

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

KRISTEN MONTAG and WARREN
KUIPER, individually and on behalf of
others similarly situated,

Plaintiffs,

v.

RELIANCE WORLDWIDE CORPORATION,
a Delaware Corporation and HOME DEPOT
USA, INC., a Delaware Corporation,

Defendants.

CASE No.:

NOTICE OF REMOVAL

Defendant Reliance Worldwide Corporation (“RWC”) hereby removes this civil action from the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida, to the United States District Court for the Southern District of Florida pursuant to the Class Action Fairness Act (CAFA), codified in relevant part at 28 U.S.C. §§ 1332 and 1453. RWC hereby provides a “short and plain statement of the grounds for removal” pursuant to 28 U.S.C. § 1446(a).

I. PROCEEDINGS TO DATE

On January 23, 2020, Plaintiffs Kristen Montag and Warren Kuiper (collectively, “Plaintiffs”) filed a putative class action complaint (the “Complaint”) in the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida (the “Circuit Court”) against Defendants Home Depot USA, Inc. (“Home Depot”) and RWC. The Complaint was served on RWC on April 9, 2020. In the Complaint, Plaintiffs purport to assert claims against RWC and Home Depot based on state law. As required by

28 U.S.C. § 1446, copies of all process, pleadings and other papers previously filed with the Circuit Court are attached hereto as follows:

Docket from the Fifteenth Judicial Circuit as of April 29, 2020	Exhibit 1
Complaint and Civil Cover Sheet	Exhibit 2
Summons issued to RWC	Exhibit 3
Summons issued to Home Depot	Exhibit 4
Plaintiff's Notice of Serving Interrogatories to RWC	Exhibit 5
Plaintiff's Notice of Serving Interrogatories to Home Depot	Exhibit 6
Return of Service for RWC	Exhibit 7
Return of Service for Home Depot	Exhibit 8
* Notice of Appearance by David A. Coulson, Esq. of Greenberg Traurig, P.A. on behalf of RWC	Exhibit 9
* Notice of Appearance by George L. Fernandez, Esq. and Lars O. Bodnieks, Esq. of Quintairos, Prieto, Wood & Boyer, P.A. on behalf of RWC	Exhibit 10
* Notice of Email Designation by Quintairos, Prieto, Wood & Boyer, P.A.	Exhibit 11

* Exhibits 9-11 were e-filed with the Circuit Court but have not yet appeared on the docket as of the time of this filing.

II. THIS ACTION MAY BE REMOVED UNDER CAFA

This Court has original jurisdiction over this case under CAFA pursuant to 28 U.S.C. §§ 1332(d), 1453. Under CAFA, United States District Courts have original jurisdiction over any civil action if: (a) the proposed class contains at least 100 members; (b) none of the primary defendants is a state, state official, or governmental entity; (c) there is diversity between at least one putative class member and one defendant; and (d) the amount in controversy, after aggregating the sum or value of each proposed class member's claim, exceeds \$5 million, exclusive of interest and costs. 28 U.S.C. §

1332(d). Based on the allegations in the Complaint, which must be taken as true for purposes of removal, and for the reasons set forth below, all requirements of CAFA are satisfied.

A. The Proposed Class Consists of at Least 100 Members

Plaintiffs seek to certify a nationwide class comprised of “thousands of customers.” Compl. ¶ 78. Plaintiffs claim that RWC’s product at issue in this Action was purchased by thousands of American consumers during the period in question, January 22, 2016 to present. *Id.* at ¶ 76. In addition, the Complaint alleges the class size is “plainly so numerous that joinder of all members is impracticable.” *Id.* at ¶ 78. Accordingly, the aggregate number of class members is greater than 100 persons for purposes of 28 U.S.C. § 1332(d)(5)(B).

B. No Defendant is a State, State Official, or Government Entity

RWC is not a state, state official, or governmental entity. To the best of RWC’s knowledge, co-defendant Home Depot is also not a state, state official, or governmental entity.

C. This Action Meets the Diversity Requirements of CAFA

Diversity under CAFA exists if the citizenship of “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). A corporation is deemed to be a citizen of every state “by which it has been incorporated and . . . where it has its principal place of business.” 28 U.S.C. § 1332(c)(1).

RWC is incorporated in Delaware, and its principal place of business is in Atlanta, Georgia. Compl. ¶ 15. Home Depot is also incorporated in Delaware with its principal place of business in Atlanta, Georgia. *Id.* at ¶ 16. Thus, for diversity purposes, RWC and Home Depot are both considered citizens of Delaware and Georgia. On the other hand, Plaintiffs are both citizens of Florida. *Id.* at ¶¶ 13-14. Thus, since Plaintiffs are citizens of Florida, and RWC and Home Depot are citizens of

Delaware and Georgia, CAFA's minimal diversity requirement is satisfied. 28 U.S.C. § 1332(d)(2)(A).

D. The Amount in Controversy Exceeds \$5 Million

To remove a case from state court, the defendant must plead only “a short and plain statement of the grounds for removal” setting forth “a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 81 (2014); 28 U.S.C. § 1446(a). The “amount-in-controversy allegation of a defendant . . . should be accepted” just as the plaintiff’s amount-in-controversy allegation is accepted when a plaintiff invokes federal court jurisdiction. *Dart Cherokee Basin*, 574 U.S. at 81–82. “Where, as here, the plaintiff has not pled a specific amount of damages, the removing defendant must prove by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional requirement [of CAFA].” *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 752 (11th Cir. 2010) (quoting *Williams v. Best Buy Co., Inc.*, 269 F.3d 1316, 1319 (11th Cir. 2001)). That is, a defendant need only prove “the amount in controversy *more likely than not* exceeds the jurisdictional requirement.” *Id.* (quoting *Cohen v. Office Depot, Inc.*, 204 F.3d 1069, 1072 (11th Cir. 2000)).

“The amount in controversy is not proof of the amount the plaintiff will recover. Rather, it is an estimate of the amount that will be put at issue in the course of the litigation.” *Pretka*, 608 F.3d at 751 (quoting *McPhail v. Deere & Co.*, 529 F.3d 947, 956 (10th Cir. 2008)). In addition, “the inclusion of attorney’s fees in the calculation of the amount in controversy is appropriate.” *DO Restaurants, Inc. v. Aspen Specialty Ins. Co.*, 984 F. Supp. 2d 1342, 1346 (S.D. Fla. 2013).

Here, Plaintiffs seek monetary damages and disgorgement of Defendants’ profits, alleging that RWC’s website states it has sold “more than 550 million [SharkBite] connections” and that “more than 1.5 million [SharkBite] connections [are] made every week.” Compl. at ¶¶ 30, 31. SharkBite

water heater connectors currently sold at Home Depot range in price from approximately \$11.00 to \$30.00.¹ According to Plaintiffs' allegations, RWC's 2018 sales revenue in the Americas was \$559.7 million and 2018 worldwide sales revenue was \$769.4 million. *Id.* at ¶ 78. While RWC denies that Plaintiffs and the putative class are entitled to any damages, taking Plaintiffs' allegations as true for purposes of removal only, the alleged retail sales of SharkBite products, plus attorneys' fees and the value of the injunctive relief Plaintiffs seek, in the aggregate, exceed CAFA's \$5 million amount in controversy requirement. *See Lee-Bolton v. Koppers Inc.*, 848 F. Supp. 2d 1342, 1357 (N.D. Fla. 2011) ("there is little question that the amount in controversy for purposes of CAFA has been satisfied [based on monetary damages alone, and] [t]his ... does not [even] take into account that the amount of attorney's fees and the value of the claims for injunctive relief also could be factored into the calculus of determining the amount in controversy"). In sum, based on an alleged class period that runs from January 22, 2016 to the present, the \$5 million amount in controversy standard is easily met.

Accordingly, the Court has original jurisdiction over this action under CAFA pursuant to 28 U.S.C. §§ 1332(d), 1453 and this case may be removed to this Court pursuant to 28 U.S.C. § 1441(a).

III. VENUE

Plaintiffs' lawsuit is pending in state court in Palm Beach County, which is within this judicial district and division. *See* 28 U.S.C. § 89(c). Therefore, this Court is the proper venue for removal under 28 U.S.C. §§ 1441(a), 1446(a).

¹ SharkBite water heater connectors currently sold at Home Depot range in price from approximately \$11 to \$30. *See* <https://www.homedepot.com/s/sharkbite%2520water%2520heater%2520connector?NCNI-5> (last accessed April 28, 2020). While it is not yet clear which specific connectors or part numbers are at issue in the Complaint, this public information further supports the conclusion that this case easily meets the \$5 million amount in controversy standard.

IV. TIMELINESS

RWC was served on April 9, 2020 and is filing this Notice within thirty (30) days from the date that the Complaint was served on it. Accordingly, this Notice of Removal is timely filed. *See* 28 U.S.C. § 1446(b).

V. CONSENT

A class action “may be removed [under CAFA] by any defendant without the consent of all defendants.” *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1196 (11th Cir. 2007) (quoting 28 U.S.C. § 1453(b)). In any event, counsel for RWC has conferred with counsel for Home Depot and is authorized to represent that Home Depot consents to the removal of this action.

VI. NOTICE

As required by 28 U.S.C. § 1446(d), RWC will serve written notice of this Notice of Removal on Plaintiffs and Home Depot, and RWC will file a copy of this Notice of Removal with the clerk of the Circuit Court.

CONCLUSION

For the foregoing reasons, Defendant Reliance Worldwide Corporation respectfully requests that this action, previously pending in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, be removed to this Court, and that this Court proceed as if this case had been originally initiated in this Court.

Dated: April 29, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2020, I electronically filed the foregoing with the Clerk of Court, using CM/ECF. I also certify that the foregoing document was served on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF, or via other means if required.

/s/ David A. Coulson
DAVID A. COULSON