class member is any person “who falls[] within the definition”
25 of the proposed class. *Id.* § 1332 (d)(1)(D).

26 15. For diversity purposes, an individual is a “citizen” of the state in which
27 he is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir.
28 1983). An individual’s domicile is the place he resides with the intention to remain

1 or to which he intends to return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857
2 (9th Cir. 2001). Plaintiff is a citizen of California. Compl. at ¶ 10. And, the putative
3 class is defined to include only consumers within California. *Id.* at ¶ 48. At a
4 minimum, the putative class likely includes at least one California citizen.

5 16. Under CAFA, both corporations and unincorporated associations are
6 deemed to be citizens of the states where they are incorporated or organized, and
7 where they have their principal places of business. 28 U.S.C. § 1332(c)(1), (d)(10).
8 The phrase “principal place of business” “refers to the place where the
9 corporation’s high level officers direct, control, and coordinate the corporation’s
10 activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010). This is the corporation’s
11 “nerve center.” *Id.* at 81 (internal quotation marks omitted). This “should normally
12 be the place where the corporation maintains its headquarters.” *Id.* at 93. At the
13 time of the filing of the Complaint and this notice of removal, Plum is a Delaware
14 corporation with its principal place of business in Camden, New Jersey. *See, e.g.*,
15 *Gulkarov, et al. v. Plum, PBC*, No. 4:21-cv-913, at ECF No. 34-1 (N.D. Cal. Apr.
16 12, 2021).

17 17. Because plaintiff is a citizen of California and because Plum is a
18 citizen of Delaware and New Jersey, the parties are at least minimally diverse.

19 **D. The Aggregate Amount In Controversy Exceeds \$5 Million**

20 18. Under CAFA, the claims of the individual class members are
21 aggregated to determine if the amount in controversy exceeds the required “sum or
22 value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. §§ 1332(d)(2),
23 (d)(6). When a defendant removes an action pursuant to CAFA, the “defendant’s
24 notice of removal need include only a *plausible* allegation that the amount in
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27
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1 controversy exceeds the jurisdictional threshold” of \$5 million. *Dart Cherokee*
2 *Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014) (emphasis added).²

3 19. To determine the amount in controversy, the Court must assume that
4 the allegations in the operative pleading are true and that a jury will return a verdict
5 for the plaintiff on all such claims. *See Cain v. Hartford Life & Accident Ins. Co.*,
6 890 F. Supp. 2d 1246, 1249 (C.D. Cal. 2012) (“The ultimate inquiry is what amount
7 is put ‘in controversy’ by the plaintiff’s complaint, not what a defendant will
8 actually owe.”) (emphasis and internal quotation marks omitted).

9 20. Plaintiff does not specifically plead the amount of damages claimed.
10 Where this is the case, a defendant need only make a *prima facie* showing that it is
11 more likely than not that the amount in controversy exceeds \$5 million. *Singer v.*
12 *State Farm Mut. Auto Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997). “The ultimate
13 inquiry is what amount is put ‘in controversy’ by the plaintiff’s complaint, not what
14 defendant will actually owe.” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d
15 1199, 1205 (E.D. Cal. 2008) (emphasis omitted). A “removing defendant is not
16 obligated to ‘research, state, and prove plaintiff’s claims for damages.’” *Id.* at 1204-
17 05 (emphasis omitted). Defendants may rely on “reasonable assumptions” in
18 calculating the amount in controversy for removal purposes. *Arias*, 936 F.3d at 922.

19 21. Although Plum denies all allegations of wrongdoing and states that
20 plaintiff’s claims are meritless, plaintiff seeks, amongst other things, monetary and
21 compensatory damages, an award of equitable and injunctive relief, restitutionary
22 disgorgement of all products and unjust enrichment, and attorneys’ fees, which well
23 exceed the \$5 million jurisdictional threshold.

24 22. First, monetary damages and restitutionary disgorgement are in excess
25 of \$5 million. Plaintiff requests “[a]n award of all economic, monetary, actual,
26

27 ² “Evidence establishing the amount is required by [28 U.S.C.] § 1446(c)(2)(B)
28 only when the plaintiff contests, or the court questions, the defendant’s allegation.”
Dart, 574 U.S. at 89.

1 consequential and compensatory damages caused by Defendant’s conduct, trebled
2 where appropriate,” and “restitutionary disgorgement of all profits and unjust
3 enrichment.” Compl. at Prayer for Relief, (C), (E). Plaintiff challenges all Plum
4 baby food products. *See* Compl. at ¶¶ 16 (identifying products at issue as being all
5 Plum’s baby food products that are at risk of containing heavy metals, and listing
6 79 Plum products); 48 (putative class consists of “[a]ll persons within the State of
7 California who purchased Plum Organic’s Baby Food Products . . .”). Moreover,
8 plaintiff claims that she and the putative class would not have purchased the
9 products at all had they known that they contain, or are at risk of containing, heavy
10 metals. *Id.* at ¶¶ 46, 65. Thus, pursuant to plaintiff’s allegations, the estimated
11 amount in controversy can be determined by aggregating the total revenue derived
12 from the sale of Plum’s baby food products in California. During the class period,
13 Plum’s gross revenue for the sale of its baby food products in the State of
14 California has been more than \$5 million.

15 23. Second, injunctive relief is properly valued in the amount in
16 controversy. *See Lyon v. W.W. Grainger Inc.*, 2010 WL 1753194, at *2 (N.D. Cal.
17 2010).

18 24. Plaintiff requests an injunction “prohibiting [Plum] from engaging in
19 the unlawful acts described herein.” Compl. at Prayer for Relief (D). The value of
20 injunction in this case is measured by the cost of revising labels, pulling challenged
21 products without heavy metals disclosures from California shelves, and destroying
22 old packaging. *See Arens v. Popcorn, Indiana, LLC*, 2014 WL 2737412, at *2
23 (N.D. Cal. June 16, 2014). Moreover, Plum would have to develop new labels and
24 advertising for its products, or in the alternative, would have to change the product
25 formulation and re-produce its products to comply (if it were even possible to do
26 so, given that the pervasiveness of heavy metals in the environment would always
27 pose a risk that the products contained heavy metals).

28

1 25. To ensure that Plum adequately complies with an injunction requiring
2 it to either disclose on its product packaging the risk that the products contain heavy
3 metals or to reformulate its products so that they do not contain heavy metals
4 (likely an impossible task), Plum would have to change its product labeling
5 nationwide. Otherwise, distributors or other third-parties could sell Plum's
6 allegedly misbranded products in California.

7 26. Moreover, many courts have looked to costs imposed upon the
8 defendants if certain relief were granted to determine amount in controversy. *See*
9 *Gen. Dentistry For Kids, LLC v. Kool Smiles, P.C.*, 379 F. App'x 634, 635 (9th Cir.
10 2010) (looking at defendant's cost of compliance in injunctive relief context). The
11 cost to Plum of destroying all misleading and deceptive advertising materials and
12 product labels is thus properly valued in amount in controversy. To destroy all
13 allegedly misleading and deceptive product labels, Plum would have to buy back
14 inventory in California, destroy its current and unsold inventory, and provide
15 relabeled products to replace those it has bought back from retailers.

16 27. Finally, attorneys' fees are counted in evaluating the amount in
17 controversy. *See Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir.
18 2007). These fees "can exceed six figures in a class action and are properly
19 aggregated and considered for purposes of determining the amount in controversy
20 under CAFA." *Federico v. Home Depot*, 507 F.3d 188, 197 (3d Cir. 2007).

21 28. Plaintiff's Complaint raises complex factual and legal issues. If the
22 case were to proceed to discovery, it is likely that disputes would arise as to the
23 proper breadth and scope of discovery to be permitted. It is thus clear that litigating
24 this case to a resolution on the merits would require substantial time and effort by
25 plaintiff's counsel.

26 29. Taken together, the amount in controversy in this action exceeds \$5
27 million.

28

1 **E. No Exception To Defeat CAFA Applies**

2 30. Neither CAFA’s “local controversy” nor its “home state” exceptions
3 apply to this case. For the home state exception to apply, all primary defendants
4 must be citizens of the state in which the case is filed. 28 U.S.C. § 1332(d)(4)(B);
5 *see also Corsino v. Perkins*, 2010 WL 317418, at *5 (C.D. Cal. Jan. 19, 2010).
6 Similarly, for the local controversy exception to apply, at least one defendant must
7 be a citizen of California, and that defendant’s conduct must form a significant
8 basis for the claims asserted by the proposed plaintiff class. 28 U.S.C. §
9 1332(d)(4)(i)(II). Plum is not a citizen of California, so neither exception applies.

10 31. Moreover, the local controversy exception does not apply when the
11 principal injury alleged is one that occurred throughout the country, not just in the
12 state where the case was filed, as is the case here. 28 U.S.C. §
13 1332(d)(A)(4)(i)(III); *see also Waller v. Hewlett-Packard Co.*, 2011 WL 8601207,
14 at *4 (S.D. Cal. May 10, 2011). Plum baby food products are sold nationwide and
15 the labels and ingredient formulation for the products is the same throughout the
16 United States. Indeed, there are substantively identical class actions currently
17 pending in the District of New Jersey against Plum bringing similar claims. This
18 demonstrates that this controversy is not truly local in nature, and that the principal
19 injury is nationwide.

20 32. Finally, the local controversy exception does not apply when, in the
21 three years preceding the filing of a case, any other class action has been filed
22 “asserting the same or similar factual allegations against any of the defendants on
23 behalf of the same or other persons.” 28 U.S.C. § 1332(d)(4)(A)(ii). Numerous
24 other class actions have been brought over the past few months based on the same
25 allegations as those brought here (*see, e.g., Gulkarov*, No. 4:21-cv-00913 (N.D.
26 Cal.)).

1 **III. COMPLIANCE WITH OTHER REMOVAL REQUIREMENTS**

2 **A. Removal Is Timely**

3 33. This Notice of Removal is timely because Plum filed it prior to being
4 served with the Complaint. *See* 28 U.S.C. § 1446(b)(1) (requiring, as relevant here,
5 that a notice of removal of a civil action be filed within 30 days after the defendant
6 receives, “through service or otherwise,” a copy of the summons and complaint);
7 *see also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 348
8 (1999) (clock for removal not triggered by “mere receipt of the complaint
9 unattended by any formal service”); Borders Decl. at ¶ 7.

10 **B. Venue Is Proper**

11 34. Under 28 U.S.C. § 1441(a), venue is proper in the United States
12 District Court for the Southern District of California because this Court embraces
13 the San Diego County Superior Court, where this action was pending.

14 **C. Notice To Plaintiff And State Court**

15 35. Pursuant to 28 U.S.C. § 1446(d), Plum is serving written notice of the
16 removal of this case on plaintiff’s counsel:

17 Todd D. Carpenter
18 Scott G. Braden
19 1350 Columbia St., Suite 603
20 San Diego, CA 92101

21 36. Pursuant to 28 U.S.C. § 1446(d), Plum will promptly file a Notice of
22 Removal Filing with the Clerk of the Superior Court of California, County of San
23 Diego.

24 **IV. RESERVATION OF RIGHTS**

25 37. By removing this matter, Plum does not waive and, to the contrary,
26 reserves any rights it may have, including, without limitation, all available
27 arguments and affirmative defenses. Plum does not concede that class certification
28 is appropriate or that plaintiff is entitled to any recovery whatsoever. However, the
question is not whether class certification is appropriate or whether plaintiff will

1 recover any amount for any particular time period. “The amount in controversy is
2 simply an estimate of the total amount in dispute, not a prospective assessment of
3 defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir.
4 2010).

5 38. In the event that plaintiff files a request to remand, or the Court
6 considers remand *sua sponte*, Plum respectfully requests the opportunity to submit
7 additional argument and/or evidence in support of removal.

8 **V. CONCLUSION**

9 WHEREFORE, Plum respectfully requests that its Notice of Removal be
10 deemed good and sufficient and for this Court to exercise subject matter jurisdiction
11 over this removed action.

12 Dated: April 12, 2021

MAYER BROWN LLP
Dale J. Giali
Keri E. Borders

15 DECHERT LLP
16 Hope Friewald (*pro hac vice* to be filed)
17 Mark Cheffo (*pro hac vice* to be filed)

18 by: /s/ Keri E. Borders
19 Keri E. Borders

20 Attorneys for Defendant
21 PLUM, PBC