

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIAN CALLERY,	:
	:
Plaintiff,	:
	: No. 2:20-cv-3652
v.	:
	:
HOP ENERGY, LLC and DDM ENERGY,	: Removal from: The Court of Common Pleas of
	: Chester County, Docket No. 2020-03904-CT
Defendants.	:
	:

**NOTICE OF REMOVAL**

Defendants HOP Energy, LLC (“HOP Energy”) and DDM Energy (“DDM Energy”) (together, “Defendants”)<sup>1</sup> hereby file this Notice of Removal of the above-captioned matter from the Court of Common Pleas of Pennsylvania, Chester County, Docket No. 2020-03904-CT, pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446 and 1453. The grounds for removal are as follows:

1. On June 23, 2020, Plaintiff Brian Callery (“Callery” or “Plaintiff”), individually and on behalf of all persons similarly situated, filed a Summons and Complaint against Defendants in the Court of Common Pleas of Pennsylvania, Chester County, Docket No. 2020-03904-CT (“the State Court Action”). A true and correct copy of the Summons and Complaint is attached hereto as Exhibit “A”.

<sup>1</sup> As explained below, DDM Energy is not a legal entity and therefore is improperly named in this lawsuit as a separate party. Rather, HOP Energy does business in Pennsylvania under its registered fictitious name of DDM Energy. Accordingly, the proper designation of defendant in this action would be “HOP Energy, LLC d/b/a DDM Energy.” For purposes of this Notice of Removal only, DDM Energy is discussed as a party defendant to minimize confusion by mirroring the naming conventions utilized by Plaintiff in the Complaint. HOP Energy intends to confer with Plaintiff to correct this issue moving forward.

2. The Summons and Complaint were first received by Defendants on July 8, 2020. Therefore, removal of this action is timely pursuant to 28 U.S.C. § 1446(b).

3. This Court has original jurisdiction over the State Court Action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), *et seq.*, and 28 U.S.C. §§1441(a), 1446(b) and 1453(b), and therefore removal is appropriate.

4. In the Complaint, Plaintiff seeks to represent a putative class of “[a]ll persons who entered into contracts with Defendants for the delivery of heating oil to a residence, under terms including a capped pricing program and/or prevailing retail price for the price of the heating oil, and who received delivery of heating oil during the time period commencing six years before the filing date of [the State Court Action].” (*See* Compl. (Ex. “A”), at ¶ 15.)

5. Plaintiff estimates that the members of the class are “tens of thousands” of individuals. (*See id.* ¶ 18.) Accordingly, Plaintiff alleges the aggregate number of class members of the proposed plaintiff class is greater than 100 for purposes of 28 U.S.C. §1332(d)(5)(B).

6. Plaintiff Brian Callery is a natural person and, upon information and belief and according to the Complaint in the State Court Action, resides in, and is domiciled in, Coatesville, Pennsylvania. (*See* Compl. (Ex. “A”), at ¶ 1.) The other plaintiffs named in the Complaint, identified as “all persons similarly situated,” are merely putative class members.

7. Defendant HOP Energy is a foreign limited liability company. The sole member of HOP Energy is HOP Energy Holdings, Inc., a Delaware corporation, with its principal place of business located in White Plains, New York. Accordingly, HOP Energy is a citizen of Delaware and New York.

8. Defendant DDM Energy is a fictitious name registered in Pennsylvania and used by HOP Energy, LLC. Since DDM Energy is not a legal entity, but rather a fictitious name

under which HOP Energy legally does business in Pennsylvania, it is a citizen of Delaware and New York.

9. Accordingly, there is at least one plaintiff that is diverse from at least one defendant, as required by 28 U.S.C. § 1332(d)(2)(A) and other applicable law.

10. The citizenship of the parties has not changed between the commencement of this action and the filing of this notice.

11. Defendants provide residential and commercial energy services from Vermont to Delaware. As set forth in the Complaint, Plaintiff asserts claims for breach of contract, breach of covenant of good faith and fair dealing, fraud, violation of Pennsylvania Unfair Trade Practices and Consumer Protection Law, violation of New York Consumer Protection Law, and violation of other states' consumer protection laws.

12. According to the Complaint, under each cause of action Plaintiff seeks compensatory damages, which exceed \$50,000. Plaintiff also seeks punitive damages, including treble damages under consumer protection statutes, and attorneys' fees in an unspecified amount. Assuming for purposes of this Notice of Removal that Plaintiff's damages of \$50,000 represent the average amount of damages recoverable under the law, Plaintiff need only prevail on a class of 101. Given that Plaintiff has alleged a putative class of "tens of thousands" of individuals, it is more likely than not that the amount in controversy exceeds \$5,000,000 as required under 28 U.S.C. § 1332(d)(2).

13. Removal of the State Court Action is appropriate pursuant to 28 U.S.C. § 1332(d) because there exists minimal diversity between Plaintiff and Defendants, the amount in controversy exceeds the \$5,000,000 jurisdictional amount, and the putative class is over 100 members.

14. This Notice of Removal is being filed in the Eastern District of Pennsylvania, the district court of the United States for the district within which the State Court Action is pending, as required by 28 U.S.C. §§ 1446(a) and 1441(a).

15. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be given to Plaintiff and a copy of the Notice of Removal will be filed with the clerk of the Court of Common Pleas of Pennsylvania, Chester County.

Respectfully submitted,

/s/ Edward T. Butkovitz

Edward T. Butkovitz

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Dated: July 28, 2020

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