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11 Media, Inc. and CDS Global, Inc.

12 **UNITED STATES DISTRICT COURT**  
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 FENELLA ARNOLD and KELLY  
15 NAKAI, individually and on behalf of all  
16 others similarly-situated,

17 Plaintiffs,

18 v.

19 HEARST MAGAZINE MEDIA, INC., a  
20 Delaware corporation; CDS GLOBAL,  
21 INC., an Iowa corporation; and DOES 1-  
22 50, inclusive,

23 Defendants.

CASE NO. '19CV1969 BEN MDD

**PUTATIVE CLASS ACTION**

**NOTICE OF REMOVAL OF  
DEFENDANTS HEARST MAGAZINE  
MEDIA, INC., AND CDS GLOBAL,  
INC. PURSUANT TO 28 U.S.C.  
SECTION 1332(d)(2)**

Action Filed: September 10, 2019  
Action Removed: October 10, 2019

Removed from the Superior Court of the  
State of California, County of San Diego,  
Case No. 37-2019-00047733-CU-BT-CTL

1 **NOTICE OF REMOVAL OF DEFENDANTS HEARST MAGAZINE MEDIA, INC.**  
2 **and CDS GLOBAL, INC.:**

3 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

4 PLEASE TAKE NOTICE that pursuant to the Class Action Fairness Act (“CAFA”),  
5 28 U.S.C. §§ 1332, 1441, and 1446, Defendants Hearst Magazine Media, Inc. (“HMM”)  
6 and CDS Global, Inc. (“CDS”; together with HMM, “Defendants”) hereby remove the  
7 above-captioned putative class action from the Superior Court of California, County of San  
8 Diego, to the United States District Court for the Southern District of California.  
9 Defendants deny the allegations and relief sought in the Complaint, and file this Notice  
10 without waiving any defenses, exceptions, or obligations that may exist in their favor.  
11 Defendants also file this Notice without conceding, and specifically reserving, their right to  
12 contest the suitability of this lawsuit for certification as a class action. Defendants will  
13 provide evidence to support the allegations of this pleading as required in the event a  
14 challenge is raised to the Court’s jurisdiction.<sup>1</sup>

15 **RELEVANT PROCEDURAL HISTORY**

16 1. On September 10, 2019, Plaintiffs Fenella Arnold and Kelly Nakai  
17 (“Plaintiffs”), individually and on behalf of all others similarly situated, filed a proposed  
18 Class Action Complaint (“Compl.”) against Defendants, captioned *Fenella Arnold and*  
19 *Kelly Nakai v. Hearst Magazine Media, Inc., et al.*, Case No. 37-2019-00047733-CU-BT-

20  
21  
22 <sup>1</sup> A removing defendant is only required to provide a “short and plain statement” of  
23 the bases for removal and need not present or plead evidentiary detail. *Dart Cherokee Basin*  
24 *Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551 (2014); *see also Janis v. Health Net,*  
25 *Inc.*, 472 F. App’x 533, 534 (9th Cir. 2012) (“Nothing in 28 U.S.C. § 1446 requires a  
26 removing defendant to attach evidence of the federal court’s jurisdiction to its notice of  
27 removal. Section 1446(a) requires merely a ‘short and plain statement of the grounds for  
28 removal.’ Moreover, we have observed that ‘it is clearly appropriate for the district courts,  
in their discretion, to accept certain post-removal [evidence] as determinative of the  
[jurisdictional requirements].”); *Hertz Corp. v. Friend*, 559 U.S. 77, 96-97 (2010) (“When  
challenged on allegations of jurisdictional facts, the parties [who assert jurisdiction] must  
support their allegations by competent proof.”).

1 CTL, in the Superior Court of California, County of San Diego (“State Court Action”).  
2 Plaintiffs served HMM and CDS on September 12, 2019.

3 2. As required by 28 U.S.C. § 1446(a), **Exhibit A** to this Notice contains true  
4 copies of all process, pleadings, and orders served upon Defendants in the State Court  
5 Action.

6 3. Defendants are the only named defendants in the State Court Action. The  
7 defendants designated as DOES 1 through 50 are fictitious defendants, are not parties to the  
8 action, have not been named or served, and are properly disregarded for the purpose of this  
9 removal. 28 U.S.C. § 1441(a); *McCabe v. Gen. Foods, Inc.*, 811 F.2d 1336, 1339 (9th Cir.  
10 1987). All Defendants consent and agree to removal.

11 **ALLEGATIONS OF THE COMPLAINT**

12 4. In the Complaint, Plaintiffs purport to represent two proposed classes. (Compl.  
13 ¶ 35.)

14 5. Arnold and Nakai purport to represent the so-called “ARL Class,” which the  
15 Complaint defines to be “[a]ll individuals in California who, within the applicable  
16 limitations period, were enrolled by Defendants in an automatic renewal program or a  
17 continuous service program and had a credit card, debit card, and/or a third-party payment  
18 account charged by Defendants as part of such program.” (*Id.* ¶ 36.) According to the  
19 Complaint, “[w]hen Arnold submitted the order” for a two-year subscription to HGTV  
20 Magazine, “she was not aware that Defendants were going to enroll her in a program under  
21 which the subscription would automatically renew for subsequent periods, and she did not  
22 consent to be enrolled in such program.” (*Id.* ¶ 23.) The Complaint also alleges that “[i]f  
23 Nakai had known that Defendants were going to treat her submission of a sweepstakes entry  
24 as enrollment into an automatic-renewal subscription [to Food Network Magazine], she  
25 would not have entered the sweepstakes, would not have requested the magazine issue from  
26 Defendants, and would not have paid any money to Defendants for that magazine.” (*Id.*  
27 ¶ 32.)

1           6.       Based on these allegations, the Complaint purports to allege claims on behalf  
2 of the ARL Class for: (1) violations of the Automatic Renewal Law, Cal. Bus. & Prof. Code  
3 § 17600 *et seq.*; (2) violations of the California Consumer Legal Remedies Act, Cal. Civ.  
4 Code § 1750 *et seq.*; (3) violations of the California Unfair Competition Law, Cal. Bus. &  
5 Prof. Code § 17200 *et seq.*; and (4) unjust enrichment. (*Id.* ¶¶ 44-47, 53-69.)

6           7.       Nakai also purports to represent the so-called “False Invoice Class,” which the  
7 Complaint defines to be “[a]ll individuals in California who, within the applicable  
8 limitations periods, received an invoice, bill, or account statement from Defendants for  
9 magazines that Defendants’ [sic] represented to be ‘free’ and/or for magazine subscriptions  
10 that had not been ordered.” (*Id.* ¶ 37.) According to the Complaint, in connection with  
11 submitting an entry into a sweepstakes, Nakai requested a “‘FREE’ issue” of Food Network  
12 Magazine. (*Id.* ¶ 27.) Nakai then “received emails from Defendants purporting to be an  
13 ‘INVOICE’ for a subscription to *Food Network Magazine*,” which she paid. (*Id.* ¶¶ 28-29.)  
14 The Complaint alleges that, “[i]f Nakai had known that, upon receipt of her sweepstakes  
15 entry, Defendants were going to enroll her in, and charge her for, a one-year subscription  
16 for *Food Network Magazine*, she would not have submitted the sweepstakes entry.” (*Id.* ¶  
17 30.)

18           8.       Based on these allegations, the Complaint purports to allege claims on behalf  
19 of the False Invoice Class for: (1) violations of Section 1716 of the California Civil Code;  
20 (2) violations of the California Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et*  
21 *seq.*; (3) violations of the California Unfair Competition Law, Cal. Bus. & Prof. Code  
22 § 17200 *et seq.*; and (4) unjust enrichment. (*Id.* ¶¶ 48-69.)

23           9.       The Complaint seeks restitution, prejudgment interest, costs of suit, attorneys’  
24 fees, and injunctive relief. In addition, the Complaint seeks an order “that all goods sent to  
25 ARL Class members are unconditional gifts,” and damages “[f]or three times the sum  
26 solicited, pursuant to Civil Code § 1716(g).” (Compl. at pp. 17-18, Prayer.)

27           10.       Defendants deny any and all liability to Plaintiffs or to the proposed classes  
28 they seek to represent, and deny that Plaintiffs or the putative class members are entitled to

1 recover the damages, restitution, and other relief requested in the Complaint. Defendants  
2 also submit that this action does not satisfy the requirements for class certification under  
3 Fed. R. Civ. P. 23.

4 **SERVICE ON THE STATE COURT**

5 11. As required by 28 U.S.C. § 1446(d), Defendants will promptly file with the  
6 Clerk of the San Diego Superior Court and serve on all parties a copy of this Notice of  
7 Removal.

8 **VENUE**

9 12. The State Court Action was filed in the Superior Court of the State of  
10 California for the County of San Diego. Venue properly lies in the United States District  
11 Court for the Southern District of California pursuant to 28 U.S.C. § 1441(a).

12 **TIMELINESS**

13 13. CAFA removal is timely so long as (1) the face of the complaint does not  
14 plainly allege all elements needed for diversity jurisdiction under CAFA (including the  
15 amount in controversy), and (2) plaintiff has not served some other “paper” that concedes  
16 all elements needed for diversity jurisdiction. *See Roth v. CHA Hollywood Med. Ctr., L.P.*,  
17 720 F.3d 1121, 1125-26 (9th Cir. 2013) (a removing defendant may remove “on the basis  
18 of its own information, provided that it has not run afoul of either of the thirty-day  
19 deadlines” set forth in 28 U.S.C. § 1446(b)(1) or (b)(3)).

20 14. This removal is timely. The face of the Complaint does not allege all elements  
21 needed for CAFA jurisdiction (including the amount in controversy), and Plaintiffs have  
22 not served some other “paper” that concedes all the required elements. For example, no  
23 amount in controversy is stated. Regardless, this removal is being filed within 30 days of  
24 service.

25 15. Therefore, this removal is timely under CAFA.

26 **ORIGINAL JURISDICTION UNDER CAFA**

27 16. This Court has jurisdiction over this case under CAFA, 28 U.S.C. § 1332(d),  
28 and this case may be removed under the provisions of 28 U.S.C. § 1441(a). Specifically,

1 this is a putative civil class action where: (1) the proposed class contains at least 100  
2 members; (2) no Defendant is a state, state official or other governmental entity; (3) the  
3 total amount in controversy for all putative class members exceeds the sum or value of  
4 \$5,000,000, exclusive of interest and costs; and (4) there is diversity between at least one  
5 putative class member and one Defendant. Therefore, CAFA authorizes the removal of this  
6 action in accordance with 28 U.S.C. § 1446.

7 17. This action satisfies CAFA’s definition of a class action, which is “any civil  
8 action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute . . .  
9 authorizing an action to be brought by one or more representative persons as a class action.”  
10 28 U.S.C. § 1332(d)(1)(B); 28 U.S.C. § 1453(a), (b).

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

12 18. Plaintiffs’ proposed classes contain at least 100 members. Plaintiffs bring this  
13 action on their own behalves, and on behalf of the proposed ARL Class and the False  
14 Invoice Class. (Compl. ¶ 10.)

15 19. During the four years before the filing of this Complaint, significantly more  
16 than 100 individual customers in California were enrolled in a continuous service program  
17 (as alleged by Plaintiffs) for their subscriptions to an HMM magazine and had a credit card,  
18 debit card, and/or a third-party payment account charged as part of such program. In  
19 addition, during the four years before the filing of this Complaint, significantly more than  
20 100 individual customers in California received an invoice, bill, or account statement for an  
21 HMM magazine after entering a sweepstakes. Plaintiffs also specifically allege that “each  
22 class consists of at least 100 members.” (Compl. ¶ 40.)

23 **B. Defendants Are Not States, State Officials, Or Other Governmental Entities.**

24 20. Defendants are not states, state officials, or other governmental entities.

25 **C. The Amount in Controversy Exceeds \$5,000,000.**

26 21. As an initial matter, Defendants in no way concede they have any liability to  
27 Plaintiffs or to the putative classes, and deny that Plaintiffs or the putative class members  
28

1 are entitled to recover the compensatory damages, statutory damages, restitution, injunctive  
2 relief, punitive damages, attorneys' fees, or any other relief.

3 22. That said, the amount in controversy "is what amount is put 'in controversy'  
4 by the plaintiff's complaint, not what a defendant will actually owe." *Korn v. Polo Ralph*  
5 *Lauren Corporation*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (quoting *Rippee v.*  
6 *Boston Market Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005)). When measuring the  
7 amount in controversy, "a court must 'assume that the allegations of the complaint are true  
8 and assume that a jury will return a verdict for the plaintiff on all claims made in the  
9 complaint.'" *Campbell v. Vitran Exp., Inc.*, 471 F. App'x 646, 648 (9th Cir. 2012) (citing  
10 *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D.  
11 Cal. 2002)). Further, defenses that a defendant may assert are not considered in assessing  
12 the amount placed in controversy. *See Lara v. Trimac Transp. Servs. (W.) Inc.*, CV 10-  
13 4280-GHK JCX, 2010 WL 3119366, at \*3 (C.D. Cal. Aug. 6, 2010) ("affirmative defenses,  
14 counterclaims, and potential offsets may not be invoked to demonstrate the amount-in-  
15 controversy is actually less than the jurisdictional minimum.").

16 23. Under 28 U.S.C. § 1332(d)(6), "[i]n any class action, the claims of the  
17 individual class members shall be aggregated to determine whether the matter in  
18 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs."  
19 "Congress and the Supreme Court have instructed [courts] to interpret CAFA's provisions  
20 under section 1332 broadly in favor of removal," *Jordan v. Nationstar Mortg. LLC*, 781  
21 F.3d 1178, 1184 (9th Cir. 2015), and "no antiremoval presumption attends cases invoking  
22 CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal  
23 court." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

24 24. Plaintiffs seek multiple forms of monetary relief, including "restitution of all  
25 amounts that Defendants charged to Plaintiffs' and ARL Class members' credit cards, debit  
26 cards, or third-party payment accounts during the four years preceding the filing of this  
27 Complaint and continuing until Defendants' statutory violations cease" (Compl. ¶ 46), and  
28 damages "[f]or three times the sum solicited, pursuant to Civil Code § 1716(g)," (Compl.

1 at p. 17, Prayer), as well as injunctive relief, attorneys’ fees and costs. (Compl. at pp. 17-  
2 18, Prayer for Relief.) Plaintiffs do not plead a specific amount of damages.

3 25. The amount sought for the proposed ARL Class alone exceeds \$5,000,000,  
4 exclusive of interest and costs. Again, the proposed ARL Class includes “[a]ll individuals  
5 in California” who (in the last four years) were enrolled by Defendants “in an automatic  
6 renewal program or continuous service program and had a credit card, debit card, and/or a  
7 third-party payment account charged by Defendants as part of such program.” (Compl. ¶  
8 36.) Although Defendants disagree with Plaintiffs’ characterization of its subscriptions as  
9 involving an “automatic renewal program” or a “continuous service program” as defined  
10 by California’s ARL and disagree that there has been any violation of the ARL, the  
11 Complaint asserts that both Arnold and Nakai are covered by this proposed class (Compl.  
12 ¶¶ 25, 32), and they assume that HMM’s various subscription methods and magazines are  
13 covered by this proposed class definition. (*Id.* ¶¶ 33-34, 41.) Plaintiffs also expressly seek  
14 a 100% refund as to the ARL and UCL claims, alleging that “Plaintiffs and ARL Class  
15 members are entitled to restitution of all amounts that Defendants charged to Plaintiffs’ and  
16 ARL Class members’ credit cards, debit cards, or third-party payment accounts during the  
17 four years preceding the filing of this Complaint....” (Compl. ¶¶ 46, 66.) Based on these  
18 allegations and Defendants’ business records, the amount Plaintiffs are seeking as a 100%  
19 refund just for members of the proposed ARL Class greatly exceeds \$5,000,000.

20 26. Plaintiffs’ claim for attorneys’ fees must also be considered when calculating  
21 the amount in controversy under CAFA. *See, e.g., Galt G/S v. JSS Scandinavia*, 142 F.3d  
22 1150, 145 (9th Cir. 1998); *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 1000 (9th  
23 Cir. 2007), *overruled on other grounds, Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d  
24 975, 977 (9th Cir. 2013).

25 27. Here, Plaintiffs seek attorneys’ fees under Cal. Civ. Code § 1780(d) and Cal.  
26 Code Civ. Proc. § 1021.5. In other class-action cases brought under California’s auto-  
27 renewal law, class counsel sought to recover attorneys’ fees awards of \$1.6 million and \$2.3  
28



1 million. *See, e.g., Noll v. eBay, Inc.*, 309 F.R.D. 593, 612 (N.D. Cal. 2015); *Williamson v.*  
2 *McAfee, Inc.*, No. 5:14-CV-00158-EJD, 2017 WL 6033070, at \*2 (N.D. Cal. Feb. 3, 2017).

3 28. The additional categories of relief Plaintiffs seek further enlarge the amount in  
4 controversy well beyond the \$5,000,000 minimum under CAFA:

5 a. Plaintiffs' claim for "damages in an amount equal to three times the sum  
6 solicited by Defendants" from Nakai and members of the proposed False  
7 Invoice Class; and

8 b. Plaintiffs' claim for injunctive relief, which, if successful, would likely  
9 require Defendants to incur substantial costs in order to, among other  
10 things, revise their advertising materials, order forms, and customer  
11 processes.

12 29. Thus, the amount Plaintiffs have placed in controversy substantially exceeds  
13 the \$5,000,000 threshold.

14 **D. Diversity of Citizenship.**

15 30. CAFA's minimum diversity requirement is satisfied when at least one putative  
16 class member is a citizen of a state different from any defendant. 28 U.S.C. § 1332(d)(2).

17 31. For diversity purposes, a person is a "citizen" of the state in which he or she is  
18 domiciled. *Gilbert v. David*, 235 U.S. 561, 569 (1915); *Kanter v. Warner-Lambert Co.*, 265  
19 F.3d 853, 857 (9th Cir. 2001). Each Plaintiff alleges she is a citizen of the State of  
20 California. (Compl. ¶¶ 2-3.)

21 32. For diversity purposes, a corporation "shall be deemed a citizen of any State  
22 by which it has been incorporated and of the State where it has its principal place of  
23 business." 28 U.S.C. § 1332(c)(1). To determine a corporation's principal place of  
24 business, courts apply the "nerve center" test, which deems the principal place of business  
25 to be the state in which the corporation's officers direct, control, and coordinate the  
26 corporation's activities. *Hertz Corp. v. Friend*, 559 U.S. 77, 91 (2010). A corporation's  
27 principal place of business will typically be where the corporation maintains its  
28 headquarters. *Id.* at 81.

1 33. Plaintiffs allege HMM is incorporated in the State of Delaware (Compl. ¶ 5).  
2 HMM’s principal place of business is in New York, New York, thus making it a citizen of  
3 Delaware and New York.

4 34. Plaintiffs allege CDS is incorporated in the State of Iowa (Compl. ¶ 6). CDS’s  
5 principal place of business is in Des Moines, Iowa, thus making it a citizen of Iowa.

6 35. Because neither Plaintiff Arnold nor Nakai is a citizen of Delaware, New York,  
7 or Iowa, and because neither HMM nor CDS is a citizen of California, at least one putative  
8 class member is diverse from a defendant and CAFA’s minimal diversity requirement is  
9 met.

10 36. Doe defendants are disregarded when determining diversity jurisdiction for  
11 removal. 28 U.S.C. § 1441(b)(1) (“In determining whether a civil action is removable on  
12 the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants  
13 sued under fictitious names shall be disregarded.”); *see Aguilar v. McKesson Corp.*, No.  
14 1:16-CV-00308-LJO-SKO, 2016 U.S. Dist. LEXIS 61342, at \*5-6 (E.D. Cal. May 6, 2016)  
15 (“the citizenship of the unidentified Doe defendants is immaterial for determining diversity  
16 jurisdiction.”).

17 37. Furthermore, all Defendants consent to the removal of this case to federal court  
18 under CAFA.

19 **NO ADMISSION**

20 38. By this filing, Defendants do not admit any liability to Plaintiffs or to the  
21 putative class members they seek to represent, concede the accuracy of Plaintiffs’  
22 allegations, admit Plaintiffs are adequate class representatives for the putative class they  
23 seek to represent, or concede Plaintiffs or the putative class members are entitled to any of  
24 the relief sought in the Complaint, or any relief of any kind. Defendants also in no way  
25 admit the instant action satisfies the requirements for class certification.

26 ///

27 ///

28 ///

**CONCLUSION**

39. As Defendants have shown in this Notice of Removal and supporting documents, this lawsuit meets CAFA’s requirements. Wherefore, the State Court Action is hereby removed to this Court from the Superior Court of the State of California, County of San Diego.

Dated: October 10, 2019

Respectfully submitted,  
GREENBERG TRAURIG, LLP

By:           /s/ Robert J. Herrington            
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Media, Inc. and CDS Global, Inc.