

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

CASE NO. _____

RICKY THOMPSON and ROBERT
LIVINGSTONE, as individuals and on behalf
of all others similarly situated,

Plaintiffs,

v.

THE PROCTER AND GAMBLE
COMPANY,

Defendant.

_____ /

DEFENDANT'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453, Defendant The Procter & Gamble Company ("P&G") hereby removes this class action, filed in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, Case No. CACE-17-022358, to the United States District Court for the Southern District of Florida, Fort Lauderdale Division.¹

As more fully set forth below, this case is properly removed to this Court under 28 U.S.C. § 1441 because: (1) P&G has satisfied the procedural requirements for removal; and (2) this Court has original jurisdiction over this action under 28 U.S.C. §§ 1332 and 1441.

¹ By removing this case to this Court, P&G does not waive any defenses, objections, or motions available under state or federal law. P&G expressly reserves the right to move for dismissal of some or all of Plaintiffs' claims.

THE COMPLAINT

1. On December 11, 2017, Plaintiffs Ricky Thompson and Robert Livingstone filed a class action complaint against P&G in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida (the “Complaint”).

2. Plaintiffs allege that P&G falsely and misleadingly represented that one of its products, Ivory Dish Detergent, was mild and/or gentle on the skin. They seek to represent:

All persons who have purchased the Product in the State of Florida, for personal or household use, and not for resale, during any applicable statute of limitations preceding the filing of this Complaint through and until Notice is provided to the Florida [*sic*].

Compl. ¶ 44.

GROUND FOR REMOVAL

I. The Court Has Original Jurisdiction Of This Action Under The Class Action Fairness Act (“CAFA”).

3. The Court has original jurisdiction over this action under CAFA because: (i) the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and (ii) any member of a class of plaintiff is a citizen of a State different from any defendant. *See* 28 U.S.C. § 1332(d)(2). None of the exceptions to jurisdiction under CAFA apply. *See* 28 U.S.C. § 1332(d)(4) & (5).

A. The Amount In Controversy Exceeds \$5,000,000.

4. In cases such as this, where the complaint does not specify the amount in controversy, the removing defendant “need include only a plausible allegation that the amount in controversy exceeds the jurisdictional thresholds.” *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014). “A removing defendant is not required to prove the amount in controversy beyond all doubt or to banish all uncertainty about it.” *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 754 (11th Cir. 2010).

5. Moreover, district courts are permitted to make “reasonable deductions, reasonable inferences, or other reasonable extrapolations from the pleadings to determine whether it is facially apparent that a case is removable,” *Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1061-62 (11th Cir. 2010) (internal quotation marks omitted). Courts may also consider any other relevant evidence. *Pretka*, 608 F.3d at 754-55.

6. Plaintiffs’ allegations confirm that the amount in controversy exceeds \$5,000,000. Plaintiffs purport to represent a class of Florida consumers “so large as to make joinder impracticable, if not impossible,” Compl. ¶ 49, who purchased Ivory Dish Detergent distributed to “at least *hundreds* of locations within [the County of Broward] and *thousands* of retail locations throughout Florida, where consumers purchase Ivory Dish Detergent *every day*.” Compl. ¶ 13 (emphases added).

7. Plaintiffs seek recovery against P&G “during any applicable statute of limitations” for alleged (1) violations of Florida’s Deceptive and Unfair Trade Practices Act (“FDUTPA”), (2) Negligent Misrepresentation, and (3) Breach of Warranty—a time period which spans at least four years,² and captures sales transactions that exceed the \$5,000,000 jurisdictional threshold. *See* Declaration of Christopher Kash (“Kash Decl.”), ¶¶ 4-5. Even a plain reading of the Complaint meets the jurisdictional threshold—assuming a single product purchase at 2,000 retail locations (Plaintiffs allege thousands), every day, over a four year period, for a total of 2,920,000 units, each Ivory Dish Detergent purchased only needs to meet a \$1.71 threshold. Although Plaintiffs do not allege a specific price point for their purchases, they allege the “Products sold at inflated prices

² Under Florida law, negligence, breach of implied warranty, and FDUTPA claims are subject to a four-year statute of limitations. Fla. Stat. § 95.11(3)(a), (e), (j), (k), (p); Fla. Stat. § 501.207(5). A breach of express warranty claim is subject to a five-year statute of limitations. Fla. Stat. § 95.11(2)(b).

above their true market value.” Compl. ¶ 19. Plaintiffs prayer for relief includes “actual and compensatory economic damages, injunctive relief in the form of corrective advertising, equitable relief including restitution, pre- and post-judgment interest, reimbursement of costs, [and] reasonable attorneys’ fees.” Compl. ¶¶ 64, 71, 79.

8. Both a reasonable reading of the Complaint and P&G’s records confirm that Plaintiffs have placed more than \$5,000,000 in controversy. *See Dart Cherokee Basin Operating Co.*, 135 S. Ct. at 554 (“the amount-in-controversy allegation of a defendant seeking federal-court adjudication should be accepted when not contested by the plaintiff or questioned by the court.”).

B. Diversity Of Citizenship For CAFA Exists.

9. The diversity of citizenship for removal under CAFA is proper when “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).

10. Plaintiffs Ricky Thompson and Robert Livingstone allege that they are citizens of the State of Florida. Compl. ¶¶ 14-15.

11. P&G is, and was at the time Plaintiffs commenced this action, a corporation organized under the laws of Ohio with its principal place of business in Ohio. Kash Decl. ¶ 3; *see also* Compl. ¶ 21. P&G is, therefore, a citizen of Ohio for purposes of determining diversity. *See* 28 U.S.C. § 1332(c)(1).

12. The requisite diversity of citizenship for CAFA jurisdiction exists as the named plaintiffs and P&G are citizens of different states. *See* 28 U.S.C. § 1332(d)(2)(A).

C. No CAFA Exceptions Are Applicable.

13. None of the exceptions to CAFA jurisdiction in 28 U.S.C. § 1332(d) apply.

14. The “home state defendant” exception contained in 28 U.S.C. § 1332(d)(4) does not apply, *inter alia*, because the sole defendant (P&G) is not “a citizen of the State in which the action was originally filed” (*i.e.*, Florida). 28 U.S.C. § 1332(d)(4)(A)(i)(II)(cc); Kash Decl. ¶ 3. Even if P&G were a citizen of Florida, and it is not, the home state defendant rule would not apply anyway because this is a class action. 28 U.S.C. § 1453(b).

15. 28 U.S.C. § 1332(d)(5) does not apply because the number of members in the proposed class is greater than 100. Kash Decl. ¶ 4.

II. P&G Has Satisfied All Procedural Requirements For Removal.³

16. This Notice of Removal is timely. Less than thirty (30) days have passed since Plaintiffs served P&G with their Summons and Complaint on December 20, 2017. *See* 28 U.S.C. § 1446(b).

17. True and complete copies of all process, pleadings, orders, and other papers served upon P&G are attached hereto as **Exhibit 1**.

18. Venue is proper. The Seventeenth Judicial Circuit is located within the Southern District of Florida, Fort Lauderdale Division. *See* 28 U.S.C. § 89(b); *see also* 28 U.S.C. § 1441(a).

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

20. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be promptly served upon counsel for Plaintiffs. A copy will also be promptly filed with the Seventeenth Judicial Circuit, in and for Broward County, as required by 28 U.S.C. § 1446(d).

³ If any question arises regarding the propriety of the removal of this action, P&G respectfully requests the opportunity to present evidence in support of the position that this case is removable. *See Dart Cherokee Basin Operating Co.*, 135 S. Ct. at 553-54.

21. A filing fee of \$400.00 is being tendered to the Clerk of the United States District Court for the Southern District of Florida.

DATED: January 18, 2018

Respectfully submitted,

/s/ Andrew R. Kruppa

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