

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

RENEE BURKE, MD, P.C., on behalf of  
Itself and other similarly situated,

Plaintiffs,

v.

CANDELA CORPORATION,

Defendant.

C.A. No. \_\_\_\_\_

**NOTICE OF REMOVAL**

Defendant Candela Corporation (“Candela”) hereby removes this action under 28 U.S.C. § 1446. Removal is authorized by 28 U.S.C. § 1441 and is based upon the United States District Court’s original jurisdiction of the case pursuant to 28 U.S.C. § 1332, because it is a civil action where the parties are citizens of different states and the amount in controversy exceeds \$75,000 exclusive of interest and costs. Alternatively, and as set forth below, the removal is authorized by the Class Action Fairness Act (“CAFA”), 28 U.S.C. §§ 1332(d) and 1453.

In further support of removal, Candela avers as follows:

**I. STATEMENT OF THE CASE**

In this putative class action, Plaintiff Renee Burke, MD, P.C. (“Burke”) sues for damages purportedly suffered as a result of alleged misrepresentations made by Candela salespeople in connection with her agreement to purchase a Candela medical device, the Ultra Shape System (the “System”). Compl. ¶ 4. Burke alleges, *inter alia*, that the System failed to perform as promised, that Candela’s alleged misrepresentations were deceptive in violation of Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2, and that she has suffered damages as a result, including the money she paid to purchase the System. *Id.* at ¶¶

9-11, 13. Burke agreed to purchase the System for \$85,000. Affidavit of Jeff Nardoci (“Nardoci Aff.”), filed herewith, at ¶ 4. “The [proposed] class consists of all persons and businesses who purchased the System and did not realize the results set forth in the Representations.” Compl. ¶ 14.

**II. THE REQUIREMENTS FOR REMOVAL ARE SATISFIED.**

**A. The Requirements for Diversity Jurisdiction Are Satisfied.**

The requirements for diversity jurisdiction under 28 U.S.C. § 1332(a) are satisfied and this Notice of Removal is timely filed under 28 U.S.C. § 1446.

*Diversity of Citizenship.* This action satisfies the complete diversity requirement of Section 1332(a)(1). Burke is an Illinois professional corporation, Compl. ¶ 1, and, upon information and belief, has a principal place of business in Illinois. Candela is a Delaware Corporation with a principal place of business in Wayland, MA. Compl. ¶ 2.

*Diversity of Citizenship.* In the Complaint, Burke seeks, *inter alia*, reimbursement for “any money [Candela] received for the purchase of the System.” Compl., Request for Relief. Candela was paid \$85,000 for the System. Nardoci Aff. at ¶ 4. Accordingly, the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a).

**B. The Requirements for Removal Under The Class Action Fairness Act Are Also Satisfied.**

In addition, even if the requirements of Section 1332(a) were not satisfied, removal would be proper under CAFA, 28 U.S.C. §§ 1332(d) and 1453.

*Standard for Removal Under CAFA.* CAFA provides for federal jurisdiction “in any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which 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). CAFA’s definition of a

“class action” includes an action in which the “monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that plaintiffs’ claims involve common questions of law or fact,” *id.* § 1332(d)(11), and at least one of the plaintiffs seeks recovery exceeding \$75,000. *Id.* § 1332(d)(11)(B)(i).

***Minimum Number of Class Members.*** In the Complaint, Burke describes the putative class as anyone who purchased a System. Compl. ¶ 14. Over the past three years, Candela has sold the System to well over 100 customers. Nardoci Aff. at ¶ 5.

***Minimum Diversity.*** The diversity requirements under Section 1332(d)(2)(A) are satisfied where at least one member of the class, Dr. Burke, is a citizen of a State different from the defendant. Burke is a citizen of Illinois and, upon information and belief, has a principal place of business in Illinois and Candela is a Delaware corporation with a principal place of business in Wayland, MA. Compl. ¶¶ 1-2.

***Amount In Controversy.*** The amount in controversy exceeds the sum or value of \$5,000,000 because if Candela were required to pay damages to all buyers of the System based on the purchase price of the Systems sold in the United States, the amount of damages would greatly exceed \$5,000,000. Nardoci Aff. at ¶ 5. The requirement that at least one plaintiff seek to recover an amount in excess of \$75,000 is also satisfied as Burke seeks to recover the entire purchase price of her system, which amounts to \$85,000. *Id.* at ¶ 4.

**C. This Notice of Removal Is Timely Filed.**

This removal notice is timely filed as required by 28 U.S.C. 1446(b) whether the case is removed under Section 1332(a) or CAFA. Candela was first served with a Summons and a copy of the Complaint on December 8, 2016, and it is filing this Notice within thirty days after that service.

**III. ALL OTHER PROCEDURAL REQUISITES FOR REMOVAL ARE SATISFIED**

Pursuant to 28 U.S.C. § 1446(a) Candela provides copies of all documents of record in the Circuit Court of Cook County, Case No. 2016CH15692, as follows:

1. A true and accurate copy of the Summons is attached as Exhibit 1.
2. A true and accurate copy of the Complaint is attached as Exhibit 2.

Pursuant to 28 U.S.C. § 1446(d), a notice of filing of removal, with a copy of this notice of removal attached, will be filed with the clerk of the Circuit Court of Cook County, Illinois County Department, Chancery Division, C.A. No. 2016CH15692, and Candela will serve a copy of this notice of the removal on Burke's attorneys on the day of filing.

**IV. CONCLUSION**

By this notice, Candela does not waive any objections it may have to service, jurisdiction, or venue, or any other defenses or objections to this action. Candela intends no admission of fact, law, or liability by this notice, and reserves all defenses, motions, and pleas. Candela prays that this action be removed to this Court for determination; that all further proceedings in the state court suit be stayed; and that Candela obtains all additional relief to which it is entitled.

Respectfully submitted this 6th day of January, 2017

s/ Michael T. Roche

---

Michael T. Roche  
[MTRoche@SRCattorneys.com](mailto:MTRoche@SRCattorneys.com)  
Schuyler, Roche & Crisham, P.C.  
Two Prudential Plaza  
180 North Stetson Avenue, Suite 3700  
Chicago, IL 60601  
312-565-2400

**CERTIFICATE OF SERVICE**

I, Michael T. Roche, certify that on January 6, 2017 I served a true and accurate copy of the forgoing document, including all referenced exhibits, on Plaintiff by sending copies of said documents by first-class mail, postage prepaid to:

Arnold H. Landis, Esq.  
Law Offices of Arnold H. Landis  
Chicago, Illinois 60602

/s Michael T. Roche \_\_\_\_\_

Michael T. Roche