

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

EILEEN CARR, CLAYTON KOLB,)
SAMUEL STANTON, JANE DOE I,)
JANE DOE II, and JANE DOE III, on) **CIVIL ACTION FILE**
behalf of themselves and all others) **NO. _____**
similarly situated,)
)

Plaintiffs,)
)

v.)
)

GRAND CANYON UNIVERSITY,)
INC., and GRAND CANYON)
EDUCATION, INC. d/b/a GRAND)
CANYON UNIVERSITY,)

Defendants.

**GRAND CANYON UNIVERSITY, INC. AND GRAND CANYON
EDUCATION, INC.’S NOTICE OF REMOVAL**

Defendants Grand Canyon University, Inc. and Grand Canyon Education, Inc. (collectively, “GCU”) hereby remove this action from the Superior Court of Fulton County, Georgia, to the Atlanta Division of the United States District Court for the Northern District of Georgia in accordance with 28 U.S.C. §§ 1332, 1441, 1446, 1453, and other applicable law. This Court has jurisdiction over this action under 28 U.S.C. §1332(d)(2). As grounds for removal, GCU respectfully shows this Court the following:

I. BACKGROUND

1. On March 7, 2019, Plaintiffs Eileen Carr, Clayton Kolb, Samuel Stanton, Jane Doe I, Jane Doe II, and Jane Doe III filed a Class Action Complaint (the “Complaint”) against GCU in the Superior Court of Fulton County, Case No. 2019CV317885 (the “State Court Action”). As required by 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders filed in the State Court Action or served upon GCU in the State Court Action as of the date of this filing are attached hereto as Exhibit A.

2. Plaintiffs allege that they and the putative class have been harmed in connection with their enrollment in GCU’s doctoral programs and related continuation courses. Plaintiffs’ five-count complaint purports to assert claims for: (i) breach of contract; (ii) violations of the Arizona Consumer Fraud Act; (iii) intentional misrepresentation, (iv) unjust enrichment; and (v) declaratory judgment. The Complaint seeks compensatory, punitive, and other damages, as well as attorneys’ fees and a judicial declaration that certain unidentified contract provisions are unenforceable.

3. As stated in the Complaint, Plaintiffs seek to represent a class of individuals defined as, “All Grand Canyon University doctoral students who have

paid for research continuation courses or dissertation research continuation courses as part of the pursuit of a doctoral degree.” (the “Putative Class”) (Compl. ¶ 78).

4. As set forth in more detail below, this Court has original jurisdiction over Plaintiffs’ claims against GCU under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d).

5. Removal to this Court is proper under 28 U.S.C. §§ 1441(a) and 90(a)(2) because the United States District Court for the Northern District of Georgia, Atlanta Division, is the federal judicial district and division embracing the Superior Court of Fulton County, where the State Court Action was filed.

6. Plaintiffs served GCU with a Summons and copy of the Complaint on March 19, 2019. Thirty days after March 19, 2019 is Thursday, April 18, 2019. GCU’s deadline to file this Notice of Removal (“Notice”) is therefore Thursday, April 18, 2019. *See* 28 U.S.C. § 1446(b)(1). This Notice, filed on Tuesday, April 16, 2019, is therefore timely filed in compliance with § 1446(b)(1).

7. In accordance with 28 U.S.C. § 1446(d), GCU has filed this Notice with this Court, will serve a copy of this Notice upon counsel for all parties, and will file a copy in the Superior Court of Fulton County, along with a Notice of Filing of

Notice of Removal. A copy of the Notice of Filing of Notice of Removal is attached hereto as Exhibit B.¹

II. THIS COURT HAS ORIGINAL JURISDICTION OVER THE CLAIMS IN THE STATE COURT ACTION UNDER CAFA

8. The Class Action Fairness Act (“CAFA”) grants federal courts diversity jurisdiction over putative class actions that meet certain diversity and amount in controversy requirements. *See* 28 U.S.C. § 1332(d). Because, as shown below, those requirements are satisfied in this case, the State Court Action may be removed to this Court.

A. The State Court Action is A Class Action and the Number of Proposed Class Members Is Not Less Than 100.

9. Plaintiffs satisfy CAFA’s requirement that the number of proposed class members exceeds 100 persons. Plaintiffs purport to bring this case as a class action, as defined by CAFA (28 U.S.C. § 1332(d)(1)(B)), on behalf of a class consisting of “tens of thousands of current and former students.” (Compl. ¶ 81). As such, Plaintiffs assert and propose a putative class of more than 100 members.

¹By removing this action, GCU does not waive, but expressly preserves any defenses with respect to the underlying state court action, including, but not limited to defenses related to venue and/or jurisdiction.

10. The requirement that the number of proposed class members is not less than 100 is satisfied.

B. The State Court Action Satisfies the CAFA Minimum Diversity Requirement.

11. The State Court Action satisfies the CAFA diversity requirement because at least one named plaintiff or absent class member is a citizen of a different state than at least one defendant. *See* 28 U.S.C. § 1332(d)(2)(a). Grand Canyon Education, Inc. is a citizen of Delaware (its state of incorporation) and Arizona (its primary place of business). *See* 28 U.S.C. 1332(c)(1) (citizenship of corporations); *see also* Declaration of Lyn Bickle, attached as Exhibit C. In the Complaint, Plaintiffs allege that they are citizens of New York, Virginia, Florida, California, North Carolina, and Arizona.² (Compl. ¶¶ 2-7). Because several plaintiffs are citizens of states other than Delaware or Arizona, Grand Canyon Education, Inc.'s states of citizenship, the CAFA diversity requirement is satisfied. *See* 28 U.S.C. § 1332(d)(2)(a).

12. None of the mandatory or permissive exceptions in CAFA jurisdiction apply. Those exceptions apply only if (in relevant part) at least one defendant is a

² GCU disputes that the three Jane Doe Plaintiffs can proceed anonymously or represent the putative class.

citizen of the state where the action was originally filed. *See* 28 U.S.C. §§ 1332(d)(3), (d)(4)(A)(i)(II)(cc). Grand Canyon University, Inc. and Grand Canyon Education, Inc. are the only two defendants named in the Complaint, and neither Defendant is a citizen of Georgia, the state where the action was originally filed. Moreover, the burden of proving these exceptions falls on the Plaintiffs.

C. The State Court Action Satisfies the CAFA Amount in Controversy Requirement.

13. The amount in controversy in this case, exclusive of interests and costs, exceeds the \$5 million jurisdictional requirement of CAFA. *See* 28 U.S.C. § 1332(d)(2).

14. Notably, 28 U.S.C. § 1446(a) tracks the general pleading requirement stated in Rule 8(a) of the Federal Rules of Civil Procedure. Thus, “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 135 U.S. 547, 554 (2014). Evidence establishing the amount is required by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant’s allegations. *Id.* at 554.

15. While GCU disputes that Plaintiffs are entitled to bring this action, vehemently denies liability, and contends that Plaintiffs can ultimately recover nothing under the claims in the Complaint, Plaintiffs’ allegations and the relief

sought determine the amount in controversy for purposes of removal. *See Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751 (11th Cir. 2010) (“[T]he plaintiffs’ 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.”); *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 448 (7th Cir. 2005) (Easterbook, J.) (“The question is not what damages the plaintiff will recover, but what amount is ‘in controversy’ between the parties. That the plaintiff may fail in its proof, and the judgment be less than the threshold (indeed, a good chance that the plaintiff will fail and the judgment will be zero) does not prevent removal.”).

16. For purposes of determining the amount in controversy under CAFA, the claims of putative class members are aggregated. 28 U.S.C. § 1332(d)(6). Here, Plaintiffs seek recovery on behalf of a proposed class consisting of “thousands of current and former students.” (Compl. ¶ 81).

17. While Plaintiffs do not specify the exact amount of compensatory and punitive damages they seek to recover on behalf of the proposed class, Plaintiffs allege that GCU is liable for Plaintiffs’ “sustained damages as a result of Defendants’ breaches of the agreement” (Compl. ¶ 99) and for funds “knowingly received and retained from Plaintiffs.” (Compl. ¶ 125). Plaintiffs’ allege that “the typical GCU

doctoral student spends (or borrows) over \$10,000 on extended ‘courses’” that Plaintiffs allege are “completely unnecessary.”³ (Compl. ¶¶ 24 and 36). Plaintiffs’ Complaint, thus, asserts an amount in controversy in excess of \$10,000 for the “typical” class member. Simple calculation of the amount in controversy for the claims of putative class members may be performed by multiplying each Plaintiffs’ alleged amount in controversy by a plausible number of class members. *See, e.g., Jovine v. Abbott Labs., Inc.*, No. 9:11-cv-80111, 2011 WL 1337204, at *4 (S.D. Fla. Apr. 7, 2011) (denying a motion to remand after calculating the amount in controversy using simple multiplication); *Senterfitt v. SunTrust Mortg., Inc.*, 385 F. Supp. 2d 1377, 1383, n.8 (S.D. Ga. 2005) (allowing simple multiplication of a possible award to determine aggregate amount in controversy under CAFA); *see also Hartis v. Chicago Title Ins. Co.*, 694 F.3d 935, 945-46 (8th Cir. 2012) (concluding that the amount in controversy exceeded CAFA’s \$5 million requirement by multiplying the average alleged transaction fee by the number of transactions at issue); *see also S. Fla. Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312, 1317 (11th Cir. 2014) (“Estimating the amount in controversy is not nuclear science; it does not demand decimal-point precision.”).

³ Each of the Plaintiffs claims to have taken at least five continuation courses, with one Plaintiff alleging as many as twenty-one continuation courses. (Compl. ¶ 55).

18. Plaintiffs purport to represent a class consisting of “tens of thousands of current and former students.” (Compl. ¶ 81). Plaintiffs allege that the claims of the putative class members are typical of their claims and that a “typical GCU doctoral student” spends more than \$10,000 on courses that Plaintiffs allege are unnecessary. A claim of just \$10,000 multiplied by just 10,000 class members amounts to \$100,000,000 in controversy, which far exceeds the \$5 million CAFA threshold. Although Plaintiffs allege that their proposed class includes “tens of thousands” of members, if the proposed class consisted of just 501 members with typical claims in excess of \$10,000, the amount in controversy would nonetheless exceed the jurisdictional threshold.

19. Plaintiffs also seek punitive damages on behalf of the proposed class. (Compl. ¶¶ 110, 139). These additional damages push the amount in controversy even further beyond the \$5 million CAFA threshold.

III. CONCLUSION

20. In conclusion, GCU submits that CAFA applies to this action because: (i) Plaintiffs commenced this action after CAFA’s effective date; (ii) Plaintiffs allege a class of not less than 100 proposed class members; (iii) at least one member of the proposed class is a citizen of a state different from the sole defendant’s state of incorporation and principal place of business; (iv) the aggregate amount placed in

controversy by Plaintiffs' Complaint exceeds \$5 million, exclusive of interest and costs; and (v) the procedural requirements for removal under 28 U.S.C. § 1446 are met. For these reasons, GCU respectfully requests that this Court assume full jurisdiction over this action as provided by law.

21. GCU intends no admission of liability by this Notice and expressly reserves all defenses, motions, and pleas, including without limitation objections to the sufficiency of Plaintiffs' pleadings and to the propriety of class certification.

WHEREFORE, GCU hereby removes this action to this Court for further proceedings according to law.

Respectfully submitted this 16th day of April, 2019.

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