

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KELLEN JACQUIN,)	
)	
KRISTEN SPARKS)	
)	
and)	
)	
GREGORY WATERS, on behalf of themselves)	
and all others similarly situated,)	Case No. _____
)	
Plaintiffs,)	
)	
v.)	
)	
NESTLE PURINA PETCARE COMPANY,)	
)	
Defendant.)	

NOTICE OF REMOVAL

Defendant Nestle Purina Petcare Company (“Purina”) removes to this Court, pursuant to 28 U.S.C. §§ 1332(d)(2), 1441, 1446, and 1453, the civil action entitled *Kellen Jacquin, Kristen Sparks, and Gregory Waters, on behalf of themselves and all others similarly situated v. Nestle Purina Petcare Company*, Case No. 2022-CC-00473, originally filed in the Circuit Court of the City of St. Louis, State of Missouri on March 2, 2020. In support of this Notice of Removal, Purina states the following:

I. NATURE OF THE ALLEGATIONS

1. On March 2, 2020, Plaintiffs Kellen Jacquin, Kristen Sparks, and Gregory Waters (“Plaintiffs”), on behalf of themselves and all other similarly situated, commenced the above-captioned lawsuit by filing a Class Action Petition for Damages (the “Petition”) in the Circuit Court of the City of St. Louis, State of Missouri (the “State Court”). Pursuant to 28 U.S.C. §

1446(a), a true and accurate copy of the Petition, together with “all process, pleadings, and orders” on file in the State Court, are attached hereto as Exhibit A.

2. Purina was served with the summons and a copy of the Petition on or about March 4, 2020. *See* Ex. A, Return of Service.

3. Plaintiffs bring this action individually and as class representatives to recover damages for allegedly unlawful practices under the Missouri Merchandising Practices Act, RSMo. §§ 407.010 *et seq.* Ex. A, Pet. ¶ 3.

4. Plaintiffs’ Petition alleges that Purina falsely and deceptively “marketed, advertised, and sold” certain of its pet food and vitamin products as “safe and without risk to animals.” Ex. A, Pet. ¶ 6. Plaintiffs contend that those representations are false and deceptive because the products contained certain levels of glyphosate, an alleged cause of “serious disease in animals.” *See generally*, Ex. A, Pet. While Plaintiff includes allegations about the levels of glyphosate contained in certain products, every allegation is well less than that permitted by the Food and Drug Administration.

5. Plaintiffs seek to represent a proposed class defined as follows:

All Missouri residents who, within the five years preceding the filing of this Petition, purchased the Purina Products for personal, family or household use.

Id. at ¶ 87.

6. Plaintiffs request “a refund of monies paid for the Purina products,” declaratory and injunctive relief enjoining Purina from continuing the allegedly unlawful practices, punitive damages, pre-judgment interest, post-judgment interest, and attorney’s fees and costs. *Id.* at ¶¶ 96, 144.

II. STATEMENT OF GROUNDS FOR REMOVAL

7. This Court has original jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d), because this lawsuit is a “class action” as defined by CAFA. This case was brought under a state statute or rule, *i.e.*, Missouri Supreme Court Rule 52.08, authorizing an action to be brought by one or more representative persons as a class. 28 U.S.C § 1332(d)(1)(B); Ex. A, Pet. ¶ 87. This Court also has jurisdiction under 28 U.S.C. § 1453(b) because this lawsuit is a “class action” as defined by CAFA.

8. “Under CAFA, federal courts have jurisdiction over class actions in which the amount in controversy exceeds \$5,000,000 in the aggregate; there is minimal (as opposed to complete) diversity among the parties, *i.e.*, any class member and any defendant are citizens of different states; and there are at least 100 members in the class.” *Grawitch v. Charter Commc’ns, Inc.*, 750 F.3d 956, 959 (8th Cir. 2014).

9. While Purina vigorously disputes Plaintiff’s ability to pursue this action as a class action, removal is proper because Plaintiffs have pleaded this civil action as a class of “thousands” of Missouri residents. Ex. A, Pet. ¶ 89.

10. Removal is also proper because this action involves minimal diversity of citizenship and an aggregate amount in controversy exceeding \$5 million. 28 U.S.C § 1332(d).

A. **Minimal Diversity Exists**

11. This case satisfies the minimal diversity requirement of CAFA because at least one member of the putative class is a citizen of a state different from the defendant. 28 U.S.C. § 1332(d)(2)(A).

12. Plaintiffs Kellen Jacquin, Kristen Sparks, and Gregory Waters are citizens of the State of Missouri. Ex. A, Pet. ¶¶ 9-11.

13. Purina is a corporation organized under the laws of Missouri with its principal place of business in St. Louis, Missouri. Ex. A, Pet. ¶ 12. Therefore, Purina is a citizen of Missouri. 28 U.S.C. § 1332(c)(1).

14. The putative class, composed entirely of *residents* of Missouri, is by definition not limited to citizens of the State of Missouri. See Ex. A, Pet. ¶ 87 (“All Missouri residents who, within the five years preceding the filing of this Petition...”).¹ See also *Hargett v. RevClaims, LLC*, 854 F.3d 962, 965 (8th Cir. 2017) (“Unlike citizenship, residency does not require an intent to make a place home. One could, for example, be a resident of multiple states. But one may be a citizen of just one state.”) (citations omitted); *Altimore v. Mount Mercy Coll.*, 420 F.3d 763, 768 (8th Cir. 2005) (“The legal standard to determine citizenship is straightforward. Citizenship is determined by a person’s physical presence in a state along with his intent to remain there indefinitely.”); *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989) (“Domicile is, of course, a concept widely used in both federal and state courts for jurisdiction... ‘Domicile’ is not necessarily synonymous with ‘residence,’ and one can reside in one place but be domiciled in another.”) (citations omitted).

15. As a matter of law, the class as alleged includes numerous non-citizen residents. For example, Plaintiffs’ “Missouri residents” class includes students, members of the military, and even resident foreign nationals who simply live in Missouri but retain their citizenship elsewhere.

¹ In Paragraph 1 of the Petition, Plaintiffs state they bring this action “on their own behalf and as representatives of a class of persons consisting of all Missouri citizens who purchased Purina Products for personal, family, or household purposes.” Ex. A, Pet. ¶ 1. Plaintiffs fail to use the same language to define the class they seek to represent, instead defining it as “Missouri residents.” *Id.* at ¶ 87. For purposes of assessing whether minimal diversity is met, section 1332(d)(2) is clear that the class definition controls. Section 1332(d)(2) specifies that minimal diversity is assessed by examining “any member of a class.” Section 1332(d)(1)(D) specifically defines “class members” as those “who fall within the definition of the proposed or certified class in a class action.” Plaintiffs’ proposed definition therefore controls the analysis.

See, e.g., 13E Fed. Prac. & Proc. Juris. § 3617, Citizenship of Particular Persons—Military Personnel (3d ed.) (“[Military] Service personnel are presumed not to acquire a new domicile when they are stationed in a place pursuant to orders; they retain the domicile they had at the time of entry into the service.”); 13E Fed. Prac. & Proc. Juris. § 3619 (“the principle has been well established that [students] have been presumed to lack the intention to remain in the state indefinitely that is required for the acquisition of a new domicile”).

16. Further, Plaintiffs’ class is not limited to just current Missouri residents; rather, it includes *all* residents within the last five years. Ex. A, Pet. ¶ 87. This would include former residents and citizens who have moved to other states and established citizenship therein. *See Janzen v. Goos*, 302 F.2d 421, 425 (8th Cir. 1945) (recognizing that a change in domicile can be “instantaneous” and does not require a specific period of time).

17. On the face of the Petition, there is a reasonable probability that the putative class of “residents” includes both citizens and *non-citizens* of Missouri, thereby satisfying the minimal diversity requirements of 28 U.S.C. § 1332(d)(2). *Accord McMorris v. TJX Companies, Inc.*, 493 F. Supp. 2d 158, 162 (D. Mass. 2007) (class of “residents of Massachusetts” is minimally diverse from defendant, a citizen of Massachusetts, under CAFA because residency is not citizenship).

B. The Amount in Controversy is Met

18. This case satisfies CAFA’s amount in controversy requirement because the matter exceeds the sum of \$5 million, exclusive of interests and costs. 28 U.S.C. § 1332(d)(6).

19. CAFA states that “the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs.” *Id.* The United States Supreme Court has instructed that “the statute tells the District Court to determine whether it has jurisdiction by adding up the value of the claim of

each person who falls within the definition of [the] proposed class and determine whether the resulting sum exceeds \$5 million.” *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013).

20. “[W]hen a defendant seeks federal-court adjudication, the defendant’s amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court.” *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 87-88 (2014). “[T]he removing party’s burden of describing how the controversy exceeds \$5 million constitutes a pleading requirement, not a demand for proof.” *Raskas v. Johnson & Johnson*, 719 F.3d 884, 888 (8th Cir. 2013) (citations omitted); *Dart Cherokee*, 574 U.S. at 89 (defendants may simply allege that the jurisdictional threshold has been met).

21. Plaintiffs do not allege a particular amount in controversy in their complaint but seek on behalf of themselves, and a class of “thousands” of “Missouri residents” who purchased any of the challenged products from March 2015 to the present: (1) actual damages consisting of the “return[] of all purchase costs Plaintiffs and the Class paid for the Purina Products;” (2) attorney’s fees; (3) costs; (4) statutory pre-judgment and post-judgment interest; (5) punitive damages; and (6) injunctive relief. Ex. A, Pet. ¶ 87, 89, 143-144.

22. Thus, pursuant to plaintiffs’ allegations, the amount in controversy with respect to plaintiff’s claims can be determined by aggregating the total revenue derived from the sale of the challenged products during the class period. During the calendar year 2015, and separately in each year thereafter to the present, Purina’s gross revenue from the sale of the challenged products in the State of Missouri has been more than \$5,000,000. Thus, the aggregate “amount in controversy,” consistent with plaintiffs’ allegations, well exceeds the threshold established by 28 U.S.C. § 1332(d). *See Raskas*, 719 F.3d at 888 (“Once the proponent of federal jurisdiction has explained

plausibly how the stakes exceed \$5 million...then the case belongs in federal court unless it is legally impossible for the plaintiff to recover that much.”) (citations omitted).

23. Moreover, attorneys’ fees are properly considered when assessing the aggregate amount in controversy. *See, e.g., Capital Indem. Corp. v. Miles*, 978 F.2d 437, 438 (8th Cir. 1992); *Synergetics, Inc. v. Hurst*, 333 F. Supp. 2d 841, 843 (E.D. Mo. 2004). While Purina does not believe that attorneys’ fees would be appropriate here, the amount in controversy is determined by the relief request in the Petition, which includes such fees. Assuming for sake of argument that Plaintiffs’ counsel sought attorneys’ fees of 20% of the total amount sought in damages, the amount in controversy would be substantially in excess of \$5,000,000.

24. Likewise, courts consider punitive damages in evaluating the aggregate amount in controversy. *See Blake v. Career Educ. Corp.*, Case No. 08CV00821 ERW, 2008 WL 4151795, at *2 (E.D. Mo. Sept. 4, 2008) (citing *Allison v. Security Benefit Life Ins. Co.*, 980 F.2d 1213, 1215 (8th Cir. 1992)). While Purina also does not believe that punitive damages would ever be warranted, the amount in controversy is determined by the relief request in the Petition, which includes such damages. Even a punitive damages ration of 1:1 would increase the amount-in-controversy well beyond that required to establish jurisdiction under CAFA.

25. Because this matter is a putative class action in which there are over 100 class members, the aggregate potential damages and fees exceed \$5 million, and minimal diversity of citizenship exists between Plaintiffs and Purina, original jurisdiction exists under 28 U.S.C. § 1332(d)(2).

III. REMOVAL TO THIS DISTRICT IS PROPER

26. For the foregoing reasons, this Court may exercise original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2), and removal is proper pursuant to 28 U.S.C. §§ 1441, 1446, 1453.

27. This Notice of Removal is timely filed under 28 U.S.C. §§ 1453(b), 1446(b) because Purina was served on March 4, 2020 and is filing this Notice of Removal within thirty (30) days of service.

28. This Notice of Removal is filed in the District Court of the United States for the district and division in which the case is pending. *See* 28 U.S.C. §§ 1441, 1446(a). The United States District Court for the Eastern District of Missouri, Eastern Division, encompasses the location where the State Court action is pending (City of St. Louis, Missouri). 28 U.S.C. § 105.

29. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 2.03, a copy of all “process, pleadings, and orders served upon” Purina with respect to this action, “a copy of the state court’s docket sheet,” and any other documents on file in the State Court, are attached. *See* Ex. A.

30. Purina has given Plaintiffs written notice of the filing of this Notice of Removal, as required by 28 U.S.C. § 1446(d), by service on counsel. In accordance with Local Rule 2.03, a copy of that notice is filed contemporaneously herewith.

31. Pursuant to the requirements of 28 U.S.C. § 1446(d), Purina is filing a copy of this Notice of Removal with the Clerk of the Circuit Court of St. Louis City, State of Missouri. In accordance with Local Rule 2.03, a copy of that notice is filed contemporaneously herewith.

32. Purina has complied with Local Rule 2.02. A completed Civil Cover Sheet, an Original Filing Form, and a Disclosure of Organizational Interests Certificate accompanies this Notice of Removal.

WHEREFORE, Purina respectfully requests that this action now pending in the Circuit Court of the City of St. Louis, State of Missouri be removed to this Court, that this Court exercise its subject matter jurisdiction over this action, and that the Court grant such other and further relief as it deems just and proper.

Respectfully submitted,

THOMPSON COBURN LLP

By: /s/ Booker T. Shaw

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of April, 2020, I electronically filed the foregoing Notice of Removal with the Clerk of the Court using the CM/ECF system, and have served via electronic mail and U.S. mail, first class, postage prepaid, the Notice of Removal to the following:

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