

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JOHN EWALT, on behalf of himself and all others similarly situated,)	CASE NO. 2:19-cv-04262
)	
and)	JUDGE
)	
STEVE WYLIE, on behalf of himself and all others similarly situated,)	
)	
Plaintiffs,)	NOTICE OF REMOVAL
)	
v.)	
)	
GATEHOUSE MEDIA OHIO HOLDINGS II, INC., d/b/a THE COLUMBUS DISPATCH,)	
)	
Defendant.)	

Defendant GateHouse Media Ohio Holdings II, Inc. (“GateHouse” or the “Company”) removes this case to the United States District Court for the Southern District of Ohio, Eastern Division. The grounds for removal are as follows:

STATE COURT ACTION

1. Plaintiffs John Ewalt and Steve Wylie filed a class-action complaint against GateHouse in the Franklin County Court of Common Pleas, Case No. 19CV-08-6859, on August 22, 2019.
2. GateHouse was served with the complaint on August 27, 2019.

THIS COURT HAS SUBJECT MATTER JURISDICTION

3. This Court has original jurisdiction over this action under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d) (“CAFA”). CAFA grants district courts original jurisdiction over civil actions filed under federal or state law in which any member of a class of

plaintiffs is a citizen of a state different from any defendant (referred to as minimal diversity), the putative class has more than 100 members, and the amount in controversy for the putative class members exceeds \$5,000,000, exclusive of interest and costs. CAFA authorizes removal of such actions under 28 U.S.C. § 1446.

Minimal Diversity Exists

4. Named plaintiffs Ewalt and Wylie are citizens of Ohio. (Compl. ¶ 25.)

5. GateHouse is a corporation. For purposes of diversity jurisdiction, a corporation is “a citizen of any State by which it has been incorporated and of the state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). “[T]he phrase ‘principal place of business’ refers to the place where a corporation’s high level officers direct, control, and coordinate the corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010). “[I]t should normally be where the corporation maintains its headquarters.” *Id.* at 93.

6. GateHouse is, and was when plaintiffs filed the complaint, incorporated under the laws of the State of Delaware. (Declaration of Mark Maring, ¶ 2, attached as Exhibit A.) The Company maintains its headquarters in Pittsford, New York. (*Id.* ¶ 3.) GateHouse’s Foreign For-Profit Corporation Application for License filed with the Ohio Secretary of State in 2015 states that the Company was organized under Delaware law and has its principal office in Pittsford, New York. (Ohio Secretary of State Filing, attached as Exhibit B.) GateHouse’s Senior Vice President/General Counsel/Secretary; Senior Vice President/Treasurer; Senior Vice President/Chief Accounting Officer; Assistant Secretary; and one of its two Directors work in the Pittsford, New York, headquarters. (Maring Decl. ¶¶ 4-5 .) In addition, while the Chief Executive Officer/ Chief Operating Officer/President, who is also the other Director, works in Massachusetts, the Company’s legal and corporate-finance functions are directed out of Pittsford. (*Id.* ¶¶ 5-6.) Thus, the place where the Company’s high level officers direct, control,

and coordinate the activities of its multiple publications is located in New York or, alternatively, Massachusetts. So for purposes of diversity jurisdiction, GateHouse is a citizen of Delaware and New York (or, alternatively, Massachusetts).

7. Minimal diversity exists in this action because Plaintiffs are citizens of Ohio, and GateHouse is a citizen of Delaware and New York (or, alternatively, Massachusetts).

8. In addition, upon information and belief, there are non-named absent members of the proposed class that are not citizens of Delaware or New York.

There Are More Than 100 Class Members

9. Plaintiffs' complaint purports to bring this case on behalf of the following proposed classes:

"Premium Edition Class": "All persons who purchased a fixed-length subscription for delivery of The Dispatch and had the length of the subscription shortened based on charges for one or more premium editions." [Compl. ¶ 61.]

"Consumer Edition Subclass": "All consumers who purchased a fixed-length subscription for delivery of The Dispatch and had the length of the subscription shortened based on charges for one or more premium editions." [Compl. ¶ 65.]

"Statement Fee Class": "All persons who purchased a fixed-length subscription to The Dispatch; were assessed a fee in excess of \$1.00 for a paper statement; and had the length of the subscription shortened based on the paper statement fee." [Compl. ¶ 67.]

10. There are more than 100 potential members of these proposed classes. In fact, Plaintiffs allege that "[t]he Dispatch has more than 100,000 subscribers, and the Classes and Consumer Subclass each have thousands of members." (Compl. ¶ 73.)

The Amount in Controversy Exceeds \$5 Million

11. A notice of removal "need include only a plausible allegation" that CAFA's \$5 million amount in controversy threshold is satisfied. *Dart Cherokee Basin Operating Co.*,

LLC v. Owens, 574 U.S. 81, 135 S.Ct. 547, 554 (2014). It “need not contain evidentiary submissions.” *Id.* at 551.

12. GateHouse denies Plaintiffs’ claims of wrongdoing and maintains that neither Plaintiffs nor any of the proposed class members have a viable claim or have suffered any actual damages in this case.

13. In their complaint, however, Plaintiffs allege that “The Dispatch has more than 100,000 subscribers,” complain about GateHouse’s distribution of premium editions, and allege that GateHouse is “entitled to distribute \$324 worth of premium editions in a given year.” (Compl. ¶¶ 6, 43, 73.) Plaintiffs further allege that GateHouse “assesses” customers a \$9.00 fee for receiving a paper invoice. (*Id.* ¶ 17.) And Plaintiffs allege that they and the Classes and Consumer Subclass “have suffered damages because, among other things, [they] have not received the benefits of their subscription agreements, have overpaid for their subscriptions to The Dispatch, and have paid excessive charges for paper statements.” (*See id.* ¶¶ 106, 121; *see also id.* ¶¶ 140, 153, 175.)

14. Based on these allegations, Plaintiffs’ Complaint seeks more than \$5 million in compensatory damages in the aggregate.

15. GateHouse denies Plaintiffs’ claims of wrongdoing, denies that class certification is proper, and denies that Plaintiffs have suffered any actual damages. The above simply assumes *for CAFA removal purposes only* that if Plaintiffs establish a class and prove their allegations, the total amount of monetary relief sought by Plaintiffs would exceed \$5 million, exclusive of interests and costs.

16. In their complaint, Plaintiffs also request declaratory judgments regarding multiple issues (Counts IV, VI, VII), injunctive relief (Count IX), and punitive damages (Demand for Relief ¶ E). These requests would further increase the amount in controversy.

REMOVAL IS PROPER

17. Because this Notice of Removal is filed within 30 days of August 27, 2019, it is timely made pursuant to 28 U.S.C. §§ 1332(d) and 1446(b).

18. Under 28 U.S.C. § 115(b)(2), the United States District Court for the Southern District of Ohio, Eastern Division, is the district court for the district embracing Franklin County, where the state court action is pending. Removal to this Court is therefore proper under 28 U.S.C. § 1446(a).

19. This case as alleged in Plaintiffs' complaint meets CAFA's requirements for removal.

20. Promptly after filing the Notice of Removal, GateHouse will give written notice of the removal to all parties and will file a notice in the Franklin County Court of Common Pleas.

21. GateHouse has attached hereto a copy of all process, pleadings, and orders served upon it in the Franklin County Court of Common Pleas as Exhibit C.

WHEREFORE, GateHouse respectfully requests that the action pending against it in the Franklin County, Ohio, Court of Common Pleas be removed to this Court.

Dated: September 24, 2019

Respectfully submitted,

/s/ Michael J. Zbiegien, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2019, the foregoing was served by electronic mail and U.S. mail upon the following:

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