

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 0:18-cv-62111

ROBYN FERRIS, AN INDIVIDUAL, ON  
BEHALF OF HERSELF AND ALL OTHERS  
SIMILARLY SITUATED,

PLAINTIFF,

v.

SAMSUNG ELECTRONICS CO., LTD., A  
FOREIGN FOR PROFIT COMPANY, AND  
SAMSUNG ELECTRONICS AMERICA,  
INC., A NEW YORK CORPORATION,

DEFENDANTS.

**NOTICE OF REMOVAL**

TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN  
DISTRICT OF FLORIDA

Defendant Samsung Electronics America, Inc. (“SEA”), a New York corporation with its principal place of business in Ridgefield Park, New Jersey, pursuant to 28 U.S.C. §§ 1332, 1441, 1453, and 1446, seeks removal of the above-captioned action from the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, to the United States District Court for the Southern District of Florida.

**I. THE CLASS ACTION COMPLAINT**

On July 24, 2018, Plaintiff filed a putative Class Action Complaint (“**Complaint**”) against SEA and Defendant Samsung Electronics Co., Ltd. (“SEC”) in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, captioned *Robyn Ferris, an individual, on behalf of herself and all others similarly situated, v. Samsung Electronics Co., Ltd., a foreign for profit company, and Samsung Electronics America, Inc., a New York*

corporation, Case No. 18-017681. A true and correct copy of the Complaint and copies of all process served in the state court action are attached hereto as Exhibit A.

Robyn Ferris (“**Ferris**”) filed the Complaint for herself, individually, and on behalf of a putative nationwide class of those “similarly situated.” *See* Ex. A at p. 1. Ferris alleges that she purchased several Samsung home appliances from hhgregg,<sup>1</sup> which were advertised as “stainless steel” but that allegedly were not stainless steel. *Id.* at ¶¶11, 17. The proposed nationwide Class, which Plaintiff claims contains “many thousands of members,” is defined as: “All persons in the United States who purchased an appliance made from Samsung advertised as ‘stainless steel.’” *Id.* at ¶¶22, 24.

Plaintiff attempts to assert three causes of action. Count I for unjust enrichment alleges that Plaintiff conferred non-gratuitous benefits on all Defendants, which Defendants retained, and seeks “restitution of Defendants’ enrichment benefits and ill-gotten gains acquired.” *Id.* at ¶¶36, 38. Count II for money had and received alleges that all Defendants improperly received monies from the Plaintiff, and seeks “reimbursement, restitution and disgorgement in the amount necessary to restore them to the position they would have been in if Defendants have not sold them the fraudulent Products.” *Id.* at ¶¶44, 46. Count III seeks an injunction prohibiting Defendants from marketing and selling all appliances labeled as “stainless steel.” *Id.* at p. 13, Wherefore Clause.

## II. REMOVAL IS TIMELY.

Plaintiff served SEA with the Summons and Complaint on August 17, 2018. SEC, which is a foreign corporation headquartered in the Republic of Korea that must be served in accordance with the Hague Convention on the Service Abroad of Judicial and Extrajudicial

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<sup>1</sup> hhgregg is not a party to the Complaint. Plaintiff alleges hhgregg to be a nationwide retailer that filed for Chapter 11 bankruptcy protection on March 6, 2017. *See* Ex. A at ¶7, n.2.

Documents in Civil or Commercial Matters, has not been served. Because this Notice of Removal is filed within thirty (30) days of service of the Summons and Complaint on SEA, it is timely under 28 U.S.C. §§ 1446(b) and 1453.

### **III. THIS COURT HAS SUBJECT MATTER JURISDICTION.**

This Court has jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d), 28 U.S.C. § 1441(a) and (b), and 28 U.S.C. § 1453, because this is a purported class action with more than 100 putative class members who seek to recover in excess of \$5,000,000 in the aggregate, and there is minimal diversity.

#### **A. The Proposed Class Exceeds 100.**

CAFA requires that the proposed class consist of at least 100 persons. 28 U.S.C. § 1332(d)(5). Plaintiff’s Complaint alleges that the proposed nationwide class “contains many thousands of members,” and therefore satisfies this requirement. Ex. A at ¶24.

#### **B. Minimal Diversity of Citizenship Exists.**

To satisfy CAFA’s diversity requirement, a party seeking removal need only show that minimal diversity exists—that is, that one putative class member is a citizen of a state different from that of Defendants. 28 U.S.C. § 1332(d)(2).

The single named plaintiff, Robyn Ferris, is a citizen of Florida. Ex. A at ¶3. A corporation is deemed to be a citizen of any state in which it has been incorporated, and of the State where it has its principal place of business. *See* 28 U.S.C. 1332(c)(1). SEA is a New York corporation with its principal place of business in Ridgefield Park, New Jersey. Ex. A at ¶5. Thus, SEA is a citizen of New York and New Jersey. SEC is a foreign company with its principal place of business in Suwon, Republic of Korea. *Id.* at ¶4. Thus, SEC is a citizen of the Republic of Korea. Because one putative class member is a citizen of Florida, and no Defendant is a citizen of Florida, the minimal diversity requirement is satisfied.

**C. The Amount-In-Controversy Requirement Is Satisfied.**

Under CAFA, federal courts have original jurisdiction over class actions in which the amount in controversy of the aggregated claims of the individual class members exceeds the sum or value of \$5,000,000 exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(6). The amount-in-controversy analysis considers the amount that the plaintiff has placed in controversy, not the amount that the plaintiff is likely to recover. *McDaniel v. Fifth Third Bank*, 568 F. App'x 729, 730 (11th Cir. 2014) (“[T]he plaintiff[’s] likelihood of success on the merits is largely irrelevant to the court’s jurisdiction because the pertinent question is what is *in controversy* in the case, not how much the plaintiffs are ultimately likely to recover.”) (citing *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751 (11th Cir. 2010)) (emphasis in original).

SEA’s notice of removal need only include “a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554, 190 L. Ed. 2d 495, 504 (2014). “Evidence establishing the amount is required by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant’s allegation.” *Id.* Based solely on Plaintiff’s allegations (which SEA vigorously disputes but which control for purposes of removal), there is more than a reasonable probability that the amount in controversy exceeds the jurisdictional threshold.

In Counts I and II of the Complaint, for herself and purportedly on behalf of a nationwide class comprised of “many thousands of members,” Plaintiff seeks reimbursement, restitution, and disgorgement of the amount necessary to restore the putative class members to their original position had SEA not sold the allegedly “fraudulent Products,” in addition to attorneys’ fees and other categories of relief. Ex. A at ¶¶22, 24, 38, 46. The “Products” that the class members allegedly purchased include all Samsung appliances “advertised as ‘stainless steel,’” including the microwave oven (model number ME18H704SFG), dishwasher (model number

DW80J7550UF), electric range (model number NE59J7850WG), and refrigerator (model number RF263BEAESG/AA) allegedly purchased by Plaintiff. Ex. A at ¶¶11, 22. SEA's current minimum advertised prices for the four products identified by Plaintiff range from \$369 to \$2,599. Assuming a highly conservative \$250 per-appliance price (instead of the \$369-\$2,599 range described above), reimbursement to the "many thousands" of consumers in the proposed class would easily satisfy the amount in controversy requirement. Ex. A at ¶24. In other words, to meet CAFA's jurisdictional threshold of \$5,000,000, SEA would have had to sell only 20,000 stainless steel units nationwide. SEA has sold far in excess of that amount nationwide.

Additionally, Count III of the Complaint seeks to enjoin and prohibit Defendants from marketing and selling "all appliances labelled as 'stainless steel.'" Ex. A at p. 13, Wherefore Clause. "[W]hen a plaintiff seeks injunctive or declaratory relief, ... the amount in controversy is the monetary value of the object of the litigation from the plaintiff's perspective." *Kelly v. State Farm Mut. Auto. Ins. Co.*, No. 5:10-CV-194-OC-32GRJ, 2010 WL 9888731, at \*4 (M.D. Fla. Sept. 23, 2010). As noted above, SEA's sale of numerous models of appliances labeled as stainless steel across the United States accounts for well in excess of \$5,000,000 in sales. Because the injunction that Plaintiff seeks would prohibit Defendants from earning those revenues, indefinitely, the cost to Defendants of Plaintiff's requested injunctive relief is well in excess of \$5,000,000.

Based on all of the foregoing, it is evident that the \$5,000,000 amount-in-controversy requirement is easily satisfied.

#### IV. CONCLUSION

Because all of the requirements of CAFA are satisfied, the state court action is properly removable to this Court. As required by 28 U.S.C. § 1446(d), SEA will provide notice of

removal to Plaintiff through her attorneys of record, and will file a copy of this Notice with the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida.

WHEREFORE, Defendant SEA requests the removal of the putative class action to this Court, requests the opportunity to file a brief or additional materials in support of removal should that become necessary, and requests all other and further relief as the Court deems just and appropriate.

Dated: September 6, 2018

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*Attorneys for Defendant, Samsung Electronics  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 6, 2018, I submitted the foregoing NOTICE OF REMOVAL to the Clerk of Court using the CM/ECF system and I served a copy on the attorneys for Plaintiff by e-mail and U.S. Mail, postage prepaid, at the addresses reflected on the Service List below.

/s/Joy Spillis Lundeen  
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