UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PHILIP STAMM, individually and on behalf of other persons similarly situated,

Plaintiffs,

- against -

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

Defendant.

ORDER

17 Civ. 2769 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

Plaintiff Philip Stamm filed this putative class action asserting state law claims for unjust enrichment, fraud, and violations of New York General Business Law ("GBL") § 349 based on Defendant My Pillow, Inc.'s advertising and administration of a "Buy One Get One Free" promotion for the sale of its products. Plaintiff filed the Complaint in New York state court, and Defendant My Pillow, Inc. removed the case to this Court. Plaintiff now moves to remand, arguing that Defendant has not demonstrated the required amount in controversy to sustain federal jurisdiction. For the reasons set forth below, Plaintiff's motion to remand will be granted.

BACKGROUND

On March 21, 2017, Plaintiff filed this putative class action in Supreme Court of the State of New York, New York County. (Cmplt. (Dkt. No. 1-1)) According to the Complaint, Defendant manufactures pillows and "advertises the sale of these pillows on television nationwide and in New York and elsewhere, and sells its pillows in New York and throughout the United States." (Id. ¶ 4) Plaintiff alleges that in 2014, and running continuously through at

least January of 2017, Defendant began airing infomercials and other marketing campaigns to promote a "Buy One Get One Free" ("BOGO") promotion for its My Pillow product. (Id. ¶ 10) Defendant's commercials and infomercials stated that if a consumer "purchased one My Pillow and used the provided 'promo' code, the consumer would receive a second My Pillow for free." (Id.)

On January 23, 2017, after watching a My Pillow infomercial, Plaintiff "attempted to place an order over the internet for two (2) standard/queen size My Pillow pillows using the provided 'promo' code so that he would receive his second My Pillow for 'free,' and as advertised." (Id. ¶ 14) The "promo code" was not accepted online, however, and Plaintiff called a My Pillow sales representative to help him complete his order. Although Plaintiff was able to complete the order, he received only a 33% discount and not the 50% discount promised in the "Buy One Get One Free" promotion. (Id. ¶¶ 15-16) Plaintiff claims that because Defendant failed to honor its "Buy One Get One Free" promotion, he was "improperly charged $125.15, including shipping, handling, and tax." (Id. ¶ 16)

Plaintiff seeks to certify a nationwide class and a New York subclass of all persons "who (1) attempted to purchase My Pillow pillows from Defendant using a BOGO promo code; (2) . . . were not successful in completing a purchase of My Pillow pillows using the BOGO promo code; and (3) . . . 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. ¶ 19) Plaintiff alleges 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. ¶ 21) Plaintiff brings claims for fraud and unjust enrichment on behalf of the

nationwide class, and violations of GBL § 359 on behalf of the New York subclass, for Defendant's alleged failure to honor the "BOGO" promotional code. (Id. ¶¶ 35-53)

On April 17, 2017, Defendant timely removed this action to this Court. (Notice of Removal (Dkt. No. 1) ¶ 4) Defendant asserts that this Court has subject matter jurisdiction under 28 U.S.C. §§ 1441, 1446 and the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332. (Notice of Removal (Dkt. No. 1) ¶ 3) On May 17, 2017, Plaintiff moved to remand the action, arguing that Defendant had not demonstrated that the amount in controversy satisfies the required jurisdictional minimum. (Pltf. Mot. to Remand (Dkt. No. 8); Pltf. Br. (Dkt. No. 9) at 1)[1]

DISCUSSION

I. LEGAL STANDARD

"Under 28 U.S.C. § 1441, a civil action filed in state court may be removed by the defendant to federal district court if the district court has original subject matter jurisdiction over the plaintiff's claim." Lupo v. Human Affairs Int'l, 28 F.3d 269, 271 (2d Cir. 1994). To establish federal subject matter jurisdiction under CAFA, a defendant "'must prove to a reasonable probability' that (1) there is minimal diversity . . . [,] (2) the putative class exceeds 100 people[,] and (3) the amount in controversy is greater than $5 million." Fields v. Sony Corp. of Am., No. 13 Civ. 6520(GBD), 2014 WL 3877431 at *1 (S.D.N.Y. Aug. 4, 2014) (citing 28 U.S.C. § 1332(d)(2)(A), (5)(B), (6); Blockbuster, Inc. v. Galeno, 472 F.3d 53, 59 (2d Cir. 2000)). A party may aggregate the claims of individual class members to reach this jurisdictional amount. 28 U.S.C. § 1332(d)(6) ("In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.").

[1] The page numbers of documents referenced in this Order correspond to the page numbers designated by this District's Electronic Case Filing system.

"On a motion to remand, the party seeking removal bears the burden of establishing to a 'reasonable probability' that removal is proper." Anwar v. Fairfield Greenwich Ltd., 676 F. Supp. 2d 285, 292 (S.D.N.Y. 2009) (citing Blockbuster, 472 F.3d at 58; DiTolla v. Doral Dental IPA of N.Y., 469 F.3d 271, 275 (2d Cir. 2006); Wilds v. UPS. Inc., 262 F. Supp. 2d 163, 171 (S.D.N.Y.2003)). Because the notice of removal, "[b]y design[,] . . . tracks the general pleading requirement stated in Rule 8(a) of the Federal Rules of Civil Procedure," the grounds for removal need only be stated in "'a short and plain statement,'" and "[a] defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." Dart Cherokee Basin Operating Co., LLC v. Owens, 135 S. Ct. 547, 553-554 (2014) (quoting 28 U.S.C. § 1446(a)). "Evidence establishing the amount [in controversy] is required by § 1446(c)(2)(b) only when the plaintiff contests, or the court questions, the defendant's allegation." Id. at 554.

Where a complaint does not allege a specific amount of damages, a defendant must "establish the amount in controversy" for the purposes of removal "'by a preponderance of the evidence.'" Fields, 2014 WL 3877431, at *2 (quoting Smith v. Manhattan Club Timeshare Ass'n, Inc., 944 F. Supp. 2d 244, 250 (S.D.N.Y. 2013)). "Courts look to the plaintiff's complaint and then to the defendant's petition for removal in determining whether a defendant has met its burden of a 'reasonable probability.'" Id. at *2 (quoting Blockbuster, 472 F.3d at 58). Where the allegations in the pleadings as to the amount in controversy are inconclusive, "courts may look outside those pleadings to other evidence in the record." United Food & Commercial Workers Union, Local 919, AFL-CIO v. CenterMark Props. Meriden Square, Inc., 30 F.3d 298, 305 (2d Cir. 1994) (citations omitted).

"Any doubts regarding the propriety of removal are resolved in favor of remand, and 'federal courts construe the removal statute narrowly.'" Anwar, 676 F. Supp. 2d at 292 (quoting Lupo, 28 F.3d at 274) (citation omitted).

II. ANALYSIS

Although "Plaintiff [claims that he] was . . . improperly charged $125.15, including shipping, handling and tax," (Cmplt. (Dkt. No. 1-1) ¶ 16), the Complaint does not include a specific demand for class damages, and the aggregate value of the claims at issue is not apparent from the face of the Complaint. The Complaint does plead, however, that "the aggregate amount in controversy ***does not exceed*** $5,000,000." (Id. ¶ 6 (emphasis in original))

As to the size of the putative class, the Complaint pleads that "the Nationwide Class consists of hundreds of thousands of members, and the New York Subclass consists of thousands of members." (Id. ¶ 21) The "Nationwide Class" is made up of those "who were not successful in completing a purchase of My Pillow pillows using the BOGO promo code[,] and . . . who were instead redirected to a different promo code which did not honor the BOGO advertised price." (Id. ¶ 19) The "New York Subclass" is defined in nearly the same way, except that it is limited to citizens of New York. (Id.)

Defendant argues that the amount-in-controversy requirement is satisfied here based on (1) the restitution damages Plaintiff seeks; (2) a declaration setting forth the amount of Defendant's revenue from non-BOGO sales; (3) potential punitive damages, and (4) damages associated with Plaintiff's GBL § 359 claim. (Notice of Removal (Dkt. No. 1) ¶¶ 18-19; Def. Opp. (Dkt. No. 10) at 5, 12-13)

A. Restitution Damages

In the Notice of Removal, Defendant alleges that, "because the putative nationwide class here includes 'hundreds of thousands' of members . . . , 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)." (Notice of Removal (Dkt. No. 1) ¶ 19 (quoting Cmplt. (Dkt. No. 1-1) ¶ 21)). Defendant has also submitted a declaration from its Chief Executive Officer, Michael Lindell, in which Lindell states that "nationwide sales of the premium pillows at issue without a 'BOGO' promo code from My Pillow's website and telephone order system exceeded $5,000,000 during the relevant time period." (Def. Opp. (Dkt. No. 10) at 12 (citing Lindell Decl. (Dkt. No. 10-1) ¶ 4)) Plaintiff argues, however, that Defendant has not met its burden of proof, because it has "provide[d] no evidence to substantiate its claim." (Pltf. Br. (Dkt. No. 9) at 8 (emphasis omitted)) According to Plaintiff, the $5 million revenue figure cited in the Lindell Declaration is not tied to the sales practice challenged in the Complaint. (Pltf. Reply (Dkt. No. 11) at 3-4)

As to Plaintiff's unjust enrichment cause of action, this is a "'a quasi-contract claim' and 'contemplates 'an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties." Ga. Malone & Co., Inc. v. Rieder, 19 N.Y.3d 511, 516 (2012) (quoting IDT Corp. v. Morgan Stanley Dean Witter & Co., 12 N.Y.3d 132, 142 (2009)). "To recover on a theory of unjust enrichment under New York Law, a party must establish not only that there was enrichment, but that the enrichment was at the plaintiff's expense, and that the circumstances dictate that, in equity and good conscience, the defendant should be required to turn over its money to the plaintiff." Universal City Studios, Inc. v. Nintendo Co., Ltd, 797 F.2d 70, 79 (2d Cir. 1986) (citing Dolmetta v. Uintah Nat'l Corp., 712 F.2d 15, 20 (2d Cir. 1983); McGrath v. Hilding, 41 N.Y.2d 625, 629 (1977)). Moreover, "[a]n action to recover for unjust enrichment sounds in restitution." Edelman v. Starwood Capital Group, LLC, 70 A.D.3d 246, 250 (1st Dep't 2009) (citing Waldman v Englishtown Sportswear, 92 A.D.2d 833, 836 (1st

Dep't 1983)). It is "the reasonable value of the benefit unjustly received, not the contract price, [which] determines the amount of an award in restitution." Bausch & Lamb Inc v. Bressler, 977 F.2d 720, 730 (2d Cir. 1992).

Here, the Complaint alleges that "Plaintiff was . . . improperly charged $125.15, including shipping, handling, and tax." (Cmplt. (Dkt. No. 1-1) ¶ 16) The $125.15 charge reflects the price of two pillows at a 33% discount, shipping, handling, and tax. (Id.) Under the BOGO promotion, Plaintiff should have only been charged the price for one pillow – i.e., he should have received a 50% discount on the price of two pillows – plus the corresponding shipping, handling, and tax. Thus, "the benefit unjustly received" is the difference between these two amounts – the price Plaintiff paid and the price he should have paid. However, the Complaint does not provide the latter price, nor does it plead sufficient information to permit the Court to calculate the latter price to a "reasonable probability." It is impossible to determine – from the Complaint – what price Plaintiff should have paid, because the Complaint does not disclose the price for a single pillow or how much of the $125.15 cost is attributable to shipping, handling, and tax. Nor has Defendant provided evidence concerning these matters, even though this information is undoubtedly readily available to Defendant.

Instead of submitting a declaration that explains the price for each pillow and the cost of shipping, handling, and tax, Defendant contends – in the Notice of Removal – that Plaintiff is seeking damages of $125.15 as to each sale that was processed at 33% off rather than 50% off. (See Notice of Removal (Dkt. No. 1) ¶ 19) But that is not a reasonable reading of the Complaint. The Complaint, fairly read, indicates that Plaintiff is seeking the difference between what he paid and what he would have paid if the "Buy One Get One Free" promotional offer had been honored. What that amount is is unknown, because Defendant has chosen not to tell us.

Defendant also argues that the amount in controversy requirement is satisfied by the revenue figure provided in the Lindell Declaration, which states that, "from the time the 'BOGO' promo code became available . . . , revenue generated from sales of premium pillows nationwide without a 'BOGO' promo code from My Pillow's website and telephone ordering systems exceeds $5,000,000." (Lindell Decl. (Dkt. No. 10-1) ¶ 4) But this revenue figure is over-inclusive on its face. Plaintiff is not seeking recovery of all monies spent by consumers on pillows purchased without the benefit of the "Buy One Get One Free" offer. He is seeking only the difference between the price he paid and the price he would have paid if granted the benefit of the special promotion.

Moreover, the Complaint does not address all "revenue generated from sales of premium pillows nationwide without a 'BOGO' promo code," (Lindell Decl. (Dkt. No. 10-1) ¶ 4), nor does the Complaint "'put[] at issue' all purchases of pillows by consumers nationwide that did not use a . . . []'BOGO'[] promo code," (Def. Opp. (Dkt. No. 10) at 4). Instead, the putative class consists only of those "who (1) attempted to purchase My Pillow pillows from Defendant using a BOGO promo code; (2) . . . were not successful in completing a purchase of My Pillow pillows using the BOGO promo code; and (3) . . . 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." (Cmplt. (Dkt. No. 1-1) ¶ 19)

These transactions are a subset of those described in the Lindell Declaration. The size of that subset is unknown, but it is clear that Lindell Declaration references revenue from transactions not covered by the Complaint. For example, where a customer only wanted one pillow or never attempted to use the BOGO promo code, revenue from that sale would be

included in the figure set forth in the Lindell Declaration, but that customer would not be part of the putative class.

The out-of-circuit cases Defendant relies on to support his assertion that the Lindell Declaration is adequate, (see Def. Opp. (Dkt. No. 10) at 11-12), are not to the contrary.

In Lewis v. Verizon Communications, Inc., 627 F.3d 395 (9th Cir. 2010), the plaintiff sought damages for "unauthorized" "charges billed by the defendant, Verizon, on behalf of Enhanced Services Billing, Inc. ('ESBI'), a billing processor, or 'aggregator,' for third-party vendors who offer telephone-related services." Lewis, 627 F.3d at 397. In support of removal, Verizon submitted a declaration stating that company "'records show that these subscribers were billed more than $5 million . . . for ESBI charges.'" Id. The district court remanded because it found the $5 million figure in the declaration included "authorized" charges and was therefore overinclusive. Id. at 398. The Ninth Circuit reversed, holding that "on this record, the entire amount of the billings is 'in controversy.'" Id. at 400. The court stated that "the [p]laintiff has not attempted to demonstrate, or even argue, that the claimed damages are less than total billed," there was "no showing that some substantial part of the total billings was 'authorized,' and no allegation that Plaintiff sought less than $5 million." Id. at 399-400. As a result, "there was no evidence or allegation to support th[e] assumption" by "the district court . . . that total billings would include both authorized and unauthorized charges." Id. at 400.

Here, by contrast, the Complaint explicitly pleads that "the aggregate amount in controversy does not exceed $5,000,000." (Cmplt. (Dkt. No. 1-1) ¶ 6 (emphasis omitted)) Moreover – as discussed above – it is a fair reading of the Complaint that Plaintiff is not seeking the full $125.15 purchase price, but instead seeks the difference between what was charged and what would have been charged if the "Buy One Get One Free" promotion had been honored.

Abreu v. Slide, Inc., No. C 12-00412 WHA, 2012 WL 1123367 (N.D. Cal. Apr. 3, 2012), is likewise not on point. In Abreu, the defendants operated "an internet-based video game," which offered "subscription-only access to premium game content (VIP status)," and a mechanism by which users could purchase "[a] premium form of virtual currency, aptly called 'gold,' [which] allowed users to obtain premium virtual goods." Abreu, 2012 WL 1123367, at *1. After the defendants shut down the game, the plaintiff sued in California state court, "seek[ing] to recover the actual value of . . . users' 'investments and property' in 'gold' and virtual goods as well as money spent on VIP status subscriptions." Id. at *3.

The defendants removed the case pursuant to CAFA, and submitted a declaration stating that "'users spent approximately $6,116,000 on purchases of "gold"'" during an eight-month period. Id. at *2-*3. The court found the amount in controversy exceeded CAFA's $5 million threshold, because the "plaintiff ha[d] put at issue the full amount of user spending on" the game, and the declaration "shows user spending exceeded the jurisdictional amount on just one portion of the game." Id. at *3. Here, however, Plaintiff has not put the "full amount of [customer] spending" without a BOGO code at issue, but rather only revenue obtained from customers who were redirected to a less favorable promo code.

Under the circumstances here, Plaintiff's potential fraud damages do not differ from those available under his unjust enrichment claim. "In a fraud action, a plaintiff may recover only the actual pecuniary loss sustained as a direct result of the wrong." Cont'l Cas. Co. v. PricewaterhouseCoopers, LLP, 15 N.Y.3d 264, 271 (2010) (citing Reno v Bull, 226 N.Y. 546, 553 (1919) ("The purpose of an action for deceit is to indemnify the party injured. All elements of profit are excluded. The true measure of damage is indemnity for the actual pecuniary loss sustained as the direct result of the wrong." (citations omitted))); see also Cayuga Harvester, Inc.

v. Allis-Chalmers Corp., 95 A.D.2d 5, 22 (4th Dep't 1983) ("There is no question that in New York damages for fraud are limited to indemnity for the actual loss sustained and that loss of the benefit of the bargain as represented by the wrongdoer is not recoverable." (citing Reno) (footnote omitted)).

"Under this rule, the loss is computed by ascertaining the 'difference between the value [i.e., not profit] of the bargain which a plaintiff was induced by fraud to make and the amount or value of the consideration exacted as the price of the bargain.'" Lama Holding Co. v. Smith Barney Inc., 88 N.Y.2d 413, 421 (1996) (quoting Sager v. Friedman, 270 N.Y. 472, 481 (1936)). "Damages are to be calculated to compensate plaintiffs for what they lost because of the fraud, not to compensate them for what they might have gained." Id. (citing Cayuga, 95 A.D.2d 5).

Here, if Defendant had honored the "Buy One Get One Free" promotion, Plaintiff would only have paid the price for one My Pillow product, plus tax, shipping, and handling. Thus, Plaintiff's actual pecuniary loss on his fraud claim is the additional amount he paid because he did not receive the full 50% discount, which is the same damages as he would receive in restitution.

The $5 million threshold is not met based on Plaintiff's potential recovery under his unjust enrichment and fraud claims.

B. Statutory Damages Under N.Y. GBL § 350

Defendant also argues that the amount in controversy is met on the first cause of action because "NYGBL §349 . . . allows the court to increase an award up to $1,000 for willful and intentional misconduct." (Def. Opp. (Dkt. No. 10) at 12-13)

Section 349(a) of the GBL prohibits "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service" in New York.

Subsection (h) provides for a private cause of action to recover "actual damages or fifty dollars, whichever is greater," as well as "damages . . . not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly" committed the violation. N.Y. GBL § 349(h) (emphasis added). Thus, damages up to $1,000 are only permitted where actual damages are at least $333.34.

As discussed above, while the amount the Complaint seeks in compensatory damages is unknown, it is clearly less than $125.15 per transaction. Total damages, compensatory and exemplary, under GBL § 349 therefore could not exceed $375.45 at best. Moreover, the GBL § 349 claim is brought only as to the New York subclass, which the Complaint alleges is thousands of members. (Cmplt. (Dkt. No. 1-1) ¶¶ 21, 35-44) "[T]housands" could be as few as two thousand members. The Court concludes that Defendant has not shown that damages under GBL § 349 would exceed CAFA's $5 million threshold.

C. Punitive Damages

Defendant also contends that "Plaintiff seeks punitive damages, which would be further added to the amount put at issue . . . [and] [g]iven that sales revenue exceeds $5 million, based upon Plaintiff's allegations, the availability of statutory and punitive damages further support that the amount put at issue exceeds $5 million." (Def. Opp. (Dkt. No. 10) at 12-13)

Courts can "consider the amount claimed in punitive damages in determining whether CAFA's jurisdictional amount requirement is met." Abdale v. North Shore-Long Island Jewish Health Sys., Inc., No. 13-CV-1238 (JS)(WDW), 2014 WL 2945741, at *5 (E.D.N.Y. June 30, 2014). Though ""[n]o objective standard exists that justifies the award of one amount, as opposed to another, to punish a tortfeasor appropriately for his misconduct[,]' . . . an award of punitive damages greater than two times compensatory damages" is likely excessive under the

due process and New York law. Koch v. Greenberg, 14 F. Supp. 3d 247, 275 (S.D.N.Y. 2014) (quoting Payne v. Jones, 711 F.3d 85, 93 (2d Cir. 2012)).

Here, there is no basis for this Court to estimate a potential punitive damages award, because Defendant has not provided sufficient information to estimate a potential compensatory award.

* * * *

Because the allegations in Defendant's notice of removal have been "contested" by Plaintiff, the burden is on Defendant to provide a basis for this Court to determine that the amount in controversy exceeds $5 million. Dart Cherokee, 135 S. Ct. at 554. Although Defendant undoubtedly possesses data that would shed light on this issue, it has not provided this data to the Court. Given these circumstances, the Court concludes that Defendant has not met its burden to demonstrate, "'with competent proof and . . . by a preponderance of the evidence," that this Court has subject matter jurisdiction under CAFA. Fields, 2014 WL 3877431, at *2 (citation omitted).

CONCLUSION

For the reasons stated above, Plaintiff's motion to remand this action to Supreme Court of the State of New York, New York County, is granted. The Clerk of the Court is directed to terminate the motion, (Dkt. No. 8), to close this case, and to return the matter to the Clerk of the Supreme Court for the State of New York, New York County. Any other pending motions are moot.

Dated: New York, New York
October 11, 2017

SO ORDERED.

Paul G. Gardephe
United States District Judge

ECF

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:17-cv-02769-PGG

Stamm v. My Pillow, Inc.
Assigned to: Judge Paul G. Gardephe
Cause: 28:1446nr Notice of Removal

Date Filed: 04/17/2017
Jury Demand: Plaintiff
Nature of Suit: 370 Other Fraud
Jurisdiction: Diversity

Plaintiff

Philip Stamm
Individually And On Behalf Of All Other Similarly Situated

A CERTIFIED COPY
RUBY J. KRAJICK, CLERK
BY _____ Deputy Clerk

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V.

Defendant

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Date Filed	#	Docket Text
04/17/2017	1	NOTICE OF REMOVAL from Supreme Court, County of New York. Case Number: 651472/2017. (Filing Fee $ 400.00, Receipt Number 0208-13551130).Document filed by My Pillow, Inc.. (Attachments: # 1 Exhibit Ex. A to Notice of Removal)(Tricarico, Michael) (Entered: 04/17/2017)
04/17/2017	2	CIVIL COVER SHEET filed. (Tricarico, Michael) (Entered: 04/17/2017)
04/17/2017	3	FIRST RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by My Pillow, Inc..(Tricarico, Michael) (Entered: 04/17/2017)
04/18/2017		*****NOTICE TO ATTORNEY REGARDING CASE OPENING STATISTICAL ERROR CORRECTION: Notice to attorney Michael J. Tricarico. The following case opening statistical information was erroneously selected/entered: County code New York; Fee Status code due (due). The following correction(s) have been made to your case entry: the County code has been modified to XX Out of State; the Fee Status code has been modified to pd (paid). (kl)** (Entered: 04/18/2017)
04/18/2017		*****NOTICE TO ATTORNEY REGARDING PARTY MODIFICATION. Notice to attorney Michael J. Tricarico. The party information for the following party/parties has been modified: Philip M. Stamm, My Pillow, Inc.. The information for the party/parties has been modified for the following reason/reasons: party name contained a typographical error; party role was entered incorrectly; party text was omitted. (kl)** (Entered: 04/18/2017)

04/18/2017		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Paul G. Gardephe. Please download and review the Individual Practices of the assigned District Judge, located at http://nysd.uscourts.gov/judges/District. Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at http://nysd.uscourts.gov/ecf_filing.php. (kl) (Entered: 04/18/2017)
04/18/2017		Magistrate Judge Kevin Nathaniel Fox is so designated. (kl) (Entered: 04/18/2017)
04/18/2017		Case Designated ECF. (kl) (Entered: 04/18/2017)
04/18/2017	4	AFFIDAVIT OF SERVICE of Notice of Removal served on Philip Stamm on 04-17-17. Service was made by Mail. Document filed by My Pillow, Inc.. (Tricarico, Michael) (Entered: 04/18/2017)
04/19/2017	5	NOTICE OF PRETRIAL CONFERENCE: Initial Conference set for 7/20/2017 at 11:30 AM in Courtroom 705, 40 Centre Street, New York, NY 10007 before Judge Paul G. Gardephe. (As further set forth in this Order.) (Signed by Judge Paul G. Gardephe on 4/19/2017) (cf) (Entered: 04/19/2017)
04/24/2017	6	FIRST LETTER MOTION for Conference *Pursuant to Individual Rule IV. A.* addressed to Judge Paul G. Gardephe from Michael J. Tricarico dated 04-24-2017. Document filed by My Pillow, Inc..(Tricarico, Michael) (Entered: 04/24/2017)
04/27/2017	7	LETTER RESPONSE in Opposition to Motion addressed to Judge Paul G. Gardephe from Thomas J. McKenna dated April 27, 2017 re: 6 FIRST LETTER MOTION for Conference *Pursuant to Individual Rule IV. A.* addressed to Judge Paul G. Gardephe from Michael J. Tricarico dated 04-24-2017. . Document filed by Philip Stamm. (McKenna, Thomas) (Entered: 04/27/2017)
05/17/2017	8	MOTION to Remand . Document filed by Philip Stamm.(McKenna, Thomas) (Entered: 05/17/2017)
05/17/2017	9	MEMORANDUM OF LAW in Support re: 8 MOTION to Remand . . Document filed by Philip Stamm. (McKenna, Thomas) (Entered: 05/17/2017)
05/31/2017	10	**FILING ERROR - DEFICIENT DOCKET ENTRY** - FIRST MEMORANDUM OF LAW in Opposition re: 8 MOTION to Remand . . Document filed by My Pillow, Inc.. (Attachments: # 1 Affidavit Michael J. Lindell)(Tricarico, Michael) Modified on 7/11/2017 (ldi). (Entered: 05/31/2017)
06/07/2017	11	REPLY MEMORANDUM OF LAW in Support re: 8 MOTION to Remand . . Document filed by Philip Stamm. (McKenna, Thomas) (Entered: 06/07/2017)
07/11/2017		*****NOTICE TO ATTORNEY TO RE-FILE DOCUMENT - DEFICIENT DOCKET ENTRY ERROR. Notice to Attorney Michael J. Tricarico to RE-FILE Document 10 Memorandum of Law in Opposition to Motion. ERROR(S): Supporting/Opposing documents must be filed separately, each receiving their own document number. Declaration in Opposition to Motion is found under the event list Replies, Opposition and Supporting Documents. (ldi)** (Entered: 07/11/2017)
07/13/2017	12	JOINT LETTER addressed to Judge Paul G. Gardephe from Thomas J. McKenna dated July 13, 2017 re: in connection with the Notice of Pretrial Conference (Dkt. No. 5). Document filed by Philip Stamm.(McKenna, Thomas) (Entered: 07/13/2017)
07/14/2017	13	ORDER: granting 6 Letter Motion for Conference. It is hereby ORDERED that the conference in this action previously scheduled for July 20, 2017 is adjourned to September 7, 2017 at 11:30 a.m. in Courtroom 705 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York. SO ORDERED. Initial Conference set for 9/7/2017 at 11:30 AM in Courtroom 705, 40 Centre Street, New York, NY 10007 before Judge Paul G. Gardephe. (Signed by Judge Paul G. Gardephe on 7/13/2017) (ama) (Entered: 07/14/2017)
07/28/2017	14	LETTER MOTION to Adjourn Conference addressed to Judge Paul G. Gardephe from Michael J. Tricarico dated July 28, 2017. Document filed by My Pillow, Inc..(Tricarico, Michael) (Entered: 07/28/2017)
08/23/2017	15	MEMORANDUM OF LAW in Opposition re: 8 MOTION to Remand . . Document filed by My Pillow, Inc.. (Tricarico, Michael) (Entered: 08/23/2017)
08/23/2017	16	DECLARATION of Michael J. Lindell in Opposition re: 8 MOTION to Remand .. Document filed by My Pillow, Inc.. (Tricarico, Michael) (Entered: 08/23/2017)

08/23/2017	17	CONSENT LETTER addressed to Judge Paul G. Gardephe from Michael J. Tricarico dated August 23, 2017 re: Adjournment of Pre Trial Conference. Document filed by My Pillow, Inc..(Tricarico, Michael) (Entered: 08/23/2017)
08/24/2017	18	MEMO ENDORSED ORDER granting 14 Letter Motion to Adjourn Conference on 17 CONSENT LETTER re: Adjournment of Pre Trial Conference, filed by My Pillow, Inc. ENDORSEMENT: The Application is granted. The conference is adjourned to Oct. 12, 2017 at 11:00 a.m. So Ordered. (Initial Conference set for 10/12/2017 at 11:00 AM before Judge Paul G. Gardephe.) (Signed by Judge Paul G. Gardephe on 8/24/17) (yv) (Entered: 08/25/2017)
10/11/2017	19	ORDER granting 8 Motion to Remand. For the reasons stated above, Plaintiff's motion to remand this action to Supreme Court of the State of New York, New York County, is granted. The Clerk of the Court is directed to terminate the motion, (Dkt. No. 8), to close this case, and to return the matter to the Clerk of the Supreme Court for the State of New York, New York County. Any other pending motions are moot. (As further set forth in this Order.) (Signed by Judge Paul G. Gardephe on 10/11/2017) (cf) (Entered: 10/11/2017)
10/11/2017		Transmission to Docket Assistant Clerk. Transmitted re: 19 Order to the Docket Assistant Clerk for case processing. (cf) (Entered: 10/11/2017)

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