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SCOPELY, INC.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**VERNON ACKIES (INDIVIDUALLY AND
ON BEHALF OF ALL SIMILARLY
SITUATED),**

Plaintiff,

v.

SCOPELY, INC.,

Defendant.

Civil Action No. _____

(State Court Docket No. L 6946-19)

NOTICE OF REMOVAL

Document Electronically Filed

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant Scopely, Inc. (“Scopely”), by and through its undersigned attorneys, hereby removes this action from the Superior Court of New Jersey, Law Division, Essex County, to the United States District Court for the District of New Jersey. The grounds for removal are as follows:

I. LOCAL CIVIL RULE 10.1 STATEMENT

1. Plaintiff Vernon Ackies (“Plaintiff”) is an individual who alleges that he resides at 120 Rutgers Street, Apt. E6, Belleville, New Jersey, in Essex County, New Jersey. **Exhibit 1 ¶ 5.**

Plaintiff is represented in this action by Bob Kasolas and Michael E. Critchley, Brach Eichler LLC, 101 Eisenhower Parkway, Roseland, New Jersey 07068. *See id.* ¶¶ 5, 7. Scopely is a Delaware corporation with its principal place of business at 3530 Hayden Avenue, Culver City, California 90232. Scopely is represented in this action by Jeffrey J. Greenbaum and Charles J. Falletta, Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102-5400 and Jennifer L. Kelly, Ryan Tyz, and Ciara N. McHale, Tyz Law Group PC, 4 Embarcadero Center, Suite 1400, San Francisco, California, 94111.

II. PROCEDURAL HISTORY, VENUE, AND TIMELINESS

2. On September 23, 2019, Plaintiff Vernon Ackies, individually and on behalf of all others similarly situated, filed his original class action complaint in the Superior Court of New Jersey, Law Division, Essex County, styled *Vernon Ackies (Individuall [sic] and on behalf of all similarly situated) v. Scopely, Inc.*, Docket No. L 6946-19 (“Original Complaint”). **Exhibit 2** is a copy of the Original Complaint, which Scopely incorporates herein by reference. On September 25, 2019, Scopely received a copy of the Original Complaint through an authorized agent for service of process. **Exhibit 3** is a copy of the Track Assignment Notice that the state court issued on September 24, 2019.

3. On October 7, 2019, Plaintiff filed a First Amended Class Action Complaint (“FAC”), attached as **Exhibit 1** and incorporated herein by reference.

4. This action was filed in Essex County, which is embraced by the United States District Court for the District of New Jersey. This action is therefore subject to removal to this District. *See* 28 U.S.C. §§ 1391(b)(2) and 1441(a).

5. Pursuant to 28 U.S.C. § 1446(d), Scopely will promptly serve a copy of this notice of removal on counsel for Plaintiff and file it with the Clerk of the Superior Court of New Jersey, Law Division, Essex, as an exhibit to a notice of filing of notice of removal.

6. This notice of removal is timely because Scopely has filed it within 30 days of Scopely’s receipt of the Original Complaint through service of process on September 25, 2019. 28 U.S.C. § 1446(b).

III. SUMMARY OF ALLEGATIONS OF THE FIRST AMENDED COMPLAINT

7. The FAC asserts claims against Scopely for violation of the New Jersey Consumer Fraud Act (“CFA”), N.J.S.A. 56:8-1 *et. seq.*; Breach of Contract; Breach of the Implied Covenant of Good Faith and Fair Dealing; Conversion, Unjust Enrichment; and Legal Fraud arising from Scopely’s offering of its mobile game, *Star Trek Fleet Command*. FAC ¶¶ 62-88.

8. The FAC alleges a class consisting of “all similarly situated persons who have been subjected to Scopely’s fraudulent and deceptive conduct in [*Star Trek Fleet Command*].” *Id.* at ¶ 51. The FAC seeks “compensatory, punitive, actual and treble damages, attorneys’ fees and costs, and injunctive relief.” *See id.* ¶ 4.

IV. GROUNDS FOR REMOVAL JURISDICTION

9. This is a putative class action over which this Court has subject matter jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”), codified at 28 U.S.C. §§ 1332(d), 1446 and 1453.

10. CAFA defines a class action as “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by one or more representative persons as a class action.” *See* 28 U.S.C. § 1332(d)(1)(B), 1453(a). The FAC falls within this definition. Removal under CAFA is proper because diversity exists between at least one putative class member and Scopely; the FAC alleges a putative class consisting of more than 100 members; and the amount placed in controversy by the claims of the named Plaintiff and the proposed class members purports to exceed the sum or value of \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d).

11. **Diversity of Citizenship.** Under CAFA, sufficient diversity of citizenship exists where “any member of a class of plaintiffs is a citizen of a State different from any defendant.” *See* 28 U.S.C. § 1332(d)(2)(A). Plaintiff alleges that he is a citizen of New Jersey, residing in Essex County, New Jersey, and he brings this action on behalf of a purported class consisting of “all similarly situated persons.” *See* FAC ¶¶ 4–5, 51. Scopely is a Delaware corporation with its principal place of business located in Los Angeles County, California and is therefore deemed a

citizen of Delaware and California under 28 U.S.C. § 1332(c). *Id.* at ¶ 6; 28 U.S.C. § 1332(c). This action therefore meets CAFA’s diversity requirement because Plaintiff is a citizen of a state different from Scopely.

12. **Number of Class Members.** Plaintiff purports to bring this action pursuant to Rule 4:32-1 of the New Jersey Court Rules and estimates the proposed class to be “in the hundreds, if not thousands.” FAC ¶ 51. Based on these and other allegations, the aggregate number of class members in Plaintiff’s proposed class is at least 100 and therefore satisfies 28 U.S.C. § 1332(d)(5).

13. **Amount in Controversy.** Under CAFA, a district court aggregates the claims of individual class members to determine if the amount in controversy exceeds the required “sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. §§ 1332(d)(2), (d)(6); *see Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014) (“a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold” and does not require evidentiary submissions). The FAC appears to propose a nationwide class of all players of *Star Trek Fleet Command* who have made in-game purchases of virtual goods. FAC ¶ 52 (alleging “a class consisting of all similarly situated persons who have been subjected to Scopely’s fraudulent and deceptive conduct in [*Star Trek Fleet Command*]”); ¶ 54 (alleging without limitation that “all class members purchased virtual goods in [*Star Trek Fleet Command*] with real money” and then suffered “a decrease of the value of virtual goods . . . misrepresentation of the capabilities and benefits of the virtual goods, and loss of the virtual goods after their purchase through no fault of the player”). As of July 25, 2019, *Star Trek Fleet Command* had generated over \$100 million in revenue from in-game purchases of virtual goods. The majority of that revenue derives from players in the United States, all of whom the FAC purports to include in the proposed class (Plaintiff in fact appears to suggest there could be a global class, in the “hundreds, if not thousands,” attaching to the FAC a letter from a player in

Alberta, Canada. FAC ¶¶ 51-52; Ex. 1).¹ Accordingly, the amount in controversy, if Plaintiff obtains the relief he requests for himself and on behalf of the proposed class, exceeds the sum or value of \$5 million, exclusive of interest and costs, based on revenue attributable to in-game purchases by members of a purported nationwide class or even, in the alternative, based on revenue from in-game purchases by players in New Jersey alone, taken together with Plaintiff's allegations seeking treble and punitive damages and attorneys' fees. Specifically, in addition to actual, compensatory, and direct damages, Plaintiff seeks treble and punitive damages and attorneys' fees, which are properly included in calculating the amount in controversy. FAC ¶ 4; p. 21–22 (Prayer for Relief); *Frederico v. Home Depot*, 507 F.3d 188, 199 (3d Cir. 2007) (“Fees could be as much as thirty percent of the judgment”); *Grace v. T.G.I. Fridays, Inc.*, 2015 U.S. Dist. LEXIS 97408, at *20-*26 (D.N.J. July 27, 2015) (including treble damages and punitive damages in amount-in-controversy analysis and denying motion to remand); *Kendall v. CubeSmart L.P.*, No. CV-15-6098-FLW-LHG, 2015 WL 7306679, at *5 (D.N.J. Nov. 19, 2015). Removal is therefore proper because the amount in controversy as alleged by Plaintiff, if true, would exceed the amount required under CAFA.

V. RESERVATIONS

14. By filing this notice of removal, Scopely does not waive any defense that may be available to it and hereby expressly reserves all defenses, including the right to compel arbitration. Scopely disputes the FAC in its entirety, including all factual and legal allegations and prayers for relief. Scopely reserves the right to amend or supplement this notice of removal if needed.

WHEREFORE, Defendant Scopely respectfully gives notice of the removal of this action to the United States District Court for the District of New Jersey pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

¹ While Scopely disputes Plaintiff's ability to bring his claims on behalf of a nationwide class or establish any injury here (concerns that will be raised at the appropriate time), removal jurisdiction rests on the allegations in the FAC which, on its face, alleges injury to a nationwide class, thus giving rise to federal jurisdiction under CAFA.

Respectfully submitted,

By: /s/ Jeffrey J. Greenbaum

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SCOPELY, INC.

Dated: October 23, 2019