

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

GINNY COSTELLO, individually and on behalf of herself and all others similarly situated,

Plaintiff

v.

GANNETT CO., INC.

Defendant

Case No. 3:19-CV-212-RGJ

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant Gannett Co., Inc. (“Gannett”), by counsel, gives notice of its removal to this Court of the action commenced against it in Circuit Court for Jefferson County, Commonwealth of Kentucky, styled *Costello v. Gannett Co., Inc.*, Case No. 19-CI-1188. Removal is proper pursuant to the Class Action Fairness Act of 2005 for the following reasons:

1. On February 22, 2019, Plaintiff Ginny Costello filed the attached Complaint in the Circuit Court for Jefferson County, Kentucky, styled as *Costello v. Gannett Co., Inc.*, Case No. 19-CI-1188. Costello served the Complaint on March 1, 2019 via certified mail on Gannett’s registered agent for service in Kentucky. Attached as **Exhibit A** is a true and correct copy of the Complaint served on Gannett.

2. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b).

3. 28 U.S.C. § 1332(d) provides, in pertinent part, that federal jurisdiction exists over any class action (a) in which the amount in controversy, in the aggregate, exceeds \$5 million, exclusive of interest and costs; (b) the class contains at least 100 members; and

(c) any class member is a citizen of a different state than any defendant. 28 U.S.C. § 1332(d)(1)(B), (d)(2), (d)(5).

4. Costello’s complaint was filed as a class action, as defined in 28 U.S.C. § 1332(d)(1)(B). (*See generally* Compl.)

5. The putative class contains at least 100 members. Indeed, Costello seeks relief on behalf of “thousands of subscribers” of Gannett media publications. (Compl. at ¶¶ 1 & 35.)

6. Costello is a citizen of Kentucky. (Compl. ¶ 4.) Gannett is a Delaware corporation, with its principal place of business in Virginia, and the Complaint asserts claims on behalf of a putative class of “thousands of subscribers” across all of Gannett’s “local and national media outlets in the Commonwealth of Kentucky and 33 other states.” (Compl. ¶¶ 5& 8.) Accordingly, minimal diversity of citizenship exists pursuant to 28 U.S.C. § 1332(d)(2)(A).

7. Costello seeks injunctive relief and compensatory, statutory, and treble damages on allegations that across all 34 states in which Gannett distributes publications Gannett overcharged “thousands” of putative class members for promotional subscriptions. Costello’s class definition is completely unlimited in time. Costello asserts claims for breach of contract and violation of the New York Consumer Protection Act.

8. Based on the number of putative class members and the nature of the claims and relief sought, the preponderance of the evidence demonstrates that the amount placed in controversy “more likely than not” exceeds \$5 million, exclusive of interest and costs. *Gafford v. Gen. Elec. Co.*, 997 F.2d 150, 158 (6th Cir. 1993); *accord* 28 U.S.C. § 1332(d)(2); *Smith v. Nationwide Property and Cas. Ins. Co.*, 505 F.3d 401, 404–05 (6th Cir. 2007). The

amount in controversy may be determined based upon a “fair reading of [the] complaint.” *Hayes v. Equitable Energy Res. Co.*, 266 F.3d 560, 573 (6th Cir. 2001). Costello seeks compensatory damages for “thousands” of putative class members, as well as statutory and treble damages under New York’s Consumer Protection Act. Costello also seeks injunctive relief. *Freeland v. Liberty Mut. Fire Ins. Co.*, 632 F.3d 250, 253 (6th Cir. 2011) (where a plaintiff seeks injunctive or declaratory relief, “the amount in controversy is not necessarily the money judgment sought or recovered, but rather than value of the consequences which may result from the litigation.”). And Costello seeks attorneys fees’, which are recoverable under the New York Consumer Protection Act, and thus are considered in determining the amount in controversy for purposes of diversity. *Williamson v. Aetna Life Ins. Co.*, 481 F.3d 369, 376 (6th Cir. 2007) (noting that attorneys’ fees are includable in determining the amount in controversy “where a statute mandates or expressly allows the payment of such fees.”); *Clark v. Nat. Travelers Life Ins. Co.*, 518 F.2d 1167, 1168 (6th Cir. 1975) (“It is settled that the statutory penalty and statutory attorney’s fee can be considered in determining whether the jurisdictional amount is met.”); N.Y. Gen. Bus. L. § 349(h)(expressly permitted award of attorney’s fees to a prevailing plaintiff).

9. Accordingly, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d).

10. 28 U.S.C. §§ 1441(a) and 1453(b) together operate to provide that any class action over which this Court would have original jurisdiction may be removed to this Court by any defendant.

11. Removal to this Court is proper under 28 U.S.C. § 1441(a), as this Court is the United States District Court embracing Jefferson County, Kentucky where the state court action is pending.

12. Gannett is filing a removal notice with the Clerk of the Circuit Court of Jefferson County, Kentucky and will serve notice of same upon counsel of record for Costello. (*See Exhibit B.*)

13. Pursuant to 28 U.S.C. § 1446(a), a copy of the summons and Complaint served upon Gannett are attached, and these are the only process, pleadings, and orders served upon Gannett to date.

Respectfully Submitted,

By: /s/ Michael T. Leigh
Jon Fleischaker
Michael Abate
Michael T. Leigh
Kaplan Johnson Abate & Bird LLP
710 West Main Street, Suite 400
Louisville, Kentucky 40202
Tel: (502) 416-1630
Email: jfleischaker@kaplanjohnsonlaw.com
mabate@kaplanjohnsonlaw.com
mleigh@kaplanjohnsonlaw.com

Counsel for Gannett Co., Inc.