

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, Grand Canyon respectfully shows this Court the following:

I. BACKGROUND

1. On July 18, 2019, Plaintiffs Debra Austin and Tammy Baker filed a Class Action Complaint (the “Complaint”) against Grand Canyon in the Superior Court of Fulton County, Case No. 2019CV324006 (the “State Court Action”). As required by 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon Grand Canyon 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 Grand Canyon’s professional degree programs. Plaintiffs’ seven-count complaint purports to assert claims for: (i) fraudulent omission; (ii) fraudulent misrepresentation; (iii) violation of the Racketeer Influenced and Corrupt Organizations (“RICO”) Act, (iv) violation of the Arizona Civil RICO act; (v) violation of the Arizona Consumer Fraud Act; (vi) intentional

misrepresentation; and (vii) unjust enrichment.² 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 students who have been enrolled in an online professional graduate degree or certificate program that is not accredited in the state where they are employed or, if not employed, where they reside." (the "Putative Class") (Compl. ¶ 80).

4. As set forth in more detail below, this Court has original jurisdiction over Plaintiffs' claims against Grand Canyon 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 Grand Canyon with a Summons and copy of the Complaint on July 29, 2019. Thirty days after July 29, 2019 is August 28, 2019.

² While Plaintiffs' unjust enrichment claim is labeled "Count VIII" in the Complaint (*see* Compl. ¶ 52), it is the seventh and final count of the Complaint.

Grand Canyon's deadline to file this Notice of Removal ("Notice") is therefore Wednesday, August 28, 2019. *See* 28 U.S.C. § 1446(b)(1); Fed R. Civ. P. 6(a)(c). This Notice, filed on August 19, 2019, is therefore timely filed in compliance with § 1446(b)(1).

7. In accordance with 28 U.S.C. § 1446(d), Grand Canyon 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.³

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.

³ By removing this action, Grand Canyon 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.

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. ¶ 83). As such, Plaintiffs assert and propose a putative class of more than 100 members.

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 principal 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 Georgia and Ohio. (Compl. ¶¶ 2, 4). Because 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 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 Grand Canyon 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 “tens of thousands of current and former students.” (Compl. ¶ 83).

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 Grand Canyon is liable for Plaintiffs' damages, sustained as a result of Defendants actions and seeks monetary, declaratory, and injunctive relief. Plaintiff Austin alleges she spent \$65,000 on her courses "for nothing." (Compl. ¶ 2). Plaintiff Baker alleges she spent \$14,000 on tuition, which was "wasted." (*Id.* ¶ 3). Plaintiffs claim that they are typical members of the class and that "all members of the class have been similarly affected by actions of Defendants." (*Id.* ¶ 89). Plaintiffs' Complaint thus asserts an amount in controversy in excess of \$10,000—and likely much higher than \$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.”).

18. Plaintiffs purport to represent a class consisting of “tens of thousands of current and former students.” (Compl. ¶ 83). 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. ¶ 158 and Prayer for Relief). These additional damages push the amount in controversy even further beyond the \$5 million CAFA threshold.

III. CONCLUSION

20. In conclusion, Grand Canyon 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 at least one

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, Grand Canyon respectfully requests that this Court assume full jurisdiction over this action as provided by law.

21. Grand Canyon 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, Grand Canyon hereby removes this action to this Court for further proceedings according to law.

Respectfully submitted this 19th day of August, 2019.

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