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*Attorneys for Defendant*  
ARDAGH METAL BEVERAGE USA INC.

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

GRANT DIAZ, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

ARDAGH METAL BEVERAGE USA,  
INC., a Delaware corporation; and  
DOES 1-50, inclusive,

Defendants.

Case No.:

**DEFENDANT'S NOTICE OF  
REMOVAL OF ACTION TO  
FEDERAL COURT**

*[Filed Concurrently with Civil Cover  
Sheet; and Corporate Disclosure  
Statement]*

Action Filed: December 6, 2021

**TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

**PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, ARDAGH METAL BEVERAGE USA INC. ("Defendant"), removes the action filed by GRANT DIAZ ("Plaintiff") in the Superior Court of the State of California, in and for the County of Solano, and captioned Case No. FCS057518, to the United States District Court for the Eastern District of California.

**JURISDICTION AND VENUE**

1. This is a civil action over which this Court has original subject matter jurisdiction under 28 U.S.C. § 1332, and removal is proper under 28 U.S.C. §§ 1441 and 1446 because it is a civil action that satisfies the requirements stated in

1 the Class Action Fairness Act of 2005 (“CAFA”), codified in part at 28 U.S.C. §  
2 1332(d).

3 2. This Court is in the judicial district and division embracing the place  
4 where the state court case was brought and is pending. Specifically, the United  
5 States District Court for the Eastern District of California embraces Solano County.  
6 Thus, this Court is the district court to which this case is properly removed. *See* 28  
7 U.S.C. §§ 1441(a) and 1446(a).

### 8 **THE ACTION & TIMELINESS OF REMOVAL**

#### 9 **PROCEDURAL BACKGROUND**

10 3. On December 6, 2021, Plaintiff, purportedly on behalf of himself and  
11 all others similarly situated, filed a Class Action Complaint (“Complaint”) against  
12 Defendant in the Superior Court of the State of California, in and for the County of  
13 Solano, Case No. FCS057518 (the “State Court Action”). Plaintiff filed the  
14 complaint as a putative class action.

15 4. On December 16, 2021, Defendant was served with a copy of the  
16 Summons and Complaint.

17 5. Pursuant to 28 U.S.C. § 1446(b), this removal is timely because  
18 Defendant filed this removal within 30 days of its receipt of a copy of the Summons  
19 and Complaint in the State Court Action.

20 6. Exhibit “A” constitutes all process, pleadings, and orders served on  
21 Defendant in the State Court Action.

22 7. Defendant filed its Answer in the State Court Action on January 14,  
23 2022. A true and correct copy of Defendant’s Answer is attached as Exhibit “B”.

#### 24 **CAFA JURISDICTION**

25 8. Basis of Original Jurisdiction. This Court has original jurisdiction of  
26 this action under CAFA. 28 U.S.C. § 1332(d)(2) and (5) provide that a district court  
27 shall have original jurisdiction over a class action with one hundred (100) or more  
28 putative class members, in which the matter in controversy, in the aggregate,

1 exceeds the sum or value of \$5,000,000. Section 1332(d)(2) further provides that  
2 any member of the putative class must be a citizen of a state different from any  
3 defendant.

4 9. As set forth below, this is a civil action over which this Court has  
5 original jurisdiction under 28 U.S.C. § 1332(d) because it is a civil action filed as a  
6 class action involving more than 100 members; the amount in controversy exceeds  
7 the sum of \$5,000,000, exclusive of interest and costs, based on the allegations that  
8 Plaintiff set forth in the Complaint; Plaintiff and Defendant are citizens of different  
9 states; and no Defendant is a state, state official, or government entity.

#### 10 **DIVERSITY OF CITIZENSHIP**

11 10. CAFA's diversity requirement is satisfied when any member of a class  
12 of plaintiffs is a citizen of a state different from any defendant. 28 U.S.C. §  
13 1332(d)(2). The citizenship of the parties is determined by their citizenship status  
14 at the action's commencement. *See Mann v. City of Tucson*, 782 F. 2d 790, 794 (9th  
15 Cir. 1986). As the Ninth Circuit held, "[a] party's allegation of minimal diversity  
16 may be based on 'information and belief.' [citations omitted] The pleading 'need  
17 not contain evidentiary submissions.'" *Ehrman v. Cox Communications*, 932 F.3d  
18 1223, 1227 (9th Cir. 2019) \*2 (quoting *Dart Cherokee Basin Operating Co., LLC v.*  
19 *Owens*, 574 U.S. 81, 84 (2014)).

20 11. Plaintiff's Citizenship. As alleged in the Complaint, Plaintiff "was and  
21 currently is a California resident residing in the State of California." Complaint, ¶ 8.  
22 For diversity purposes, a person is a "citizen" of the state in which he or she is  
23 domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir.  
24 1983). Residence is prima facie evidence of domicile. *State Farm Mutual Auto Ins.*  
25 *Co. v. Dyer*, 19 F. 3d 514, 520 (10th Cir. 1994). Accordingly, Plaintiff is a citizen  
26 of the State of California.

27 12. Ardagh Metal Beverage USA Inc.'s Citizenship. Pursuant to 28  
28 U.S.C. § 1332(c), "a corporation shall be deemed to be a citizen of any State by

1 which it has been incorporated and of the State where it has its principal place of  
2 business.” The United States Supreme Court has concluded that a corporation’s  
3 “principal place of business” is “where a corporation’s officers direct, control, and  
4 coordinate the corporation’s activities,” or its “nerve center.” *Hertz Corp. v. Friend*,  
5 559 U.S. 77, 92-93 (2010). “[I]n practice,” a corporation’s “nerve center” should  
6 “normally be the place where the corporation maintains its headquarters.” *Id.*

7 13. Defendant is incorporated in the State of Delaware. Pursuant to the  
8 *Hertz* nerve center test, Defendant has its principal place of business in the State of  
9 Illinois. Defendant’s corporate headquarters is located at 8770 W Bryn Mawr Ave.,  
10 8th Floor, Chicago, Illinois 60631, where the majority of its officers direct, control,  
11 and coordinate its corporate activities. Accordingly, Defendant is a citizen of the  
12 states of Delaware and Illinois.

13 14. Doe Defendants. Although Plaintiff has also named fictitious  
14 defendants “DOES 1-50,” the presence of Doe defendants has no bearing on  
15 diversity with respect to removal. *See* 28 U.S.C. § 1441(b) (“In determining  
16 whether a civil action is removable on the basis of the jurisdiction under section  
17 1332(a) of this title, the citizenship of defendants sued under fictitious names shall  
18 be disregarded.”); *Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir.  
19 1980) (unnamed defendants need not join in the removal petition). Thus, the  
20 existence of Doe defendants 1 through 50 does not deprive this Court of  
21 jurisdiction.

22 15. Minimal Diversity. Defendant has met the minimal diversity of  
23 citizenship required by CAFA, inasmuch as Plaintiff (who is a member of the  
24 putative class) is a citizen of California and Defendant is a citizen of Delaware and  
25 Illinois. *See* 28 U.S.C. § 1332(d)(2).

26 16. Size of the Putative Class. CAFA provides that district courts shall not  
27 have jurisdiction over actions “where the number of members of all proposed  
28 plaintiff classes in the aggregate is less than 100.” 28 U.S.C. § 1332(d)(5). Here,

1 Plaintiff has alleged and seeks to serve as a class representative of the following  
2 putative class: “All non-exempt employees who work or worked for Defendants in  
3 California, during the four years immediately preceding the filing of the Complaint  
4 through the date of trial.” Complaint, ¶ 42. Four years prior to Plaintiff’s filing of  
5 the Complaint is December 6, 2017. During this time period, Defendant employed  
6 approximately 157 individuals as non-exempt employees in California. Therefore,  
7 per the Complaint allegations, the putative class size is at least 157.

8 **AMOUNT IN CONTROVERSY UNDER CAFA**

9 17. Removal is appropriate when it is more likely than not that the amount  
10 in controversy exceeds the jurisdictional requirement. Here, that amount is  
11 \$5,000,000, in the aggregate. *See, e.g., Cohn v. PetsMart, Inc.*, 281 F.3d 837, 839-  
12 40 (9th Cir. 2002). In determining whether the amount in controversy exceeds  
13 \$5,000,000, the Court must presume Plaintiff will prevail on each and every one of  
14 his claims. *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp.  
15 2d 993, 1001 (C.D. Cal. 2002), citing *Burns v. Windsor Ins. Co.*, 31 F.3d 1092,  
16 1096 (11th Cir. 1994) (the amount in controversy analysis presumes that “plaintiff  
17 prevails on liability”) and *Angus v. Shiley Inc.*, 989 F.2d 142, 146 (3d Cir. 1993)  
18 (“the amount in controversy is not measured by the low end of an open-ended  
19 claim, but rather by reasonable reading of the value of the rights being litigated”).

20 18. Here, Plaintiff does not specifically allege any amount of damages or  
21 recoverable penalties in the Complaint, nor does he allege that the aggregate  
22 amount in controversy is less than \$5,000,000. Therefore, Defendant “need include  
23 only a plausible allegation that the amount in controversy exceeds the jurisdictional  
24 threshold.” *Dart Cherokee*, 574 U.S. at 84 (holding defendants need not submit  
25 “evidence” establishing CAFA jurisdiction in their removal papers; rather,  
26 defendants only need to provide “a short and plain statement of the grounds for  
27 removal”); *see also Al-Najjar v. Kindred Healthcare Operating, Inc.*, No. CV 17-  
28 6166 PSG (FFMx), 2017 WL 4862067, at \*2 (C.D. Cal. Oct. 26, 2017).

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