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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 JENNIFER MULLINIX, PATRISIA
13 VELA, and OMAR OROZCO,
14 individually and on behalf of all others
15 similarly situated,

16 Plaintiff,

17 v.

18 US FERTILITY, LLC, a Delaware
19 limited liability company, and DOES 1-
20 100, inclusive,

21 Defendants.

Case No.:
[Orange County Superior Court No. 30-
2021-01181929-CU-BC-CXC]

NOTICE OF REMOVAL
PURSUANT TO 28 U.S.C. §§ 1441
AND 1453

1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD AND TO**
2
3 **THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE**
4 **CENTRAL DISTRICT OF CALIFORNIA:**

5 **PLEASE TAKE NOTICE** that Defendant US Fertility, LLC (“US
6 Fertility”), hereby removes to this Court the state action captioned *Mullinix, et al.*
7 *v. US Fertility, LLC, et al.*, Case No. 30-2021-01181929-CU-BC-CXC, filed in the
8 Superior Court for the State of California, County of Orange, pursuant to 28 U.S.C.
9 §§ 1441(a) and 1453(b).

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12 **I. BACKGROUND**

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14 1. On February 1, 2021, Plaintiffs Jennifer Mullinix, Patrisia Vela, and
15 Omar Orozco (collectively, “Plaintiffs”) filed the complaint in this action against
16 US Fertility and Does 1-100, inclusive, in the Superior Court for the State of
17 California, County of Orange (“Complaint”). A copy of the Complaint is attached
18 as Exhibit A to this Notice.

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21 2. According to the Complaint, Plaintiff Jennifer Mullinix is a Maryland
22 citizen, and Plaintiffs Patrisia Vela and Omar Orozco are California citizens.

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24 3. US Fertility is a Delaware limited liability company with its principal
25 place of business in Rockville, Maryland.

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27 4. In the Complaint, Plaintiffs allege that, “as a result of Defendant’s
28 malfeasance, thousands of prospective patients and patients who received services

1 from Defendant had their protected health information (“PHI”) and private
2 identifiable information (“PII”) harvested by third-party actors with ill intentions.”

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4 Compl. ¶ 1.

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6 5. Plaintiffs assert causes of action for (1) breach of express and/or
7 implied contractual promise; (2) breach of covenant of good faith and fair dealing;
8 (3) negligence per se; (4) negligence; (5) violation of the California Unfair
9 Competition Law, Cal. Bus. & Prof. Code § 17200, *et. seq.*; (6) violation of the
10 Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et. seq.*; (7) violation of
11 the California Consumer Privacy Act, Cal. Civ. Code § 1798.150, *et. seq.*
12 (“CCPA”); (8) violation of the Maryland Consumer Protection Act, Md. Code
13 Comm. Law § 13-301, *et seq.*; and (9) violation of the Maryland Personal
14 Information Protection Act, Md. Code Ann. § 14-3501, *et seq.*

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18 6. Plaintiffs seek to represent a putative nationwide class consisting of
19 “[a]ll persons residing Nationwide whose Personal Health Information and Personal
20 Identifying Information was maintained by US Fertility, LLC and was
21 compromised as a result of the breach announced by US Fertility, LLC on or about
22 November 13, 2020.” Plaintiffs also seek to represent a putative California class
23 consisting of “[a]ll persons residing in the State of California whose Personal
24 Health Information and Personal Identifying Information was maintained by US
25 Fertility, LLC and was compromised as a result of the breach announced by US
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1 Fertility, LLC on or about November 13, 2020,” and a putative Maryland class
2 consisting of “[a]ll persons residing in the State of Maryland whose Personal Health
3 Information and Personal Identifying Information was maintained by US Fertility,
4 LLC and was compromised as a result of the breach announced by US Fertility,
5 LLC on or about November 13, 2020.” Compl. ¶ 42.
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8 7. US Fertility has not filed a responsive pleading or otherwise responded
9 to the Complaint in the state court action.
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11 8. This Notice of Removal is timely because it has been filed within 30
12 days of February 2, 2021, which is the date on which US Fertility was served with
13 the Complaint in the state court action.
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15 9. Removal to this Court is proper because it is the “district . . . embracing
16 the place” in which the state court action is pending. 28 U.S.C. § 1441(a).
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18 10. Because US Fertility is removing this action pursuant to 28 U.S.C. §
19 1453, US Fertility may remove it “without the consent of all defendants.”
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21 **II. GROUNDS FOR REMOVAL**

22 11. Jurisdiction in this Court is appropriate under 28 U.S.C. § 1332(d), as
23 amended by the Class Action Fairness Act of 2005 (“CAFA”) because this matter
24 involves a putative class action, and: (1) a member of the class of plaintiffs is a
25 citizen of a state different from US Fertility (“minimum diversity”); (2) the number
26 of proposed class members is 100 or more; and (3) the amount in controversy as
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1 pled exceeds \$5 million in the aggregate, exclusive of interest and costs. *See* 28
2 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B), and 1332(d)(6).
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4 12. US Fertility is a Delaware limited liability company with its principal
5 place of business in Maryland. Compl. ¶ 8. Plaintiffs Patrisia Vela and Omar Orozco
6 allege that they are citizens of California. Compl. ¶ 7. Accordingly, minimum
7 diversity is achieved because members “of a class of plaintiffs [are] citizen[s] of a
8 State different from” US Fertility. *See* 28 U.S.C. § 1332(d)(2).
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11 13. The number of proposed class members is 100 or more, as Plaintiffs
12 allege that, “given the fact that Defendant is the largest fertility management
13 organization in the country, it stands to reason that the number of Class Members
14 is at least in the thousands.” Compl. ¶ 43.
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16 14. The amount in controversy exceeds \$5 million in the aggregate,
17 exclusive of interest and costs. Specifically, Plaintiffs seek statutory damages of up
18 to \$750 per violation in their cause of action under the CCPA. Compl. ¶ 124. Based
19 on this demand and the alleged number of class members, the damages as pled in
20 the Complaint exceed CAFA’s \$5 million amount in controversy requirement. *See*
21 *Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n. 3 (9th Cir. 2011)
22 (noting that courts may consider statutory damages when determining the amount
23 in controversy). In addition, Plaintiffs seek an award of attorneys’ fees on their
24 claim under the Maryland Consumer Protection Act, which may also be considered
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1 in determining whether the amount in controversy is sufficient. *See Galt G/S v. JSS*
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3 *Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (“[W]here an underlying statute
4 authorizes an award of attorneys’ fees, either with mandatory or discretionary
5 language, such fees may be included in the amount in controversy.”).
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7 15. Upon filing this Notice of Removal in this Court, US Fertility will file
8 a true and correct copy of the Notice with the Clerk of the Superior Court of
9 California, County of Orange, and will give written notice to the Plaintiffs. *See* 28
10 U.S.C. § 1446(d).
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14 Dated: March 3, 2021

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ClassAction.org

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