

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KAREN L. MANCZAK, on behalf of herself,)
and all others similarly situated,)
)
Plaintiff,)
)
v.)
)
GLOBAL CLIENT SOLUTIONS, LLC, an)
Oklahoma limited liability company; GLOBAL)
HOLDINGS, LLC, an Oklahoma limited)
liability company; and DOES 1-10, inclusive,)
)
Defendants.)

NOTICE OF REMOVAL

Defendants Global Client Solutions, LLC (“Global”) and Global Holdings, LLC (“Global Holdings”) (collectively “Defendants”), pursuant to 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, by its counsel, and with full reservation of all defenses and objections, respectfully remove this action from the Circuit Court of Cook County, Chancery Division to the United States District Court for the Northern District of Illinois, Eastern Division. In support of this Notice of Removal, Defendants state the following:

I. 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. Indeed, both primary

Defendants here are citizens of another state, and the matter in controversy exceeds \$5,000,000 in the aggregate.¹

II. Background

2. On September 28, 2011, Plaintiff filed a Class Action Complaint (the “Complaint”) against Defendants in the Circuit Court of Cook County, Chancery Division, bearing the above caption and case number 11 CH 33932 (the “State Court Action”).²

3. Defendants were served with the Summons and Complaint on October 11, 2011. Thus, this Notice of Removal is timely under 28 U.S.C. § 1446(b).

4. Copies of all process, pleadings, orders and other documents served upon Defendants and/or filed in the State Court Action are attached hereto collectively as incorporated by reference as **Exhibit A**.

5. The three claims asserted in the Complaint relate to the contracted for bank account processing services Global provided to Plaintiff and members of the putative class. Specifically, Plaintiff alleges that Defendants violated the Illinois Debt Settlement Act (“IDSA”), the Illinois Consumer Fraud and Unfair Business Practices Act (“ICFA”) and participated in a Civil Conspiracy. (*See* Compl. at ¶¶ 75-96). Plaintiff also seeks a declaration that her contract

1. 28 U.S.C. § 1332(d)(6) (“[T]he claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.”)

2. Prior to filing her State Court Action, on September 6, 2011, Plaintiff filed an action in the United State District Court for the Northern District of Illinois, Eastern Division, styled as *KAREN L. MANCZAK, on behalf of herself, and all others similarly situated v. GLOBAL CLIENT SOLUTIONS, LLC, an Oklahoma limited liability company, GLOBAL HOLDINGS, LLC, an Oklahoma limited liability company; and DOES 1-10, inclusive* (Case No.: 1-11-cv-06177), Judge Gary Feinerman presiding. (Doc. 1). On September 9, 2011, the court *sua sponte* entered a Notification of Docket Entry (Doc. 3) for Plaintiff to show cause why the case should not be dismissed for lack of subject matter jurisdiction. On September 12, 2011, Plaintiff filed a jurisdictional addendum to the complaint (Doc. 4). On September 27, 2011, the court entered a second Notification of Docket Entry (Doc. 10) advising that Plaintiff’s addendum did not resolve the jurisdictional issue, but provided Plaintiff with an opportunity to supplement the addendum. On September 28, 2011, Plaintiff voluntarily dismissed Case No.: 1-11-cv-06177 (Doc. 11).

with Global (as well as those of the putative class members) is “null and void *ab initio*” (Compl. ¶¶ 63-74; Wherefore clause p. 13). Plaintiff requests damages that include the return of all fees Plaintiff and the putative class paid, punitive damages equal to three (3) times the amount paid, and attorneys’ fees and costs. (Compl. Wherefore Clause at p. 14 ¶¶ A-C).

6. Plaintiff seeks to certify a class of “[a]ll consumers residing in Illinois (the ‘Illinois Consumers’) who entered into a debt settlement agreement or contract with Defendants from August 4, 2010.” (Compl. at ¶ 54).

III. This Case is a “Class Action” under CAFA

7. This case is a putative “class action” as defined by 28 U.S.C. § 1332(d)(1)(B) (Compl. at ¶¶ 54-62). 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 or more representative persons as a class action.”

8. According to the Complaint, Plaintiff alleges that class certification is appropriate pursuant to Illinois Code of Civil Procedure 735 ILCS 5/2–801 which is Illinois’s rule authorizing an action to be brought by one or more representative persons as a class action.

9. Accordingly, this action classifies as a class action under 28 U.S.C. § 1332(d)(1)(B).

IV. The CAFA Requirements are Met

10. Federal district courts have original jurisdiction over any “civil action in which the matter in controversy exceeds the sum or value \$5,000,000, exclusive of interests and costs, and is a class action in which – (A) 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). Section 1332(d) supplies jurisdiction even if the district judge decides not to certify the proposed class.³

11. Each of these Section 1332(d) requirements is satisfied in this case.⁴

A. The matter in Controversy exceeds \$5,000,000

12. Based on the factual allegations of the Complaint and the Notice of Removal, construed as true for the purposes of assessing removal jurisdiction, the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs. *See* 28 U.S.C. § 1332(d)(2). The Complaint seeks damages for Plaintiff and each class member based on purported violations of IDSA, which allegedly constitute violations of the ICFA.⁵ According to the ICFA, Plaintiff and the putative class may obtain actual and punitive damages. *See* 815 ILCS 505/10a(a). Here, Plaintiff expressly seeks, among other relief, actual and punitive damages. (*See, e.g.*, Compl. at Wherefore Clause ¶¶ A and B.)

13. With respect to actual damages, Plaintiff seeks “settlement fees, charges, and other payments.” (*See, e.g.*, Compl. at Wherefore clause p. 14.) According to Global’s records, for the class period Plaintiff identifies, or from August 4, 2010 to the present (*see* Compl. at ¶54), Plaintiff and members of the putative class paid maintenance and transaction fees in connection with their individual bank accounts, which Global serviced, in the amount of \$1,494,807.38 during the relevant time period through October 27, 2011. (*See* Declaration of Brent Hampton at ¶ 3, a copy of which is attached hereto and incorporated by reference as **Exhibit B.**)

3. *Cunningham Charter Corp. v. Learjet, Inc.*, 592 F.3d 805 (7th Cir.2010).

4. The rule of unanimity, which requires the consent of all properly served defendants in the Notice of Removal, is suspended in cases where the Class Action Fairness Act applies. *See* 28 U.S.C. § 1453(b); *Springman v. AIG Mktg., Inc.*, No. 07-737-GPM, 2007 WL 3406927, at *3 (S.D. Ill. Nov.14, 2007).

5. Section 255 of the IDSA provides that a violation of the IDSA constitutes a violation of the ICFA. *See* 225 ILCS 429/155.

14. With respect to Plaintiff's request for punitive damages, which can be considered as a portion of the matter in controversy, the Seventh Circuit requires a two-step inquiry. First, the court must first determine whether punitive damages are recoverable under state law.⁶ Here, punitive damages are available under the ICFA.⁷ Second, "[i]f punitive damages are available, subject matter jurisdiction exists unless it is 'legally certain' that the plaintiff will be unable to recover the requisite jurisdictional amount."⁸ As discussed below, and given the amount of actual damages potentially recoverable plus the possibility of a punitive damages award, it cannot be said that plaintiff will be unable to potentially recover the requisite jurisdictional amount.

15. In the Complaint, Plaintiff seeks punitive damages in the amount of three times the fees Global received from the putative class. (*See* Compl. at Wherefore Clause ¶ B.) In *LM Ins. Corp. v. Spaulding Enterprises Inc.*, the Seventh Circuit recognized that the threshold ratio of 4 to 1 "might be close to the line of constitutional impropriety."⁹ Here, in contrast, Plaintiff expressly seeks a 3 to 1 punitive award, below the threshold. By multiplying the alleged actual damages (\$1,494,807.38) by three, the prospective punitive award equals \$4,484,422.14. The prospective punitive award (\$4,484,422.14) plus the alleged actual damages (\$1,494,807.38) equals \$5,979,229.52. This total well exceeds the jurisdictional threshold of \$5,000,000.00.

6. *Cantu v. Ken Nelson Auto Mall, Inc.*, 2010 WL 3882482 *3 (N.D. Ill. Sep 29, 2010) (citing *LM Ins. Corp. v. Spaulding Enterprises Inc.*, 533 F.3d 542, 551 (7th Cir. 2008) (citations omitted)).

7. *See Cantu v. Ken Nelson Auto Mall*, No. 09 C 50256, 2010 WL 3882482, at *2 (N.D. Ill. Sep 29, 2010).

8. *LM Ins. Corp.*, 533 F. 3d at 551 (citations omitted).

9. *Id.* at 552 (citing to *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003)).

Because Plaintiff cannot argue that it is “legally certain” that she will be unable to recover the requisite jurisdictional amount, removal is proper here.¹⁰

16. Additionally, Plaintiff seeks a declaratory judgment that her contract with Global, as well as the contracts of the putative class members, be declared “void *ab initio*.” (See Compl. at ¶ 74(A).) In a declaratory judgment action, the Seventh Circuit has held that the amount in controversy is measured by the value of the “object of the litigation.”¹¹ The value of the object of the litigation may be calculated from the viewpoint of either party; in other words, “what the plaintiff stands to gain, or what it would cost the defendant to meet the plaintiff’s demand.”¹² If Plaintiff is granted the declaratory relief she seeks, Defendants will suffer a large pecuniary consequence. As stated above, within approximately a 14 month period, the putative class paid maintenance and transaction fees in connection with their individual bank accounts, which Global serviced, in the amount of \$1,494,807.38. Thus, on a monthly basis, on average, Illinois residents transacted \$100,000 in connection with their bank accounts contractually serviced by Global. The cost of complying with an Order declaring all such contracts as “void *ab initio*” would further increase the amount “in controversy” here by several hundred thousand dollars within only a few short months of such an Order being entered. Clearly, the amount in controversy at issue here is well in excess of \$5,000,000.

10 Of course, Defendants do not admit that Plaintiff is an appropriate class representative or that she (or the class she seeks to represent) is entitled to damages that meet or exceed \$5,000,000. Defendants only seek to establish that they have met their burden of showing that the necessary amount in controversy has been met. See *Spivey v. Vertrue, Inc.*, 528 F.3d 982, 986 (7th Cir. 2008) (“[T]he removing party’s burden is to show not only what the stakes of the litigation could be, but also what they are given the plaintiff’s actual demands The demonstration concerns what the plaintiff is claiming (and thus the amount in controversy between the parties), not whether plaintiff is likely to win or be awarded everything he seeks.” (Citations omitted)).

11. *Corona v. Nationwide Mutual Ins. Co.*, No. 10 C 3525, 2010 WL 3842759, at *1 (N.D. Ill. Sep. 28, 2010).

12. *Corona*, 2010 WL 3842759 at *1 (citations omitted).

B. Diversity Requirement

17. The diversity requirement is met here.
- a. **Citizenship of Plaintiff.** Plaintiff, the proposed class representative, is a resident of the state of Illinois. (Compl. at ¶ 6).
- b. **Citizenship of Defendants.**
- 1) Global is a limited liability company, incorporated in the State of Oklahoma with its principal place of business in Oklahoma. (Compl. at ¶ 7).¹³
- 2) Global Holdings is a limited liability company, incorporated in the State of Oklahoma with its principal place of business in Oklahoma. (Compl. at ¶ 9).¹⁴

Consequently, Plaintiff, the purported class representative, is a citizen of a state different from both the primary Defendants. Specifically, Plaintiff, a citizen of Illinois, is diverse from Global which is an Oklahoma corporation. Thus, because at least one Plaintiff and one Defendant are citizens from different states, the diversity requirement is met.¹⁵

V. No Exceptions to Diversity Jurisdiction Apply

18. 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.

VI. Pleadings and Process.

19. As required by 28 U.S.C. § 1446(a), Defendants have attached copies of all state court process and pleadings to this Notice of Removal. *See **Exhibit A***.

13. Global is wholly-owned by Global Holdings. Global Holdings is owned by four limited liability companies (“Global Holdings’ Owners”). Global Holdings’ Owners are all Oklahoma limited liability companies with their principal places of business in Oklahoma. Also, the limited liability companies that are members of Global Holdings’ Owners, along with the individuals who own these limited liability companies, are all citizens of Oklahoma and these limited liability companies’ principal places of business are in Oklahoma.

14. *See supra* note 13.

15. *See* 28 U.S.C. § 1332(d)(2)(A); *see also In re Wal-Mart Stores, Inc.*, No. 09–8039, 2009 WL 7823752, at *1 (7th Cir. Nov. 12, 2009).

VII. Notice Given.

20. Written notice of the filing of the Notice of Removal will be promptly served on Plaintiff's counsel, and a copy will be promptly filed with the Clerk of the Circuit Court of Cook County, Chancery Division pursuant to 28 U.S.C. § 1446(d). A copy of the Notice of Filing of Notice of Removal is attached as **Exhibit C.**

VIII. Removal is Timely Filed.

21. This Notice has been timely filed within thirty (30) days of service of process of the Complaint and Summons, and within one year after commencement of the action, as allowed by 28 U.S.C. §1446(b). On October 11, 2011, Defendants were served with a copy of the Complaint and the Summons which is within thirty (30) days of the filing of this Notice of Removal.

IX. Venue.

22. Venue in this district is proper pursuant to 28 U.S.C. § 1446(a) because this action is currently pending in the Circuit Court of Cook County, Chancery Division, which is a Court within the jurisdiction of the United States District Court for the Northern District of Illinois.

X. Non-Waiver of Defenses

23. Nothing in this Notice shall be interpreted as a waiver or relinquishment of 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 Defendants Global Client Solutions, LLC and Global Holdings, LLC hereby respectfully remove this action from the Cook County Circuit Court, Chancery Division, to this Court.

Dated: November 9, 2011

Respectfully Submitted,
GLOBAL CLIENT SOLUTIONS, LLC, and
GLOBAL HOLDINGS, LLC

/s/: Timothy A. Hudson

Richard W. Epstein
(Florida Bar No. 229091)
Rebecca F. Bratter
(Florida Bar No. 685100)
GREENSPOON MARDER, P.A.
Trade Centre South, Suite 700
100 West Cypress Creek Road
Fort Lauderdale, Florida 33309
Telephone: (954) 491-1120
Facsimile: (954) 343-6958
Attorneys for Defendants

Timothy A. Hudson
TABET DIVITO & ROTHSTEIN, LLC
The Rookery Building
209 South LaSalle Street, 7th Floor
Chicago, Illinois 60604
Telephone: (312) 762-9476
Facsimile: (312) 762-9451
Attorney for Defendants