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MICRON TECHNOLOGY, INC.

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

12
13 ELIOT JOHNSON, individually, and on
behalf of the general public,

14 Plaintiff,

15 v.

16 MICRON TECHNOLOGY, INC. and DOES
1 through 100, inclusive,

17 Defendant.
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CASE NO. 5:21-cv-07774

**DEFENDANT MICRON
TECHNOLOGY INC.'S NOTICE OF
REMOVAL OF ACTION PURSUANT
TO 28 U.S.C. §§ 1332, 1441, 1446**

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

2 PLEASE TAKE NOTICE THAT Micron Technology, Inc. (“Defendant”) hereby removes
3 this matter from California Superior Court, Santa Clara County, to the United States District Court
4 for the Northern District of California, San Jose Division, pursuant to 28 U.S.C. §§ 1332, 1441,
5 and 1446. The grounds for removal are as follows:

6 **I. BACKGROUND**

7 **Compliance with Statutory Requirements**

8 1. On June 25, 2021, Plaintiff Eliot Johnson (“Plaintiff”) filed a Class Action
9 Complaint (“Complaint”) in the Superior Court of the State of California for the County of Santa
10 Clara titled *Eliot Johnson, individually, and on behalf of the general public, v. Micron Technology,*
11 *Inc. and Does 1 through 100, inclusive*, Santa Clara Superior Court Case No. 21CV383681 (the
12 “Action”). On August 9, 2021, Plaintiff filed a First Amended Complaint (“FAC”).

13 2. In the First Amended Complaint, Plaintiff asserts individual, class, and
14 representative claims for violations of: (1) California Labor Code § 2802 (unreimbursed business
15 expenses); (2) California Business & Professions Code § 17200, *et seq.* (unfair competition law);
16 and (3) Penalties, pursuant to Labor Code § 2699 for Violations Of Labor Code § 2802 (PAGA
17 Penalties). FAC at ¶¶ 28–42.

18 3. Plaintiff asks for injunctive relief and seeks to recover unreimbursed business
19 expenses, civil penalties, costs, and attorneys’ fees. *Id.* at ¶¶ 30, 37, 38, 42, Prayer for Relief.

20 4. Plaintiff did not serve Defendant with the original Complaint. On September 7,
21 2021, Defendant’s counsel signed and returned a Notice of Acknowledgement of Receipt,
22 effectuating service of the FAC.

23 5. Defendant’s removal of this Action is timely because Defendant is removing it
24 within 30 days of service of the FAC. *See* 28 U.S.C. § 1446(b); Cal. Code Civ. P. §§ 415.10,
25 415.30.

26 6. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders
27 served upon Defendant are attached as Exhibit A.

28 7. Pursuant to 28 U.S.C. § 1446(d), Defendant will promptly give written notice of

1 removal of the Action to Plaintiff and file a copy of this Notice of Removal with the Clerk of the
2 Superior Court of the State of California, County of Santa Clara.

3 **Intradistrict Assignment**

4 8. Plaintiff filed this Action in the Superior Court of California, County of Santa Clara;
5 it may therefore be removed to the San Jose Division of the Northern District of California. 28
6 U.S.C. § 1441(a); L.R. 3-2(e).

7 **II. GROUNDS FOR REMOVAL**

8 **Diversity Jurisdiction**

9 9. There is a sufficient basis for removal jurisdiction on diversity grounds because
10 there is complete diversity of citizenship between the parties and the amount in controversy
11 between Plaintiff and Defendant exceeds \$75,000 exclusive of costs and interest. *See* 28 U.S.C. §
12 1332(a); § 1441(b).

13 **There Is Complete Diversity of Citizenship Between the Plaintiff and Defendant**

14 10. As a corporate entity, Defendant is “a citizen of every State and foreign state by
15 which it has been incorporated and of the State or foreign state where it has its principal place of
16 business.” 28 U.S.C. § 1332(c)(1). Defendant is a Delaware corporation with its principal place
17 of business in Idaho. *See* 28 U.S.C. § 1332(c)(1); *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). In
18 actions removed from state court on diversity grounds, the citizenship of fictitious defendants “shall
19 be disregarded.” 28 USC § 1441(a).

20 11. Plaintiff alleges that he was employed by Defendant in California and asserts that
21 the lawsuit was properly brought in California. *See* FAC ¶ 1. Plaintiff is deemed a “citizen” of
22 California, the state where he is domiciled. *Kentor v. Wellesley Galleries Ltd.*, 704 F.2d 1088, 1090
23 (9th Cir. 1983).

24 12. Accordingly, there is complete diversity of citizenship between Plaintiff and
25 Defendant.

26 **The Amount in Controversy Between Plaintiff and Defendant Exceeds \$75,000**

27 13. Though Defendant concedes neither liability on Plaintiff’s claims nor the propriety
28 or breadth of any class or scope of aggrieved employees as alleged by Plaintiff, the FAC places in

1 controversy a sum greater than \$75,000. 28 U.S.C. § 1332(a).¹

2 14. Plaintiff brings this class action to enforce the common and undivided interest of the
3 class he seeks to represent. *See* FAC ¶ 16 (“Plaintiff can fairly and adequately protect the interests
4 of all members of the class because it is in her [sic] best interest to prosecute the claims alleged to
5 obtain the full compensation due to them.”). Plaintiff requests injunctive relief primarily “to
6 enforce important rights affecting the public interest.” *See id.* at ¶ 38, Prayer for Relief. Where, as
7 here, the plaintiff seeks injunctive relief, “the amount in controversy . . . may include ‘the cost of
8 complying with an injunction’” *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 416 (9th
9 Cir. 2018) (*quoting Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644, 648 (9th Cir.
10 2016)). Plaintiff seeks, among other things, an injunction “that Defendant account for, disgorge,
11 and restore to Plaintiff and Class Members, the reimbursement of expenses. . . .” FAC ¶ 38. These
12 acts and omissions include failing to reimburse Plaintiff and the class for the use of “Internet and/or
13 the cost of Wi-Fi.” FAC ¶ 7. Estimating, for purposes of removal only, wireless internet service
14 at just five dollars for each of 1,100 workers, the order Plaintiff seeks would require Defendant to
15 spend at least **\$104,500** to reimburse Plaintiff and the class for 19 months of internet service. The
16 scope of Plaintiff’s request for injunctive relief also requires Defendant to modify its existing
17 payroll practices to efficiently and promptly process reimbursement requests in order to “account
18 for, disgorge, and restore” unreimbursed sums to Plaintiff and the class. FAC ¶ 38. To comply
19 with this demand, Defendant estimates it will incur a minimum cost of **\$25,000** for a payroll clerk
20 to improve Defendant’s payroll policies, increase review of expense reimbursement, and more
21 closely supervise Defendant’s payroll department to ensure compliance with the Labor Code. Thus,
22 the cost of complying with the injunctive relief related to internet service alone exceeds \$75,000.

23 15. Plaintiff also seeks compensatory damages, statutory penalties, and attorneys’ fees
24

25 ¹ In alleging the amount in controversy for purposes of removal, Defendant does not
26 concede or acknowledge in any way that the allegations in Plaintiff’s FAC are accurate or that
27 Plaintiff or any proposed class member is entitled to any amount under any claim or cause of
28 action. Nor does Defendant concede or acknowledge that any class or subclass may be certified,
or that the Action may proceed on a representative basis, whether as alleged or otherwise, or that
any or all of its current or former employees are entitled to any recovery in this case, or are
appropriately included in the putative class.

1 on behalf of himself and each of the purported class members. *Id.* at ¶¶ 30, 37, 42, Prayer for
2 Relief.

3 16. Plaintiff's compensatory damages and his share of PAGA penalties may be
4 considered when determining whether the amount in controversy is satisfied. *Urbino v. Orkin*
5 *Servs. of Cal., Inc.*, 726 F.3d 1118 (9th Cir. 2013); *Linebarger v. Graphic Packaging Int'l, LLC*,
6 No. SACV2000309JVSJDEX, 2020 WL 1934958, at *2 (C.D. Cal. Apr. 22, 2020). Plaintiff is
7 entitled to **\$60** in compensatory damages, which is the reimbursable amount for internet service
8 from May 26, 2020 to May 3, 2021 (\$5 reimbursement x 12 months of employment). Plaintiff
9 worked 26 pay periods. His share of the PAGA penalties, assuming one violation at \$100 and 25
10 violations at \$200, total **\$1,275**. *See* Cal. Lab. Code § 2699(f)(2).

11 17. Where, as here, Plaintiff is entitled to recover future attorneys' fees if his action
12 succeeds, "there is no question that future [attorneys' fees] are 'at stake' in the litigation, and the
13 defendant may attempt to prove that future attorneys' fees should be included in the amount in
14 controversy." *Fritsch v. Swift Transp. Co. of Arizona, LLC*, 899 F.3d 785, 794 (9th Cir. 2018).
15 Further, for purposes of removal, attorneys' fees can be allocated entirely to Plaintiff because Labor
16 Code § 2802 "authorizes an award of attorneys' fees solely to the named plaintiffs in a class action."
17 *Gibson v. Chrysler Corp.*, 261 F.3d 927, 942 (9th Cir. 2001). The total amount of attorneys' fees
18 recoverable by Plaintiff, assuming that he is awarded the "benchmark award for attorney fees" at
19 25% is approximately **\$2,062,500** based on the award of PAGA penalties ((1 pay period x \$100 x
20 1,100 class members) + (37 pay periods x \$200 x 1,100 class members) x 25%) and **\$26,125** based
21 recovery of compensatory damages for himself and the class (\$5 reimbursement x 19 months x
22 1,100 class members x 25%). *Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir. 2003).

23 18. Accordingly, all of the requirements for traditional diversity jurisdiction are
24 established.

25 Class Action Fairness Act (CAFA) Jurisdiction

26 19. This Court also has original jurisdiction over this Action pursuant to 28 U.S.C. §
27 1332(d) (as amended by the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 14
28 ("CAFA")). Federal courts have original diversity jurisdiction over a class action whenever:

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