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JUN 15 2012

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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E-filing
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

11 *CH*
12 PHOEBE JUEL, an individual and on behalf of a
13 others similarly situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

Case No. **CV 12-03124 HRL**
CLASS ACTION

**DEFENDANT APPLE INC.'S
NOTICE OF REMOVAL**

PUBLIC REDACTED VERSION

ORIGINAL

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20 **PUBLIC REDACTED VERSION**

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22 **DEFENDANT APPLE INC.'S NOTICE OF REMOVAL**

23 Defendant Apple Inc. ("Apple"), pursuant to 28 U.S.C. § 1441, removes to this Court the
24 state action described below, which is within the original jurisdiction of this Court and properly
25 removed under 28 U.S.C. §§ 1332, 1441, 1446, and 1453. Pursuant to 28 U.S.C. § 1446(d),
26 copies of this Notice of Removal are being served upon counsel for Plaintiff Phoebe Juel
27 ("plaintiff") and filed with the Clerk of the California Superior Court for the County of Santa
28

1 Clara, as an exhibit to a Notice to State Court of Removal to Federal Court. A copy of the Notice
2 being filed in state court is attached hereto (without exhibits) as **Exhibit A**.

3 **PROCEDURAL HISTORY AND TIMELINESS OF REMOVAL**

4 1. On April 20, 2012, Plaintiff Juel filed a purported class action captioned *Juel v. Apple*
5 *Inc.*, Case No. 112CV222854, against Apple in the California Superior Court for the County of
6 Santa Clara ("State Court Action").

7 2. Apple was served with the State Court Action Summons and Complaint on May 18,
8 2012. This notice is therefore timely pursuant to 28 U.S.C. § 1446(b). Pursuant to 28 U.S.C.
9 § 1446(a), true and correct copies of all process, pleadings, and orders served upon Apple in the
10 State Court Action are attached to this Notice as **Exhibit B**.

11 3. The California Superior Court for the County of Santa Clara is located within the
12 Northern District of California. 28 U.S.C. § 84(a). This Notice of Removal is therefore properly
13 filed in this Court pursuant to 28 U.S.C. § 1441(a).

14 **NO JOINDER NECESSARY**

15 4. Because there are no other defendants in this action, no consent to removal is
16 necessary.

17 **ALLEGATIONS OF THE COMPLAINT**

18 5. This action is a putative nationwide class action against Apple. (Compl. ¶ 24.)
19 Plaintiff alleges that she and the putative class members were unable to access one or more songs
20 that they purchased from Apple's iTunes Store. (*Id.* ¶ 12.) Plaintiff alleges that Apple agreed in
21 its contracts with its customers that songs purchased through iTunes would be available
22 indefinitely and on multiple devices (*Id.* ¶¶ 6-10), but that plaintiff and the class were unable to
23 access one or more of their purchased songs because Apple's "program concealed the fact that
24 Plaintiff [and the putative class] had purchased the music" (*Id.* ¶¶ 45, 52.) Plaintiff further
25 alleges that she and the putative class could not recover the purchased songs without paying for
26 the songs again. (*Id.* ¶¶ 12, 14, 19-21.)

27 6. Plaintiff seeks to represent the following class of individuals:
28

[H]erself and all other persons similarly situated . . . who:
purchased one or more songs from Defendant; were unable to
access, use or play the purchased songs; purchased the songs again;
and were charged twice for the songs.

(*Id.* ¶ 24.)

7. The Complaint seeks, *inter alia*, damages, injunctive relief, attorney's fees, and costs.
(Compl., Prayer for Relief.)

8. Apple disputes Plaintiff's allegations, believes the Complaint lacks merit, and denies
that Plaintiff or the putative class members have been harmed in any way.

BASIS FOR REMOVAL

9. This action is within the original jurisdiction of this Court, and removal is therefore
proper under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d), which grants
district courts original jurisdiction over class actions in which the amount in controversy exceeds
\$5,000,000 and any member of the class of plaintiffs is a citizen of a State different from any
defendant. As set forth below, this action satisfies each of the requirements of Section 1332(d)(2)
for original jurisdiction under CAFA. *See Lowdermilk v. U.S. Bank, N.A.*, 479 F.3d 994, 997 (9th
Cir. 2007).

10. Covered Class Action. This action meets the CAFA definition of a class action,
which is "any civil action filed under [R]ule 23 of the Federal Rules of Civil Procedure or similar
State statute or rule of judicial procedure." 28 U.S.C. §§ 1332(d)(1)(B), 1453(a) & (b). (Compl.
¶¶ 23-32.)

11. Class Action Consisting of More than 100 Members. The Complaint alleges that
the supposed "double-billing" of iTunes songs "occurred to millions of [Apple's] customers"
(Compl. ¶ 22), and that "[t]his class . . . is so numerous that joinder of all members is
impracticable." (*Id.* ¶ 25). Accordingly, based on Plaintiff's allegations, the aggregate number of
class members is greater than 100 persons for purposes of 28 U.S.C. § 1332(d)(5)(B).

12. Diversity. The required diversity of citizenship under CAFA is satisfied because
"any member of a class of plaintiffs is a citizen of a State different from any defendant."
28 U.S.C. § 1332(d)(2)(A). Plaintiff is a Pennsylvania resident who purports to represent a

1 nationwide class. (Compl. ¶¶ 1, 24.) Apple is “a California corporation whose headquarterd in
2 Cupertino, California.” (*Id.* ¶ 2.) Thus, according to the allegations of the Complaint, the
3 diversity requirements of CAFA are satisfied. 28 U.S.C. § 1332(d)(2)(A).

4 13. Amount in Controversy. Under CAFA, the claims of the individual class members
5 are aggregated to determine if the amount in controversy exceeds the required “sum or value of
6 \$5,000,000, exclusive of interest and costs.” 28 U.S.C. §§ 1332(d)(2), (d)(6). Plaintiff seeks
7 damages and injunctive relief. (*See, e.g.,* Compl., Prayer for Relief.) Without conceding any
8 merit to the Complaint’s damages allegations or causes of action, the amount in controversy here
9 satisfies CAFA’s jurisdictional threshold.

10 14. Amount in Controversy. The amount in controversy with respect to compensatory
11 damages alone exceeds \$5,000,000. Plaintiff alleges that she and class members suffered
12 monetary damages because they were charged more than once for the same song (Compl. ¶¶ 39,
13 40, 49, 51, 59, 60), and that the alleged “double-billing has occurred to millions of [Apple’s]
14 customers.” (*Id.* ¶ 22.) Plaintiff further alleges that “Apple has made millions of dollars it was
15 not entitled to receive.” (*Id.* at p. 2:3.) Moreover, the Complaint alleges that plaintiff purchased a
16 song that she could not access on December 31, 2010. (*Id.* ¶ 16.) In 2010 alone, Apple’s
17 revenues from its sales of songs in the United States through the iTunes Store [REDACTED]
18 [REDACTED]. (Declaration of Mark Buckley in Support of Apple Inc.’s Notice of Removal ¶ 2.)
19 Notably, plaintiff’s claims are not limited to the 2010 time period. For example, under
20 Pennsylvania law, plaintiff’s claims for breach of contract and unjust enrichment cover a four-
21 year period. 42 Pa. C.S.A. § 5525; *Cole v. Lawrence*, 701 A.2d 987, 989 (Pa. Super. Ct. 1997).
22 While Apple disputes that it is liable to plaintiff or any putative class member, or that plaintiff or
23 the putative class members suffered injury or incurred damages in any amount whatsoever, for
24 purposes of satisfying the jurisdictional prerequisites of CAFA, the matter in controversy exceeds
25 \$5,000,000.

26 15. Amount in Controversy – Attorneys’ Fees. Plaintiff also seeks an award of
27 attorneys’ fees. (Compl., Prayer for Relief) This amount should be included in the amount in
28 controversy calculation. *See Mo. State Life Ins. Co. v. Jones*, 290 U.S. 199, 202 (1933);

1 *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005), *amended by* 2006 U.S. App.
2 LEXIS 3376 (9th Cir. Feb. 13, 2006); *see also, e.g., Sanchez v. Wal-Mart Stores, Inc.*, No. S-06-
3 cv-2573 DFL KJM, 2007 U.S. Dist. LEXIS 33746, at *6 (E.D. Cal. May 8, 2007) (including
4 attorneys' fees in calculation).

5 16. No CAFA Exclusions. The action does not fall within any exclusion to removal
6 jurisdiction recognized by 28 U.S.C. § 1332(d), and therefore this action is removable pursuant to
7 CAFA, 28 U.S.C. §§ 1332(d) and 1453(b).

8 **CONCLUSION**

9 17. For all of the reasons stated above, this action is within the original jurisdiction of
10 this Court pursuant to 28 U.S.C. § 1332(d). Accordingly, this action is removable pursuant to
11 28 U.S.C. § 1441(a) and § 1453.

12 Dated: June 15, 2012

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16 By: 
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