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11 Welch Foods Inc., A Cooperative, and
12 The Promotion In Motion Companies, Inc.

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **SOUTHERN DIVISION**

16 DARREN CLEVINGER on behalf of
17 himself and all others similarly situated,

18 Plaintiff,

19 v.

20 WELCH FOODS INC., A
21 COOPERATIVE, THE PROMOTION IN
22 MOTION COMPANIES, INC., a
23 Delaware corporation and DOES 1
24 through 25, inclusive;

25 Defendants.

CASE NO. 2:20-cv-8799

**DEFENDANTS' WELCH FOODS
INC., A COOPERATIVE, AND
THE PROMOTION IN MOTION
COMPANIES, INC.'S NOTICE OF
REMOVAL**

[Orange County Superior Court Case
No. 30-2020-01145532-CU-BT-CXC]

Action Filed: June 29, 2020
First Amended Complaint Served:
August 28, 2020
Removed: September 24, 2020

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, Defendants Welch Foods Inc., A
3 Cooperative (“Welch’s”), and The Promotion In Motion Companies, Inc. (“PIM”
4 and collectively with Welch’s, “Defendants”) hereby remove the above-captioned
5 case pending in the Superior Court of the State of California, for the County of
6 Orange, as Case No. 30-2020-01145532-CU-BT-CXC. This putative class action
7 is properly removed pursuant to the Class Action Fairness Act (“CAFA”), as: (1)
8 the putative class size exceeds 100 persons; (2) there is “minimal diversity between
9 plaintiffs and defendants; and (3) the amount in controversy exceeds \$5,000,000.

10 The grounds for removal are as follows:

11 1. CAFA grants district courts original jurisdiction over civil class action
12 lawsuits filed under Federal or State law in which any member of a class of
13 plaintiffs is a citizen of a State different from any defendant; the number of
14 members of all proposed plaintiff classes in the aggregate is over 100; and where
15 the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of
16 interests and costs. 28 U.S.C. § 1332(d). CAFA authorizes removal of such
17 actions under 28 U.S.C. § 1446.

18 2. This action is properly removed to the United States District Court for
19 the Central District of California because this matter was filed in the Superior
20 Court of the State of California for the County of Orange, which lies within this
21 District and Division. *See* 28 U.S.C. § 84(c)(3).

22 **PROCEDURAL BACKGROUND**

23 3. On June 29, 2020, Plaintiff filed the above captioned action in the
24 Superior Court of the State of California, County of Orange, under Case No. 30-
25 2020-01145532-CU-BT-CXC. The original complaint named only defendant
26 Welch’s. The original Complaint alleged claims against Welch’s under the
27 California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (the
28 “UCL”) and the California Consumer Legal Remedies Act, Cal. Civ. Code § 1750

1 *et seq.* (the “CLRA”) on behalf of a putative class based on Welch’s purported use
2 of packaging containing non-functional slack fill to sell its Welch’s® Reduced
3 Sugar Fruit Snacks (“Reduced Sugar”) and Fruit ‘n Yogurt™ Snacks (“Fruit ‘n
4 Yogurt”). *See Compl. generally.*

5 4. Welch’s was served with the original Complaint on July 2, 2020. *See*
6 Declaration of Daniel S. Silverman (“Silverman Decl.”) ¶ 4.

7 5. Before Welch’s deadline to respond to the original Complaint expired,
8 Plaintiff filed a First Amended Complaint (“FAC”) on August 25, 2020, which
9 added PIM as a defendant. Plaintiff also added additional products to the
10 Complaint in addition to Reduced Sugar and Fruit n’ Yogurt, specifically adding
11 claims relating to 90 count boxes of Welch’s® Fruit Snacks sold at Costco stores
12 (the “Costco Fruit Snacks” and with Reduced Sugar and Fruit n’ Yogurt the
13 “Products”), but asserting the same causes of action under the UCL and CLRA, on
14 behalf of a putative class.

15 6. Welch’s and PIM were served with the FAC via a Notice and
16 Acknowledgment of Receipt on August 28, 2020. *See Silverman Decl.* ¶ 5.

17 **THE REMOVAL IS TIMELY**

18 7. 28 U.S.C. § 1446(b) identifies two initial 30-day windows for
19 removal: (1) where the complaint’s removability is clear from the face of the
20 pleading; and (2) where the initial pleading does not reveal a basis for removal but
21 the defendant “receives an amended pleading, motion, or other paper from which it
22 can be ascertained from the face of the document that removal is proper.”
23 *Gallegos v. Costco Wholesale Corp.*, 2020 U.S. Dist. LEXIS 96911, at *5 (C.D.
24 Cal. June 2, 2020).

25 8. This removal is timely because the FAC revealed facts indicating for
26 the first time that the action was removable. Specifically, Plaintiff’s addition of the
27 Costco Fruit Snacks as products upon which his claims are based reveal that the
28

1 action is subject to removal because the amount in controversy exceeds
2 \$5,000,000. *See* Declaration of Scott Yales (“Yales Decl.”) ¶ 5.

3 9. The removal is, thus, timely because this removal is being filed within
4 30 days of Defendants being served with the FAC. *See* Silverman Decl. ¶ 5.

5 **CAFA’S MINIMAL DIVERSITY OF CITIZENSHIP REQUIREMENT IS**
6 **SATISFIED**

7 10. This Court has original jurisdiction over the action under CAFA
8 because it is a civil class action in which at least one member of the proposed
9 putative class of plaintiffs is a citizen of a state different from any defendant. *See*
10 28 U.S.C. § 1332(d)(2)(A).

11 11. The FAC establishes that there is minimal diversity of citizenship
12 between the class and Defendants under CAFA. *See id.* A class need not be
13 certified before a court may assert federal jurisdiction over the action under CAFA.
14 *See* 28 U.S.C. § 1332(d)(8).

15 12. Specifically, and by the allegations of the FAC, Plaintiff Darren
16 Clevenger is an individual residing in Orange County, California, while Welch’s is
17 a cooperative corporation incorporated in Michigan with its principal place of
18 business in Massachusetts and PIM is a corporation incorporated in Delaware with
19 its principal place of business in New Jersey. *See* FAC ¶¶ 3-5; *see also Johnson v.*
20 *Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (“a
21 corporation is a citizen only of (1) the state where its principal place of business is
22 located, and (2) the state in which it is incorporated.”) Because Plaintiff himself is
23 diverse from both Defendants and purports to also represent a class of California
24 consumers, minimal diversity is satisfied.¹

25
26
27
28 ¹ Although the FAC fictitiously names Doe defendants, their citizenship is
discarded for purposes of determining whether minimal diversity is satisfied.

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CAFA’S CLASS SIZE REQUIREMENTS ARE SATISFIED

13. CAFA grants district courts original jurisdiction over civil class action lawsuits filed under federal or state law in which members of all proposed plaintiff classes in the aggregate is over 100. 28 U.S.C. § 1332(d).

14. Plaintiff’s FAC alleges a putative class comprised of himself and all similarly situated consumers who made retail purchases of the Products from June 30, 2016 to present.

15. From June 30, 2016 to present, far more than 100 consumers have made retail purchases of the Products. *See* Yales Decl. ¶ 5.

16. CAFA’s class size requirement is, thus, satisfied.

CAFA’S AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

17. CAFA authorizes the removal of class action cases in which the amount in controversy for all class members exceeds \$5,000,000. 28 U.S.C. § 1332(d).

18. Plaintiff has not alleged a specific amount in controversy in the FAC. However, the failure of the FAC to specify the total amount of monetary relief sought by Plaintiff does not deprive this Court of jurisdiction. *Banta v. Am. Med. Response Inc.*, No. CV 11-03586 GAF (RZx), 2011 U.S. Dist. LEXIS 77558, at *3 (C.D. Cal. Jul. 15, 2011) (observing that even where a pleading is indefinite on its face, a defendant can possess “sufficient information allowing it to ascertain that the amount in controversy exceeds the jurisdiction minimum” and thus may remove the action on that basis).

19. To remove a class action pursuant to CAFA, the removing party merely needs to file a “short and plain statement of the grounds of removal.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 83 (2014). The court must accept the removing party’s amount in controversy allegation as long as the allegation is made in good faith. *Id.* at 87. The removing party’s notice of removal

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