Wallace et al v. ConAgra Foods, Inc. Doc. 1

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MELVIN WALLACE, SHIRLEY HARDT, LEWIS SIMPSON, and WILLIAM COBB, ERICA DAVIS-HOLDER, ROTEM COHEN, JULIAN WAGNER, ROSE WAGNER, ERIN STILWELL, MARIA EUGENIA SAENZ VALIENTE and ADAM BURNHAM individually and on behalf of others similarly situated,

Plaintiffs,

vs.

CONAGRA FOODS, INC. d/b/a/ Hebrew National, a Delaware corporation,

Defendant.

Case No. _____

NOTICE OF REMOVAL FROM THE FIRST JUDICIAL DISTRICT COURT, DAKOTA COUNTY, MINNESOTA

PLEASE TAKE NOTICE that Defendant ConAgra Foods, Inc. ("ConAgra") hereby removes this action from the First Judicial District Court, Dakota County, Minnesota, to the United States District Court for the District of Minnesota, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, and respectfully states:

1. This is a putative nationwide class action against ConAgra concerning the marketing of Hebrew National brand products. *See* Complaint ¶ 10, attached hereto as Exhibit 1.

2. On May 18, 2012, Plaintiffs Melvin Wallace, Shirley Hardt, Lewis Simpson, William Cobb, Erica Davis-Holder, Rotem Cohen, Julian Wagner, Rose Wagner, Erin Stilwell, Maria Eugenia Saenz Valiente and Adam Burnham individually

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and on behalf of others similarly situated ("Plaintiffs") commenced this action against ConAgra Foods, Inc. in the First Judicial District Court, Dakota County, by serving ConAgra with a Summons and Complaint. *See* Minn. R. Civ. P. 3.01 (stating that service of summons and complaint commences an action); *Duchene v. Premier Bank Metro South*, 870 F. Supp. 273, 274 (D. Minn. 1994); Notice of Service, Summons, and Complaint, attached hereto as Exhibit 1.

3. As set forth more fully below, this case is properly removed to this Court pursuant to 28 U.S.C. § 1441 because ConAgra satisfies the procedural requirements for removal, the Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441, and the jurisdictional principles of the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2005), properly apply.

I. ConAgra Satisfies the Procedural Requirements for Removal.

4. ConAgra was first served with the Complaint on May 18, 2012. *See* Exhibit A. Accordingly, this Notice of Removal is timely filed within 30 days as required by 28 U.S.C. § 1446(b). *See Duchene*, 870 F. Supp. at 274 (holding a defendant has 30 days from the date a complaint was served to remove an action from Minnesota state court).

5. ConAgra has filed the Complaint in the First Judicial District Court, Dakota County, on June 6, 2012.

6. The First Judicial District Court, Dakota County, is located within the District of Minnesota. Therefore, venue is proper in this Court is the "district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

7. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and orders served upon ConAgra Foods, Inc., including the Complaint, is attached hereto as Exhibit 1.

8. Pursuant to 28 U.S.C. § 1446(d), a copy of the Notice of Removal is being served on counsel for Plaintiff and a copy will be filed promptly with the clerk of the First Judicial District Court, Dakota County.

II. Removal is Proper Because the Court Has Subject Matter Jurisdiction Pursuant to 28 U.S.C. §§ 1332, 1441, and 1453.

9. This case is subject to removal pursuant to CAFA.

10. As set forth below, this is a putative class action in which: (a) there are 100 or more members in Plaintiffs' proposed class; (b) at least some members of the proposed class have citizenship different from ConAgra; (c) the claims of the proposed class members exceed the sum value of $5,000,000 in the aggregate. Thus, the Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1332(d), 1441(b), and 1453.

A. The Proposed Class Consists of 100 or More Members.

11. In their Complaint, Plaintiffs purport to represent a nation-wide class of "[t]ens of thousands of consumers" who purchased Hebrew National Meat during the Class period." (Compl. ¶¶ 97-98.)

12. Based on these and other allegations, the aggregate number of members of Plaintiffs' proposed class is far greater than 100 for purposes of 28 U.S.C. § 1332(d)(5)(B).

B. Diversity of Citizenship Exists.

13. Diversity of citizenship exists if "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(c)(2)(A).

14. Named Plaintiffs are citizens of Minnesota, Arizona, Illinois, New York, Florida, California, and Massachusetts. (Compl. ¶¶ 23-32.)

16. For the purposes of establishing minimum diversity necessary for jurisdiction under CAFA, a corporation such as ConAgra is "deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." 28 U.S.C. § 1332(c)(1). ConAgra is a corporation organized under the laws of Delaware with its principal place of business in Nebraska. (Declaration of Matt Russell, attached hereto as Exhibit 2; Compl. ¶ 36.) Therefore, ConAgra is a citizen of Delaware and Nebraska.

17. Because at least one (and, in fact, all) of the named plaintiffs are citizens of states different from ConAgra, minimum diversity is satisfied.

C. The Amount-In-Controversy Requirement Is Satisfied.

18. Plaintiffs allege that the kosher meat sold by ConAgra under its Hebrew National brand was not kosher, and as a result, Plaintiffs "deprived of the value of the goods they purchased." (Compl. ¶ 13.)

19. Plaintiffs allege that they are entitled to a full refund of the purchase price of the Hebrew National meat purchased during the class period. (Compl. ¶ 195 (alleging that Plaintiffs and the Class were harmed in the amount of the purchase price of Hebrew National products").)

20. Plaintiffs also define the class period as "dat[ing] back to the length of the longest applicable statute of limitations for any claim asserted, from the date this action was originally filed and continues through the present and the date of judgment. The limitations period under Counts II and III is four years from the date this action was originally filed and continues through the present and the date of judgment." (Compl. ¶ 97.)

21. In fiscal 2012 alone, annual revenues from sales of Hebrew National branded products in the United States exceeded $5,000,000. *See* Exhibit 2, Declaration of Matt Russell ¶ 3.

22. Given that the class period is longer than one year, and Plaintiffs purport to represent all persons who purchased Hebrew National meat in the United States, the amount in controversy exceeds $5,000,000.

D. The Court Should Resolve Any Questions Regarding Removal in Favor of Federal Jurisdiction.

23. The Court should resolve any questions or ambiguities regarding ConAgra's right to remove in favor of federal jurisdiction. CAFA's legislative history makes clear that doubts regarding the maintenance of interstate class actions in state or federal courts are to be resolved in favor of federal jurisdiction. *See, e.g.*, S. Rep. No. 109-14, at 43 (2005) ("Overall, new section 1332(d) is intended to expand substantially federal court jurisdiction over class actions. Its provisions should be read broadly, with a strong preference that interstate class actions should be heard in federal court if properly removed by any defendant.") *Id.* at 35 (the intent of CAFA "is to strongly favor the

exercise of federal diversity jurisdiction over class actions with interstate ramifications"); *id.* at 27 ("The Committee believes that the federal courts are the appropriate forum to decide most interstate class actions because these cases usually involve large amounts of money and many plaintiffs, and have significant implications for interstate commerce and national policy.").

WHEREFORE, ConAgra respectfully removes this action from the First Judicial District in County of Dakota to this Court pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

Dated: June 6, 2012

Respectfully submitted,

s/ Jerry W. Blackwell

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