

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ANNA WURTZBURGER,

Plaintiff,

vs.

KENTUCKY FRIED CHICKEN,

Defendant.

Civ. No.

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that defendant Kentucky Fried Chicken (“KFC”), by and through its attorneys Reed Smith LLP, hereby removes this action, pursuant to 28 U.S.C. §§ 1332(a), 1441 and 1446, from the Supreme Court of the State of New York, County of Dutchess, to the United States District Court for the Southern District of New York. In support of this Notice of Removal, KFC states the following:

1. On September 29, 2016, plaintiff commenced an action in the Supreme Court of the State of New York, Dutchess County, captioned *Anna Wurtzburger v. Kentucky Fried Chicken*, Index No. 20162125. A true and correct copy of the Summons and Complaint is attached as **Exhibit 1**, which constitutes all pleadings and process in this action.

2. The Summons and Complaint asserts claims against KFC for alleged violation of New York General Business Law Sections 349 and 350, which prohibit deceptive trade practices and false advertising. Compl. ¶¶ 3-18.

3. On October 18, 2016, KFC accepted service of a copy of the Summons and Complaint.

4. KFC believes that plaintiff's claims are without merit.

5. KFC has not made any filings in the state court action.

6. This Notice of Removal is being filed in the United States District Court for the Southern District of New York, the district in which the case is pending.

7. This Notice of Removal is being filed within thirty days of defendant's receipt of service of the Summons and Complaint, as required by 28 U.S.C. § 1446(b).

8. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a)(1), because this is an action between citizens of different States, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

DIVERSITY OF CITIZENSHIP

9. The Complaint alleges that plaintiff's place of residence was at all relevant times Dutchess County, New York, thereby making her a citizen of the State of New York for diversity purposes. *See Diego Beekman Mut. Hous. Ass'n Hous. Dev. Fund Corp. Hdqc. v. Dish Network, L.L.C.*, No. 15 Civ. 1094, 2016 WL 1060328, at *7 (S.D.N.Y. Mar. 15, 2016) (“[A]n individual's residence at the time a lawsuit is commenced provides *prima facie* evidence of his domicile’ – which in turn determines citizenship.” (quoting *Willis v. Westin Hotel Co.*, 651 F. Supp. 598, 601 (S.D.N.Y. 1986))).

10. “A corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). KFC is a Delaware corporation with its principal place of business located in Louisville, Kentucky. *See KFC Corp. v. Tex. Petroplex, Inc.*, No. 11-CV-00479, 2012 WL 4760848, at *1 (W.D. Ky. Oct. 5, 2012) (“The plaintiff in this action is KFC Corporation . . . which is a Delaware Corporation with a principal place of business in Louisville,

Kentucky.”); *Wallace v. Kentucky Fried Chicken*, No. 08-248-KD-B, 2008 WL 4531773, at *5 n.6 (S.D. Ala. Oct. 9, 2008) (“KFC is a citizen of Delaware with its principal place of business in Louisville, Kentucky.”); *KFC Corp. v. Lilleoren*, 783 F. Supp. 1025, 1026 (W.D. Ky. 1992) (stating that KFC is “a Delaware corporation with its principal place of business in Louisville, Kentucky”).

11. Plaintiff is a New York citizen and defendant is a citizen of Delaware and Kentucky. As a result, the parties are completely diverse pursuant to 28 U.S.C. § 1332(a).

AMOUNT IN CONTROVERSY

12. Diversity jurisdiction under 28 U.S.C. § 1332 also requires that the amount in controversy, exclusive of interest and costs, be in excess of \$75,000.

13. The Complaint demands \$20,000,000 in monetary damages. Compl. ¶ 18.

CONCLUSION

14. Complete diversity exists between plaintiff, a citizen of New York, and KFC, a citizen of Delaware and Kentucky, and the amount in controversy exceeds \$75,000.

Accordingly, this Court has original jurisdiction over this action under 28 U.S.C. § 1332(a).

15. KFC will provide plaintiff with prompt written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d) and will file a copy of this Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of Dutchess, where the Complaint was originally filed.

WHEREFORE, KFC requests that this action be removed from the Supreme Court of the

State of New York, Dutchess County, to the United States District Court for the Southern
District of New York.

Dated: October 19, 2016
New York, New York

Respectfully submitted,
REED SMITH LLP

/s/ Peter Raymond
Peter D. Raymond
599 Lexington Avenue
New York, New York 10022
(212) 521-5400
*Attorneys for Defendant
Kentucky Fried Chicken*

TO:

Pamela J. Gabiger
P.O. Box 3455
Poughkeepsie, New York 12603
(845) 471-2447
Attorneys for Plaintiff

Exhibit 1

DUTCHESS COUNTY
CLERK'S OFFICE
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2016 SEP 29 AM 11:52

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
ANNA WORTZBURGER,
Plaintiff/Petitioner,

Index No. 2016 2125

- against -

KENTUCKY FRIED CHICKEN,
Defendant/Respondent.
-----X

**NOTICE OF OPT-OUT FROM PARTICIPATION
IN ACTION SUBJECT TO MANDATORY ELECTRONIC FILING**

Pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts, I hereby opt out of participation in electronic filing in this mandatory e-filed case.

For Attorneys:

I certify in good faith that I am unable to participate in mandatory electronic filing of documents in this case on behalf of my client, ANNA WORTZBURGER, because [place your initials in the applicable space]:

_____ I lack [check off the applicable box]:

- the necessary computer hardware
- a connection to the internet
- a scanner or other device by which documents may be converted to an electronic format

I lack the knowledge regarding operation of computers and/or scanners needed to participate in electronic filing of documents in this case and no employee of mine or of my firm, office or business who is subject to my direction possesses such knowledge.

For Self-Represented Litigants:

I choose not to participate in electronic filing of documents in this case.

Dated: September 29, 2016

Pamela J. Gabiger (Signature)
PAMELA J. GABIGER (Name)

_____ (Firm Name)

PO Box 3455 (Address)

DOUGHERTIE NY 12603

(845) 471-2497 (Phone)

DUTCHESS COUNTY
CLERK'S OFFICE
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COUNTY CLERK, DUTCHESS COUNTY

Application for INDEX NUMBER pursuant to C.P.L.R. Section 8018

2016 SEP 29 AM 11:52

INDEX NUMBER **2016 2125**

FEE - \$210.00

Spaces below to be TYPED or PRINTED by applicant

TITLE OF ACTION OR PROCEEDING

STATE OF NEW YORK

SUPREME COURT COUNTY OF DUTCHESS

CHECK AS APPLICABLE

ANNA WURTZBURGER,

Plaintiff,

CONSUMER CREDIT
TRANSACTION _____

-against-

NOT CONSUMER
CREDIT
TRANSACTION _____X_____

KENTUCKY FRIED CHICKEN,

Defendant.

NON PAYMENT
OF CONTRACTUAL
OBLIGATION

Name and Address of
Attorney for Plaintiff(s)
Or Petitioner
Telephone No.:

PAMELA J. GABIGER
P.O. Box 3455
Poughkeepsie, New York 12603
(845) 471-2447

Name and address of
Attorney for Defendant
Or Respondent
Telephone No.

A. Nature and object of action: FALSE/DECEPTIVE ADVERTISING, DECEPTIVE
TRADE PRACTICE

Or

Nature of special proceeding: _____

IS THIS ACTION OR PROCEEDING CONFIDENTIAL UNDER ANY LAW OF THE STATE
OF NEW YORK?

YES

NO _____X_____

B. Application for Index Number filed by:

Plaintiff
Defendant

_____X_____

SEPTEMBER 28, 2016
DATE

Pamela J. Gabiger
SIGNATURE

DUTCHESS COUNTY
CLERK'S OFFICE
RECEIVED

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS
2016 SEP 29 AM 11:52

ANNA WURTZBURGER,

Plaintiff,

-against-

KENTUCKY FRIED CHICKEN,

Defendant.

Index No.: **2016 2125**

Date Summons Filed:

Plaintiff designates

Dutchess

County as the place of
trial

The basis of venue is:

Plaintiff's residence

SUMMONS

Plaintiff

resides at 48 Hemlock Drive

Hopewell Junction, NY

12533

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the *Plaintiff's Attorney* within twenty (20) days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: SEPTEMBER 29, 2016

PAMELA J. GABIGER

Attorney for Plaintiff

P.O. Box 3455

Poughkeepsie, New York 12603

(845) 471-2447

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

2016 SEP 29 AM 11:52

ANNA WURTZBURGER,

Plaintiff,

COMPLAINT

-against-

Index No.: **2016** 2125

KENTUCKY FRIED CHICKEN,

Defendant.

Plaintiff, through attorney, PAMELA GABIGER, complaining of
defendant, states:

1. At all times hereinafter mentioned, plaintiff was a resident of
Hopewell Junction, County of Dutchess, State of New York.
2. At all times hereinafter mentioned, defendant was and still is a
domestic corporation duly organized and existing under the laws
of the state of New York with its principal place of business at
Route 82 and Route 376, Hopewell Junction, County of Dutchess,
State of New York.

3. That on or about July, 2016, plaintiff purchased an eight piece bucket of chicken from defendant.
4. Defendant sold to plaintiff the aforementioned product pursuant to the terms and conditions contained therein.
5. That on or about July, 2016 the full purchase price of the sum of Twenty and no/100 \$20.00 Dollars was paid by the plaintiff to the defendant.
6. That the merchandise given from defendant to the plaintiff was given to plaintiff in a carton bucket.
7. That the nationally well-known producer of chicken is (Kentucky Fried Chicken) whose company produces chicken with trade name Kentucky Fried Chicken.
8. That upon information and belief, defendant delivered to plaintiff merchandise which was misleading and constituted a false and deceptive trade practice in that the advertisement on television showed a bucket overflowing with chicken and when plaintiff

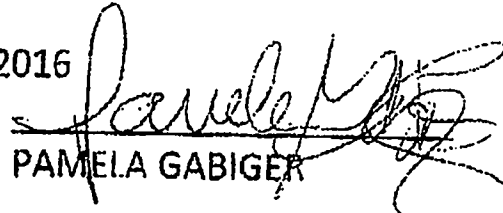
received the bucket of chicken there were only eight pieces of chicken in it.

9. That defendant's conduct constitutes a violation of the applicable sections of the general business law of the State of New York pertaining to false advertising and misleading trade practices.
10. Plaintiff thereafter spoke with a representative of defendant in Georgia who stated that defendant intentionally showed the false, deceptive advertisement of an overflowing bucket of chicken on a television commercial so that the public could see the chicken.
11. Defendant therefore was aware that defendant was intentionally misleading and deceiving the public when it advertised an overflowing bucket of chicken on television but knew that they would only sell 8 pieces of chicken to the public and to plaintiff.
12. The act or practice of defendant was consumer oriented.

13. The act or practice of defendant was misleading in a material respect.
14. Plaintiff was injured as a result of the deceptive act or practice.
15. The act or practice affected the public consumer.
16. That as a result of the actions of defendant, plaintiff has suffered damages in the sum of Twenty Million and no/100 (\$20,000,000.00) Dollars.
17. By reason of the false advertising and deceptive trade practices of the defendant plaintiff has been damaged in an amount to be awarded by a jury in the trial of this action.
18. WHEREFORE, plaintiff demands judgment against defendant in the sum of Twenty Million and no/100 (\$20,000.00) Dollars, an amount to be awarded by a jury upon the trial of this action

pursuant to CPLR 3017 together with interest, costs and disbursements of this action and for such other and further relief as to this Court may seem just and proper.

Dated: September 28, 2016



PAMELA GABIGER

Attorney for Plaintiff

P.O. Box 3455, Poughkeepsie, NY
12603
(845) 471-2447