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11 Welch Foods Inc., A Cooperative, and
12 PIM Brands, Inc., formerly the Promotion
13 In Motion Companies, Inc.

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

17 DARREN CLEVINGER and DAVID
18 BLOOM on behalf of themselves and all
19 others similarly situated,

20 Plaintiffs,

21 v.

22 WELCH FOODS INC., A
23 COOPERATIVE; PIM BRANDS, INC.,
24 formerly THE PROMOTION IN
25 MOTION COMPANIES, INC., a
26 Delaware Corporation; and DOES 1
27 through 25, inclusive,

28 Defendants.

CASE NO. 8:23-cv-00127

**DEFENDANTS WELCH FOODS
INC., A COOPERATIVE, AND
PIM BRANDS, INC., FORMERLY
THE PROMOTION IN MOTION
COMPANIES, INC.’S NOTICE OF
REMOVAL**

[Orange County Superior Court Case
No. 30-2022-01298406-CU-BT-CXC]

Action Filed: December 21, 2022
Removed: January 20, 2023

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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 PIM Brands, Inc., formerly the Promotion In Motion
4 Companies, Inc. (“PIM” and collectively with Welch’s, “Defendants”) hereby
5 remove the above-captioned case pending in the Superior Court of the State of
6 California, for the County of Orange, as Case No. 30-2022-01298406-CU-BT-
7 CXC. This putative class action is properly removed pursuant to the Class Action
8 Fairness Act (“CAFA”), as: (1) the putative class size exceeds 100 persons; (2)
9 there is “minimal diversity between plaintiffs and defendants; and (3) the amount
10 in controversy exceeds \$5,000,000. 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 December 21, 2022, Plaintiffs filed the above captioned action in
24 the Superior Court of the State of California, County of Orange, under Case No.
25 30-2022-01298406-CU-BT-CXC. Plaintiffs allege claims against Defendants
26 under the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et*
27 *seq.* (the “UCL”) on behalf of a putative class based on Defendants’ purported use
28

1 of packaging containing non-functional slack fill to sell various varieties of
2 Welch’s Fruit Snacks sold in 8, 10, 18, 22, 80 and 90 count boxes. *See Compl.*
3 *generally.*

4 4. Welch’s and PIM were served with the Complaint via a Notice and
5 Acknowledgment of Receipt executed on December 30, 2022. *See Declaration of*
6 *Daniel S. Silverman (“Silverman Decl.”) ¶ 4.*

7 **THE REMOVAL IS TIMELY**

8 5. 28 U.S.C. § 1446(b) identifies two initial 30-day windows for
9 removal: (1) where the complaint’s removability is clear from the face of the
10 pleading; and (2) where the initial pleading does not reveal a basis for removal but
11 the defendant “receives an amended pleading, motion, or other paper from which it
12 can be ascertained from the face of the document that removal is proper.”
13 *Gallegos v. Costco Wholesale Corp.*, 2020 U.S. Dist. LEXIS 96911, at *5 (C.D.
14 Cal. June 2, 2020).

15 6. The removal is, thus, timely because this removal is being filed within
16 30 days of Defendants being served with the Complaint.

17 **CAFA’S MINIMAL DIVERSITY OF CITIZENSHIP REQUIREMENT IS**
18 **SATISFIED**

19 7. This Court has original jurisdiction over the action under CAFA
20 because it is a civil class action in which at least one member of the proposed
21 putative class of plaintiffs is a citizen of a state different from any defendant. *See*
22 *28 U.S.C. § 1332(d)(2)(A).*

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

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1 9. Specifically, and by the allegations of the Complaint, Plaintiffs Darren
2 Clevenger and David Bloom are individuals residing in Orange County, California,
3 while Welch’s is a cooperative corporation incorporated in Michigan with its
4 principal place of business in Massachusetts and PIM is a corporation incorporated
5 in Delaware with its principal place of business in New Jersey. *See* Compl. ¶¶ 6-9;
6 *see also Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th
7 Cir. 2006) (“a corporation is a citizen only of (1) the state where its principal place
8 of business is located, and (2) the state in which it is incorporated.”) Because
9 Plaintiffs are diverse from both Defendants and they purport to represent classes of
10 California consumers, minimal diversity is satisfied.¹

11 **CAFA’S CLASS SIZE REQUIREMENTS ARE SATISFIED**

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

15 11. Plaintiffs’ Complaint alleges claims on behalf of two putative classes
16 comprised of themselves and all similarly situated consumers who made retail
17 purchases of the Products from June 30, 2016 to present.²

18 12. In the four years preceding December 21, 2022, far more than 100
19 consumers have made retail purchases of the Products. *See* Declaration of Ramiro
20 Fernandez (“Fernandez Decl.”) ¶ 5.

21 13. CAFA’s class size requirement is, thus, satisfied.

22
23
24
25 ¹ Although the Complaint fictitiously names Doe defendants, their citizenship is
26 disregarded for purposes of determining whether minimal diversity is satisfied.
See 28 U.S.C. § 1441(b)(1).

27 ² Defendants do not agree that the applicable limitations period for Plaintiffs’
28 claims reaches back to June 30, 2016 but rather only goes back to four years from
the filing of the Complaint on December 21, 2022.

CAFA’S AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

14. 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).

15. Plaintiffs have not alleged a specific amount in controversy in the Complaint. However, the failure of the Complaint 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).

16. 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 only needs to include a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. *Id.* at 89.

17. In considering whether the amount in controversy exceeds \$5,000,000, the Court must “look beyond the complaint to determine whether the putative class action meets the [amount in controversy] requirements” adding “the potential claims of the absent class members” and attorneys’ fees. *Rodriguez*, 728 F.3d at 981 (citing *Standard Fire Ins. Co. v. Knowles*, 133 S.Ct. 1345 (2013)); *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 705 (9th Cir. 2007).

18. Furthermore, “[i]n considering whether the amount in controversy is clear from the face of the complaint, a court must assume that the allegations of the

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1 complaint are true and that a jury will return a verdict for the plaintiff on all claims
2 made in the complaint.” *Altamirano v. Shaw Indus., Inc.*, C-13-0939 EMC, 2013
3 WL 2950600, at *4 (N.D. Cal. June 14, 2013) (citing *Korn v. Polo Ralph Lauren*
4 *Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008)); *see also Muniz*, 2007 WL
5 1302504, at *3.

6 19. Here, Plaintiffs seek, on behalf of themselves and both putative
7 classes: “full restitution” and injunctive relief under the UCL as well as attorneys’
8 fees. *See* Compl. ¶¶ 67, 76; *see also id.* at 23-24 (Prayer for Relief).

9 20. In the four years preceding December 21, 2022, sales of the Products
10 have far exceeded \$5,000,000.³ *See* Fernandez Decl. ¶ 5. Therefore, the amount in
11 controversy, based on the “full restitution” Plaintiffs are seeking far exceeds
12 \$5,000,000 such that the threshold for CAFA removal is met, even before any
13 amounts associated with injunctive relief or attorney’s fees are taken into
14 consideration.

15 **THE OTHER REQUIREMENTS FOR REMOVAL ARE SATISFIED**

16 21. Consent of other parties is not required for removal under CAFA’s
17 class action jurisdiction. *See* 28 U.S.C. § 1453(b). Additionally, there are no
18 parties other than Plaintiffs and the proposed classes and removing Defendants.

19 22. Defendants are filing herewith true and correct copies of the state
20 court filings with which it has been served, including copies of all process,
21 pleadings, and orders. *See* Silverman Decl. Exs. 1-5.

22 23. Pursuant to 28 U.S.C. § 1446(d), Defendants are filing with the clerk
23 of the Superior Court of the State of California for the County of Orange, and
24 serving upon plaintiff, a Notice to Adverse Party and State Court of Removal of
25

26
27 ³ As such, if Plaintiffs’ allegation that their claims relate back to June 30, 2016 is
28 correct, which Defendants dispute, the amount in controversy will be even larger
and is clearly satisfied.

1 Action to Federal Court. Proof of same will be filed with this Court. *See*
2 Silverman Decl., Ex. 6.

3 24. No previous application has been made for the relief requested herein
4 in this Action.

5 25. This Notice of Removal has been signed pursuant to Fed. R. Civ. P.
6 11.

7 26. Defendants reserve the right to amend or supplement this Notice of
8 Removal.

9 Accordingly, Defendants respectfully request that this action be removed to
10 this Court.

11
12 Dated: January 20, 2023

VENABLE LLP

Daniel S. Silverman

Bryan J. Weintrop

By: */s/ Daniel S. Silverman*

Daniel S. Silverman

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Welch Foods Inc., A Cooperative, and
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Promotion In Motion Companies, Inc.*

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