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CHIPOTLE MEXICAN GRILL INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MELISSA CRUZ, individually and on behalf of all others similarly situated,
Plaintiff,

v.

CHIPOTLE MEXICAN GRILL, INC., a Delaware corporation,

Defendant.

CASE NO.: 2:19-cv-08068

NOTICE OF REMOVAL BY DEFENDANT CHIPOTLE MEXICAN GRILL, INC.

NOTICE OF REMOVAL

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant Chipotle Mexican Grill, Inc. ("Chipotle") hereby removes this action, originally filed in the Superior Court of the State of California for the County of Los Angeles, Case No. 19STCV25669 (the "State Action"). This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff's claims depend on the resolution of a substantial question of federal law under: (1) the Organic Foods Production Act ("OFPA"), codified at 7 U.S.C. § 6501 *et seq.*; (2) the National Bioengineered Food Disclosure Standard ("NBFDS"), codified at 7 U.S.C. § 1639 *et seq.*; and (3) regulations promulgated thereunder by the U.S. Department of Agriculture ("USDA"), 7 C.F.R 66.5(c). In addition, that Plaintiff's claims are preempted by the OFPA and NBFDS is a separate and independent ground for original subject matter jurisdiction.

This Court further has original subject matter jurisdiction over Plaintiff's claims under 28 U.S.C. §§ 1332(d), 1441, 1453 and 1446, because this is a class action, minimal diversity exists and the amount in controversy exceeds $5,000,000.

Accordingly, removal is proper for the reasons explained more fully below.

I. INTRODUCTION.

On July 24, 2019, Plaintiff Melissa Cruz ("Plaintiff") commenced the State Action, a putative class action in the Superior Court of the State of California for the County of Los Angeles. The State Action alleges that Chipotle's non-GMO advertising was somehow misleading to consumers because Chipotle's corn- and soy-based products allegedly contain trace levels of GMOs. Plaintiff's allegations ignore federal law recognizing that non-GMO products may contain trace levels of GMOs and permitting advertising of products as non-GMO so long as those trace levels fall below certain thresholds. Chipotle's corn and soy products fall well below those threshold levels. In addition, and critically, Chipotle's soy products are certified organic, which

necessarily means they are non-GMO under federal law. In other words, Plaintiffs claims arise under and turn upon federal law governing both organic and GMO ingredients, and removal is therefore proper.

Additionally, Plaintiff brings her claims on behalf of herself and a proposed "nationwide class" of customers who purchased Chipotle's food products from April 27, 2015 to the present. Under the Class Action Fairness Act ("CAFA"), codified under 28 U.S.C. § 1332(d), removal is proper.

II. FEDERAL QUESTION JURISDICTION.

A. The State Action Presents a Substantial Question of Federal Law.

This Court has original subject matter jurisdiction to adjudicate "all civil actions arising under the Constitution, laws, or treaties of the United States." See 28 U.S.C. § 1331. Accordingly, a defendant may remove an action to federal court under 28 U.S.C. § 1441(a) if the plaintiff's "well-pleaded complaint" presents a federal question, such as a cause of action "arising under" or created by federal law. *See Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987); *Independent Living Center of Southern Cal., Inc. v. Kent*, 909 F.3d 272, 278 (9th Cir. 2018) (noting that federal courts have jurisdiction to hear "cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law."). These jurisdictional requirements are met here.

First, Plaintiff's right to relief necessarily depends on the resolution of a "substantial question" of federal law—whether Chipotle's soy products are Organic under the OFPA. Specifically, the OFPA provides that "the [organic] certification shall be considered ***sufficient*** to make a claim . . . such as 'not bioengineered', '***non-GMO***', or another similar claim." 7 U.S.C. § 6524 (emphasis added). Thus, the merits of this action necessarily turn on whether Chipotle's food products are certified organic under OFPA. Because Chipotle's lone soy-based ingredient—tofu used in "Sofritas"—is certified organic, Plaintiff's claims relating to Chipotle's soy-based products will

depend on a resolution of federal law (i.e., the OFPA), and removal is therefore proper. (*See* Declaration of Pablo Ramirez ["Ramirez Decl."] ¶¶ 3-4.)

Second, the NBFDS directed the Secretary of the USDA to "establish a national mandatory bioengineered food disclosure standard with respect to any bioengineered food." 7 U.S.C. § 1639(b)(1). On December 21, 2018, the USDA issued regulations setting a national GMO disclosure threshold of 5%. 7 C.F.R 66.5(c). In other words, under federal law, only food products containing greater than 5% of genetically engineered material is considered a GMO product. *Id.* Accordingly, Plaintiff's right to relief necessarily depends on a second "substantial question" of federal law—whether GMO levels in Chipotle's corn and soy products are greater than 5%, in violation of the USDA's regulations and the NBFDS.

In summary, Plaintiff's right to relief necessarily depends on the resolution of substantial questions of federal law giving rise to federal question jurisdiction: (1) whether Chipotle's soy products are Organic under the OFPA; and (2) whether GMO levels in Chipotle's corn and soy products are less than the 5% threshold set by the USDA's regulations and the NBFDS. *See, e.g.*, *Grable & Sons Metal Products, Inc. v. Dame Eng'g & Mfg.*, 545 U.S. 308, 315 (2005) (holding that a quiet title action in state court alleging the Internal Revenue Service had given the plaintiff inadequate notice under a federal tax provision was "an important issue of federal law that sensibly belongs in a federal court"); *Bright*, 780 F.2d at 769 (holding that federal question jurisdiction existed in action for breach of an employment contract deriving from employer's withholding of federal income tax from a paycheck because "despite 'artfully pleading' his action as a breach of contract, [plaintiff's action] in fact is challenging federal income tax withholding laws and regulations").

B. The State Action is Preempted by Federal Law.

Federal question jurisdiction also exists because both the OFPA and NBFDS preempt Plaintiff's claims. *See Peters v. Union Pac. R.R. Co.*, 80 F.3d. 257, 262 (8th Cir. 1996) (removal proper because state law claim involving railroad's right to suspend

engineer's certificate was "totally preempted" by the Federal Railway Safety Act).

First, the OFPA expressly prohibits the establishment of organic standards under state law without the prior approval of the Secretary of Agriculture. *See* 7 U.S.C. § 6507 ("A State organic certification program must meet the requirements of this title to be approved by the Secretary."); 65 Fed. Reg. 80548, 80682 ("OFPA and these regulations do preempt State statutes and regulations related to organic agriculture."). As such, Congress established a framework of federal regulation that is so extensive and comprehensive that there is no room for supplemental regulation by the states as to who is authorized to use the USDA Organic seal. *See Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992).

Indeed, the purpose of the OFPA was (a) to eliminate conflicting standards under state law as to what foods are properly labeled "organic" and (b) to accelerate public acceptance of and interstate commerce in organic food products by creating a consistent set of rules and regulations across the country. S. Rep. No. 101-357 at 4944-45 (the OFPA is intended "to establish national standards governing the marketing of certain agricultural products as organically produced"). Congress, in turn, delegated to the USDA exclusive responsibility for establishing a comprehensive set of national regulations (known as the National Organic Program or "NOP"), setting forth the criteria that must be met for food products in the United States to be labeled "organic." Congress likewise delegated to the USDA exclusive responsibility for regulating the use of the USDA Organic seal. Thus, regulation by the states would frustrate the purpose of the OFPA, which was to create consistent national standards for organic production and to avoid piecemeal regulation under state law. *See* 7 U.S.C. § 6501.

Second, the NBFDS expressly preempts Plaintiff's state law claims. Congress enacted a broad express preemption provision that specifically and deliberately removed state law from the field of GMO labeling: "No State or a political subdivision of a State may ***directly or indirectly*** establish under ***any*** authority or continue in effect as to any food or seed in interstate commerce any requirement relating to the labeling of

whether a food (including food served in a restaurant or similar establishment) or seed is ***genetically engineered*** (which shall include such other similar terms as determined by the Secretary of Agriculture) or was developed or produced using genetic engineering, ***including any requirement for claims that a food or seed is or contains an ingredient that was developed or produced using genetic engineering***." 7 U.S.C. § 1639i(b) (emphasis added). In other words, all state laws directly or indirectly relating to GMO labeling standards are preempted. *Cf. Atay v. Cty. of Maui*, 842 F.3d 688, 699 (9th Cir. 2016) (explaining that "the plain wording of the clause . . . necessarily contains the best evidence of Congress' pre-emptive intent.").

Furthermore, once the USDA promulgated regulations related to the disclosure of GMOs in food, Congress specifically barred states from establishing or imposing any rules that are not identical: "no State . . . may directly or indirectly establish . . . any requirement relating to the labeling or disclosure of whether a food is bioengineered or was developed or produced using bioengineering for a food that is the subject of the national bioengineered food disclosure standard under this section that is not identical to the mandatory disclosure requirement under that standard." 7 U.S.C. § 1639b(e).

Thus, Congress expressly removed GMO labeling from the purview of state law, and Plaintiff cannot use state law to litigate the propriety of Chipotle's GMO claims.

III. CAFA JURISDICTION.

Additionally, CAFA provides this Court with original jurisdiction and permits Chipotle to remove the State Action. CAFA provides that federal district courts shall have original jurisdiction over class actions where the number of proposed class members is 100 or greater, any member of the putative class of plaintiffs is a citizen of a state different from that of any defendant, and the aggregate amount in controversy for all putative class members exceeds $5 million (exclusive of interests and costs). 28 U.S.C. §§ 1332(d)(2), (d)(5)(B); *see also Soto v. Greif Packaging LLC*, 2018 WL 1224425, at *1 (C.D. Cal. Mar. 8, 2018) (citing 28 U.S.C. §§ 1332(d)(2), (5)(B)); *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676 (9th Cir. 2006). These

jurisdictional requirements are satisfied in this action.

A. Class Action.

The State Action is a class action as defined by CAFA. CAFA provides:

> [T]he term "class action" means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.

28 U.S.C. § 1332(d)(1)(B).

Plaintiff filed the State Action as a putative class action on behalf of herself and a proposed class of plaintiffs, under California Code of Civil Procedure § 382. (Exhibit A, ¶¶ 49-55.) The California rule governing the maintenance of class actions, California Code of Civil Procedure § 382, is analogous to Federal Rule of Civil Procedure 23. The State Action therefore falls within the definition of a "class action" under CAFA.

B. The Putative Class Exceeds 100 Members.

Plaintiff purports to represent a "nationwide class action" consisting of customers "during the period April 27, 2015 to the present, who purchased and/or paid for Chipotle Food Products" and alleges that the class consists of "tens of thousands" of putative class members. (Exhibit A, ¶¶ 49-51.) Currently, Chipotle has approximately 415 locations in California and 2,506 locations in the United States. (Ramirez Decl. ¶ 6.) Given Plaintiff's own allegations regarding the size of the class and the fact that she seeks to represent a nationwide class of Chipotle customers over a four-year period, the class undoubtedly consists of over 100 members.

C. Minimal Diversity of Citizenship Under CAFA is Satisfied.

CAFA requires only minimal diversity, and in class action lawsuits, "[t]he district courts shall have original jurisdiction of any civil action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A). For purposes of diversity, a corporation is deemed to be a citizen of (1) the state under whose laws it is organized; and (2) the state of its "principal place of

business." 28 U.S.C. § 1332(c)(1).

Here, Chipotle is incorporated in Delaware and headquartered in California. (Exhibit A, ¶ 8.) Further, the Complaint alleges a "nationwide class action."[1] (*Id.*, ¶ 49.) Accordingly, the minimal diversity requirement is satisfied given that Chipotle is a citizen of Delaware and California, and at least one putative class member is not a citizen of Delaware and California.

D. The Amount in Controversy Requirement is Satisfied.

Although Chipotle denies all liability alleged in the Complaint and denies that class treatment is appropriate for this Action, CAFA's third requirement—that the aggregate amount in controversy, exclusive of interest and costs, exceed $5 million—is also satisfied here. 28 U.S.C. § 1332(d)(2). Specifically, while Chipotle denies Plaintiff's substantive allegations, denies that Plaintiff is entitled to any of the relief sought in her Complaint, and does not waive any defense with respect to any of Plaintiff's claims, the amount in controversy is determined by accepting Plaintiff's allegations as true. *See, e.g., Cain v. Hartford Life & Accident Ins. Co.*, 890 F. Supp. 2d 1246, 1249 (C.D. Cal. 2012) ("In measuring the amount in controversy, a court must assume that the allegations of the complaint are true and assume that a jury will return a verdict for the plaintiff on all claims made in the complaint."); *accord Gyorke-Takatri v. Nestle USA, Inc.*, 2015 WL 6828258, at *2 (N.D. Cal. Nov. 6, 2015); *Asturias v. Nationstar Mortgage, LLC*, 2015 WL 6602022, at *1 (N.D. Cal. Oct. 30, 2015).

Moreover, it is well settled that "[t]he amount-in-controversy allegation of a plaintiff invoking federal-court jurisdiction is accepted if made in good faith" and "the amount-in controversy allegation of a defendant seeking federal-court adjudication should be accepted when not contested by the plaintiff or questioned by the court."

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[1] Plaintiff's Complaint is somewhat unclear in this regard. Plaintiff refers to both a "nationwide class" and to "persons residing in California." (*See* Complaint, ¶ 49.) However, taking Plaintiff's allegations in sum, which discuss Chipotle's nationwide marketing campaign and a "nationwide class", it appears that Plaintiff intends to allege a nationwide class of Chipotle customers. (*See* Complaint, ¶¶ 2, 8, 32, 49.)

Dart Cherokee Basin Operating Co., LLC v. Owens, 135 S. Ct. 547, 549-50 (2014).

Here, Plaintiff seeks "full restitution and/or restitutionary disgorgement, to the greatest extent permitted by law." (Exhibit A, ¶ 78.) Restitution is calculated as "the difference between the market price actually paid by consumers and the true market price that reflects the impact of the [allegedly misleading label]." *In re NJOY, Inc. Consumer Class Action Litig.*, No. 14-428, 2016 WL 787415, at *5 (C.D. Cal. Feb. 2, 2016). Here, Plaintiff's own allegations indicate that Chipotle has over 2,500 restaurants throughout the United States and that "Chipotle has reported revenues of $1.2 billion." (Exhibit A, ¶¶ 8, 50.) While Chipotle disputes that it is liable to Plaintiff or any putative class member, given the volume of sales at Chipotle's restaurants over the four-year class period, as alleged by Plaintiff, any alleged restitution will exceed $5 million and CAFA's aggregate amount in controversy requirement is satisfied.

IV. SUPPLEMENTAL JURISDICTION.

To the extent any claims arise solely under state law, supplemental jurisdiction over such claims would exist pursuant to 28 U.S.C. §§ 1367 and 1441(c). Specifically, this court has supplemental jurisdiction over Plaintiff's state law claims because they derive from a common nucleus of operative fact with claims arising under federal law. *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966); *Voelker v. Porsche Cars N. Am.*, 353 F.3d 516, 521–22 (7th Cir. 2003) (exercising supplemental jurisdiction). Because all of Plaintiff's claims concern whether Chipotle's ingredients were truthfully marketed as non-GMO based on the same underlying purchases, to the extent the Court finds that some of Plaintiff's claims do not arise under federal law, supplemental jurisdiction over this action in its entirety is proper. *Sea-Land Serv., Inc. v. Lozen Int'l, LLC*, 285 F.3d 808, 814 (9th Cir. 2002) (allowing supplemental jurisdiction because facts underlying the jurisdiction-invoking claim "ar[o]se from the same transaction and rel[ied] on identical facts for their resolution" of the supplemental claim).

V. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED.

A. Removal is Timely.

Chipotle was served with the Complaint on August 20, 2019. Chipotle has timely filed this Notice of Removal pursuant to 28 U.S.C. § 1446(b) because it was filed within 30 days of service, and within one year of commencement in state court.

B. Venue is Proper.

The Superior Court of the State of California for the County of Los Angeles is located within the Central District of California. 28 U.S.C. § 84(c). This Notice of Removal is therefore properly filed in this Court pursuant to 28 U.S.C. §§ 1441(a), 1446(a), and 1453(b).

C. Notice of Filing.

Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for Plaintiff and a copy is being filed with the Clerk of the Superior Court of the State of California for the County of Los Angeles.

D. Copies of Pleadings.

Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all pleadings, process, and orders served upon Chipotle are attached as "**Exhibit A**."

VI. RELATED CLASS ACTION.

A class action against Chipotle is pending in the United States District Court for the Northern District of California that involves a material part of the subject matter of this action: *Martin Schneider et al. v. Chipotle Mexican Grill, Inc.*, Case No.: 4:16-CV-02200-HSG (N.D. Cal.).

Dated: September 18, 2019

DLA PIPER LLP (US)

By: */s/ Angela C. Agrusa*
Angela C. Agrusa
Attorneys for Defendant
CHIPOTLE MEXICAN GRILL, INC.

CERTIFICATE OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2000 Avenue of the Stars, Suite 400 North Tower Los Angeles, California 90067-4704. On September 18, 2019, I served the within document(s):

NOTICE OF REMOVAL BY DEFENDANT CHIPOTLE MEXICAN GRILL INC.

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as follows:

LAW OFFICES OF QUYEN C. HOANG
QUYEN C. HOANG (CBN 192126)
17011 Beach Blvd., Suite 900
Huntington Beach, CA 92647

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below on this date before the close of normal business hours.

☐ by transmitting via electronic mail a copy of the document(s) listed above in .pdf format, with no transmission errors reported, to the person(s) at the e-mail address(es) below, as denoted on the Electronic Mail notice list.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

I under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on September 18, 2019 at Los Angeles, California.

Sona Sarkisyan