

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION**

Jamie Jackson and Trenton
McDonald, individually and on
behalf of all other similarly situated
current Illinois citizens,

Plaintiff,

v.

SFC Global Supply Chain, Inc.,

Defendant.

Civil Action No. _____

NOTICE OF REMOVAL

PLEASE TAKE NOTICE, that Defendant SFC Global Supply Chain, Inc., (“SFC” or “Defendant”), pursuant to 28 U.S.C. §§ 1332, 1446, & 1453, hereby removes the putative class action pending in the Circuit Court for the 20th Judicial Circuit, County of St. Clair, State of Illinois, Case No. 20-L-0678, to the United States District Court for the Southern District of Illinois. As grounds for removal, SFC respectfully states as follows:

THE REMOVED CASE

1. The removed case is a civil action commenced by the filing of a Complaint entitled, *Jamie Jackson and Trenton McDonald, individually and on behalf of all other similarly situated current Illinois citizens, v. SFC Global Supply Chain, Inc.*, Case No. 20-L-0678 (the “Removed Case”), on or about September 4, 2020. Plaintiffs Jackson and McDonald (“Plaintiffs”) served SFC Global Supply Chain,

Inc. with a Summons and Complaint via registered agent on September 17, 2020.

2. Plaintiffs, individually and allegedly on behalf of all other similarly situated Illinois citizens, purport to challenge SFC's labeling and product descriptions for several kinds of Red Baron®-brand frozen pizzas, specifically Red Baron's Brick Oven Cheese Trio Pizza, Classic Crust Four Cheese Pizza, and Thin and Crispy Five Cheese Pizza (the "Pizzas"). Plaintiffs allege that SFC's description that the Pizzas have "Preservative Free Crust" and "No Artificial Flavors" are false and misleading to consumers. (Complaint ¶¶ 1, 20-31.)

3. Plaintiffs' Complaint includes three counts.

a. In Count I of the Complaint, Plaintiffs allege that SFC violated the Illinois Consumer Fraud Act ("ICFA"), 815 Ill. Comp. Stat. Ann. 505/2.

b. In Count II, Plaintiffs allege Breach of Express Warranty.

c. In Count III, Plaintiffs allege Unjust Enrichment.

4. Plaintiffs' Prayer for Relief in the Removed Case requests class certification, damages, disgorgement, restitution, pre- and post-judgment interest, and attorney's fees. (*Id.* p. 13.)

5. There have been no proceedings before the State Court in connection with the Removed Case, and there has been no previous application made for the relief requested by this Notice of Removal.

PAPERS FROM THE REMOVED CASE

6. Pursuant to 28 U.S.C. §1446(a), copies of the following are attached to this Notice of Removal:

a. The complete file from the State Court, all summons and

return of summons (if any), process, pleadings and orders served upon SFC in the Removed Case, are attached hereto as **Exhibit A**.

b. The Civil Cover Sheet is attached hereto as **Exhibit B**.

GROUND FOR REMOVAL

I. Removal is Timely.

7. The Complaint in the Removed Case was served on SFC on or about September 17, 2020. (*See* Exhibit A (Summons).) Accordingly this Notice of Removal has been properly filed within thirty (30) days following the service of the Complaint, the initial pleading setting forth the claims for relief upon which this action is based, and is therefore timely under 28 U.S.C. § 1446(b).

II. The Court Has Jurisdiction over the Removed Case.

8. Removal of a state court action to federal court is proper when the district court possesses original jurisdiction. 28 U.S.C. § 1441(a). This Court has original diversity jurisdiction over the Removed Case under the Class Action Fairness Act (“CAFA”), 28 U.S.C. §§ 1332(d), 1453. As set forth below, the Removed Case is a civil action in which (a) SFC is a citizen of a different State than Plaintiffs and one or more members of the putative class, (b) the putative class consists of more than 100 members, and (c) the amount in controversy exceeds the sum or value of \$5,000,000. 28 U.S.C. § 1332(d).

9. A notice of removal need only provide “a short and plain statement of the grounds for removal.” 28 U.S.C. § 1446(a). The rule governing the content of a notice of removal, 28 U.S.C. § 1446, “[t]racks the general pleading requirements stated in [Fed. R. Civ. P.] 8(a),” and submission of proof is only

necessary if the allegations in the notice of removal are contested. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 553-54 (2014); *see also Roppo v. Travelers Commercial Ins. Co.*, 869 F.3d 568, 579 (7th Cir. 2017)(same). The requirements for removal are satisfied here.

A. Minimal Diversity Is Satisfied.

10. Original jurisdiction under CAFA exists when the parties in a class action are minimally diverse, including when “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).

11. **SFC:** For purposes of diversity jurisdiction, corporations are deemed to be citizens of their state of incorporation and the location of their principal place of business. 28 U.S.C. § 1332(c). SFC is a Minnesota corporation with its principal place of business in Marshall, Minnesota. (Complaint ¶ 12.)

12. **Plaintiffs:** Plaintiffs allege in their Complaint that each is an “Illinois citizen” residing in the St. Clair County, Illinois. (*Id.* ¶¶ 10-11)

13. **The Proposed Class:** Plaintiffs seek to represent a class of all current Illinois citizens who purchased any of the Pizzas for personal, family, or household purposes in the five years preceding the filing of the Complaint. (*Id.* ¶ 32.)

14. The minimal diversity requirements of CAFA are satisfied, and in fact complete diversity exists, because SFC is a citizen of Minnesota and Plaintiffs and members of the putative class are citizens of Illinois.

15. SFC is not a citizen of the State in which the action was originally filed. *See* 28 U.S.C. § 1332(d)(4)(A)(i)(II)(cc).

B. The Removed Case Purports to Be Brought on behalf of a Class with at least 100 Members.

16. Plaintiffs purport to bring the Removed Case on behalf of “all similarly situated Illinois citizens,” defined to include citizens that purchased any of the Pizzas over the last five years. (Complaint p. 1 & ¶ 32.)

17. Plaintiffs allege that the “Class consists of hundreds of purchasers.” (*Id.* ¶ 34.) In fact, according to retail sales data available to SFC, retail outlets located in Illinois sold over 4.4 million Pizzas during the 5-year period from September 2015 to August 2020.

18. By any reasonable estimate, the proposed class includes at least tens of thousands of members, easily satisfying CAFA’s jurisdictional requirement of at least 100 members.

C. The Removed Case Satisfies the CAFA Threshold Amount in Controversy.

19. As required by 28 U.S.C. § 1332(d)(2), the amount in controversy in the Removed Case exceeds the sum or value of \$5,000,000, taking into account damages and attorney’s fees, exclusive of interest and costs.

20. “The party seeking removal does not need to establish what damages the plaintiff will recover, but only how much is *in controversy* between the parties.” *Roppo*, 869 F.3d at 579 (emphasis in original) (ultimately concluding that “[b]ased on the[] allegations and evidence, a fact-finder *might* conceivably lawfully award in excess of \$5 million dollars”) (emphasis in original) (internal quotation omitted)).

21. Plaintiffs conspicuously drafted their Complaint to attempt to avoid removal by attempting to reduce the amount in controversy below the jurisdictional minimum:

- a. First, Plaintiffs allege that the value of each class member's individual damages claim is, at most, the purchase price they paid for the Pizzas, which Plaintiffs allege were sold for \$3.99 each. (Complaint ¶¶ 10 & 14.)
- b. Second, Plaintiffs make a conclusory allegation that because their individual claims are typical of all class members, the total damages, inclusive of costs and attorneys' fees, are "far less than the five million dollar (\$5,000,000) minimum threshold to create federal jurisdiction [under CAFA]." (*Id.* ¶ 15).
- c. Third, although claimants under the Illinois Consumer Fraud Act may be entitled to punitive damages under 815 ILCS 505/10a(a), in a continued attempt to plead around federal jurisdiction Plaintiffs further allege that neither they nor the proposed class members will seek punitive damages or statutory penalties. (*Id.* ¶ 19).
- d. Plaintiffs go on to conclude that there "is therefore no CAFA jurisdiction for this case." (*Id.* ¶ 15 (emphasis added).)

22. As stated above, Plaintiffs seek up to a full refund of the purchase price on behalf of all Illinois citizens who purchased Pizzas for personal or household use from September 5, 2015 to September 4, 2020. (Complaint ¶ 14, 32.) Plaintiffs allege that that the purchase price for the Pizza each bought was \$3.99 and that the "value of Plaintiffs' claims is typical of all class members with respect to the value of the claim." (*Id.* ¶¶ 10-11, 14.) During the September 2015

to August 2020 period, retail outlets located in Illinois sold 4,400,517 Pizzas to consumers. A full refund of the alleged \$3.99 purchase price for 4,400,517 Pizzas sold to Illinois retailers during the five-year period, which is a reasonable estimate of the volume purchased by the putative class, would result in refund damages of \$17,558,062, exceeding the jurisdictional minimum.

23. Alternatively, the retail sales data shows that the actual Illinois sales volume of the Red Baron Pizzas between September 1, 2015 and August 30, 2020 was \$15,550,359.

24. In addition, both pre-removal statutory attorneys' fees and punitive damages count toward the jurisdictional minimum for diversity jurisdiction. *See, e.g. Oshana v. Coca-Cola Co.*, 472 F.3d 506, 512 (7th Cir. 2006).

25. Here, Plaintiffs assert a claim and seek attorneys' fees under the ICFA, 815 ILCS 505/10a(c), under which the Court "may award . . . reasonable attorney's fees and costs to the prevailing party." 815 ILCS 505/10a(c).

26. The possibility of punitive damages, which the Court has discretion to award under the ICFA, 815 ILCS 505/10a(a), only adds to the already sufficient amount in controversy, despite Plaintiffs' efforts to disclaim such damages on behalf of the putative class. The Seventh Circuit has held that a putative class representative asserting an ICFA claim cannot avoid removal by disclaiming punitive damages in the complaint. "A statement that [the plaintiff] does not 'now' want punitive damages would not prevent a change of mind." *Back Doctors Ltd. v. Metro. Prop. & Cas. Ins. Co.*, 637 F.3d 827, 831 (7th Cir. 2011). If doing so were permitted, an unscrupulous plaintiff might "return[] to state court and after the time had passed for removal, *see* 28 U.S.C. § 1446(b), amend[] her

complaint to seek punitive damages.” *Oshana*, 472 F.3d at 512–13. It is thus not improper to consider the possibility of punitive damages despite Plaintiffs’ disclaimer in light of the fact that they are available under the statute. *Back Doctors*, 637 F.3d at 831.

27. Courts in Illinois have affirmed punitive damages awards for violations of the ICFA that reflect multiples more than five times the plaintiffs’ actual damages. *See, e.g., Gehrett v. Chrysler Corp.*, 882 N.E.2d 1102 (Ill. 2008) (multiplier of seven); *Bates v. William Chevrolet/GEO, Inc.*, 785 N.E.2d 53 (Ill. 2003) (same). The Seventh Circuit has specifically approved the use of a five-times multiplier for purposes of calculating CAFA jurisdiction with regard to ICFA claims. *Keeling v. Esurance Ins. Co.*, 660 F.3d 273, 275 (7th Cir. 2011). Under that standard, the amount in controversy would exceed \$75,000,000, more than fifteen times the jurisdictional minimum.

28. Because the requirements for this Court’s original jurisdiction are satisfied, removal of this action is proper.

III. Venue Is Proper in this District.

29. Venue in this Court and this District is proper under 28 U.S.C. § 1404(a) because this Court is the Federal Court for the District and Division corresponding to the Circuit Court for the 20th Judicial Circuit, St. Clair County, Illinois, where the Removed Case is pending.

FILING OF REMOVAL PAPERS

30. Pursuant to 28 U.S.C. § 1446(d), written notice of removal of the Removed Case is being given simultaneously to Plaintiffs’ counsel, and a Notice

of Filing Notice of Removal is being filed with the State Court. SFC will file copies of the aforementioned Notices in this Court upon serving the same upon Plaintiffs' counsel and the State Court.

31. By removing this Action, SFC does not waive any rights or defenses available under federal or state law. SFC also does not waive, and expressly reserves, any arguments in opposition to class certification and all arguments and defenses supporting dismissal of the complaint in the Removed Case under Rule 12 of the Federal Rules of Civil Procedure or any similar Illinois Rule or statute, to the extent removal is denied. Similarly, the statements in this Notice should not be construed as an admission that Plaintiffs' allegations have any merit or are sufficient to state a claim, nor should it be deemed an admission of liability and/or that Plaintiffs or any other putative class members have been damaged or are entitled to any payment.

WHEREFORE Defendant SFC Global Supply Chain, Inc. hereby removes this case to the United States District Court for the Southern District of Illinois; requests that no further proceedings be had in the Circuit Court for the 20th Judicial Circuit, St. Clair County, Illinois; and, further, requests that this Court grant such other and further relief as it deems just and proper.

Respectfully submitted,

DATED: October 12, 2020 By: /s/ Michael L. Jente

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