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8 *Attorneys for Defendant Extra Space Storage Inc.*

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

12 ALEXANDRU IONESCU, LENAY
 13 JOHNSON and LAMAR MOSLEY,
 14 individually and on behalf of themselves and
 all other similarly situated,

15 *Plaintiffs,*

16 vs.

17 EXTRA SPACE STORAGE INC.,

18 *Defendant.*

Case No. _____

DEFENDANT EXTRA SPACE STORAGE INC.'S NOTICE OF REMOVAL

FIRST AMENDED COMPLAINT FILED IN
ALAMEDA COUNTY SUPERIOR COURT:
MARCH 25, 2019

NOTICE OF REMOVAL FILED: APRIL 24,
2019

1 **TO THE CLERK OF THE COURT, PLAINTIFFS AND PLAINTIFFS’**
2 **ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453,
4 Defendant Extra Space Storage Inc. (“Extra Space” or “Defendant”), by and through its attorneys,
5 hereby removes to this Court the action entitled *Johnson v. Extra Space Storage Inc.*, Case No.
6 RG19004671 (the “Action”), which was originally filed in the Superior Court of California for the
7 County of Alameda. As the requisite “short and plain statement of the grounds for removal,” 28
8 U.S.C. § 1446(a), Extra Space states as follows:

9 **I. INTRODUCTION**

10 1. As set forth below, this Action is properly removed to this Court pursuant
11 to 28 U.S.C. § 1441 because this Court has jurisdiction under the Class Action Fairness Act, 28
12 U.S.C. § 1332(d)(“CAFA”), as this is a civil action between citizens of different states, where the
13 amount in controversy exceeds the sum of \$5,000,000 exclusive of costs and interest, and the
14 putative class has more than 100 members.

15 **II. BACKGROUND**

16 2. On January 28, 2019, plaintiffs Lenay Johnson and Lamar Mosley
17 commenced this putative class action by filing a complaint in the Alameda County Superior Court.
18 That complaint was served on Defendant on February 4, 2019.

19 3. On March 5, 2019, prior to Defendant’s deadline to answer or otherwise
20 respond to the complaint, the parties entered a “Stipulation to Extend Deadlines” which the Court so
21 ordered. In that stipulation the parties agreed that plaintiffs Johnson and Mosley would file an
22 amended complaint on March 25, 2019, and defendant’s deadline to answer or otherwise respond to
23 the amended complaint would be April 24, 2019.

24 4. On March 25, 2019, plaintiffs Lenay Johnson and Lamar Mosley filed
25 their first amended complaint (“FAC”). The FAC added a third plaintiff Alexandru
26 Ionescu (along with Johnson and Mosley, “Plaintiffs”).¹

27 ¹ The Summons and Complaint with its Exhibit, and the Summons and First Amended Complaint
28

1 5. The FAC alleges violations of California’s Unfair Competition Law
2 (Cal. Bus. & Prof. Code. § 17200), California’s False Advertising Law (Cal. Bus. & Prof. Code §
3 17500), California’s Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*). (FAC ¶ 9.)

4 6. The proposed putative class consists of “[a]ll persons residing in the
5 United States who signed leases for storage units in California from Extra Space Storage from
6 January 28, 2015 to present.” (*Id.* ¶ 56.)

7 7. The FAC seeks an order “requiring Defendant to restore monies
8 that Defendant acquired from Plaintiffs and Class members in the amount not less than the
9 difference between any increase in Plaintiffs and Class Members’ rental rates and the original rental
10 rates to which Plaintiffs and Class members agreed in their leases.” (*Id.* ¶ 72.) The Complaint also
11 seeks injunctive relief, interest, costs, and fees. (*Id.* ¶¶ 73-76.)

12 8. Extra Space has not filed an answer or responsive pleading to the FAC.²

13 **III. BASIS FOR REMOVAL**

14 9. CAFA creates federal jurisdiction over putative class actions in which:
15 (a) the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs; (b) any
16 plaintiff is a citizen of a State different from any defendant; and (c) the putative class consists of
17 more than 100 members. 28 U.S.C. §§ 1332(d)(2)(A) and (d)(5). This action meets each of these
18 requirements.

19 **A. The Amount In Controversy Exceeds \$5,000,000**

20 10. In considering removal under CAFA, the Supreme Court has made clear
21 that “a defendant’s notice of removal need include only a plausible allegation that the amount in
22 controversy exceeds the jurisdictional threshold. Evidence establishing the amount is required by §
23 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant’s allegation.”
24 *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.Ct. 547, 554 (2014).

25 11. Although Extra Space denies all liability and further denies that class

26 _____
27 with its Exhibit, as well as “all process, pleadings, and orders served” on Defendants
28 in this Action, 28 U.S.C. § 1446(a), are attached hereto as Exhibit A.

² Nor did Extra Space file an answer or responsive pleading to the original complaint.

1 treatment is appropriate for this Action, if damages or restitution were awarded on Plaintiffs'
2 claims, the aggregate amount would exceed \$5,000,000 exclusive of interests and costs.

3 12. Extra Space denies Plaintiffs' substantive allegations, denies that
4 Plaintiffs are entitled to any of the relief sought in their Complaint, and does not waive any defense
5 with respect to any of Plaintiffs' claims. Nonetheless, the amount in controversy is determined by
6 accepting Plaintiff's allegations as true. *See, e.g., Campbell v. Vitran Exp., Inc.*, 471 F. App'x 646,
7 648 (9th Cir. 2012); *Nguyen v. Ericsson, Inc.*, 2018 WL 2836076, at *2 (N.D. Cal., 2018); *Cain v.*
8 *Hartford Life & Accident Ins. Co.*, 890 F. Supp. 2d 1246, 1249 (C.D. Cal. 2012) (citing *Kenneth*
9 *Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002)) ("In
10 measuring the amount in controversy, a court must assume that the allegations of the complaint are
11 true and assume that a jury will return a verdict for the plaintiff on all claims made in the
12 complaint.")

13 13. The Complaint seeks an order "requiring Defendant to restore monies
14 that Defendant acquired from Plaintiffs and Class members in the amount not less than the
15 difference between any increase in Plaintiffs and Class Members' rental rates and the original rental
16 rates to which Plaintiffs and Class members agreed in their leases." (FAC ¶ 79.) Plaintiffs claim
17 that their rates increased by \$19, \$31, and \$5 per month, respectively. (*Id.* ¶¶ 34, 43, 50-52.) In
18 pursuing such restitution, Plaintiffs seek to represent "[a]ll persons residing in the United States
19 who signed leases for storage units in California from Extra Space Storage from January 28, 2015 to
20 present." (*Id.* ¶ 49.)

21 14. Plaintiffs state that the restitution they seek is "believed to exceed the
22 hundreds of thousands, *or possibly millions*, of dollars in the aggregate." (*Id.* ¶ 66.) (emphasis
23 supplied)

24 15. Given the controverted sum per unit, per month, and the size of the
25 purported class as pleaded by Plaintiffs (all U.S. residents who signed leases for storage units in
26 California from Extra Space during the four-year period in question), the amount in controversy,
27 exclusive of interests and costs, well exceeds \$5,000,000.
28

1 **B. There Is Minimal Diversity Between Plaintiffs and Defendant**

2 16. CAFA requires only minimal diversity, and in putative class actions,
3 “[t]he district courts shall have original jurisdiction of any civil action in which...any member of a
4 class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).
5 Such diversity exists here.

6 17. Plaintiffs are citizens of California. (FAC ¶ 10) (“Plaintiff Alexandru
7 Ionescu is a resident of San Diego, California.”); (*Id.* ¶ 11) (“Plaintiff Lenay Johnson is a resident of
8 Hawthorne, California.”); (*Id.* ¶ 11) (“Plaintiff Lamar Mosley is a resident of Oakland,
9 California.”).

10 18. For purposes of diversity, a corporation is deemed to be a citizen of
11 (1) The state under whose laws it is organized; and (2) the state of its “principal place of business.”
12 28 U.S.C. § 1332(c)(1).

13 19. Defendant Extra Space is “a Maryland corporation with its headquarters
14 and principal place of business in Utah.” (FAC ¶ 13.)

15 20. Therefore, because Plaintiffs are citizens of California, and Defendant is
16 A citizen of Maryland and Utah, the diversity requirement is satisfied.

17 **C. The Proposed Putative Class Exceeds 100 Members**

18 21. Plaintiffs allege that “[m]embers of the class are so numerous that
19 joinder is impracticable: While the exact number of class members is unknown to Plaintiffs, *it is*
20 *believed that the class comprises thousands of members* geographically disbursed throughout
21 California.” (FAC ¶ 58.) (emphasis added).

22 22. Because the FAC pleads that that the putative class comprises
23 “thousands” of members, the requirement that the putative class exceed 100 members is satisfied.

24 **IV. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED**

25 23. *Venue.* This Court is the proper venue for removal because the
26 Action is pending in the County of Alameda, California and the United States District Court for the
27 Northern District of California, San Francisco/Oakland Division is the “district and division
28

1 embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

2 24. *Timeliness.* Extra Space timely filed this notice of removal.

3 Extra Space was served with the FAC on March 25, 2019. Accordingly, Extra Space filed this
4 Notice of Removal within 30 days of being served. 28 U.S.C. §§ 1446(b); 1453(b).

5 25. *Unanimity.* Because there are no other defendants besides Extra Space
6 In this action, no consent to removal from any other defendant is necessary.

7 26. *Notice.* As required by 28 U.S.C. § 1446(d), a copy of this notice of
8 removal is being promptly served upon counsel for Plaintiff and a copy is being filed with the Clerk
9 of the Superior Court of the State of California for the County of Alameda.

10 27. *State Court Record.* Pursuant to 28 U.S.C. § 1446(a), true and correct
11 copies of all process and pleadings served upon Extra Space in the state court action are attached to
12 this Notice as Exhibit A.

13 **V. RESERVATION OF RIGHTS**

14 28. By filing this notice of removal, Extra Space does not waive, and
15 reserves, all defenses including objections as to venue and the legal sufficiency of the claims
16 alleged in the Action.

17 29. Extra Space specifically does not waive, and expressly reserves, its right
18 to arbitrate the claims alleged in the Action. *See e.g., DeMartini v. Johns*, 2012 WL 4808448, at *5
19 (N.D. Cal. Oct. 9, 2012) (“[N]umerous courts have held that merely removing a case to federal
20 court...does not give rise to waiver of the right to arbitrate.”); *accord Paxton v. Macy’s W. Stores,*
21 *Inc.*, 2018 WL 4297763, at *11 (E.D. Cal. Sept. 7, 2018).

22 30. Extra Space reserves the right to submit additional evidence and
23 argument as needed to supplement this “short and plain statement of the grounds for removal.” 28
24 U.S.C. § 1446(a).

25 **VI. CONCLUSION**

26 31. For the reasons set forth above, this action is within the original
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1 jurisdiction of this Court pursuant to 28 U.S.C. § 1332(d) and venue is proper pursuant to 28 U.S.C.
2 § 1441(a). Accordingly, this action is removable to this Court pursuant to 28 U.S.C. § 1441.
3 Wherefore, Defendant hereby removes this civil action to this Court from the California Superior
4 Court for the County of Alameda.

5
6 Dated: April 24, 2019

Respectfully submitted,

7 /s/ Quyen L. Ta

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*Attorneys for Defendant Extra Space Storage
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2019, I electronically filed Extra Space Storage Inc.'s Notice of Removal and accompanying papers with the Clerk of Court using the CM/ECF system which sent an email notification to all participants in this case who are registered CM/ECF users. I further caused the documents listed above to be served via email and FedEx on the following:

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Dated: April 24, 2019

BOIES SCHILLER FLEXNER LLP

/s/ Ashleigh Jensen

Ashleigh Jensen