

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION**

CASE NO. _____

CHRISTOPHER DeROSE, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

APPLE INC., a California Corporation,

Defendant.

DEFENDANT APPLE INC.'S NOTICE OF REMOVAL

Defendant Apple Inc. ("Apple"), pursuant to 28 U.S.C. § 1441 removes to this Court the state action described below, which is within the original jurisdiction of this Court and properly removed under 28 U.S.C. §§ 1332, 1441, 1446 and 1453.

PROCEDURAL HISTORY AND TIMELINES OF REMOVAL

1. On July 29, 2010, Plaintiff filed a purported class action captioned *DeRose, et al. v. Apple Inc.*, Case No. 10-31020, against Apple in the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida ("State Court Action").

2. Apple was served with the State Court Action Summons and Complaint on July 30, 2010. This notice is therefore timely pursuant to 28 U.S.C. § 1446(b). Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon Apple in the State Court Action are attached to this Notice as Exhibit A.

3. The Seventeenth Judicial Circuit in and for Broward County, Florida is located within the Southern District of Florida. 28 U.S.C. § 89(c). The Notice of Removal is therefore properly filed in this Court pursuant to 28 U.S.C. § 1441(a).

NO JOINDER NECESSARY

4. No other Defendants are required to consent to this removal. 28 U.S.C. § 1453(b).

ALLEGATIONS OF THE COMPLAINT

5. This action is a putative class action against Apple on behalf of Florida purchasers of Apple's iPhone 4. (Complaint ("Compl.") ¶ 41). Apple's iPhone 4 is sold by Apple. (Compl. ¶ 2). Plaintiff alleges that "Defendant knew or should have known that the iPhone 4s were defective in design and/or manufacture, were not fit for their ordinary and intended use, and did not perform in accordance with the advertisements, marketing materials and warranties disseminated by Defendant." (Compl. ¶ 3). Plaintiff alleges that "Defendant knew or should have known that the iPhone 4s do not conform with the reasonable expectations of ordinary Florida consumers." (*Id.*).

6. On behalf of Plaintiff and the putative class, the Complaint attempts to state claims for: (1) negligence; (2) defect in design, manufacture and assembly; (3) breach of express warranty; (4) breach of implied warranty; and (5) violations of Florida's Unfair and Deceptive Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.* The Complaint seeks, *inter alia*, damages, actual and consequential damages, injunctive relief, declaratory relief, pre- and post-judgment interest, attorneys' fees and costs. (Compl. at *ad damnum* clauses following ¶¶ 55, 60, 68, 76 and 88).

7. Apple disputes Plaintiff's allegations, believes the Complaint lacks merit, and denies that Plaintiff or the putative class members have been harmed in any way.

BASIS FOR REMOVAL

8. This action is within the original jurisdiction of this Court, and removal is therefore proper under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d).

In CAFA, Congress granted the federal courts diversity jurisdiction over putative class actions where: (1) the putative class action consists of at least 100 proposed class members [28 U.S.C. § 1332(d)(5)(B)]; (2) the citizenship of at least one proposed class member is different from that of any defendant [*Id.* § 1332(d)(2)(A)]; and (3) the matter in controversy, after aggregating the claims of the proposed class members, exceeds \$5 million, exclusive of interests and costs [*Id.* §§ 1332(d)(2), (d)(6)]. Each of these requirements is satisfied here.

9. Covered Class Action. This action meets the CAFA definition of a class action, which is “any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure.” 28 U.S.C. §§ 1332(d)(1)(B), 1453(a) & (b). (Compl. ¶ 41).

10. Class Action Consisting of More Than 100 Members. The Complaint alleges that “Plaintiff is informed and believes, and on that basis alleges, that the proposed Class contain[s] many tens of thousands of members.” (Compl. ¶ 42). Accordingly, based on Plaintiff’s allegation, the aggregate number of class members is greater than 100 persons for purposes of 28 U.S.C. § 1332(d)(5)(B).

11. Diversity – Plaintiff. The required diversity of citizenship under CAFA is satisfied because “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). Plaintiff is a citizen of the State of Florida. (Compl. ¶ 12).

12. Diversity – Defendant. Apple is “a California corporation with its headquarters and principal place of business in Cupertino, California.” (Compl. ¶ 13). Each member of the purported class is a citizen of a state (Florida) different from Apple (California). Thus,

according to the allegations of Plaintiff's Complaint, the diversity requirements of CAFA are satisfied as between Plaintiff and Apple.

13. Amount in Controversy. Under CAFA, the claims of the individual class members are aggregated 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). The Complaint alleges claims for negligence; defect in design, manufacture and assembly; breach of express warranty; breach of implied warranty; and violations of Florida's Unfair and Deceptive Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.* Plaintiff alleges, *inter alia*, that he has suffered "economic injury" and "economic damage," and seeks, *inter alia*, damages, actual and consequential damages, injunctive relief, and declaratory relief. (Compl. at *ad damnum* clauses following ¶¶ 55, 60, 68, 76 and 88). Without conceding any merit to the Complaint's damages allegations or causes of action, the amount in controversy here satisfies CAFA's jurisdictional threshold.

14. The amount in controversy clearly exceeds \$5,000,000. The Complaint alleges that "[i]f Plaintiff and members of the Class had known the true facts regarding the defective condition of the iPhone 4s, they would not have purchased iPhone 4s or paid as much money for the iPhone 4s." (Compl. ¶ 71). The iPhone 4 sells for a retail price of \$199 for the 16GB model and \$299 for the 32GB model. (Declaration of James Bean ¶ 3, which is attached to this Notice as Exhibit B). The Complaint alleges a class of "[a]ll persons who purchased the Apple iPhone 4 in the State of Florida" (Compl. ¶ 41). Since the iPhone 4 was launched in June 2010, Apple has sold in excess of 50,000 iPhone 4 units through Apple's Retail Stores in Florida alone.¹ (Declaration of James Bean ¶ 2). To the extent each class member is claiming damages

¹ The iPhone 4 is also sold through AT&T retail stores.

in an amount equal to the purchase price of his or her iPhone 4 unit, the amount in controversy Plaintiff alleges far exceeds the minimum and easily meets the amount-in-controversy requirement.

15. Thus, Plaintiff's allegations place in controversy an amount plainly in excess of \$5,000,000. While Apple disputes that it is liable to Plaintiff or any of the putative class members, or that Plaintiff or the putative class members suffered injury or incurred damages in any amount whatsoever, for purposes of satisfying the jurisdictional prerequisites of CAFA, the matter in controversy exceeds \$5,000,000.

16. No CAFA Exclusions. The action does not fall within any exclusion to removal of jurisdiction recognized by 28 U.S.C. § 1332(d), and therefore this action is removable pursuant to CAFA, 28 U.S.C. § 1332(d) and § 1453(b).

CONCLUSION

17. For all the reasons stated above, this action is within the original jurisdiction of this Court pursuant to 28 U.S.C. § 1332(d). Accordingly, this action is removable pursuant to 28 U.S.C. § 1441(a) and § 1453.

NOTICE TO STATE COURT AND ADVERSE PARTY

18. Counsel for Apple certifies that pursuant to 28 U.S.C. § 1446(d), copies of this Notice of Removal will be filed with the Clerk of the Circuit Court for the Seventeenth Judicial Circuit of Florida, as an exhibit to a Notice of Filing of Notice of Removal to Federal Court, and served upon counsel for Plaintiff.

WHEREFORE, Defendant Apple gives notice that the above-described action pending against it in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, is removed to this Court.

Dated: August 18, 2010.

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By: s/ Frank A. Zacherl
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S.

Mail and electronic mail on this 18th day of August 2010, to:

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