

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JEFFREY PARRELLA, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

SIRIUS XM HOLDINGS INC. d/b/a SIRIUS
XM SATELLITE RADIO; SIRIUS XM
RADIO INC.; and JAMES E. MEYER,

Defendants.

Case No.: _____

NOTICE OF REMOVAL

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453, and the Class Action Fairness Act (“CAFA”), Defendants Sirius XM Holdings Inc., Sirius XM Radio Inc. (“Sirius XM”), and James E. Meyer (collectively “Defendants”), by and through undersigned counsel, hereby remove to this Court from the Superior Court of New Jersey, Case No. MERL00120719, described below, and in support thereof, state as follows:

INTRODUCTION

1. Pursuant to Rule 10.1(a) of the Local Civil Rules, the addresses of the named parties are as follows:

- Plaintiff Jeffrey Parrella (“Plaintiff”) states in his Complaint that he is a resident of the State of New Jersey, living in Kinnelon, New Jersey.
- Plaintiff is represented by Bharati O. Sharma, Esq., of The Wolf Law Firm LLC, located at 1520 US Highway 130, Suite 101, North Brunswick, New Jersey 08902.

- Defendants Sirius XM Holdings Inc. and Sirius XM Radio Inc. are Delaware corporations, with their headquarters at 1290 Avenue of the Americas, New York, New York 10104.
- Defendant James E. Meyer is the Chief Executive Officer of Sirius XM Holdings Inc. and Sirius XM Radio Inc. Mr. Meyer is a resident of Indiana.
- Defendants are represented by the undersigned attorneys at Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036 and Robinson Miller LLC, 1 Newark Center, Newark, New Jersey 07102.

2. Plaintiff initiated this action in the Superior Court of New Jersey, Law Division, Civil Part, Mercer County on June 19, 2019. A copy of Plaintiff's Complaint is attached as Exhibit 1.

3. Plaintiff served Defendant Sirius XM on June 25, 2019, and subsequently served Defendants Sirius XM Holdings Inc. and Mr. Meyer by mail. *See* Exhibit 1. Plaintiff's Complaint is the only process, pleading, or order served on Defendants. *Cf.* 28 U.S.C. § 1446(a).¹

4. Accordingly, this Notice of Removal is timely under 28 U.S.C. § 1446(b) because it was filed within thirty (30) days after receipt by Defendants, through service or otherwise, of a copy of the "initial pleading setting forth the claim for relief upon which such action or proceeding is based." 28 U.S.C. § 1446(b).

5. Nothing in this Notice of Removal constitutes a waiver or admission of any allegation, defense, argument, or principle of equity available to Defendants, including the right to move to compel arbitration.

BASIS FOR JURISDICTION

6. This Court has original jurisdiction over this case pursuant to CAFA, Pub. L. No. 109-2, 119 Stat. 4 (Feb. 18, 2005) (codified at 28 U.S.C. §§ 1711-1715, 1332(d), and 1453).

¹ Based on the allegations in the Complaint, Plaintiff's identification of James Meyer as a defendant is wholly improper and Defendants, including Mr. Meyer, reserve the right to file a motion to dismiss at the appropriate time.

7. As set forth below, the instant action alleges a putative class action in which: (1) at least one member of the proposed class is a citizen of a different state (New Jersey) from the Defendants; (2) there are more than 100 alleged members in the proposed class; and (3) based on the allegations in the complaint, the aggregated claims of the proposed class exceed \$5,000,000, exclusive of interest and costs. Therefore, this Court has original jurisdiction over this action, and the action may be removed to this Court pursuant to 28 U.S.C. § 1332(d)(2).

8. For purposes of CAFA, a “class action” is “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 one or more representative persons as a class action.” 28 U.S.C. ¶ 1332(d)(1)(B).

9. Sirius XM offers a variety of subscription-based services to its customers. Complaint at ¶ 9.

10. Plaintiff alleges that Defendants conducted a “bait-and-switch advertising scheme” by advertising to sell to him and others Sirius XM’s “Select Service” radio package at a price of \$99 for three years (“the \$99/3yr. Offer”), but then sold to him a one year-plan for \$68.34. Complaint at ¶ 1.

11. Plaintiff’s Complaint contends that Defendants thereby violated the New Jersey Consumer Fraud Act (the “CFA”), N.J.S.A. 56:8-2 *et seq.*, the General Advertising Regulations, N.J.A.C. 13:45A-9.1 *et seq.*, and the Truth-in-Consumer Contract, Warranty and Notice Act (the “TCCWNA”), N.J.S.A. 56:12-14 *et seq.* Complaint at ¶ 1.

12. Plaintiff’s Complaint defines “the class” to include himself as well as a putative class consisting of “all New Jersey consumers to whom Sirius XM offered a ‘Select service’ package the same as or similar to the ‘Select service’ package offered to Plaintiff at any time on

or after the day six years prior to the date this Complaint was filed, who timely responded to the offer and subsequently purchased a more expensive service package.” Complaint at ¶ 51. Accordingly, these allegations comprise a “class action” as defined in 28 U.S.C. §§ 1332(d)(1)(B) and 1453.1.²

13. Plaintiff alleges that the “members of the Class for whose benefit this action is brought are so numerous that joinder of all members is impracticable.” Complaint at ¶ 52. Plaintiff does not estimate the actual number of class members.

14. Based on a preliminary investigation, Sirius XM sent the \$99/3yr. Offer to about 169,000 residents of New Jersey. Declaration of James Dunn, Vice President of Marketing Operations (“Dunn Declaration”) at ¶ 3. While it is unclear at this time exactly how many of these 169,000 New Jersey residents meet the proposed class definition, the potential number of all proposed plaintiff class members in the aggregate, based on Plaintiff’s allegations, is not less than 100. 28 U.S.C. § 1332 (d)(5)(B).

15. As of the date of this Notice of Removal, Defendants have not filed a responsive pleading to any complaint in this action. Defendants reserve all rights to assert any and all defenses or otherwise respond to the operative Complaint. Defendants further reserve the right to amend or supplement this Notice of Removal.

² Defendants do not agree and in fact dispute that Plaintiff’s claims are subject to class treatment in any form and reserve the right to make all available arguments in that regard, if necessary, at the appropriate time. Defendants further seek to remove this action to federal court without conceding that federal court is the appropriate forum to resolve the instant dispute because the instant dispute should be submitted to arbitration pursuant to agreement between the parties. Defendants will commence such a motion as the appropriate time.

DIVERSITY OF CITIZENSHIP EXISTS

16. District courts have subject matter jurisdiction over a “class action,” as defined in 28 U.S.C. §§ 1332(d)(1)(B) and 1453, where, *inter alia*, “any member of a class of plaintiffs is a citizen of a State different from any defendant[.]” *See* 28 U.S.C. § 1332(d)(2)(A).

17. Plaintiff alleges that he is a resident of New Jersey. *See* Compl. at ¶ 3. On information and belief, Plaintiff is, therefore, a citizen of New Jersey. Moreover, Plaintiff defines the class to include “New Jersey consumers.” Complaint at ¶ 51.

18. Pursuant to 28 U.S.C. § 1332(c), a corporation is “a citizen of every State . . . by which it has been incorporated and of the State . . . where it has its principal place of business.” Defendants Sirius XM Radio Inc. and Sirius XM Holdings Inc. are both incorporated in Delaware and have their principal places of business in New York, making them citizens of Delaware and New York.

19. As a result, at least one member of the putative class Plaintiff seeks to represent is a citizen of a different state (New Jersey) than the states Defendants are citizens of and therefore diversity of citizenship has been satisfied. *See* 28 U.S.C. § 1332(d)(2)(4).

THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

20. District courts have subject matter jurisdiction over a “class action,” as defined in 28 U.S.C. §§ 1332(d)(1)(B) and 1453, where, *inter alia*, “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” *See* 28 U.S.C. § 1332(d)(2).

21. Defendants do not agree that Plaintiff or putative class members have been damaged, and reserve the right to make all available arguments in that regard, if necessary, at the appropriate time.

22. Pursuant to 28 U.S.C. § 1332(d)(6), the claims of each putative class member can be aggregated to determine whether the amount in controversy requirement is satisfied. *See* 28 U.S.C. § 1332(d)(6).

23. The aggregate cost to Defendants to comply with the monetary and injunctive relief sought in Plaintiff's complaint will exceed the sum or value of \$5,000,000 exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(6).

24. When a plaintiff's complaint does not state the amount in controversy, such as Plaintiff's Complaint here, "the defendant may provide an amount in its notice of removal." *Doe v. Georgetown Synagogue-Kesher Israel Congregation*, 118 F. Supp. 3d. 88, 93 (D.D.C. 2015). Furthermore, the United States Supreme Court has held that in order to remove a case to federal court, "the defendant need only 'allege the requisite amount plausibly' and need not support the allegation with evidentiary submissions." *Id.* (quoting *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 553 (2014)).

25. Congress' intent in enacting CAFA is quite clear; CAFA is "to be interpreted expansively," and "if a federal court is uncertain about whether 'all matters in controversy' in a purported class action 'do not in the aggregate exceed the sum or value of \$5,000,000,' the court should err in favor of exercising jurisdiction over the case." *Senate Comm. on the Judiciary, 109th Cong., Report on the Class Action Fairness Act of 2005*, S. Rep. No. 109-14, at 42 (2005). Furthermore, if the aggregated total exceeds \$5,000,000, then the amount in controversy is met "regardless of the type of relief sought (e.g., damages, injunctive relief, or declaratory relief)." *Id.*

26. Here, the claimed statutory damages alone could potentially amount to over \$5,000,000, should the proposed class ultimately prevail. Plaintiff alleges that Defendants are

liable to Plaintiff and others similarly situated for the minimum statutory penalty of \$100 for each contract, pursuant to the TCCWNA at N.J.S.A. 56:12-17. Complaint at ¶ 53(h).

27. Plaintiff further alleges that he and others similarly overpaid by \$27 for one year (\$60 for one year of service, instead of \$33.00), and thereby suffered alleged actual damages in that amount (pre-tax). Complaint at ¶ 45.

28. Plaintiff further requests that the Court award treble damages pursuant to the CFA. Complaint at p. 15.

29. Combining the alleged statutory and trebled actual damages, Plaintiff seeks at least \$181 per class member (*i.e.*, \$27 times 3 plus \$100). Therefore, if there are at least 27,625 putative class members, the alleged damages would exceed \$5,000,000, satisfying the amount-in-controversy threshold. Again, as stated above, given the about 169,000 recipients of the advertising at issue, this number of potential class members is plausible.

30. Plaintiff additionally seeks an award of attorneys' fees and costs, which further confirms the plausibility of the damages claim exceeding \$5,000,000. Reasonable attorney's fees are considered as well when calculating the CAFA amount-in-controversy requirement. *See Bradford*, 249 F. Supp. 3d at 334 (citing *Frederico v. Home Depot*, 507 F.3d 188, 199 (3d Cir. 2007)).

31. Plaintiff's claims for attorney's fees and injunctive relief, including the cost of implementing the requested relief, further confirm that the amount in controversy requirement is met. All of the claimed potential damages and fees described above easily amount to well over the \$5,000,000 threshold necessary under CAFA to remove this action to federal court.

32. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).³ This analysis satisfies the requirement that Defendants need include “only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold” in this Notice, without the need to include evidentiary submissions at this stage. *Dart Cherokee Basin Operating Co. v. Owens*, --- U.S. ---, 135 S.Ct. 547, 554, 190 L.Ed.2d 495 (2014); *see also Grace v. T.G.I. Fridays, Inc.*, 14-7233, 2015 WL 4523639, at *3 (D.N.J. July 27, 2015) (discussing *Dart*).

VENUE

33. Venue is proper in this District pursuant to 28 U.S.C. § 1441 (a) because the original action was filed in the Superior Court located within the District of New Jersey. Therefore, venue is proper in this District because it is the “district . . . embracing the place where such action is pending.” *See* 28 U.S.C. § 1441(a).

NOTICE

34. Defendants will promptly serve Plaintiff with this Notice of Removal and file a copy of this Notice of Removal with the clerk of the Superior Court of New Jersey, Law Division, Civil Part, Mercer County pursuant to 28 U.S.C. § 1446(d).

CONCLUSION

WHEREFORE, Defendants respectfully remove this matter to this Court pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

³ CAFA’s “local controversy” and “home state” exceptions both apply only where the defendant is a citizen of the State in which the action was originally filed. *See* 28 U.S.C. § 1332(d)(4)(A)(cc) (requiring that “at least one defendant . . . is a citizen of the State in which the action was originally filed”); *id.* at § 1332(d)(4)(B) (requiring, *inter alia*, that “primary defendants[] are citizens of the State in which the action was originally filed”). Defendants demonstrated above that they are not citizens of New Jersey and, therefore, neither exception applies.

Dated: July 24, 2019

Respectfully submitted,

By /s/Michael J. Gesualdo
Michael J. Gesualdo

ROBINSON MILLER LLC
Keith J. Miller (kmiller@rwmlegal.com)
Michael J. Gesualdo (mgesualdo@rwmlegal.com)
Justin T. Quinn (jquinn@rwmlegal.com)
One Newark Center, 19th Floor
Newark, New Jersey 07102
(973) 690-5400

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Mark A. Baghdassarian (*pro hac vice to be filed*)
Aaron M. Frankel (*pro hac vice to be filed*)
Eileen M. Patt (*pro hac vice to be filed*)
1177 Avenue of the Americas
New York, New York 10036
(212) 715-9100
mbaghdassarian@kramerlevin.com
afrankel@kramerlevin.com
epatt@kramerlevin.com

*Attorneys for Defendants Sirius XM Holdings Inc.,
Sirius XM Radio Inc., and James E. Meyer*