

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

FRANCIS JAYE and SEAN)
MADELMAYER, individually and on behalf)
of all others similarly situated,)

Plaintiffs,)

vs.)

CRANE MERCHANDISING SYSTEMS,)
INC.; COMPASS GROUP USA, INC., D/B/A)
CANTEEN VENDING SERVICES, INC.)

Case No. 3:19-cv-1523

JURY TRIAL

DEMANDED

Defendants.

NOTICE OF REMOVAL BY DEFENDANT COMPASS GROUP USA, INC.

PLEASE TAKE NOTICE THAT pursuant to 28 U.S.C. §§ 1332, 1441, 1446, 1453, and 1711, defendant Compass Group USA, Inc. (“Compass”), by and through its undersigned counsel, hereby removes this action from the District Court of Dallas County, Texas (“State Court”), in which court the cause is currently pending, to the United States District Court for the Northern District of Texas, Dallas Division. In support thereof, Compass states as follows:

1. Compass exercises its rights under the provisions of 28 U.S.C. §§ 1332, 1441, and 1446 to remove this case from the State Court where this case is pending under the name and style of *Francis Jaye and Sean Madelmayer v. Crane Merchandising Systems, Inc. and Compass Group USA, Inc. d/b/a Canteen Vending Services, Inc.*, Cause No. DC-19-06786.

2. 28 U.S.C. § 1441(a) provides that any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant to the district court of the United States for the district and division embracing the place where such action is pending.

3. This is a civil action that was instituted in the State Court, and has not been tried. On or about May 13, 2019, Plaintiffs filed their original class action petition (the “Complaint”) in the State Court. A true and correct copy of the entire state court file, including the Complaint, is attached hereto as **Exhibit A**. As set forth below, Compass received a copy of the summons and Complaint on May 28, 2019, and this Notice of Removal is therefore timely pursuant to 28 U.S.C. §§ 1446(b) and 1453.

4. As more fully set forth below, this case is properly removed to this Court under 28 U.S.C. § 1441 because this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) in that Plaintiffs’ action constitutes a class action (as defined in 28 U.S.C. § 1332(d)(1)(B)) pursuant to the Class Action Fairness Act, codified at 28 U.S.C. §§ 1332(d) and 1453 (“CAFA”).

SUBJECT MATTER JURISDICTION

THIS CLASS ACTION IS REMOVABLE UNDER THE CLASS ACTION FAIRNESS ACT, 28 U.S.C. §§ 1332(d)(11), 1453

5. As set forth below, this Court has subject matter jurisdiction pursuant to CAFA, 28 U.S.C. §§ 1332(d)(2), because: (i) this case is a class action as defined in 28 U.S.C. § 1332(d)(1)(B); and (ii) at least one member of each putative class is a citizen of a state different from any defendant.

I. The Minimal Diversity of Citizenship Requirement Is Satisfied

6. At the time Plaintiffs commenced this action against Defendants in State Court, and now at the time of removal, there was and is minimal diversity of citizenship as contemplated by CAFA, 28 U.S.C. § 1332(d)(2)(A).

7. CAFA provides that the minimal diversity requirement is met if any member of a class of plaintiffs is a citizen of a state different from any defendant. 28 U.S.C. § 1332(d)(2)(A).

This requirement is met here, as Crane and Compass are citizens of different states than the named plaintiffs for purposes of diversity jurisdiction.

8. The Complaint identifies the named Plaintiffs as residents of Texas and proposes two classes of plaintiffs who are alleged to be “individuals in the United States.” *See* Compl. ¶¶ 3–4, 26.

9. Upon information and belief, for purposes of diversity of citizenship under 28 U.S.C. § 1332, each plaintiff is a citizen of the state in which he or she is alleged to reside.

10. The Complaint identifies Crane as being incorporated in Delaware with its principal place of business in Iowa, and Compass as being incorporated in Delaware with its principal place of business in North Carolina. *See id.* ¶¶ 5–6. For purposes of diversity citizenship under 28 U.S.C. §§ 1332(a) and (d), Crane and Compass are citizens of states other than the state of Texas.

11. As citizens of Delaware, Iowa, and North Carolina, Defendants are citizens of a state other than the state of citizenship of at least one named plaintiff identified in the Complaint. Accordingly, diversity of citizenship is established under 28 U.S.C. § 1332(d)(2)(A).

II. The Amount In Controversy Requirement Under CAFA Is Satisfied Because The Aggregate Amount In Controversy Exceeds \$5,000,000

12. Under CAFA, the claims of the individual plaintiffs in a mass action are aggregated to determine if the amount in controversy exceeds the sum or value of \$5,000,000. *See* 28 U.S.C. §§ 1332(d)(6), (d)(11). Plaintiffs’ claims meet the jurisdictional threshold set forth in § 1332(d)(6) in that, if awarded, the aggregate amount of the damages and other relief sought by the putative classes would exceed \$5,000,000, exclusive of interest and costs.

13. Where, as here, a complaint fails to plead a specific amount of damages or disclaim an amount of damages in of \$5,000,000, the party seeking removal need only make a

plausible allegation that the amount in controversy exceeds the jurisdictional threshold. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

14. A party seeking to remove under CAFA must establish the amount in controversy by showing that the amount is “facially apparent.” *Robertson v. Exxon Mobil Corp.*, 814 F.3d 236, 240 (5th Cir. 2014) (citing *Manguno v. Prudential Prop. and Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002)). Under this standard, a court must decide by a preponderance of the evidence whether the relevant amount in controversy is met. *Id.* (citing *Dart Cherokee*, 135 S. Ct. at 553–54).

15. CAFA’s legislative history makes clear that doubts regarding the maintenance of class actions in state or federal court should be resolved in favor of federal jurisdiction. *See, e.g.*, S. Rep. No. 109-14, at *43, as reprinted in 2005 WL 627977 (“[o]verall, new section 1332(d) is intended to expand substantially federal court jurisdiction over class actions”); *see also Dart Cherokee*, 135 S. Ct. at 554 (“no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court”).

16. The Complaint seeks relief for purported breach of contract, unjust enrichment, and fraud. *See* Compl. ¶¶ 36, 39, 54.

17. Plaintiffs allege that Defendants charge credit and debit cards amounts exceeding displayed prices on products purchased at Defendants’ vending machines. *See id.* at ¶ 14.

18. Plaintiffs seek compensatory damages for the alleged overcharges charged by Defendants’ vending machines. *See id.* at Prayer for Relief. The Complaint also specifically pleads “[f]or injunctive relief, enjoining Defendants from charging additional undisclosed amounts for purchases from its [*sic*] vending machines.” *Id.* Moreover, the Complaint seeks penalties and attorney’s fees. *See id.* at ¶ 2.

19. As a threshold matter, a removing defendant may aggregate all of a plaintiff's claims to determine the total amount of controversy. *See* 28 U.S.C. § 1332(d)(6) (under CAFA, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds \$5,000,000, exclusive of interest and costs).

20. The Complaint does not disclaim an amount in controversy in excess of \$5,000,000. In fact, the Complaint seeks unlimited damages.

21. Even though the Complaint alleges two classes, it defines both identically. *See* Compl. ¶ 26. Based on Plaintiffs' claims, the amount of damages sought by the putative nationwide classes plausibly could include the combined total of the alleged overcharges charged to each member of the putative classes. *See In re Kitec Plumbing Sys. Prods. Liab. Litig.*, 2010 WL 11618052, at *5 (N.D. Tex. Aug. 23, 2010) (citing 28 U.S.C. § 1332(d)(6)) ("CAFA also provides that [i]n any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy" meets the amount threshold) (internal quotation marks and emphasis omitted). Thus, the total of these "overcharges," or cash discounts¹ not applied by Compass, in the U.S. during the relevant time period make up the plausible damages at issue in this case.²

22. For the year ending on May 13, 2019, the aggregate amount of cash discounts not applied by Compass on credit and debit card transactions through its vending machines exceeded

¹ For transactions made at some of Compass's vending machines, Compass offers a discount of ten cents (\$0.10) per transaction for transactions made in cash rather than using credit or debit cards. Exhibit B, ¶ 4.

² Compass does not concede that any credit or debit card charges were improper or actionable, or that Compass has liability to Plaintiffs or any member of the putative classes, and Compass expressly reserves the right to contest the factual allegations contained in the Complaint. For purposes of assessing the amount of controversy, a defendant is not required to concede that it has liability in excess of the jurisdictional minimum. *See In re Whole Foods Market, Inc., Greek Yogurt Mktg. & Sales Practices Litig.*, MDL No. 2588, 2015 WL 5737692, at *7 (W.D. Tex. Sept. 30, 2015) (citing *Berniard v. Dow Chem. Co.*, No. 10-30497, 2010 WL 8750602, *unpublished*, at *3 (5th Cir. Aug. 6, 2010)).

\$5 million. *See* Declaration in Support of Notice of Removal, attached hereto as **Exhibit B**, ¶ 4. That amount represents only the aggregate discounts not applied, and not the dollar value of the credit or debit card transactions in which discounts were not applied. *Id.*

23. Accordingly, by virtue of joining their claims in one action, Plaintiffs and their purported classes have placed in controversy at least \$5 million in damages. *See In re Kitec Plumbing Sys. Prods. Liab. Litig.*, 2010 WL 11618052 (N.D. Tex. Aug. 23, 2010) (aggregating class members from multiple states). The \$5,000,000 amount in controversy threshold thus is satisfied for the purposes of satisfying 28 U.S.C. § 1332(d)(6).

III. The Court Should Not Decline To Exercise Jurisdiction Over This Action

24. Pursuant to 28 U.S.C. § 1332(d)(3), a district court may decline to exercise jurisdiction over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed. Plaintiffs will not be able to satisfy this provision. First, while Compass has not determined the citizenship of all customers who did not receive a cash discount, Compass has determined that less than 7% of its vending machines are located in Texas, less than 6% of its vending machine revenues are derived from machines located in Texas, and less than 8% of the cash discounts not awarded were for transactions through vending machines located in Texas. *See* Exhibit B, ¶¶ 5–7. It is therefore plausible, if not highly likely, that less than one-third of the members of putative classes are Texas citizens. Even if greater than one-third but less than two-thirds of the members of the putative classes are citizens of Texas, Compass is a citizen of Delaware and of North Carolina and Crane a citizen of Delaware and of Iowa. Compl., ¶¶ 5–6. This action was originally filed in the state of Texas.

See Exhibit A. Accordingly, this Court should not decline to exercise jurisdiction on the basis of 28 U.S.C. § 1332(d)(3).

25. Pursuant to 28 U.S.C. § 1332(d)(4), a district court shall decline to exercise jurisdiction over a class action where two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action originally filed, or where:

- a. greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;
- b. at least one defendant is a defendant:
 - i. from whom significant relief is sought by members of the plaintiff class;
 - ii. whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and
 - iii. who is a citizen of the State in which the action was originally filed; and
- c. principal injuries resulting from the alleged conduct of each defendant were incurred in the State in which the action was originally filed; and
- d. during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons.

26. The factors outlined in 28 U.S.C. § 1332(d)(4) are not present here. As shown above, it is highly likely that less than two-thirds of the putative classes are Texas citizens. Even

if greater than two-thirds of members of the putative classes are citizens of Texas, neither Defendant is a citizen of Texas. *See* Compl. ¶ 5–6. By its terms, 28 U.S.C. § 1332(d)(4) cannot be met where no defendant is a citizen of the state where the action was originally filed. Additionally, class actions with similar factual allegations have been filed within three years of the filing of this action. The case captioned *George Moore and Virginia Carter, on behalf of themselves and all others similarly situated v. Compass Group USA, Inc., d/b/a Canteen*, No. 4:18-cv-01962, was filed in October 2018 and is currently pending in the United States District Court for the Eastern District of Missouri. Similarly, the case captioned *Anthony Oliver, individually and on behalf of all others similarly situated v. Compass Group USA, Inc., d/b/a Canteen*, No. 18-cv-05998, was filed in July 2018 and is currently pending in the United States District Court for the Northern District of Illinois. Accordingly, this Court should not decline to exercise jurisdiction over this action.

PROCEDURAL COMPLIANCE

27. In accordance with the requirements of 28 U.S.C. § 1446(b), a Notice of Removal should be filed within thirty (30) days after the service on Compass of the summons and Complaint. Compass received the summons and Complaint on May 28, 2019.

28. Pursuant to 28 U.S.C. § 1441 *et seq.*, the right exists to remove this case from the State Court, to the United States District Court for the Northern District of Texas, Dallas Division, which embraces the place where the action is pending.

29. The United States District Court for the Northern District of Texas, Dallas Division, embraces the county in which the state court action is now pending and thus, this Court is a proper venue for this action pursuant to 28 U.S.C. § 124(a)(1).

30. No previous application has been made for the relief requested herein.

31. Pursuant to the provisions of 28 U.S.C. § 1446(a) and Local Rule 81.1(4), attached hereto as **Exhibit C** is an index of all state court filing and copies of all process, pleadings, and orders served upon Compass: the Complaint bearing the cause number DC-19-06786, filed in the District Court of Dallas County, Texas and citations.

32. Written notice of the filing of this Notice of Removal will be served upon counsel for Plaintiffs as required by law.

33. A true and correct copy of this Notice of Removal will be filed with the clerk of the State Court, as required by law, and served upon counsel for Plaintiffs.

WHEREFORE, Defendant Compass Group USA, Inc. hereby removes this case from the State Court, where it is now pending, to this Court.

Dated: June 24, 2019

Respectfully submitted,

COMPASS GROUP USA, INC.

By: /s/ Clayton L. Falls
One of Its Attorneys

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