

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

RICH AND LESLIE STRUZYNSKI AND
RACHEL WULK, individual and on behalf
of all others similarly situated,

Plaintiffs,

v.

VERIZON NEW JERSEY INC. AND
VERIZON ONLINE LLC,

Defendants.

Civil Action No.

NOTICE OF REMOVAL

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

Defendants Verizon New Jersey Inc. and Verizon Online LLC (collectively, “Defendants”), pursuant to 28 U.S.C. § 1441, hereby remove this action to this Court from the Superior Court of New Jersey, Camden County. This action is within the original jurisdiction of this Court and properly removed based on the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332, 1446, and 1453. Pursuant to 28 U.S.C. § 1446(d), copies of this Notice of Removal will be served upon counsel for Plaintiffs Rich and Leslie Struzynski (the “Struzynskis”) and Rachel Wulk (together with the Struzynskis, “Plaintiffs”) and filed with the Clerk of the New Jersey Superior Court for the County of Camden, as an exhibit to a Notice to State Court of Removal to Federal Court. A copy of the Notice being filed in state court is attached (without exhibits) as Exhibit A.

PROCEDURAL HISTORY AND TIMELINESS OF REMOVAL

1. On July 21, 2017, Plaintiffs commenced this action by filing a putative class action Complaint against the Defendants in the Superior Court of New Jersey, Camden County, captioned *Struzynski v. Verizon New Jersey Inc., et al.*, Case No. L-2903-17.

2. Defendants were served on July 31, 2017. The Complaint is the initial pleading setting forth the claim for relief upon which this action is based. Accordingly, this Notice is timely pursuant to 28 U.S.C. § 1446(b). Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon Defendants in this action are attached to this Notice as Exhibit B.

3. The Superior Court of New Jersey, Camden County, is located within the District of New Jersey. 28 U.S.C. § 110. This Notice of Removal is therefore properly filed in this Court pursuant to 28 U.S.C. § 1441(a).

ALLEGATIONS OF THE COMPLAINT

4. This is a putative class action on behalf of Plaintiffs and other FiOS customers of Verizon.

5. Plaintiff alleges, *inter alia*, that Verizon required its FiOS customers to lease multiple “set-top boxes”, “digital adapter”, and/or “CableCARD device” to utilize FiOS programming on multiple televisions but that more than one set-top box is not technologically required in order to access FiOS programming on multiple televisions, and that Verizon does not disclose to its customers the alleged availability of third-party alternatives to leasing Verizon set-top boxes. (Compl. ¶¶ 2-5);

6. Plaintiff seeks to represent the following putative class: “All New Jersey citizens who are current or former customers of Verizon, who purchased FiOS service, and who have paid rental charges, installation fees, and any other expenditures to Verizon for the installation, maintenance, and/or use of more than one Verizon-supplied STB, digital adapter, or CableCARD at any time from July 2012 to present.” (*Id.* ¶ 59.)

7. On behalf of Plaintiffs and the putative class, the Complaint attempts to state claims for: (1) violations of the New Jersey Consumer Fraud Act (“NJCFCA”); (2) the New Jersey

Truth-in-Consumer Contract, Warranty and Notice Act (“TCCWNA”); and (3) injunctive relief. (*Id.* ¶¶ 66-127.)

8. The Complaint seeks, *inter alia*, (1) “actual and statutory damages for each instance of unfair or deceptive conduct”; (2) “actual and statutory damages for each instance of Verizon’s illegal conduct”; (3) declaratory and injunctive relief; (4) treble damages; (5) attorneys’ fees and costs; and (6) interest. (*Id.* at pp. 29-43.)

9. Defendants dispute Plaintiffs’ allegations, deny that the Complaint has merit, deny that the Class is certifiable, and deny that Plaintiff or the putative class has been harmed in any way.

BASIS FOR REMOVAL

10. This action is within the original jurisdiction of this Court, and removal is proper under CAFA, which grants district courts original jurisdiction over putative class actions, involving over 100 putative class members, where any member of the putative class of plaintiffs is a citizen of a State different from any defendant, and in which the amount in controversy in the aggregate exceeds \$5 million. As set forth below, this action satisfies each of the requirements of § 1332(d)(2) for original jurisdiction under CAFA.

Putative Class Action.

11. This action meets the CAFA definition of a class action, which is “any civil action filed under rule 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). Plaintiff seeks certification of a class under N.J. Court Rule 4:32-1, *et seq.*, New Jersey’s analog to Fed. R. Civ. P. 23. (*See* Compl. ¶ 58.)

Class Consisting of More than 100 Members.

12. Upon information and belief, there are more than 100 New Jersey citizens who are current or former FiOS customers of Verizon and who have paid rental charges for the use of more than one Verizon-supplied set-top box, digital adapter, or CableCARD.

13. According to Verizon's records, during one month (July 2017) of the claimed class period, approximately 601,631 FiOS customers leased more than one set-top box in connection with their FiOS services in New Jersey.

14. Upon information and belief, based on an analysis of the names and service addresses, and publicly available records indicative of the citizenship (*e.g.*, voter registration in New Jersey, ownership of property in New Jersey, driver's license issued by New Jersey) of a small portion of those 601,631 New Jersey customers, at least 600 customers are citizens of New Jersey and thus are putative class members. *See Krasnov v. Dinan*, 465 F.2d 1298, 1301 (3d Cir. 1972); *Smith v. Honeywell Int'l Inc.*, No. 10-cv-3345 (ES), 2013 WL 2181277, at *4 (D.N.J. May 20, 2013) ("The district court may make 'a reasonable assumption' of CAFA's citizenship requirements from evidence that indicates the 'probable citizenship of the proposed class'.").

15. Accordingly, the aggregate number of members of the proposed class is greater than 100 persons for purposes of 28 U.S.C. § 1332(d)(5)(B).

CAFA Diversity.

16. 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).

17. Defendant Verizon Online LLC is a Delaware limited liability company, with its principal place of business in Virginia. Accordingly, Verizon Online LLC is a citizen of Delaware and Virginia.

18. As discussed above (¶ 14, *supra*), at least 100 members of the putative class are citizens of New Jersey.

19. These members of the putative class are not citizens of the same states as Verizon Online LLC. Accordingly, at least one proposed class member is a citizen of a state different from a defendant, thus satisfying the minimal diversity requirements of 28 U.S.C. § 1332(d)(2)(A).

Amount in Controversy.

20. Under CAFA, the claims of the individual class members are aggregated to determine if the amount in controversy exceeds the required “sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. §§ 1332(d)(2), (d)(6). Without conceding any merit to the Complaint’s allegations or causes of action, the amount in controversy satisfies this jurisdictional threshold because under Plaintiffs’ theories of recovery the amount in controversy exceeds \$5 million.

Rental Charges Alleged By Plaintiffs and the Putative Class

21. The Complaint alleges that, “Verizon charges its customers a minimum of \$12.00 per month for the first television [set-top box], and a minimum of \$10.00 per month for each additional television [set-top box].” (Compl., ¶ 30.)

22. Plaintiffs further allege that, “[t]he Struzynskis have been Verizon FiOS customers since at least April 2010, and currently rent three (3) Verizon-supplied STBs for use in their home, and three (3) Verizon-supplied digital adapters, for a total of approximately \$51.94 in monthly fees (exclusive of any additional installation, administrative, and other fees charged by Verizon in relation to these rentals).” (*Id.* at ¶ 9.)

23. The Struzynskis’ statement attached to the Complaint lists one set-top box for \$7.99, two additional set-top boxes for \$19.98, and three digital adapters for \$23.97. Thus, the

monthly amount allegedly paid by the Struzynskis for additional set-top boxes and digital adapters (beyond the first set top box) is \$46.95 (\$19.98 + \$23.97).

24. Plaintiffs allege that the Struzynskis were FiOS customers for the entire length of the putative class period (July 2012 to the present) (at least 61 months).

25. Thus, Plaintiffs claim that the Struzynskis overpaid at least approximately \$2,680.95 to rent multiple unnecessary set-top boxes and/or digital adapters.

26. Plaintiffs have asserted claims under the NJCFA, which provides for a “refund of all moneys acquired by means of any [unlawful] practice,” as well as treble damages and attorneys’ fees. N.J.S.A. § 56:8-2.11, 19.

27. Thus, Plaintiffs allege that damages for the Struzynskis’ NJCFA claim are at least approximately \$8,042.85 (\$2,680.95 x 3).

Statutory Damages Under the TCCWNA

28. Plaintiffs also seek statutory damages pursuant to N.J.S.A. § 56:12-17 for violations of the TCCWNA. (Compl. at pp. 25, 28, 30.) Pursuant to N.J.S.A. § 56:12-17, a court may award to the aggrieved consumer “a civil penalty of not less than \$100.00 or for actual damages, or both”

29. Plaintiffs allege at least four violations of the TCCWNA, seeking at least \$400 in civil penalties. (Compl., Counts II-VI.)

Amount in Controversy

30. Based on the allegations in the Complaint, Plaintiffs allege that the Struzynskis’ total damages claim is \$8,442.85 (\$8,042.85 + \$400).

31. Plaintiffs further allege that the Struzynskis’ claim is “typical” of the putative class members’ claims. (*Id.* at ¶ 61.)

32. As discussed above (¶ 14, *supra*), upon information and belief, the putative class is comprised of at least 600 individuals.

33. Accordingly, the amount in controversy exceeds the \$5 million threshold required by CAFA ($\$8,442.85 \times 600 = \$5,065,710$).

34. Plaintiffs also seek a declaratory judgment. (Compl., Count VII.) The value of this relief also counts towards the amount in controversy. *See Spock v. David*, 469 F.2d 1047, 1052 (3d Cir. 1972) (“In cases where there is no adequate remedy at law, the measure of jurisdiction is the value of the right sought to be protected by injunctive relief”).

35. For purposes of removal “the question is not what damages the Plaintiff will recover, but what amount is ‘in controversy’ between the parties.” *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 448 (7th Cir. 2005) (“That the Plaintiff may fail in its proof, and the judgment be less than the threshold (indeed, a good chance that the Plaintiff will fail and the judgment will be zero) does not prevent removal.”). While Defendants dispute that they are liable to Plaintiffs or the putative class, or that Plaintiffs or the putative class suffered any injury or incurred damages in any amount whatsoever, or that any class is certifiable, for purposes of satisfying the jurisdictional prerequisites of CAFA, the matter in controversy exceeds \$5 million.

No Joinder Necessary.

36. Defendants Verizon New Jersey Inc. and Verizon Online LLC jointly file this notice of removal. No other defendants have been identified by Plaintiffs and no other defendants are required to consent to removal based on CAFA. 28 U.S.C. § 1453(b).

RESERVATION OF RIGHTS AND DEFENSES

37. By filing this Notice of Removal, Defendants do not waive any defenses that may be available to them and reserve all such defenses. In addition, Defendants do not waive their right to compel arbitration of this dispute pursuant to the parties’ contract, nor do Defendants

concede that Plaintiffs states any claim upon which relief can be granted, or that Plaintiffs are entitled to any relief of any nature. Nonetheless, Plaintiffs' claims, as pleaded in the Complaint at the time of removal, "whether well or ill founded in fact, fixes the right of the defendant to remove." *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 202 U.S. 283, 294 (1938).

38. If any challenges to the propriety of the removal of this action arise, Defendants respectfully request the opportunity to present oral argument and/or additional evidence.

WHEREFORE, Defendants hereby remove this Action to this Court from the Superior Court of New Jersey, Camden County.

/s/Philip R. Sellinger
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