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8 Trader Joe's Company and T.A.C.T. Holding,
Inc.

9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 SERENA WONG, on behalf of herself
13 and all others similarly situated,

14 Plaintiff,

15 v.

16 TRADER JOE'S COMPANY; T.A.C.T.
17 HOLDING, INC.; DOE DEFENDANTS
1-5;

18 Defendants.
19

Case No. '18CV0869 JLS JLB

NOTICE OF REMOVAL

(San Diego Superior Court Case No.:
37-2018-00014504-CU-BC-CTL)

Complaint Filed: March 22, 2018

1 **PLEASE TAKE NOTICE** that Defendants Trader Joe’s Company (“Trader
2 Joe’s”) and T.A.C.T. Holding, Inc. (“TACT”)¹ (together, “Defendants”) hereby
3 remove this action pursuant to U.S.C. §§ 1332(d), 1441(a), and 1446, from the
4 Superior Court for the State of California for the County of San Diego to the United
5 States District Court for the Southern District of California. Removal is proper
6 because this is a putative class action that satisfies the jurisdictional prerequisites
7 under the Class Action Fairness Act (“CAFA”). Here, the proposed plaintiff class
8 consists of over 100 members, and minimal diversity exists because Defendants are
9 citizens of California and the putative class includes citizens of other states.
10 Additionally, the amount in controversy exceeds \$5,000,000. This Notice of
11 Removal is timely because it has been filed within thirty days of the date Defendants
12 were served with the summons and complaint. *See* 28 U.S.C. § 1446(b).

13 **PROCEDURAL BACKGROUND AND TIMELINESS OF REMOVAL**

14 1. On March 22, 2018, Plaintiff Serena Wong (“Plaintiff”) filed a putative
15 class action against Defendants in the Superior Court for the State of California,
16 County of San Diego, captioned *Wong v. Trader Joe’s Company, et al.*, Case No. 37-
17 2018-00014504-CU-BC-CTL (the “Superior Court Action”).

18 2. Plaintiff served Defendants with the Superior Court Action Summons
19 and Complaint on April 4, 2018. This Notice of Removal is therefore timely because
20 it is filed within thirty days of service on Defendants. *See* 28 U.S.C. § 1446(b).

21 3. Pursuant to 28 U.S.C. § 1446(a), Defendants have attached as **Exhibit**
22 **1** a copy of all process, pleadings, and orders served upon Defendants in the Superior
23 Court Action.

24 4. Plaintiff purports to bring this action on behalf of purchasers of Trader
25 Joe’s Sour Gummies (the “Product”) on or after January 1, 2012. Compl. ¶ 98.
26 Specifically, she seeks to represent a putative class consisting of “[a]ll U.S. citizens

27 _____
28 ¹ TACT is a holding company with no role in marketing or advertising Trader Joe’s products.

1 who purchased the Product in their respective state of citizenship on or after January
2 1, 2012 and until the Class is certified, for personal use and not for resale...” *Id.*
3 Plaintiff also seeks to certify a California sub-class defined as “[a]ll California
4 citizens” who purchased the Product during the same time period. *Id.* ¶ 98.

5 5. Plaintiff alleges that Trader Joe’s deceptively marketed the Product
6 because the Product allegedly fails to disclose on the label that it contains an artificial
7 flavoring, d-l malic acid, and allegedly misleadingly identifies d-l malic acid only as
8 “malic acid” on the label, giving consumers the misleading impression that the
9 ingredient is naturally-occurring when it is not. *Id.* ¶¶ 41-44, 46.

10 6. On behalf of Plaintiff and the putative class, the Complaint alleges
11 claims against Defendants for violation of California’s (1) Consumers Legal
12 Remedies Act, Cal. Civ. Code § 1750, *et seq.*; (2) Unfair Competition Law, Cal. Bus.
13 & Prof. Code § 17200 *et seq.*; (3) False Advertising Law, Cal. Bus. & Prof. Code §
14 17500, *et seq.*; (4) breach of express warranty; (5) breach of implied warranty; and
15 (6) negligent misrepresentation. *See Compl.* ¶¶ 115–188.

16 7. Plaintiff seeks declaratory relief, damages, restitution, punitive
17 damages, injunctive relief, an award of pre-judgment and post-judgment interest, and
18 attorneys’ fees and costs. *Id.* at 24-25 (Prayer for Relief).

19 **JURISDICTION AND BASIS FOR REMOVAL**

20 8. This action is removable pursuant to 28 U.S.C. § 1441(a) because this
21 is an action over which this Court has original jurisdiction.

22 9. This Court possesses original jurisdiction over this action under CAFA,
23 28 U.S.C. § 1332(d), which grants district courts original jurisdiction over class
24 actions (1) involving a plaintiff class of 100 or more members; (2) where any member
25 of the proposed class is a citizen of a state different from any defendant; and (3) the
26 amount in controversy exceeds \$5,000,000 in the aggregate, exclusive of interests
27 and costs. *See* 28 U.S.C. § 1332(d)(2); *see also Dart Cherokee Basin Operating Co.*
28 *v. Owens*, 135 S. Ct. 547, 554 (2014) (explaining that “CAFA’s provisions should be

1 read broadly” (internal quotation marks omitted)). These conditions are satisfied
2 here for the reasons set out below.

3 **The Plaintiff Class Consists of Over 100 Members**

4 10. This action meets the CAFA definition of a class action, which is “any
5 civil action filed under [R]ule 23 of the Federal Rules of Civil Procedure or similar
6 State statute or rule of judicial procedure.” 28 U.S.C. § 1332(d)(1)(B); *see*
7 *Compl.* ¶¶ 97–114. Plaintiff purports to bring claims on behalf of “[a]ll U.S. citizens
8 who purchased the Product in their respective state of citizenship on or after January
9 1, 2012...” *Id.* ¶ 98. Plaintiff also alleges that the number of class members is “at
10 minimum in the tens of thousands.” *Id.* ¶ 103. Accordingly, the aggregate number
11 of class members exceeds 100 persons. *See* 28 U.S.C. § 1332(d)(5)(B).

12 **There is Minimal Diversity of Citizenship**

13 11. Minimal diversity exists between Defendants and the members of the
14 putative class under 28 U.S.C. § 1332(d)(2)(A). Under CAFA, diversity of
15 citizenship is satisfied where “any member of a class of plaintiffs is a citizen of a
16 State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

17 12. A corporation is “deemed to be a citizen of every State and foreign state
18 by which it has been incorporated and of the State or foreign state where it has its
19 principal place of business.” 28 U.S.C. § 1332(c)(1). “The term ‘principal place of
20 business’ means ‘the place where a corporation's officers direct, control, and
21 coordinate the corporation’s activities.’” *Martinez v. Michaels*, 2015 WL 4337059,
22 at *3 (C.D. Cal. July 15, 2015) (quoting *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93
23 (2010)).

24 13. Trader Joe’s is a California corporation with its headquarters located in
25 California. *See Compl.* ¶ 3 (alleging that Trader Joe’s is a “California
26 corporation...”). Accordingly, Trader Joe’s is a citizen of California for diversity
27 purposes.

28 14. Additionally, TACT is a California corporation with its headquarters

1 located in California. *See* Compl. ¶ 4 (alleging that TACT “is headquartered and has
2 its principal place of business in California.”).

3 15. Plaintiff has brought this action on behalf of a nationwide class of “[a]ll
4 U.S. citizens who purchased the Product in their respective state of citizenship on or
5 after January 1, 2012...” *Id.* ¶ 98. The Product is sold throughout the United States,
6 including in states other than California. Thus, at least one member of the proposed
7 class is from a state other than California, thereby satisfying minimal diversity for
8 purposes of CAFA jurisdiction. *See* 28 U.S.C. § 1332(d)(2)(A).

9 **The Amount in Controversy Exceeds \$5,000,000**

10 16. The amount in controversy in this action satisfies CAFA’s \$5,000,000
11 jurisdictional threshold. Under CAFA, the claims of the individual class members
12 are aggregated to determine if the amount in controversy exceeds the required “sum
13 or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2).
14 “The amount in controversy is simply an estimate of the total amount in dispute, not
15 a prospective assessment of defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*,
16 627 F.3d 395, 400 (9th Cir. 2010). To determine the amount in controversy, courts
17 first look to the complaint and “the sum claimed by the plaintiff controls if the claim
18 is apparently made in good faith.” *Id.* (citation omitted). Accordingly, “in assessing
19 the amount in controversy, a court must assume that the allegations of the complaint
20 are true and assume that a jury will return a verdict for the plaintiff on all claims made
21 in the complaint.” *Campbell v. Vitran Express, Inc.*, 471 F. App’x 646, 648 (9th Cir.
22 2012) (citation omitted). Where a complaint does not specify the amount of damages
23 sought, the removing defendant need only establish that it is more likely than not that
24 the amount in controversy requirement has been met. *Abrego Abrego v. Dow Chem.*
25 *Co.*, 443 F.3d 676, 683 (9th Cir. 2006). “The removing party’s burden is ‘not
26 daunting,’ and defendants are not obligated to ‘research, state, and prove the
27 plaintiff’s claims for damages.’” *Behrazfar v. Unisys Corp.*, 687 F. Supp. 2d 999,
28 1004 (C.D. Cal. 2009).

1 17. While Trader Joe’s contends that the allegations in the Complaint are
2 without merit and that neither Plaintiff nor the putative class members have suffered
3 any injury whatsoever, the amount in controversy here exceeds \$5,000,000. Here,
4 Plaintiff seeks to represent a nationwide class of customers who purchased the
5 allegedly deceptive Product during the putative class period—January 1, 2012 to the
6 present. Compl. ¶ 98. Trader Joe’s gross nationwide sales of the Product during the
7 putative class period were in excess of \$5,000,000. *See Watkins v. Vital*
8 *Pharmaceuticals, Inc.*, 720 F.3d 1179, 1181-82 (noting that an undisputed
9 declaration from Defendants that the total sales of products during the class period
10 exceeded \$5 million was “sufficient to establish that CAFA’s \$5 million amount in
11 controversy requirement is met.”). In addition, Plaintiff seeks to recover her
12 attorneys’ fees, which contribute to the alleged amount in controversy. *Id.* at 25
13 (Prayer for Relief); *see Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 1000 (9th
14 Cir. 2007) (including attorneys’ fees in calculating amount in controversy), *overruled*
15 *on other grounds by Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345 (2013);
16 *Kroske v. US. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005) (including attorney’s
17 fees in amount in controversy); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155–
18 56 (9th Cir. 1998) (including attorneys’ fees in calculating the amount in controversy
19 requirement for traditional diversity jurisdiction).

20 18. Plaintiff also seeks punitive damages. Compl. at 25 (Prayer for Relief).
21 Potential punitive damages are properly included in the amount in
22 controversy. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001) (“It is
23 well established that punitive damages are part of the amount in controversy in a civil
24 action.”).

25 19. Finally, Plaintiff seeks injunctive relief “enjoining Defendants’
26 deceptive and unfair practices” and “requiring Defendants to conduct corrective
27 advertising.” Compl. at 25 (Prayer for Relief). The cost of compliance with such an
28 injunction further adds to the amount in controversy. *See, e.g., Bayol v. ZipCar, Inc.*,

1 2015 WL 4931756, at *10 (N.D. Cal. Aug. 18, 2015) (“[A] defendant’s aggregate
2 cost of compliance with an injunction is appropriately counted toward the amount in
3 controversy.”).

4 20. Thus, while Trader Joe’s disputes it is liable to Plaintiff or any putative
5 class member—or that Plaintiff or any putative class member suffered injury or
6 incurred damages in any amount whatsoever—to the extent that the gross nationwide
7 sales of the Product during the class period exceeds \$5,000,000—and to the extent
8 that Plaintiff seeks attorneys’ fees, punitive damages, and requests injunctive relief—
9 the amount in controversy is in excess of the \$5,000,000 threshold for satisfying
10 CAFA’s jurisdictional prerequisites.

11 **No Exception to CAFA Applies**

12 21. Although CAFA contains several exceptions, which, where applicable,
13 may prevent the Court from exercising jurisdiction under CAFA, these exceptions do
14 not impose additional jurisdictional requirements. *See Serrano v. 180 Connect, Inc.*,
15 478 F.3d 1018, 1023 (9th Cir. 2007) (“[T]he provisions set forth in §§ 1332(d)(3)
16 and (4) are not part of the prima facie case for establishing minimal diversity
17 jurisdictional under CAFA, but, instead, are exceptions to jurisdiction.”). Rather, it
18 is plaintiff’s burden to demonstrate that an exception to CAFA applies. *Id.* at 1023–
19 24 (requiring the party seeking remand to demonstrate the applicability of the “home
20 state” and “local controversy” exceptions to CAFA); *Korn v. Polo Ralph Lauren*
21 *Corp.*, 536 F. Supp. 2d 1199, 1206 (E.D. Cal. 2008). Plaintiff here will not be able
22 to demonstrate that an exception to CAFA applies.

23 **OTHER PROCEDURAL REQUIREMENTS**

24 22. *Venue*. Plaintiff filed this action in the Superior Court of the State of
25 California, County of San Diego. This action is thus properly removed to the United
26 States District Court for the Southern District of California, which embraces San
27 Diego County within its jurisdiction. 28 U.S.C. §§ 1441(a), 1446(a).

28 23. *Joinder*. Because there are no other named defendants in this action

1 other than Trader Joe's and TACT, no consent to removal is necessary. The Doe
2 defendants, who have not been named or served, need not consent to this Notice of
3 Removal. *See Soliman v. Philip Morris, Inc.*, 311 F.3d 966, 971 (9th Cir. 2002).

4 24. *Notice.* Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of
5 Removal will be filed with the Clerk of Court for the Superior Court for the State of
6 California, County of San Diego and served upon counsel for Plaintiff.

7 **CONCLUSION**

8 For the reasons stated above, this action is within this Court's original
9 jurisdiction and meets all requirements for removal, such that removal is proper under
10 28 U.S.C. §§ 1332(d), 1441(a), and 1446. Accordingly, Defendants respectfully
11 remove this action from the Superior Court for the State of California, County of San
12 Diego, to this Court.

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15 Dated: May 4, 2018

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R. COLLINS KILGORE
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16
17
18 By: /s/ Dawn Sestito
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