

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

STATE OF NEW HAMPSHIRE,

Plaintiff,

v.

JURY TRIAL DEMANDED

PURDUE PHARMA L.P.; PURDUE PHARMA INC.; and
THE PURDUE FREDERICK COMPANY INC.,

Civil Action No. 1:17-cv-427

Defendants.

NOTICE OF REMOVAL

Defendants Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company Inc. (together “Purdue”), by their undersigned attorneys, hereby give notice of removal of this action, pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446, and 1453, from the Merrimack County Superior Court of the State of New Hampshire to the United States District Court of New Hampshire. As grounds for removal, Purdue states as follows:

PRELIMINARY STATEMENT

1. The State of New Hampshire, through its Attorney General’s Office (“Plaintiff”), filed this action on August 8, 2017, in Merrimack County Superior Court in the State of New Hampshire, Case No. 217-2017-CV-00402. The Complaint alleges that Purdue improperly and fraudulently promoted its opioid pain medications for treating chronic pain, a use approved by the Food and Drug Administration (“FDA”). In addition to injunctive relief and civil penalties, Plaintiff seeks restitution and compensatory damages on behalf of itself and New Hampshire’s “cities, counties, and consumers” who have allegedly incurred costs “in paying for the prescribing of opioids and their direct costs in abuse, addiction, ... overdose, injury, and death.” Compl. ¶ 293(d).

2. Plaintiff seeks restitution and damages under New Hampshire’s Consumer Protection Act, RSA 358-A, for physical and economic injuries allegedly sustained by individual consumers of opioid medications. *See, e.g., id.* ¶¶ 219, 221-22, 224, 232. It also seeks restitution and damages under the Consumer Protection Act for New Hampshire’s “cities, towns, and counties” for alleged “costs associated with administering first responder services and support care for the families of individuals suffering drug overdoses.” *Id.* ¶ 233.¹

3. As set forth below, although Plaintiff has not labeled this matter as a class action, this Court should look at the nature of the Complaint and determine whether it is a “class action in all but name.” *W. Va. ex rel. McGraw v. Comcast Corp.*, 705 F. Supp. 2d 441, 452 (E.D. Pa. 2010). The face of the Complaint establishes that Plaintiff brings this action not only for injunctive relief as *parens patriae* but also to recover alleged damages on behalf of a class of individual cities, towns, counties, and consumers who purportedly sustained damages as a result of Purdue causing doctors to wrongfully prescribe opioid medications.

4. Accordingly, this action is properly removable to federal court under the Class Action Fairness Act (CAFA), 28 U.S.C. §§ 1332(d) and 1453(b), because the parties, which include the putative class of New Hampshire cities, towns, counties, and consumers, are diverse and the aggregate amount in controversy for the putative class exceeds \$5 million.

FEDERAL DIVERSITY JURISDICTION EXISTS UNDER CAFA

5. This Court has original jurisdiction over this case under CAFA. Under 28 U.S.C. § 1332(d), “district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs,

¹ In addition to the Consumer Protection Act, the Complaint alleges violations of the State’s Medicaid Fraud and False Claims Act and also seeks recovery under several state law theories, including public nuisance, unjust enrichment, and fraudulent or negligent misrepresentation. Compl. ¶¶ 239-292.

and is a class action in which ... any member of a class of plaintiffs is a citizen of a State different from any defendant.” There must be at least 100 class members. 28 U.S.C. § 1332(d)(5)(B).

A. This Case Is a Putative Class Action

6. Under 28 U.S.C. § 1453(b), a class action may be removed to federal court. CAFA defines a “class action” as “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 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B).

7. In enacting CAFA, Congress stated that the “overall intent” of Section 1332(d) is “[t]o strongly favor the exercise of federal diversity jurisdiction over class actions with interstate ramifications.” S. Rep. No. 109-14, at 35 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3. Consistent with that objective, “the definition of ‘class action’ is to be interpreted liberally. Its application should not be confined solely to lawsuits that are labeled ‘class actions’ Generally speaking, lawsuits that resemble a purported class action should be considered class actions for the purpose of applying these provisions.” *Id.*

8. Here, Plaintiff’s Complaint asserts claims and seeks restitution and damages under the Consumer Protection Act on behalf of a class or classes of consumers of opioids in New Hampshire who have allegedly paid for medications and the New Hampshire cities, towns, and counties that have allegedly provided “first responder services and support care for the families of individuals suffering drug overdoses.” Compl. ¶ 233; *see also id.* ¶¶ 232, 293(d). New Hampshire’s Consumer Protection Act expressly permits such a request for restitution on behalf of a “class of persons,” including by the Attorney General. RSA 358-

A:4(III)(a); *id.* at 358-A:10-a. The statutory requirements for a class action under RSA 358-A:10-a are “similar” to those of Federal Rule 23. 28 U.S.C. § 1332(d)(1)(B).

B. The Diversity and Numerosity Requirements Are Satisfied

9. Because the restitution and compensatory relief the Complaint requests inure principally to the benefit of a class or classes of consumers and municipalities, it is those individuals, and not the State of New Hampshire, who are the real parties in interest. *See Alfred L. Snapp & Son v. Puerto Rico, ex rel Barez*, 458 U.S. 592, 602 (1982) (“Interests of private parties are obviously not in themselves sovereign interests, and they do not become such simply by virtue of the State’s aiding in their achievements.”); *see also In re Avandia Mktg., Sales Practices & Prod. Liab. Litig.*, 238 F. Supp. 3d 723, 730 (E.D. Pa. 2017) (county was real party in interest in action by state seeking restitution and other damages on behalf of county under consumer protection law because “relief sought would not inure to the benefit of the state alone”).

10. When the State is properly disregarded as a nominal party in favor of the real parties in interest, CAFA’s diversity and numerosity requirements are satisfied.

11. To determine whether minimal diversity exists, the citizenship of all class members, both named and unnamed, is considered. 28 U.S.C. § 1332(d)(1)(D). For purposes of diversity jurisdiction, a corporation is a citizen of both the state of incorporation and where it has its principal place of business. 28 U.S.C. § 1332(c)(1). A partnership is a citizen of every state in which its partners are citizens. *See Americold Realty Tr. v. Conagra Foods, Inc.*, 136 S. Ct. 1012, 1015 (2016); *American Fiber & Finishing, Inc. v Tyco Healthcare Group, LP*, 362 F.3d 136, 138 (1st Cir. 2004).

12. Purdue Pharma L.P. is a limited partnership organized under the laws of Delaware, none of whose partners are citizens of New Hampshire. Purdue Pharma Inc. is a New

York corporation with its principal place of business in Stamford, Connecticut. The Purdue Frederick Company Inc. is a New York corporation with its principle place of business in Stamford, Connecticut. Thus, none of the defendants is a citizen of New Hampshire for purposes of diversity jurisdiction.

13. Purdue is thus diverse from the real parties in interest – the New Hampshire consumers of opioid prescriptions and the cities, towns, and counties in New Hampshire that have allegedly incurred costs relating to first responder services and support care related to opioid overdoses. Minimal diversity is satisfied pursuant to 28 U.S.C. § 1332(d)(2)(A).

14. In addition, based on the allegations in the Complaint that millions of doses of opioid medications were prescribed in New Hampshire and that there have been hundreds of overdoses, it is clear that this putative class of consumers and municipalities numbers more than 100 members. *See, e.g.*, Compl. ¶¶ 11, 16, 170, 185.

C. The Amount in Controversy Requirement Is Satisfied

15. The remaining requirement for CAFA jurisdiction is that the amount in controversy must exceed \$5,000,000 in the aggregate for the class. 28 U.S.C. § 1332(d). “[A] defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

16. The relief Plaintiff seeks includes “restitution and damages, including enhanced compensatory damages, as appropriate, for the costs incurred by the State, cities, counties, and consumers in paying for the prescribing of opioids and their direct cost in abuse, addiction, . . . overdose, injury, and death.” Compl. ¶ 293(d). Plaintiff seeks such relief for the period “[f]rom 2011 to the present,” *id.* ¶ 8, on behalf of the putative class of well over 100 consumers and municipalities described above. Given the nature of the claims and the alleged

number of consumers, prescriptions, and incidents potentially at issue, the amount in controversy exceeds \$5 million.

17. Accordingly, the amount-in-controversy requirement is satisfied.²

PROCEDURAL REQUIREMENTS FOR REMOVAL

18. Purdue has satisfied or will satisfy all of the procedural requirements for removal under 28 U.S.C. § 1446 and District of New Hampshire Local Rule 81.1.

19. In accordance with 28 U.S.C. § 1446(a), this is the appropriate court for removal because the state court in which the action was commenced, Merrimack County Superior Court, is within the Court's district and division. True and correct copies of all process, pleadings, and orders served upon Purdue in this action, including the Complaint,³ are attached as Removal Exhibit A.

20. This Notice of Removal is signed on behalf of all defendants pursuant to Fed. R. Civ. P. 11.

21. In accordance with 28 U.S.C. § 1446(b), this Notice of Removal is being timely filed within 30 days of the receipt of the Summons and Complaint on August 16, 2017. *See* Return of Service (Removal Exhibit A).

22. In accordance with 28 U.S.C. § 1446(d), Purdue is promptly notifying Plaintiff in writing that this case has been removed to this Court pursuant to this Notice of Removal. A true and correct copy of the Notice of Filing Notice of Removal that is being served

² Purdue notes that the inquiry at this stage concerns only the amount of damages *requested* by the Plaintiff. Purdue need not, and does not, concede that Plaintiff is entitled to recover any damages. *See Hartis v. Chicago Title Ins. Co.*, 694 F.3d 935, 945 (8th Cir. 2012).

³ Plaintiff filed two versions of the Complaint with the Superior Court, a public version with redactions and a non-redacted version under seal. A true and correct copy of the redacted version of the Complaint is included as part of Removal Exhibit A, and a true and correct copy of the non-redacted version is Removal Exhibit B. Pursuant to District of New Hampshire Local Rule 83.12, Purdue is conventionally filing Exhibit B together with a motion to seal at Level I.

on Plaintiff is attached as Removal Exhibit C. Plaintiff is also being served with copies of this Notice of Removal and all exhibits.

23. Purdue is filing, contemporaneously with the filing of this Notice of Removal, a Notice of Filing Notice of Removal, which attaches a copy of this Notice of Removal, with the Clerk of the Merrimack County Superior Court. A true and correct copy of the Notice of Filing Notice of Removal that will be filed with the Superior Court is attached as Removal Exhibit D.

24. In accordance with Local Rule 81.1(c), Purdue will contemporaneously request a certified copy of the Merrimack County Superior Court record in Case No. 217-2017-CV-00402, and Purdue will file that certified state court record with this Court within 14 days.

25. Purdue reserves any and all rights to assert any and all defenses and/or objections to the Complaint. Purdue further reserves the right to amend or supplement this Notice of Removal.

26. If any questions arise as to the propriety of the removal of this action, Purdue requests the opportunity to present briefing, argument, and further evidence necessary to support their position that this case is removable.

WHEREFORE, Purdue hereby removes this action from the Merrimack County Superior Court to this Court.

Purdue Pharma L.P.;
Purdue Pharma Inc.; and
The Purdue Frederick Company Inc.

By and Through Their Attorneys,

NIXON PEABODY LLP

Dated: September 15, 2017

/s/ W. Daniel Deane

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2017, a copy of the foregoing *Notice of Removal*, with exhibits, was served via e-mail and by United States first-class mail, postage prepaid, to the following counsel of record:

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