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6 Attorneys for Defendant Ancestry.com  
Operations Inc.

7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA

9 MARTA CARRERA CHAPPLE,  
10 individually and on behalf of all others  
11 similarly situated;

12 Plaintiff,

13 vs.  
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15 ANCESTRY.COM OPERATIONS,  
16 INC., a Virginia corporation, and DOES  
1-50, inclusive,

17 Defendants.  
18

CASE No. '20CV1456 LAB DEB

**NOTICE OF REMOVAL OF  
ACTION TO FEDERAL COURT**

[Diversity Jurisdiction, 28 U.S.C. §§  
1332(d)(2), 1441, 1446 and 1453]

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

3 PLEASE TAKE NOTICE THAT defendant Ancestry.com Operations Inc.  
4 (“Ancestry”) hereby removes this action to the United States District Court for the  
5 Southern District of California, and in support thereof, respectfully shows the Court  
6 as follows:

7 **STATEMENT OF THE CASE**

8 1. Plaintiff seeks to certify a statewide class of Ancestry customers who  
9 were “(1) enrolled in a Ancestry.com membership program on or after December 1,  
10 2010 and (2) charged for such Ancestry.com membership program” between June  
11 24, 2016 and the present.

12 2. Plaintiff seeks, on behalf of herself and the purported class, restitution,  
13 injunctive relief, pre- judgment interest, attorneys’ fees and costs.

14 3. The Class Action Complaint was filed on June 24, 2020, and is  
15 removable under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§  
16 1332(d)(2) and 1453(b). Defendant has satisfied all procedural requirements of 28  
17 U.S.C. § 1446 and thereby removes this action to the United States District Court  
18 for the Southern District of California pursuant to 28 U.S.C. §§ 1332, 1441, 1446  
19 and 1453.

20 **THE REQUIREMENTS FOR REMOVAL**

21 **UNDER CAFA ARE SATISFIED**

22 4. CAFA fundamentally changed the legal standards governing removal  
23 jurisdiction for class actions. Congress explicitly stated that CAFA’s “provisions  
24 should be read broadly, with a strong preference that interstate actions should be  
25 heard in a federal court,” on the grounds that state courts were not adequately  
26 protecting defendants against class action abuses. S. Rep. No. 109-14, at \*43  
27 (2005). Rather than emphasizing a strict constructionist view of the statute against  
28 removal jurisdiction, Congress instructed district courts to “err in favor of exercising

1 jurisdiction.” *Id.* at 42-43; *see also Dart Cherokee Basin Operating Co., LLC v.*  
2 *Owens*, 574 U.S. 81 (2014) (“no antiremoval presumption attends cases invoking  
3 CAFA, which Congress enacted to facilitate adjudication of certain class actions in  
4 federal court”) (citation omitted). As shown below, this action satisfies the  
5 requirements for diversity jurisdiction under CAFA, 28 U.S.C. § 1332(d)(2).

6       5.     ***Class Action.*** This lawsuit is a class action as defined by 28 U.S.C. §  
7 1332(d)(1)(B). CAFA defines a “class action” as “any civil action filed under rule  
8 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial  
9 procedure authorizing an action to be brought by 1 or more representative persons as  
10 a class action.” *Id.* Plaintiff styles her complaint a “Class Action” and alleges that  
11 she brings it “individually and on behalf of all others similarly situated.”  
12 Declaration of Shon Morgan (“Morgan Decl.”) ¶ 2, Ex. 1 (Complaint).

13       6.     ***Diversity of Citizenship.*** At the time this lawsuit was filed and as of  
14 the date of this notice, Ancestry.com Operations Inc. was and is a Virginia  
15 corporation with its principal place of business in Utah. Morgan Decl. ¶¶ 2, 10, Ex.  
16 1 (Complaint at ¶ 3). At the time of the filing of this action and as of the date of this  
17 notice, the named plaintiff, Marta Carrera Chapple, was and is a resident of San  
18 Diego, California. Morgan Decl. ¶ 2, Ex. 1 (Complaint at ¶ 2). Because at least one  
19 member of the proposed class is from a state other than Virginia or Utah, the  
20 diversity requirement of 28 U.S.C. § 1332(d)(2)(A) is met.

21       7.     ***Amount in Controversy.*** “[A] defendant's notice of removal need  
22 include only a plausible allegation that the amount in controversy exceeds the  
23 jurisdictional threshold. Evidence establishing the amount is required by §  
24 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the  
25 defendant's allegation.” *Dart Cherokee*, 574 U.S. 81. Here, the matter in  
26 controversy exceeds the sum or value of \$5 million, exclusive of interest and costs,  
27 satisfying the amount-in-controversy requirement of 28 U.S.C. § 1332(d)(2). The  
28 Complaint seeks relief that includes:

- 1 a. Injunctive relief;
- 2 b. Restitution;
- 3 c. Pre-judgment interest;
- 4 d. Attorneys' fees and costs.

5 *See* Morgan Decl. ¶ 2, Exh. 1 (Complaint) at Prayer for Relief.

6 Plaintiff asserts three causes of action for (1) false advertising (Cal. Bus. &  
7 Prof. Code § 17600 and §17535); (2) violation of the California Consumer Legal  
8 Remedies Act (Cal. Civ. Code § 1750); and (3) unfair competition (Cal. Bus. &  
9 Prof. Code § 17200). *Id.* at 1. Plaintiff's purported harm is premised on allegations  
10 she and the putative class were charged automatic renewal payments for their  
11 Ancestry accounts, which purportedly "resulted in no benefit to Plaintiff." *Id.* at ¶¶  
12 18-19.

13 Plaintiff's claim under California Business and Professions Code § 17200 has  
14 a four-year statute of limitations period. *Perez v. Nidek Co.*, 657 F. Supp. 2d 1156,  
15 1166 (S.D. Cal. 2009), *aff'd*, 711 F.3d 1109 (9th Cir. 2013) ("[C]laims under Cal.  
16 Bus. & Prof. Code § 17200 are subject to a four-year statute of limitations[.]")  
17 (quotations and citation omitted). The remedy of restitution that plaintiff seeks is  
18 available for alleged violations of section 17200. *See, e.g., Feitelberg v. Credit*  
19 *Suisse First Bos., LLC*, 134 Cal. App. 4th 997, 1012 (2005) ("[T]wo remedies are  
20 available to redress violations of the UCL: injunctive relief and restitution.").  
21 Plaintiff's putative class consists of individuals who were "(1) enrolled in a  
22 Ancestry.com membership program on or after December 1, 2010 and (2) charged  
23 for such Ancestry.com membership program" between June 24, 2016 and the  
24 present. Morgan Decl. ¶ 2, Exh. 1 (Complaint) at ¶ 24.

25 From June 2016 through June 2020 alone, Ancestry sold more than \$250  
26 million in services to California customers via auto-renewal subscriptions. An order  
27 for restitution is one "compelling a UCL defendant to return money obtained  
28 through an unfair business practice to those persons in interest from whom the

1 property was taken, that is, to persons who had an ownership interest in the property  
2 or those claiming through that person.” *Korea Supply Co. v. Lockheed Martin*  
3 *Corp.*, 29 Cal. 4th 1134, 1144–45 (2003). Here, plaintiffs seek “restitution of all  
4 amounts paid to [Ancestry] in connection with an automatic renewal membership  
5 program[.]” Morgan Decl. ¶ 2, Exh. 1 (Complaint) at ¶ 50 .

6 Accordingly, more than \$250 million is at issue based on plaintiff’s claim for  
7 restitution under section 17200 alone, which is far in excess of the \$5 million  
8 jurisdictional threshold. Even if plaintiff were to claim she is not seeking one-  
9 hundred percent of the sales amount in restitution (contrary to her complaint’s  
10 assertion she and the class seek restitution “of all amounts”), the amount in  
11 controversy would need to be reduced by more than 98% to fall below the threshold  
12 amount—courts have repeatedly rejected such unreasonable reductions in assessing  
13 the amount in controversy in CAFA removal cases. *See, e.g., Allred v. Kellogg Co.*,  
14 2018 WL 332904, at \*3 (S.D. Cal. Jan. 9, 2018) (rejecting plaintiff’s argument that  
15 defendant could not assume the class members sought “a full restitution award” and  
16 holding that even if defendant’s “assumptions were reduced by 50%, . . . \$5 million  
17 is easily exceeded.”); *Schneider v. Ford Motor Co.*, 756 F. App’x 699, 701 (9th Cir.  
18 2018) (rejecting plaintiff’s argument that the amount in controversy fell below the  
19 jurisdictional threshold where such argument would require the court to reduce  
20 defendant’s valuation “by 99.84 percent of the original amount calculated”);  
21 *Carrera v. First Am. Home Buyers Prot. Co.*, 2013 WL 12114623, at \*3 (S.D. Cal.  
22 Sept. 6, 2013) (rejecting plaintiff’s argument that the amount in controversy fell  
23 below the jurisdictional threshold where such argument would require the court to  
24 reduce defendant’s valuation “by over 99%”).

25 In addition, plaintiff’s Complaint seeks recovery of attorneys’ fees. Although  
26 defendant does not concede this type of relief would be recoverable under the claims  
27 pleaded, attorneys’ fees can be properly considered for purposes of determining  
28 CAFA jurisdiction. *See, e.g., Stern v. RMG Sunset, Inc.*, 2018 WL 2296787, at \*5

1 (S.D. Cal. May 21, 2018) (“[T]he Court finds that Defendants have met their burden  
2 to show that Plaintiff’s restitution, punitive damages, and attorney’s fees exceeds  
3 \$5,000,000.”). With regard to attorneys’ fees, “[t]wenty-five percent is the Ninth  
4 Circuit benchmark in common fund cases.” *Stern*, 2018 WL 2296787 at \*5. An  
5 attorneys’ fees award would increase the amount in controversy to \$312.5 million.<sup>1</sup>

6 8. **Number of Proposed Class Members.** The putative class exceeds 100  
7 members. *See* Morgan Decl. ¶ 2, Exh. 1 (Complaint) at ¶ 27 (alleging there are “at  
8 least 100 members” in the putative class).

9 9. **Timeliness.** This removal notice is timely, as required by 28 U.S.C. §  
10 1446(b). Defendant was served with the complaint on June 29, 2020 and files this  
11 notice within thirty days of being served with the complaint.<sup>2</sup>

12 10. **Venue.** The United States District Court for the Southern District of  
13 California is a federal judicial district embracing the Superior Court of the State of  
14 California in the County of San Diego, where plaintiff originally filed this suit.  
15 Venue is therefore proper under 28 U.S.C. § 1441(a).

16 11. **No Exceptions Apply.** The exceptions to removal under 28 U.S.C. §§  
17 1332(d) and 1446 do not apply here.

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21 <sup>1</sup> Of course, Ancestry denies that a class is the proper vehicle for plaintiff’s  
22 claims, that these calculations are relevant to the amount of actual damages, or that  
23 defendant is liable for any such claims. However, “[w]hen measuring the amount in  
24 controversy, a court must assume that the allegations of the complaint are true and  
25 that a jury will return a verdict for the plaintiff on all claims made in the complaint. .  
26 . . The ultimate inquiry is what amount is put ‘in controversy’ by the plaintiff’s  
27 complaint, not what a defendant will actually owe.” *Stern*, 2018 WL 2296787 at \*5  
28 (quotations and citations omitted).

<sup>2</sup> Defendants Does 1 through 50 are unnamed and unknown, and therefore have  
not been served with the Complaint. *See* Morgan Decl. ¶ 2, Exh. 1 (Complaint) at ¶  
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**THE OTHER PROCEDURAL REQUISITES  
FOR REMOVAL ARE SATISFIED**

12. Ancestry has complied with 28 U.S.C. §§ 1446(a) and (d). Under 28 U.S.C. §§ 1446(a), a true and correct copy of all of the process, pleadings, or orders on file in the state court and served on defendant in the state court are attached to the Morgan Declaration, filed concurrently. Morgan Decl. ¶¶ 2-8, Exh. 1-6. Pursuant to 28 U.S.C. §§ 1446(d), a notice of filing of removal, with a copy of this notice of removal attached thereto, will be promptly filed with the clerk of the Superior Court of the State of California in the County of San Diego, Case No. 37-2020-00021807-CU-BT-CTL, and Ancestry has served a notice of filing of removal, with a copy of the notice of removal attached thereto, on plaintiff’s attorneys. Copies of the notice and the certificate of service of the notice to plaintiff are attached to the Morgan Declaration. Morgan Decl. ¶ 9, Exh. 7. (A copy of this notice is not attached for the Court’s convenience. Ancestry will provide it upon request.)

**CONCLUSION**

Ancestry intends no admission of fact, law, or liability by this notice, and reserves all defenses, motions, and pleas. Ancestry prays that this action be removed to this Court for determination; that all further proceedings in the state court suit be stayed; and that Ancestry obtain all additional relief to which it is entitled.

DATED: July 29, 2020

QUINN EMANUEL URQUHART &  
SULLIVAN. LLP

By /s/ Shon Morgan  
Shon Morgan  
Attorneys for Ancestrv.com Operations Inc.

**CERTIFICATE OF SERVICE**

1           The undersigned hereby certifies that a true and correct copy of the above and  
2 foregoing document has been served on July 29, 2020 to all counsel of record who  
3 are deemed to have consented to electronic service via the Court’s CM/ECF system  
4 per Civil Local Rule 5.4. Any other counsel of record will be served by electronic  
5 mail, facsimile and/or overnight delivery.

6   Executed on July 29, 2020, at Los  
7 Angeles, California.

8  
9   */s/ Shon Morgan*

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  Shon Morgan

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