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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

BRUCE WINKWORTH and MARCIA
BOTELHO,

*Individually and on behalf of
themselves and on behalf of all others
similarly situated,*

Plaintiffs,

v.

SPECTRUM BRANDS, INC.

Defendant.

Case No.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1332, Defendant Spectrum Brands, Inc. (“Spectrum”) by and through its undersigned attorneys, hereby removes this action from the Pennsylvania Court of Common Pleas, Jefferson County, to the United States District Court for the Western District of Pennsylvania. In support thereof, Spectrum states as follows:

1. On July 2, 2019, Plaintiffs Bruce Winkworth (“Winkworth”) and Marcia Botelho (“Botelho” and, together with Winkworth, “Plaintiffs”) filed a Complaint against Spectrum in the Pennsylvania Court of Common Pleas, Jefferson County. Attached hereto as Exhibit A, respectively, are true and accurate copies of the Complaint and Notice to Defend.
2. Spectrum was served with the Complaint and Notice to Defend on July 15, 2019.

3. This Notice of Removal is timely because it is being filed within thirty days of service of the Complaint and Notice to Defend.

I. This Action Is Removable Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(11) (“CAFA”)

4. This Court has subject matter jurisdiction pursuant to CAFA, 28 U.S.C. § 1332(d), because (1) the putative class consists of at least 100 proposed class members; (2) the citizenship of at least one putative class member is different from the citizenship of the only defendant, Spectrum; and (3) the aggregate amount placed in controversy by the claims of the named Plaintiffs and the proposed class members exceeds the sum or value of \$5,000,000, exclusive of costs and interest.

A. The Minimal Diversity of Citizenship Requirement Is Satisfied.

5. Under CAFA, 28 U.S.C. § 1332(d)(2)(A), minimal diversity jurisdiction exists if any member of the purported class is a citizen of a state different from any defendant.

6. As alleged in the Complaint, Winkworth and Botelho are both residents of Pennsylvania. (Ex. A ¶¶ 18, 19).

7. Spectrum is incorporated in Delaware and has its principal place of business at 3001 Deming Way, Middleton, Wisconsin. As such, for jurisdictional purposes, Spectrum is a citizen of Delaware and Wisconsin.

8. Thus, the minimal diversity of citizenship requirement of 28 U.S.C. § 1332(d)(2)(A) is satisfied because the citizenship of at least one putative class member, Plaintiffs, is different than the citizenship of the only defendant, Spectrum.

B. The Putative Class Consists of More than 100 Members.

9. Plaintiffs purport to bring this action pursuant to Pa. R. Civ. P. 1701, *et seq.*, on behalf of two putative classes: a nationwide “Injunctive/Declaratory Relief Class,” and a Pennsylvania “Damages Class.” (Ex. A ¶ 65-67).

10. The nationwide “Injunctive/Declaratory Relief Class” consists of “[a]ll persons in the United States who own a Remington® Ionic Conditioning Hair Setter, Model(s) H5600/H5600H purchased during the four (4) years preceding the filing of this action.” (*Id.* ¶ 66).

11. The Pennsylvania “Damages Class” consists of “[a]ll persons in the Commonwealth of Pennsylvania who purchased a Remington® Ionic Conditioning Hair Setter, Model(s) H5600/H5600H purchased during the four (4) years preceding the filing of this action.” (*Id.* ¶ 67).

12. Plaintiffs allege that the putative classes “are so numerous that the joinder of all members is impracticable” but do not allege the exact or approximate number of putative class members. (*Id.* ¶ 68).

13. During the putative class period (July 2015 to the present (*id.* ¶¶ 66-67)), Spectrum shipped over 400,000 Remington® Ionic Conditioning Hair Setter, Model(s) H5600/H5600H, for sale to consumers throughout the United States.

14. Based on these and other allegations, the aggregate number of class members in Plaintiffs’ proposed classes is at least 100 for the purposes of satisfying 28 U.S.C. § 1332(d)(5).

C. The Amount in Controversy Requirement under CAFA Is Satisfied.

15. Plaintiffs alleges that the Remington® Ionic Conditioning Hair Setter, Model(s) H5600/H5600H (the “Hot Rollers”) manufactured by Spectrum allegedly “are sold with latent defects that cause the Hot Rollers to heat to unreasonably unsafe temperatures when operated as

instructed preventing their contact with bare skin or detachment of the plastic end caps from the roller itself, thereby exposing consumers to dangerous skin contact with the hot plastic end, as well as the metal underneath the plastic end cap.” (Ex. A ¶ 5).

16. Plaintiffs contend that the alleged defect renders the Hot Rollers “unfit for use as intended as they expose anyone who contacts them with a substantial risk of permanent and/or serious injury.” (*Id.* ¶ 6).

17. Based on these allegations, Plaintiffs assert claims against Spectrum for breach of the implied warranty of merchantability, breach of express warranty, violation of the Magnuson-Moss Consumer Products Warranties Act, 15 U.S.C. § 2301, *et seq.* (the “MMWA”), negligence, and negligent failure to warn. (Ex. A at 23-33).

18. Plaintiffs seek, on their own behalf and on behalf of the putative class, the following damages and/or injunctive relief from Spectrum: (1) “compensatory, direct, incidental, and consequential damages, including full refunds or replacement of the Hot Rollers with a non-defective product at least the quality and grade marketed and promised, as well as the shipment at Defendant Spectrum Brands’ expense”; (2) attorneys’ fees, expert fees, costs, and expenses under the MMWA and as otherwise allowable under the applicable law; (3) equitable and injunctive relief including “the remediation of the Defect”; (4) punitive damages; (5) “restitution and/or disgorgement of profits,” and (6) pre- and post-judgment interest. (*Id.* at 34-35 ¶¶ A-H; ¶¶ 17, 95, 118, 134).

19. “In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation.” *Jesmar Energy, Inc. v. Range Res.-Appalachia, LLC*, No. CV 17-928, 2017 WL 4572526, at *7 (W.D. Pa. Oct. 13, 2017) (internal quotation omitted).

20. The object of Plaintiffs' injunctive/declaratory relief claims, as stated in the Complaint, is to award the Plaintiffs and the nationwide putative class "the remediation of the Defect, and its coverage under the available express and implied warranties." (Ex. A at ¶¶ 95, 119, 133).

21. The Complaint further alleges that, if Spectrum had complied with its express warranty, it would be "obligated to provide Hot Rollers free of the Defect or defects." (*Id.* ¶ 100).

22. As such, the injunctive relief sought by Plaintiffs seeks to require Spectrum to provide replacement Hot Rollers to the nationwide putative class. (*See id.*).

23. Plaintiffs do not allege the price that they paid for their respective Hot Rollers.

24. The manufacturer's suggested retail price for the Hot Rollers is \$24.99.

25. Using only the value of the Hot Rollers that Plaintiffs seek as the measure of damages (\$24.99), the nationwide putative class would need to consist of 200,081 individuals for the amount in controversy to exceed \$5,000,000.¹

26. Similarly, using only the equitable remedy of restitution sought by the Plaintiffs to determine the amount in controversy, whereby each class member would obtain a refund of the \$24.99 paid for the Hot Rollers, the nationwide putative class would need to consist of 200,081 individuals for the amount in controversy to exceed \$5,000,000.

27. Because Spectrum shipped over 400,000 Hot Rollers for sale throughout the United States from July 2015 to the present, more than 200,081 Hot Rollers were shipped for sale throughout the United States during the putative class period.

¹ \$5,000,000 divided by \$24.99 equals 200,080.03.

28. Thus, for the reasons set forth above, the amount in controversy exceeds \$5,000,000, even if attorneys' fees are excluded from the calculation.

29. Including attorneys' fees in the amount in controversy reduces the number of members of the putative nationwide class needed to reach the amount in controversy. *See Espinoza v. Atlas R.R. Constr., LLC*, 657 F. App'x 101, 103 n.3 (3d Cir. 2016) (recognizing that, in "calculating the amount in controversy, we must consider potential attorney's fees").

30. To calculate the attorneys' fees for purposes of determining the amount in controversy, courts use the median recovery range for attorneys' fees of approximately 30 percent. *Neale v. Volvo Cars of N. Am., LLC*, 794 F.3d 353, 358 n.1 (3d Cir. 2015).

31. If attorneys' fees are included in the amount in controversy, the nationwide putative class would need to consist of 140,057 individuals for the amount in controversy to exceed \$5,000,000 using either the value of the Hot Rollers that the Plaintiffs seek or the amount refunded to the putative class members through the equitable remedy of restitution.²

32. Because Spectrum shipped over 400,000 Hot Rollers for sale throughout the United States from July 2015 to the present, more than 140,057 Hot Rollers were shipped for sale throughout the United States during the putative class period.

33. Because there is minimal diversity between the parties and because the \$5,000,000 amount in controversy requirement is satisfied, this case is properly removed pursuant to CAFA, 28 U.S.C. §§ 1332(d) and 1453.

34. A true and correct copy of this Notice of Removal will be filed with the clerk of the Pennsylvania Court of Common Pleas, Jefferson County, and served upon counsel for Plaintiff.

² Attorneys' fees would total 30% of \$5,000,000, which is equal to \$3,500,000. \$3,500,000 divided by \$24.99 equals 140,056.02.

35. In filing this Notice of Removal, Spectrum does not waive, and specifically reserves, all defenses, exceptions, rights, and motions. No statement herein or omission herefrom shall be deemed to constitute an admission by Spectrum of any of the allegations of or damages sought in the Complaint.

WHEREFORE, Spectrum respectfully gives notice of the removal of the state action referenced herein from the Pennsylvania Court of Common Pleas, Jefferson County, to the United States District Court for the Western District of Pennsylvania.

Dated: August 14, 2019

K&L GATES LLP

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