

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
PHILIP STAMM, Individually And On Behalf Of All Other
Similarly Situated,

Plaintiffs,

vs.

MY PILLOW, INC. a Minnesota Corporation, a/k/a MY
PILLOW DIRECT LLC,

Defendant.
-----X

Index No.: 651472/2017

**NOTICE TO STATE
COURT OF REMOVAL TO
UNITED STATES
DISTRICT COURT**

PLEASE TAKE NOTICE that on April 17, 2017 Defendant, MY PILLOW, INC. a Minnesota Corporation, a/k/a MY PILLOW DIRECT LLC, filed a Notice of Removal of this case from the Supreme Court of the State of New York, New York County to the United States District Court for the Southern District of New York. A copy of the Notice of Removal is attached as Exhibit A hereto, and a copy of this Notice and the Notice of Removal has also been provided to the Plaintiff in this action.

The removing defendant has electronically filed a copy of the Notice of Removal with the Clerk of the Supreme Court of the State of new York, New York County, in accordance with 28 U.S.C. § 1446(d), thereby effecting removal.

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1446, the filing of this Notice removes this action to the Federal Court, and this Court may “proceed no further unless and until the case is remanded.” 28 U.S.C. § 1446(d).

Dated: New York, New York
April 17, 2017

CARROLL, McNULTY & KULL LLC



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Attorneys for Defendant
MY PILLOW, INC. a Minnesota Corporation, a/k/a
MY PILLOW DIRECT LLC

To: Thomas J. McKenna, Esq.
GAINNEY McKENNA & EGLESTON
295 Madison Avenue, 4th Floor
New York, NY 10017
(212) 983-1200
Attorneys for Plaintiffs

EXHIBIT A

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS
Philp Stamm

DEFENDANTS
My Pillow, Inc. a/k/a My Pillow Direct, LLC

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER
Thomas J. McKenna, Gainey McKenna & Egleston, 295 Madison Avenue,
4th Floor, New York, NY 10017, (212)983-1200

ATTORNEYS (IF KNOWN)
Michael J. Tricarico, Carroll McNulty & Kull, LLC, 570 Lexington Avenue, 8th
Floor, New York, NY 10022, (646) 625-4000

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Removal of class action alleging consumer fraud pursuant to 28 U.S.C. §§ 1332, 1446 and 1453

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No [X] Yes [] Judge Previously Assigned

If yes, was this case Vol. [] Invol. [] Dismissed. No [X] Yes [] If yes, give date _____ & Case No. _____

IS THIS AN INTERNATIONAL ARBITRATION CASE? No [X] Yes []

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

Table with columns: TORTS, ACTIONS UNDER STATUTES, REAL PROPERTY, CIVIL RIGHTS, PRISONER CIVIL RIGHTS, IMMIGRATION, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like CONTRACT, PERSONAL INJURY, BANKRUPTCY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

Check if demanded in complaint:

[X] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y. AS DEFINED BY LOCAL RULE FOR DIVISION OF BUSINESS 13? IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: [X] YES [] NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- 1 Original Proceeding
- 2 Removed from State Court
 - a. all parties represented
 - b. At least one party is pro se.
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from (Specify District)
- 6 Multidistrict Litigation (Transferred)
- 7 Appeal to District Judge from Magistrate Judge
- 8 Multidistrict Litigation (Direct File)

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.

- 1 U.S. PLAINTIFF
- 2 U.S. DEFENDANT
- 3 FEDERAL QUESTION (U.S. NOT A PARTY)
- 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF		CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF		INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF
	[X]1 []1			[]3 []3			[]5 []5
CITIZEN OF ANOTHER STATE	[]2 [X]2		INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[]4 []4		FOREIGN NATION	[]6 []6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)
New York State, but not otherwise specified in complaint.

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)
My Pillow, Inc., 343 East 82nd Street, Suite 102, Chaska, MN 55318

DEFENDANT(S) ADDRESS UNKNOWN
REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

COURTHOUSE ASSIGNMENT

I hereby certify that this case should be assigned to the courthouse indicated below pursuant to Local Rule for Division of Business 18, 20 or 21. DO NOT check either box if this is a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.

Check one: THIS ACTION SHOULD BE ASSIGNED TO: WHITE PLAINS MANHATTAN

DATE 4/17/17
SIGNATURE OF ATTORNEY OF RECORD *Michael J. Lincioni*

ADMITTED TO PRACTICE IN THIS DISTRICT
[] NO
[X] YES (DATE ADMITTED Mo. 04 Yr. 1993)
Attorney Bar Code # MT-5332

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.
Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PHILIP STAMM, Individually And On Behalf Of All
Other Similarly Situated,

Plaintiffs,

vs.

MY PILLOW, INC. a Minnesota Corporation, a/k/a MY
PILLOW DIRECT LLC,

Defendant.
-----X

Action No.: 1:17-cv-2769

**NOTICE OF REMOVAL
UNDER CLASS ACTION
FAIRNESS ACT (U.S.C. 28
§§ 1332, 1446, AND 1453)**

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.**

PLEASE TAKE NOTICE that Defendant My Pillow, Inc. (“My Pillow”), through its undersigned counsel, Carroll, McNulty & Kull LLC, hereby removes the above-captioned action from the New York Supreme Court, County of New York (Index No. 65417/2017), to the United States District Court for the Southern District of New York, by filing of this Notice of Removal with the Clerk of the United States District Court for the Southern District of New York. In support of this Notice of Removal, My Pillow states:

1. On or about March 21, 2017, plaintiff Philip Stamm (“Plaintiff”) commenced this putative class action against My Pillow by filing a Class Action Complaint (“Complaint”) in New York Supreme Court, County of New York (the State Court Action”). Index No. 651472/2017 has been assigned to the State Court Action. The Complaint contains three counts, for: (1) alleged violations of New York General Business Law §349; (2) Fraud/Deceit; and (3) Unjust Enrichment.

2. The U.S. Supreme Court recently affirmed that a defendant needs only to plausibly allege the requirements for federal jurisdiction to remove. That is, a defendant need only file in the federal forum, a notice of removal “containing a short and plain statement of the grounds for removal”; no evidentiary submissions need to be submitted. *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 21 547, 553 (2014) (citing 28 U.S.C. §1446(a)).

3. As set out more fully below, this putative class action as alleged in the Complaint is properly removed to this Court under 28 U.S.C. § 1441 and 1446 because My Pillow has satisfied the venue and procedural requirements for removal, and because this Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332.

I. THE REQUIREMENTS OF 28 U.S.C. §§ 1441 AND 1446 ARE MET.

4. *Timeliness.* A notice of removal may be filed within 30 days after the defendant receives a copy of the initial pleading, motion, or other papers from which it may be ascertained that the case is removable. 28 U.S.C. §1446(b). My Pillow received a copy of the Complaint on March 29, 2017. As such, the deadline to remove this case is April 28, 2017. Because this Notice of Removal is filed in advance of April 28, 2017, it is timely filed under 28 U.S.C. § 1446(b).

5. *Removal to Proper Court.* The New York Supreme Court, County of New York is located in the United States District Court for the Southern District of New York. Thus, venue is proper because this is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a); *see also* 28 U.S.C. § 1446(a).

6. *Procedural Requirements.* Section 1446(a) requires a removing party to provide this Court with a copy of all “process, pleadings, and orders” served on it in the

state court action. A true and correct copy of the Complaint and all papers served with the Complaint is attached hereto as Exhibit A. As required by 28 U.S.C. § 1446(d), My Pillow will file an appropriate notice in the state court action and will serve on all counsel of record a true and correct copy of this Notice of Removal.

7. No previous application has been made for the relief requested herein.

II. REMOVAL IS PROPER BECAUSE THIS COURT HAS JURISDICTION UNDER 28 U.S.C. §§ 1332 AND 1441.

8. This case is subject to removal under the Class Action Fairness Act of 2005. Pub. L. No. 109-2, 119 Stat. 4 (codified in various sections of 28 U.S.C.) (“CAFA”).

9. As set forth below, this is a putative class action in which (1) there are alleged to be more 100 or more members in the proposed putative class; (2) at least some members of the proposed class have a different citizenship from My Pillow; and (3) the aggregate amount in controversy exceeds \$5 million. Thus, this Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1332(d) and 1453(b).

A. Diversity of Citizenship

10. Plaintiff is, and was, at all relevant times a citizen of New York residing in New York. Ex. A., Compl. At ¶3. Plaintiff brings this suit on behalf of a putative Nationwide Class consisting of: “All persons who (1) attempted to purchase My Pillow pillows from Defendant using a BOGO promo code; (2) who were not successful in completing a purchase of My Pillow pillows using the BOGO promo code; and (3) who were instead redirected to a different promo code which did not honor the BOGO advertised price, resulting in a higher charge to the consumer than advertised” and a New York Subclass consisting of: “All citizens of the State of New York who (1) attempted to

purchase My Pillow pillows from Defendant using a BOGO promo code; (2) who were not successful in completing a purchase of My Pillow pillows using the BOGO promo code; and (3) who were instead redirected to a different promo code which did not honor the BOGO advertised price, resulting in a higher charge to the consumer than advertised *Id.* Compl. at ¶18-19(a)-(b).

11. A corporation like My Pillow is a citizen of every State by which it has been incorporated and of the State where it has its principal place of business. 28 U.S.C. § 1332(c)(1). Here, My Pillow is incorporated and has its principal place of business in the state of Minnesota. *See* Ex. A, Comp. at, ¶4.

12. Therefore, at least one member of the Plaintiff's proposed class is a citizen of a state different from My Pillow's state of citizenship.

13. The diversity of citizenship between Plaintiff (New York) and My Pillow (Minnesota) satisfies the minimal-diversity requirement of CAFA, which requires only that the citizenship of "any member of a class" be diverse from "any defendant." 28 U.S.C. § 1332(d)(2)(A). Because the named plaintiff is a New York resident, and My Pillow's a citizen of Minnesota, the minimal-diversity requirement under CAFA is met.

B. Class Action Consisting of More than 100 Members.

14. Plaintiff purports to represent a "Nationwide Class" and a "New York Subclass" defined as follows:

(a) The "Nationwide Class" is defined as:

All persons who (1) attempted to purchase My Pillow pillows from Defendant using a BOGO promo code; (2) who were not successful in completing a purchase of My Pillow pillows using the BOGO promo code; and (3) who were instead redirected to a different promo code which did not honor the BOGO advertised price, resulting in a higher charge to the consumer than advertised.

(b) The "New York Subclass" is defined as:

All citizens of the State of New York who (1) attempted to purchase My Pillow pillows from Defendant using a BOGO promo code; (2) who were not successful in completing a purchase of My Pillow pillows using the BOGO promo code; and (3) who were instead redirected to a different promo code which did not honor the BOGO advertised price, resulting in a higher charge to the consumer than advertised.

Ex. A. Compl. at ¶19

15. Plaintiff asserts that “[t]he exact number of members of the Nationwide Class and New York Subclass are believed to be so numerous that joinder of all members into one action, or into an individual statewide action is impractical” and that “[u]pon information and belief, the Nationwide Class consists of hundreds of thousands of members, and the New York Subclass consists of thousands of members.” *Id.* Compl. at ¶21. Moreover, My Pillow’s direct sales records indicate that its direct sales to consumers in New York State alone, exceeds 100 consumers during the class period alleged in the Complaint.

16. Based upon these allegations, the aggregate number of class members in Plaintiff’s proposed class is far greater than 100 for purposes of 28 U.S.C. §1332(d)(5)(B).

C. The Amount-in-Controversy Requirement Is Satisfied

17. As set forth herein, the aggregate amount-in-controversy, exclusive of interests and costs, exceeds the \$5,000,000 jurisdictional minimum under CAFA. 28 U.S.C. §§ 1332(d)(2), 1332(d)(6).

18. In an attempt to avoid federal jurisdiction, Plaintiff improperly attempts to bind absent class members by pleading that the amount in controversy is less than \$5,000,000. Such stipulation is of no significance as the U.S. Supreme Court has held a

class representative plaintiff cannot bind the absent putative class to with a pre-certification stipulation in a complaint to amounts at issue that fall below the CAFA jurisdictional requirements. *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1347, 185 L. Ed. 2d 439 (2013). And while My Pillow disputes that the proposed class could ever be certified or that My Pillow is liable for any of the claims Plaintiff asserts in the Complaint, the putative class size, coupled with the following claims for relief as alleged in the Complaint, make clear CAFA's jurisdictional amount in controversy requirement is easily met. Plaintiff seeks, in relevant part, the following relief on behalf of the putative Nationwide and New York classes:

- a. Statutory and Actual Damages. Ex. A. Compl., Prayer;
- b. Disgorgement. *Id.* Compl., Prayer;
- c. Restitution. *Id.* Compl., Prayer;
- d. Punitive Damages. *Id.* Compl., Prayer;
- e. Attorneys' Fees and Costs. Compl., Prayer;
- f. Injunction. Compl., Prayer.

19. Plaintiff alleges he paid approximately \$125.15 for the pillows at issue. *Id.* Compl. at ¶16. And because the putative nationwide class here includes “hundreds of thousands” of members and the New York subclass includes “thousands of members” (Compl. at ¶21), the amount in controversy requirement would be met if plaintiff prevails on this class wide restitution/disgorgement claim alone (\$125.15 x 200,000 class members) This estimation does not include Plaintiff's other claims for relief, such as

punitive damages, statutory damages, or attorneys' fees, all of which could easily increase the amount in controversy.¹

20. By filing this Notice, My Pillow does not waive any defenses that may be available to it, and My Pillow reserves the right to amend or supplement this Notice.

Thus, My Pillow respectfully requests removal of this action from New York Supreme Court, County of New York, bearing Index No. 651472/2017, to this Court under 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

Dated: New York, New York
April 17, 2017

CARROLL McNULTY & KULL LLC



Michael J. Tricarico (MT-5332)

Douglas J. Steinke (DS-9987)

570 Lexington Avenue, 8th Floor

New York, New York 10022

(212) 252-0004

*Attorneys for Defendant My Pillow, Inc. a
Minnesota Corporation, a/k/a My Pillow
Direct LLC*

¹ My Pillow reserves all defenses, denies all liability and contends that Plaintiff's allegations are meritless.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

PHILIP STAMM, Individually And On Behalf Of All Other
Similarly Situated,

Plaintiffs,

vs.

MY PILLOW, INC. a Minnesota Corporation, a/k/a MY
PILLOW DIRECT LLC,

Defendant.

-----X

Action No.: 1:17-cv-2769

**CORPORATE
DISCLOSURE
STATEMENT**

Pursuant to Federal Rule of Civil Procedure 7.1, defendant My Pillow, Inc. (identified in the complaint of the removed action as My Pillow, Inc., a/k/a My Pillow Direct, LLC), by and through its undersigned counsel, hereby submits the following Corporate Disclosure Statement:

- 1. My Pillow, Inc. has no parent corporation.
- 2. No publicly-held corporation owns 10% or more of the stock of My Pillow, Inc.

Dated: New York, New York
April 17, 2017

CARROLL, McNULTY & KULL LLC



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*Attorneys for Defendant My Pillow, Inc. a
Minnesota Corporation, a/k/a My Pillow Direct
LLC*