

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

(1)HAROLD MILHISLER, husband, and
(2)ELIZABETH MILHISLER, wife,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

(1)GLOBAL CLIENT SOLUTIONS, LLC, an
Oklahoma limited liability company; (2)GHS
SOLUTIONS, LLC, a Florida Limited
Liability Company; (3)ROCKY MOUNTAIN
BANK & TRUST, a Colorado financial
institution; (4)BANK OF OKLAHOMA, N.A.;
and (5)JOHN AND JANE DOES A-M,

Defendants.

CASE NO.

NOTICE OF REMOVAL

Pursuant to L.R. 81.2, 28 U.S.C. §§ 1441, 1446, and the Class Action Fairness Act of 2005 (“CAFA”), as codified in 28 U.S.C. §§ 1332(d) and 1453, with full reservation of all defenses, Defendants Global Client Solutions, LLC (“Global”) and Rocky Mountain Bank & Trust (“RMBT”) (collectively “Removing Defendants”) hereby remove this action from the District Court of Oklahoma County, State of Oklahoma to the United States District Court for the Western District of Oklahoma. In support of this Notice of Removal, Removing Defendants state the following:

Basis for Jurisdiction

1. This Court has jurisdiction over this removed action pursuant to 28 U.S.C. §§ 1332(d), 1441 and 1453. This action for monetary relief could have been filed

originally in this Court pursuant to 28 U.S.C. § 1332(d)(2) because it is a putative class action wherein at least one Plaintiff is a citizen of a State different from at least one Defendant, and the amount in controversy exceeds \$5,000,000 in the aggregate.

Background

2. On July 6, 2011, Plaintiffs filed their class action complaint (“Class Action Complaint”) against Defendants in the District Court of Oklahoma County, State of Oklahoma and with the above caption. The six-count Class Action Complaint arises out of Plaintiffs’ alleged purchase of debt reduction services from defendant GHS Solutions, LLC (“GHS”). Plaintiffs seek to represent a class of Oklahoma residents within the applicable limitations period that retained Defendants “to establish, maintain, and/or manage a debt settlement account.” (Compl., Class Allegations, ¶ 1) (the Class Action Complaint is attached hereto as Exhibit “A”).

This Case is a “Class Action” under CAFA

3. This case is a putative “class action” as defined by 28 U.S.C. § 1332(d)(1)(B). (Compl., Class Allegations, ¶¶ 1-10). According to 28 U.S.C. § 1332(d)(1)(B), the term “class action” means 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 (1) or more representative persons as a class action.

4. According to the Class Action Complaint, Plaintiffs allege that class certification is appropriate pursuant to Oklahoma’s procedural rule authorizing an action

to be brought by one (1) or more representative persons as a class action. Accordingly, this action classifies as a class action under by 28 U.S.C. § 1332(d)(1)(B).

The CAFA Requirements are Met

5. Federal district courts have original jurisdiction over any purported class action in which (i) any member of a class of plaintiffs are citizens of a State different from any defendant and (ii) the amount in controversy exceeds \$5,000,000 in the aggregate. *See* 28 U.S.C. § 1332(d)(2). Each of these requirements is satisfied in this case.

Diversity Requirement.

6. The diversity requirement is met here.

a. **Citizenship of Plaintiffs.** Plaintiffs, the proposed class representatives, are residents of Oklahoma County, Oklahoma. (Compl. ¶ 1).

b. **Citizenship of Defendants.**

1) Global is an Oklahoma limited liability company with its principal place in Tulsa, Oklahoma. (Compl. ¶ 2)

2) GHS is a Florida limited liability company with its principal place of business in Delray Beach, Florida. (Compl. ¶ 3).

3) RMBT is a financial institution organized under the laws of Colorado with its principal place of business in Florence, Colorado. (Compl. ¶ 4).

4) Bank of Oklahoma (“BOK”) is a financial institution organized under the laws of Oklahoma with its principal place of business in Tulsa, Oklahoma. (Compl. ¶ 5).

Consequently, Plaintiffs, the purported class representatives, are citizens of a state different from at least one Defendant. Specifically, Plaintiffs, citizens of Oklahoma, are diverse from GHS and RMBT, which are Florida and Colorado entities respectively. Thus, because at least one Plaintiff and one Defendant are citizens from different states, the diversity requirement is met.¹

Amount in Controversy.

7. Because Plaintiffs did not plead a specific amount of damages, Defendants bear the burden of proving that the amount in controversy exceeds the jurisdictional threshold by a preponderance of the evidence.² Based on the factual allegations of the Class Action Complaint and the Notice of Removal, construed as true for the purposes of assessing removal jurisdiction, the amount in controversy exceeds \$5,000,000, exclusive of interests and costs. *See* 28 U.S.C. § 1332(d)(2).³

8. In Count III, the Class Action Complaint seeks damages, *inter alia*, for each class member based on certain alleged violations of the Oklahoma Consumer Protection Act pursuant to 15 Okl.St. Ann. § 750 (Compl. ¶¶ 40-52). More specifically, Plaintiffs seek actual damages, punitive damages, attorneys' fees and injunctive relief. (Compl., Demand for Relief ¶¶ b) - d), f)).

1. *See Johnson v. Service Corp. Intern.*, No. CIV-10-1368-C, 2011 WL 1219340, *1 (W.D.Okla., March 31, 2011) ("...minimal diversity of jurisdiction of citizenship between the parties, meaning at least one Plaintiffs' and one defendant must be citizens of different states"). (citing 28 U.S.C. § 1332(d)(2)(A)).

2. *See Green v. Harsco Corp.*, No. 99-5139, 2000 WL 745353, at *3 (10th Cir. May 25, 2000) (citations omitted).

3. *See Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir.1995) (For removal to be proper, the defendant must set forth facts supporting the assertion that the amount in controversy is satisfied).

9. Assuming Plaintiffs' claims are representative of the class they purport to represent (*See* Compl. Class Allegations, ¶¶ 1, 5 & 8), the amount in controversy exceeds CAFA's jurisdictional threshold by a preponderance of the evidence. According to Plaintiffs' bank account statement which identifies the transfers they made in conjunction with your program with GHS ("Account Statement"), Plaintiffs paid GHS \$7,891.63 and Global \$215.56 for a total of \$8,107.19. (See the Declaration of Brent Hampton attached hereto as Exhibit "B", ¶ 3, Ex. 1). Plaintiffs' alleged actual damages, at a minimum, include the fees paid for Removing Defendants' services.

10. Plaintiffs also seek punitive damages in the Class Action Complaint. *See* (Compl., Demand for Relief, sub. d)). It is permissible for Plaintiffs' claim of punitive damages to be included towards the jurisdictional amount.⁴ Should the Court award punitive damages with a two (2) to one (1) punitive to actual damages ratio, such damages would amount to \$16,214.38 per class member.

11. Adding both the estimated actual and punitive damages here, this amount totals \$24,321.57. From the limitations period specified in the Class Action Complaint to the present, the joint-clients of GHS and Global in Oklahoma exceed two-hundred six (206). (*See* Hampton Decl, ¶ 4).

12. Multiplying the conservative estimate of actual and punitive damages set forth in this Notice (\$24,321.57) by two-hundred six (206), or the prospective class

⁴ *See, e.g., Burrell v. Burrell*, 229 F.3d 1162, 2000 WL 1113702, at *2, (10th Cir.2000); *Byte v. Am. Commerce Ins. Co.*, No. CIV-09-365, 2009 WL 3839419, *1 (E.D.Okla. Nov. 16, 2009) ("The Plaintiff also seeks unspecified punitive damages, which are included in determining the amount in controversy.")

members, this total equals \$5,010,243.42, which is above the jurisdictional threshold of CAFA.

13. Moreover, Plaintiffs seek their attorneys' fees from Defendants which a court may award pursuant to Oklahoma's Consumer Protection Act, 15 Okl.St. Ann. § 761.1. (Compl., Demand for Relief, sub. f)). And when calculating the amount in controversy, courts may include an attorneys' fees award in the jurisdictional calculation.⁵ Even though Removing Defendants have already demonstrated that the amount in controversy exceeds the jurisdictional threshold of this Court, the fact that attorneys' fees are awardable in an Oklahoma Consumer Protection Act claim further exemplifies that removal is proper.

14. Particularly, whereas here, Plaintiffs filed this claim as a class action and attorneys' fees of \$10,000.00 may be awarded per alleged statutory violation of the Oklahoma Consumer Protection Act,⁶ the amount in controversy is significantly increased by a prospective attorneys' fee award.

15. Accordingly, Removing Defendants undoubtedly meet the jurisdictional requirement set forth in CAFA.⁷

5. *Humphreys v. Fuselier*, No. 97-5019124 F.3d 216 (Table), * 2, F.N. 3 (10th Cir., September 18, 1997 (statutorily-allowed attorney fees may be considered in determining the amount in controversy)).

6. See 15 Okl.St. Ann. § 761.1(c).

7. Of course Removing Defendants do not admit that Plaintiffs are appropriate class representatives or that Plaintiffs or the class they seek to represent would be entitled to damages that meet or exceed \$5,000,000, but that is not the standard. *McPhail v. Deere & Co.*, 529 F.3d 947, 956 (10th Cir. 2008) ("The amount in controversy is not proof of the amount the plaintiff

No Exceptions to Diversity Jurisdiction Apply

16. Furthermore, diversity jurisdiction exists and removal is proper because the exceptions set forth in 28 U.S.C. § 1332(d)(4)(A) & (B) do not apply.

Pleadings and Process.

17. As required by 28 U.S.C. § 1446(a), Removing Defendants have attached copies of all state court process and pleadings to this Notice of Removal. *See* Composite Exhibit “C”. Further, as required by L.R. 81.2(a), a copy of the District Court of Oklahoma County, State of Oklahoma’s docket for this case as of the date of this filing is attached Exhibit “D”.

Notice Given.

18. Written notice of the filing of the Notice of Removal will be promptly served on Plaintiffs’ counsel, and a copy will be promptly filed with the Clerk of the District Court of Oklahoma County, State of Oklahoma pursuant to 28 U.S.C. § 1446(d). A copy of the Notice of Filing of Notice of Removal to Federal Court is attached as Exhibit “E”.

Removal is Timely Filed.

19. This Notice has been timely filed within thirty (30) days of the dates in which Plaintiffs served Removing Defendants with the process of this claim and within one year after commencement of the action as allowed by 28 U.S.C. § 1446(b). RMBT and Global were served on August 8, 2011 and August 10, 2011 respectively. Pursuant to

will recover. Rather, it is an estimate of the amount that will be put at issue in the course of the litigation.”).

28 U.S.C. § 1446(b), Removing Defendants timely file this Notice and within thirty (30) days of August 8, 2011.

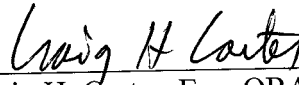
Venue.

20. Venue in this district is proper pursuant to 28 U.S.C. § 1446(a) because this action is currently pending in the District Court of Oklahoma County, State of Oklahoma which lies in the United States District Court for the Western District of Oklahoma.

Non-Waiver of Defenses.

21. Nothing in this Notice shall be interpreted as a waiver or relinquishment of Removing Defendants' right to assert any defense or affirmative matter, including without limitation, a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

ACCORDINGLY, this Court has jurisdiction over this matter, pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453, and Removing Defendants hereby remove this action from the District Court of Oklahoma County, State of Oklahoma to this Court.



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