

1 SABRINA L. SHADI, SBN 205405
NICHOLAS D. POPER, SBN 293900
2 **BAKER & HOSTETLER LLP**
11601 Wilshire Boulevard, Suite 1400
3 Los Angeles, CA 90025-0509
Telephone: 310.820.8800
4 Facsimile: 310.820.8859
Email: *sshadi@bakerlaw.com*
5 *npoper@bakerlaw.com*

6 *Attorneys for Defendant*
ARDAGH METAL BEVERAGE USA INC.

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

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

11 Plaintiff,

12 v.

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

15 Defendants.
16

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

17
18 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

19 **PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1332, 1441 and
20 1446, ARDAGH METAL BEVERAGE USA INC. (“Defendant”), removes the
21 action filed by GRANT DIAZ (“Plaintiff”) in the Superior Court of the State of
22 California, in and for the County of Solano, and captioned Case No. FCS057518, to
23 the United States District Court for the Eastern District of California.

24 **JURISDICTION AND VENUE**

25 1. This is a civil action over which this Court has original subject matter
26 jurisdiction under 28 U.S.C. § 1332, and removal is proper under 28 U.S.C. §§
27 1441 and 1446 because it is a civil action that satisfies the requirements stated in
28

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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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