

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CAITLYN CLIFF, GEORGE DICKENS, III)
MELANIE FENLEY, ZACHARY GRUBER,)
PETER LEYH, MYLEE MCKINNEY, and)
CASEY TUGGLE, individually and on behalf)
of all others similarly situated,)

Plaintiffs,)

v.)

SAVANNAH LAW SCHOOL, LLC, JOHN)
MARSHALL LAW SCHOOL, LLC (DE),)
JOHN MARSHALL LAW SCHOOL, JOHN)
MARSHALL UNIVERSITY, JOHN)
MARSHALL ONLINE, INC., and JMLS 1422,)
LLC,)

Defendants.)

CIVIL ACTION NO.

CV 418 - 104

JURY TRIAL DEMANDED

NOTICE OF AND PETITION FOR REMOVAL

COME NOW Defendants Savannah Law School, LLC, John Marshall Law School, LLC (DE), John Marshall Law School, John Marshall University, John Marshall Online, Inc., and JMLS 1422, LLC (collectively "Defendants"), and by and through their undersigned counsel of record, file this Notice of and Petition for Removal in the above-referenced matter. Defendants respectfully show this Honorable Court as follows:

1.

Defendants acknowledged service of a Summons and "Class Action Complaint" in the above-referenced matter on April 3rd, 2018. A copy of each of the foregoing documents, along with the Acknowledgement of Service, are attached hereto as Exhibit "1". These documents constitute all pleadings, process and other documents served upon Defendants in this action. These

documents were the initial pleadings served upon the Defendants setting forth the claims upon which Plaintiffs' action is based.

2.

Savannah Law School, LLC is a domestic limited liability company organized under the laws of Georgia with a principal office address and principal place of doing business in Georgia. John Marshall Law School, LLC (DE) is a foreign limited liability company organized under the laws of Delaware with a principal office address and place of doing business in Georgia. John Marshall Law School is a domestic nonprofit corporation organized under the laws of Georgia with a principal place of doing business and principal office address in Georgia. John Marshall University is a domestic nonprofit corporation organized under the laws of Georgia with a principal place of doing business and principal office address in Georgia. John Marshall Online, Inc. is a domestic nonprofit corporation organized under the laws of Georgia with a principal place of doing business and principal office address in Georgia. JMLS 1422, LLC is a foreign limited liability company organized under the laws of Delaware with a principal place of doing business and principal office address in Georgia.

3.

Defendants have invoked the Class Action Fairness Act in removing this action. Unlike in traditional diversity analysis, the Court need not inquire into the citizenship of each member of each Defendant LLC. 28 U.S.C. § 1332(d)(10) provides that for CAFA purposes, "an unincorporated association shall be deemed to be a citizen of the state where it has its principal place of business and the State under whose laws it is organized." 28 U.S.C. § 1332(d)(10). Federal courts have given these terms their plain meaning. *See Irwin v. Jimmy John's Franchise, LLC*, 175 F. Supp. 3d 1064, 1068 n.2 (C.D. Ill. 2016) (noting that normally, litigant must plead

citizenship of every LLC member but that under CAFA, allegation that LLC was Delaware limited liability company with its principal place of business in Illinois was sufficient). Thus, 28 U.S.C. § 1332(d)(10) requires only that Defendants plead the principal place of business and state of organization for each Defendant LLC.

4.

The above-styled action is a civil action for monetary damages in which Plaintiffs are seeking compensation for damages, including, but not limited to, awards they contend they are owed under scholarship agreements, compensatory damages for the purported lost value of their degree, compensatory damages resulting from the purported loss of Savannah Law School's accreditation,¹ compensatory damages arising from Plaintiffs' purported inability to finish their degree program at Savannah Law School,² general damages, and consequential damages. Complaint at Wherefore (e). Plaintiffs also seek punitive damages and attorney's fees. (Plaintiff's Complaint at Wherefore (f) and (g)).

5.

Plaintiffs frame their Complaint as a class action under O.C.G.A. § 9-11-23, a statute similar to Rule 23 of the Federal Rules of Civil Procedure, and define their class as:

All persons who are citizens of Georgia and who were enrolled in classes at Savannah Law School during the 2017-2018 academic year or had applied for admission to Savannah Law School for the Fall 2018 semester.

Plaintiffs claim that the class is "so numerous that individual joinder of all class members as parties to this action would be impractical." Plaintiffs "allege that the class consists of hundreds of members." Complaint ¶¶ 60; 63.

¹ Savannah Law School did not lose its accreditation.

² Plaintiffs will be able to finish their degree programs at Savannah Law School.

6.

This Court has original jurisdiction over Plaintiffs' claims by virtue of diversity of citizenship and satisfaction of the amount in controversy requirement of 28 U.S.C. § 1332(d), pursuant to the Class Action Fairness Act of 2005. Plaintiffs have alleged damages spanning the entire legal careers of "hundreds of members" (at minimum, then, over one hundred). Further, Plaintiffs have pleaded their entitlement to punitive damages. In this Circuit, courts consider all pleaded damages (including punitive damages) in determining the amount in controversy for CAFA purposes. *McDaniel v. Fifth Third Bank*, 568 F. App'x 729, 732 (11th Cir. 2014). If Plaintiffs were to prove their allegations that the careers of hundreds of lawyers were damaged across their entire career span, *plus* the allegations that some students would otherwise have become lawyers but now cannot, *plus* the allegations that scholarships were improperly revoked, *plus* the pleaded punitive damages, the amount for a class of "hundreds of members" would exceed \$5,000,000.00.

7.

A member of the purported class of Plaintiffs (Peter Leyh) is a citizen of New Jersey. Leyh previously listed himself as a citizen and resident of the State of New Jersey in application materials to Savannah Law School, stating that his "permanent address" was in New Jersey. To protect Mr. Leyh's privacy, Defendants have not set forth his home address in this public pleading, but can provide it to the Court or opposing counsel upon request.

8.

"[A] change of domicile requires a concurrent showing of (1) physical presence at the new location with (2) an intention to remain there indefinitely." *Scoggins v. Pollock*, 727 F.2d 1025, 1026 (11th Cir. 1984) (cleaned up). Accordingly, "[c]ourts have recognized a presumption that a

college student retains the domicile of his parents even where he travels outside of his home state for university and has no intention of returning to his home state.” *Raynor v. Shock Doctor, Inc.*, No. 3:08CV1705(WWE), 2009 WL 347576, at *1 (D. Conn. Feb. 11, 2009).

Out-of-state students generally have been viewed as temporary residents who are located in the state where their school is located only for the duration and for the purpose of their studies. Consequently, the principle has been well established that they have been presumed to lack the intention to remain in the state indefinitely that is required for the acquisition of a new domicile and to retain their prior, established domiciles while attending school.

§ 3619 Citizenship of Particular Persons—Out-of-State Students, 13E Fed. Prac. & Proc. Juris. § 3619 (3d ed.). The Eleventh Circuit has recognized and adopted this same rationale. *Scoggins*, 727 F.2d at 1026 (holding that woman who moved from Georgia to South Carolina to pursue degree after death of husband was still domiciled in Georgia). Mr. Leyh indicated that his permanent address was in New Jersey, and he is thus a citizen and domiciliary of that state.

Mr. Leyh is thus a citizen of a different state than at least one Defendant. Because the Class Action Fairness Act only requires that “any member of a class of plaintiffs is a citizen of a State different from any defendant,” Leyh’s (New Jersey) diversity from John Marshall University (a Georgia corporation) or John Marshall Law School (a Georgia corporation) would generate the requisite minimal diversity independent of the citizenship of any other entity. He is likewise diverse from all LLC Defendants.

9.

Therefore, this court has original jurisdiction over Plaintiffs’ claims by virtue of minimal diversity of citizenship and satisfaction of the amount in controversy requirement of 28 USC § 1332(d) because this is a case pleaded as a class action. This action is properly removable to federal court pursuant to 28 USC § 1332, § 1441, § 1446(b), and § 1453 (pursuant to the Class Action Fairness Act of 2005). Defendants file this Notice of Removal within thirty (30) days of

acknowledgement of service of Plaintiff's original Complaint in accordance with 28 USC § 1446(b). *See Murphy Bros., Inc. v. Mitchetti Pipe Stringing, Inc.*, 526 U.S. 344, 356 (1999) (noting that service or acknowledgment starts Section 1446(b)'s 30-day removal clock). Venue is proper in this Court.

10.

Defendants have served copies of this Notice of Removal, as well as the attached Notice of Filing of Notice of Removal upon Plaintiffs' counsel and is filing same with the Clerk of the State Court of Chatham County, Georgia.

11.

Based upon the foregoing, Defendants hereby request this matter be removed to the United States District Court for the Southern District of Georgia, pursuant to 28 USC § 1332, § 1441, § 1446, and § 1453.

THIS 3RD DAY OF MAY, 2018.

BOUHAN FALLIGANT LLP

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CERTIFICATE OF SERVICE

I, TODD M. BAIAD, do hereby certify that I have this day served a true and correct copy of the foregoing on the following counsel of record by United States Mail, with postage prepaid and addressed as follows:

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THIS 3RD DAY OF MAY, 2018.

BOUHAN FALLIGANT, LLP

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