

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MAX GERBOC, on his own behalf and for all
others similarly situated
248 Euclid Ave. # 205
Cleveland, OH 44114

Plaintiff,

v.

CONTEXTLOGIC, INC.,
One Sansome Street
40th Floor
San Francisco, CA 94104

Defendant.

CIVIL ACTION NO: _____

NOTICE OF REMOVAL OF ACTION

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446, Defendant ContextLogic, Inc. (“ContextLogic” or “Defendant”), by its undersigned counsel, hereby removes this civil action from the Court of Common Pleas, Lake County, Ohio (the “State Court Action”), pending as Case No. 16CV000516, to the United States District Court for the Northern District of Ohio, on the grounds that this Court has jurisdiction over this action under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d) because the Complaint filed in the State Court Action by Max Gerboc (“Gerboc” or “Plaintiff”), plausibly seeks relief in excess of \$5,000,000, exclusive of interests and costs, and seeks certification of a putative class of more than 100 members that satisfies CAFA’s diversity threshold. By removing this case, ContextLogic does not waive, but expressly reserves, any and all defenses available to it.

I. INTRODUCTION

1. The State Court Action was commenced on March 18, 2016, by the filing of the Complaint in the State Court Action. ContextLogic was served with a summons dated March 23, 2016. True and correct copies of the Complaint, the summons, and all process, pleadings and orders served on ContextLogic are attached to this Notice of Removal as “**Exhibit A**,” as required by 28 U.S.C. § 1446(a).

2. Promptly after filing this Notice of Removal, ContextLogic will give written notice of the removal to Plaintiff through its attorneys of record in the Action, as well as to the Clerk of the Court of Common Pleas, Lake County, Ohio, as required by 28 U.S.C. § 1446(d).

3. ContextLogic is the only defendant in this case, and as such, no additional defendants must join in or consent to the removal of this action.

4. No admission of fact, law, liability, or damages is intended by this Notice of Removal, and all defenses, affirmative defenses, objections and motions hereby are reserved.

II. THE PARTIES

5. Plaintiff Gerboc is an individual and a resident of Ohio. Compl. ¶ 4.

6. At the time the Complaint was filed, ContextLogic was a corporation organized and existing under the laws of Delaware, with its principal offices located in San Francisco, California. At the time of this Notice of Removal, ContextLogic remains a Delaware corporation with its principal place of business in California. Declaration of Thomas Chuang (“Chuang Decl.”), ¶ 4, attached hereto as “**Exhibit B**”; *see also* 28 U.S.C. § 1332(c) (corporation is “citizen” of both the state in which it was incorporated and its principal place of business).

III. THE COURT HAS ORIGINAL JURISDICTION OVER PLAINTIFF'S COMPLAINT PURSUANT TO THE CLASS ACTION FAIRNESS ACT

7. This Court has original jurisdiction over this action under CAFA. 28 U.S.C. § 1332(d). CAFA grants district courts original jurisdiction over civil class actions filed under federal or state law in which *any* member of a class of plaintiffs is a citizen of a state different from *any* defendant, the class has more than 100 members, and where the amount in controversy for the putative class members exceeds \$5,000,000, exclusive of interests and costs. *Id.*; *see also Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551 (2014).

8. CAFA authorizes removal of such actions pursuant to 28 U.S.C. § 1446. As set forth below, this case meets all of CAFA's requirements for removal and is timely and properly removed by the filing of this Notice.

A. Minimal Diversity Exists

9. As described above, Plaintiff is a citizen of the State of Ohio. *See supra*, ¶ 5. ContextLogic is a citizen of Delaware and California. *See supra*, ¶ 6.

B. The Amount in Controversy Exceeds \$5 Million

10. CAFA authorizes the removal of class actions in which the amount in controversy for all potential class members exceeds \$5 million. *See* 28 U.S.C. § 1332(d); *see also Johnson v. Bank of Am., N.A.*, No. 1:13-CV-02323, 2013 WL 6634498, at *2 (N.D. Ohio Dec. 17, 2013).

"[A] removal notice need only plausibly allege, not detail proof of, the amount in controversy." *Dart Cherokee*, 135 S. Ct. at 550 (2014).

11. Plaintiff brings this action on behalf of himself and the members of the putative class, defined in his Complaint as follows:

Anyone who, during the statute of limitations period, purchased any product(s) through Defendant's website and/or App, which Defendant's records show were sold with an

alleged advertised savings amount, but where the product(s) were not sold at the non-discount price for at least 28 of the last 90 days prior to the purchase.

Compl. ¶ 26.

12. While ContextLogic denies Plaintiff's claims of wrongdoing and will contend that the Plaintiff fails to state any cognizable claim in his Complaint, the allegations in Plaintiff's Complaint and the amount in alleged controversy exceed CAFA's jurisdictional minimum of \$5 million, calculated as follows:

- (a) Plaintiff asserts four causes of action: (1) violation of the Ohio Consumer Sales Practices Act, O.R.C. § 1345 et seq. ("OCPA") (Compl. ¶¶ 35-56); (2) breach of contract (Compl. ¶¶ 57-65); (3) unjust enrichment (Compl. ¶¶ 66-77); and (4) fraud (Compl. ¶¶ 78-87);
- (b) Plaintiff does not define his "Class Period," but seeks to certify a putative class of consumers who purchased products through www.wish.com or the Wish mobile application, both operated by ContextLogic, "during the statute of limitations period." Compl. ¶ 26. Claims for violation of the Ohio Consumer Sales Practices Act are governed by a two-year limitations period. Ohio Rev. Code Ann. § 1345.10. For purposes of this Notice of Removal, therefore, ContextLogic assumes the Relevant Time Period to be two years.
- (c) Plaintiff does not place any express geographic limitation on the scope of his proposed class. Compl. ¶ 26.
- (d) Plaintiff alleges that ContextLogic advertises false discounts "for ALL of its products . . . The products Plaintiff and the putative class members

purchased were not discounted and Plaintiff and the class did not receive the advertised discounts.” Compl. ¶¶ 3, 24.

- (e) Plaintiff describes the damages sought on behalf of the class as follows: “if consumer John Doe purchased something that Defendant represented was 50% off, Defendant's promised 50% off savings was false. Doe was damaged in this amount (i.e. 50% of the price he was charged and paid), which equals the deceptive savings that the Defendant purported to, but did not actually, provide.” Compl. ¶ 55. With respect to his own experience, Plaintiff claims to have purchased a product for \$27 that was discounted 91% from a \$300 reference price. By his measure of damages, Plaintiff claims he is entitled to monetary damages amounting to 91% of his \$27 purchase price, or roughly \$25. In other words, he believes he should have paid only \$2 for the product, and that putative class members are entitled to similar damages. Compl. ¶¶ 16-24. Plaintiff's Complaint does not specifically quantify the percentage of purchase prices he seeks as damages for other class members, but hypothesizes recovering 50% of what all Wish.com customers spent on the site or the app during the Relevant Time Period. Compl. ¶ 55. Plaintiff also states that he seeks, on behalf of himself and the putative class, “disgorgement from Defendant of all net profits it derived from the foregoing improper conduct” as an alternative measure of damages. Compl. ¶ 77.

- (f) In his prayer for relief, Plaintiff requests compensatory and punitive damages, reasonable costs and attorneys' fees, and "other or further relief as this Honorable Court deems Plaintiffs and the class entitled."
- (g) During the two-year Relevant Time Period, the gross sales of products made through the www.wish.com website or Wish mobile application to residents of Ohio alone was well in excess of \$20,000,000. Chuang Decl., ¶ 8. Sales throughout the country — again, Plaintiff's complaint puts no express geographic limit on his putative class — are very much higher. *See id.*
- (h) Therefore, even if Plaintiffs' sample damages benchmark of 50% of the price paid for products sold through the www.wish.com website or Wish mobile application were significantly reduced (say, to 25%), and even if Plaintiffs' proposed class is limited to residents of Ohio, the Complaint, on its face, seeks more than \$5,000,000 in compensatory damages.
- (i) Further, Plaintiff seeks punitive damages and attorneys' fees in addition to these compensatory damages.
- (j) Thus, CAFA's jurisdictional threshold is satisfied.

13. ContextLogic denies Plaintiff's claims of wrongdoing or that Plaintiff has suffered any actual damages. The above calculation simply assumes, *for CAFA removal purposes only*, that were Plaintiff able to prove his allegations, the total amount of monetary relief sought by Plaintiff exceeds \$5 million, exclusive of interests and costs, as detailed above.

C. There Are Well Over 100 Members in Plaintiff's Proposed Class

14. This action has been styled as a class action. Compl. ¶¶ 25-34.

15. CAFA requires the existence of at least 100 members in Plaintiff's proposed class. 28 U.S.C. § (d)(5)(B).

16. Plaintiff seeks to represent “[a]nyone who, during the statute of limitations period, purchased any product(s) through Defendant's website and/or App, which Defendant's records show were sold with an alleged advertised savings amount, but where the product(s) were not sold at the non-discount price for at least 28 of the last 90 days prior to the purchase.” Compl. ¶ 26. Plaintiff alleges that ContextLogic “engages in this unlawful practice for ALL of its products” sold on www.wish.com or the Wish mobile application.

17. There are more than 100 potential members in Plaintiff's proposed class (i.e. there have been many more than 100 residents of Ohio who purchased products through the www.wish.com or Wish mobile application during the Relevant Time Period). Chuang Decl., ¶ 7.

18. Accordingly, this case meets all of CAFA's requirements for removal and is timely and properly removed by the filing of this Notice.

VI. CONCLUSION

19. WHEREFORE, having provided notice as required by law, the above-entitled action should be removed from the Superior Court of Plymouth County, Massachusetts to the United States District Court for the District of Massachusetts.

Dated: April 19, 2016

Respectfully submitted,

/s/ Michael J. Zbiegien, Jr.

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**pro hac vice* to be filed

Attorneys for Defendant

ContextLogic, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2016, I caused the foregoing of Notice of Removal and Exhibits to be served by electronic mail and U.S. mail upon the following:.

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