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7 Attorneys for *Defendant* **ZALE DELAWARE, INC.**

8 **UNITED STATES DISTRICT COURT**
 9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
 11 GORDON HENRY LOVETTE,
 individually, and on behalf of all others
 12 similarly situated,

13 Plaintiff,

14 vs.

15
 16 ZALE DELAWARE, INC., and DOES 1-
 17 10, inclusive,

18 Defendant.

Case No '18CV2727 L RBB
 Assigned to

**NOTICE OF REMOVAL OF
 ACTION UNDER 28 U.S.C. §§
 1332(a), 1441(b), AND 1446**

*[Filed concurrently with Declaration of
 Kambria Jarrett]*

Superior Court Case No.: 37-2018-
 00055549-CU-NP-CTL
 Action Filed: October 31, 2018
 Trial Date: TBD

20
 21 **TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO**
 22 **PLAINTIFF GORDON HENRY LOVETTE AND HIS ATTORNEYS OF**
 23 **RECORD:**

24 **PLEASE TAKE NOTICE** that *Defendant* ZALE DELAWARE, INC.
 25 ("Defendant"), removes the above-captioned action from the Superior Court of the
 26 State of California, County of San Diego to the United States District Court, Southern
 27 District of California. This removal is based on 28 U.S.C. §§ 1332(d) (Class Action
 28

1 Fairness Act), 1441(a), and 1446. Defendant makes the following allegations in
2 support of its Notice of Removal:

3 **I. STATEMENT OF JURISDICTION**

4 1. This Court has original jurisdiction over this action under the Class
5 Action Fairness Act of 2005 (“CAFA”). *See* 28 U.S.C. § 1332(d). CAFA grants
6 district courts original jurisdiction over civil actions filed under federal or state law in
7 which any member of a class of plaintiffs is a citizen of a state different from any
8 defendant and where the amount in controversy for the putative class members in the
9 aggregate exceeds the sum or the value of \$5,000,000, exclusive of interests and costs.
10 CAFA authorizes removal of such actions in accordance with 28 U.S.C. §1446.

11 2. This Court has jurisdiction over this case under CAFA, 28 U.S.C.
12 § 1332(d), and this case may be removed pursuant to the provisions of 28 U.S.C.
13 section 1441(a), in that it is a civil class action wherein: (1) the proposed class
14 contains at least 100 members; (2) Defendant is not a state, state officials, or other
15 governmental entity; (3) the total amount in controversy for all putative class members
16 exceeds \$5,000,000; and; (4) there is diversity between at least one class member and
17 Defendant.

18 3. CAFA’s diversity requirement is satisfied when at least plaintiff is a
19 citizen of a state in which the defendant is not a citizen. *See* 28 U.S.C. §§
20 1332(d)(2)(A), 1453.

21 4. As set forth below, this case meets all of CAFA’s requirements for
22 removal and is timely and properly removed by the filing of this notice.

23 **II. VENUE**

24 5. This action is filed in the San Diego County Superior Court (“Superior
25 Court”). Accordingly, venue properly lies in the United States District Court for the
26 Southern District of California pursuant to 28 U.S.C. §§ 84(d), 1441, 1446 and
27 1391(a).

1 **III. PLEADINGS, PROCESS, AND ORDERS**

2 6. On October 31, 2018, Plaintiff GORDON HENRY LOVETTE
3 (“Plaintiff”) filed a Class Action Complaint (“Complaint” or “Compl.”) against
4 Defendant in the Superior Court, which initiated, *Gordon Henry Lovette, individually,*
5 *and on behalf of all others similarly situated v. Zale Delaware, Inc.* (“State Court
6 Action”). The Complaint asserts causes of action for: (1) Violation of the California
7 False Advertising Act (Cal. Bus. & Prof. Code §§ 17500, *et seq.*); Violation of Unfair
8 Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and (3) Violation of
9 Consumer Legal Remedies Act (Cal. Civ. Code §§ 1770, *et seq.*).

10 7. On November 5, 2018, Defendant was served with the Summons,
11 Complaint, and Civil Case Cover Sheet. True and correct copies of the foregoing
12 documents are attached hereto as **Exhibit A**.

13 8. As of the date of this notice, Defendant has not filed an answer or
14 otherwise responded to the Complaint. Defendant is informed and believes that the
15 Summons, Complaint and Civil Case Cover Sheet attached hereto as **Exhibit A**
16 constitute all process, pleadings, and orders in the State Court Action

17 9. The Superior Court has scheduled a Case Management Conference for
18 April 5, 2019. A true and correct copy of the docket for the State Court Action is
19 attached hereto as **Exhibit B**.

20 **IV. TIMELINESS OF REMOVAL**

21 10. Pursuant to 28 U.S.C. §§ 1446(b), this notice has been timely filed
22 because it is being filed within 30 days of Defendant’s receipt of the Complaint and
23 within 1 year of the commencement of the State Court Action.

24 **V. NOTICE OF REMOVAL TO ADVERSE PARTIES AND STATE**
25 **COURT**

26 11. Pursuant to 28 U.S.C. § 1446(d), Defendant will promptly give written
27 notice of the removal of this action to all adverse parties and will file a copy of the
28 notice with the Clerk of the Superior Court.

1 **VI. CAFA JURISDICTION**

2 12. As stated above, CAFA grants federal district courts original jurisdiction
3 over civil class action lawsuits filed under federal or state law in which any member
4 of a class of plaintiffs is a citizen of a state different from any defendant, and where
5 the matter’s amount in controversy exceeds \$5,000,000, exclusive of interest and
6 costs. *See* 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions in
7 accordance with 28 U.S.C. § 1446. As set forth below, this case meets each CAFA
8 requirement for removal, and is timely and properly removed by the filing of this
9 notice.

10 **A. The Proposed Class Contains At Least 100 Members**

11 13. 28 U.S.C. § 1332(d)(5)(B) sets forth that the provisions of CAFA do not
12 apply to any class action where “the number of members of all proposed plaintiff
13 classes in the aggregate is less than 100.” This requirement is easily met in the case at
14 bar.

15 14. Plaintiff seeks to represent a class consisting of “All consumers, who,
16 between the applicable statute of limitations and the present, purchased or attempted
17 to purchase Class Products, and whose Class Products, namely Defendant’s jewelry
18 repair service, would not repair the jewelry even through (sic) the jewelry was
19 inspected semi-annually.” (*See* Compl., ¶ 56.)

20 15. The statute of limitations for a claim for Violation of the California False
21 Advertising Act is three years. *See* Cal Civ. Proc. Code § 338(a); *County of Fresno v.*
22 *Lehman*, 229 Cal.App.3d 340, 346 fn. 7 (1991); *Ries v. Arizona Beverages USA LLC*,
23 287 F.R.D. 523, 534 (N.D. Cal. 2012). The statute of limitations for a claim for
24 Violation of Unfair Competition Law is four years. *See* Cal. Bus. & Prof. Code §
25 17208. The statute of limitations for a claim for Violation of Consumer Legal
26 Remedies Act (“CLRA”) is three years. Cal. Civ. Code § 1783. Consequently, the
27 putative class period is between October 31, 2014 to the present.

1 16. Based on a preliminary review of Defendant’s records, Defendant sold
2 313,684 items of jewelry that qualified for the jewelry repair at issue (“Class
3 Product”) in the State of California during the putative class period of October 31,
4 2014 to the present. (See Declaration of Kambria Jarrett (“Jarrett Decl.”), ¶ 5.) Thus,
5 there are well over 100 putative class members in this case according to Plaintiff’s
6 proposed class definition.

7 **B. Defendant Is Not A Governmental Entity**

8 17. Under 28 U.S.C. § 1332(d)(5)(B), CAFA does not apply to class actions
9 where “primary defendants are States, State officials, or other governmental entities
10 against whom the district court may be foreclosed from ordering relief.”

11 18. Defendant is a corporation, not a state, state official or other government
12 entity exempt from the CAFA. (See Jarrett Decl., ¶ 6.)

13 **C. There Is Diversity Between At Least One Class Member And One**
14 **Defendant**

15 19. Plaintiff is a citizen of California. CAFA’s minimal diversity requirement
16 is satisfied, inter alia, when “any member of a class of plaintiffs is a citizen of a State
17 different from any defendant.” 28 U.S.C. §§ 1332(d)(2)(A); 1453(b). In a class action,
18 only the citizenship of the named parties is considered for diversity purposes and not
19 the citizenship of the class members. *Snyder v. Harris*, 394 U.S. 332, 339-40 (1969).
20 Minimal diversity of citizenship exists here because Plaintiff and Defendant are
21 citizens of different states.

22 20. Plaintiff is a resident of the County of San Diego and is a citizen of the
23 State of California. For diversity purposes, a person is a “citizen” of the state in which
24 he is domiciled. See *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088 (9th Cir.
25 1983); see also *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)
26 (confirming that person’s domicile is the place he resides with the intention to
27 remain). Furthermore, allegations of residency in a state court complaint can create a
28 rebuttable presumption of domicile supporting diversity of citizenship. See *Lew v.*

1 *Moss*, 797 F.2d 747, 751 (9th Cir. 1986); *see also State Farm Mut. Auto. Ins. Co. v.*
2 *Dyer*, 19 F.3d 514, 519-20 (10th Cir. 1994) (allegation by party in state court
3 complaint of residency “created a presumption of continuing residence in [state] and
4 put the burden of coming forward with contrary evidence on the party seeking to
5 prove otherwise”); *Smith v. Simmons*, 2008 U.S. Dist. LEXIS 21162, *22 (E.D. Cal.
6 2008) (place of residence provides “prima facie” case of domicile).

7 21. Here, at the time Plaintiff commenced this action and, upon information
8 and belief, at the time of removal, Plaintiff resided in San Diego County, in the State
9 of California. Plaintiff alleges in his Complaint that he is “citizen and resident of the
10 State of California, County of San Diego.” (*See* Compl., ¶ 5.) Defendant has thus
11 established by a preponderance of the evidence that Plaintiff resided and was
12 domiciled in California, and is therefore a citizen of California. *See Lew*, 797 F.2d at
13 751; *Dyer*, 19 F.3d at 519-20; *Smith*, 2008 U.S. Dist. LEXIS 21162, at *22.

14 22. **Defendant is Not a Citizen of California.** For purposes of 28 U.S.C.
15 section 1332, a corporation is deemed to be a citizen of any state by which it has been
16 incorporated and of the state where it has its principal place of business. *See* 28 U.S.C.
17 § 1332(c)(1). Defendant is a corporation incorporated under the laws of the State of
18 Delaware, with its principal place of business at 9797 Rombauer Road, Dallas, Texas
19 75019. (*See* Jarrett Decl., ¶ 6; Compl., ¶ 21.) Consequently, Defendant is a citizen of
20 Delaware and Texas for purposes of diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1)
21 (“[A] corporation shall be deemed to be a citizen of every State and foreign state by
22 which is has been incorporated and of the State or foreign state where it has its
23 principal place of business[.]”).

24 23. No other party has been named or served as of the date of this removal.
25 Defendants “Does 1 through 10” are fictitious. The Complaint does not set forth the
26 identity or status of any fictitious defendants, nor does it set forth any specific,
27 charging allegation against any fictitious defendants. Thus, pursuant to 28 U.S.C. §
28 1441(a), the citizenship of defendants sued under fictitious names must be disregarded

1 for purposes of determining diversity jurisdiction and cannot destroy the diversity of
2 citizenship between the parties in this action. *See Newcombe v. Adolf Coors Co.*, 157
3 F.3d 686, 690-91 (9th Cir. 1998).

4 24. This action satisfies diversity requirements because Plaintiff is a citizen
5 of the State of California and Defendant is a citizen of the States of Delaware and
6 Texas. Therefore, the complete diversity requirement of 28 U.S.C. § 1332(a) is
7 satisfied along with the less strict diversity requirements under CAFA. *See* 28 U.S.C.
8 §§ 1332(d)(2)(A), 1453.

9 **D. The Amount In Controversy Exceeds \$5,000,000**

10 25. Although Plaintiff does not specify the exact amount of damages being
11 sought, the allegations in the Complaint demonstrate that the amount sought easily
12 exceeds \$5,000,000 in the aggregate, exclusive of interest and costs.

13 26. “The amount in controversy is simply an estimate of the total amount in
14 dispute, not a prospective assessment of defendant's liability.” *Lewis v. Verizon*
15 *Commc'ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010). “[W]hen the complaint does not
16 contain any specific amount of damages sought, the party seeking removal under
17 diversity bears the burden of showing, by a preponderance of the evidence, that the
18 amount in controversy exceeds the statutory amount.” *Id.* at 397. A party may make
19 this showing with an “affidavit to show that the potential damages could exceed the
20 jurisdictional amount.” *Id.*

21 27. Plaintiff, on behalf of himself and the putative class members, seeks
22 “[a]ctual damages ... or full restitution of all funds acquired from Plaintiff and Class
23 Members from the sale of misbranded Class Products during the relevant class
24 period.” (*See* Compl., Prayer for Relief, ¶ 103.e.) As explained above, the class
25 period is between October 31, 2014 to the present. During that time period,
26 Defendant’s records show that it sold over 313,684 items of jewelry that qualified for
27 the Class Product in the State of California. (*See* Jarrett Decl., ¶ 5.) With respect to
28 Plaintiff’s CLRA claims, a minimum damages award of \$1,000 per violation is

1 allowed. *See* Cal. Civ. Code §1780(a)(1). If Plaintiff prevails on his claims, this
2 minimum award could be applied to each sale or transaction that constitutes deceptive
3 advertising or unfair competition. *See* Cal. Civ. Code §1761(e). As applied to
4 Defendant, who has sold over 313,684 items of jewelry that qualified for the Class
5 Product, this calculation of potential damages would easily surpass the \$5,000,000
6 threshold.

7 28. Thus, based on the size of the putative class, as well as the fees that
8 Plaintiff seeks to recover, the amount in controversy is well in excess of \$5,000,000,
9 exclusive of fees and interest.

10 29. Plaintiff also seeks, for all putative class members, punitive damages and
11 attorneys’ fees. (*See* Compl., Prayer for Relief, ¶¶ 103.f.-g.) Punitive damages and
12 attorneys’ fees are recoverable for a claim for Violation of Consumer Legal Remedies
13 Act. *See* Cal. Civ. Code § 1780(a)(4), (e). Consequently, these amounts should be
14 aggregated to determine the jurisdictional amount in controversy requirement. *See*
15 *Bell v. Preferred Life Assur. Soc’y*, 320 U.S. 238, 240 (1943) (“Where both actual and
16 punitive damages are recoverable under a complaint each must be considered to the
17 extent claimed in determining jurisdictional amount.”).

18 30. Accordingly, Plaintiff’s class-wide request for damages and restitution
19 appears to meet the jurisdictional minimum, although Defendant expressly denies that
20 Plaintiff is entitled to any such relief on behalf of himself or any class.

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1 **VII. CONCLUSION**

2 31. Defendant has established by a preponderance of the evidence that the
3 putative class exceeds 100 persons, that the dispute is between citizens of different
4 states, and that the amount in controversy for this class action exceeds the \$5 million
5 minimum for federal jurisdiction. For this reason and the others discussed above,
6 removal of this action is appropriate under 28 U.S.C. §1332(d).

7
8 DATED: December 3, 2018

McGLINCHEY STAFFORD

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10 By: /s/ Dhruv M. Sharma
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12 DHRUV M. SHARMA
13 ALLISON O. CHUA
14 Attorneys for *Defendant* **ZALE**
15 **DELAWARE, INC.**
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