

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CITY OF PARMA, OHIO, on behalf of
itself and all others similarly situated,

Plaintiff,

vs.

CINGULAR WIRELESS LLC,

Defendant.

Case No.

1:05CV1471

Judge: JUDGE BOYKO

MAG. JUDGE HEMANN

NOTICE OF REMOVAL

Defendant Cingular Wireless LLC (“Cingular”), in accordance with 28 U.S.C. §§ 1332, 1441, and 1446, files this Notice of Removal of the action referred to herein from the Court of Common Pleas, Cuyahoga County, Ohio, to the United States District Court for the Northern District of Ohio, and respectfully shows the Court as follows:

1.

On or about April 18, 2005, Plaintiff City of Parma, Ohio, (“City of Parma” or the “City”) filed against Cingular a civil action in the Court of Common Pleas, Cuyahoga County, Ohio, styled City of Parma, Ohio v. Cingular Wireless LLC, Case No. CV-05-560750.

2.

On April 21, 2005, City of Parma filed an Amended Class Action Complaint.

3.

Cingular first received a copy of the Amended Class Action Complaint (the "Complaint") on April 27, 2005. Cingular had not previously been served with, or received a copy of, or otherwise received notice of any pleading in this case.

4.

The Summons and Class Action Complaint were served on Cingular on May 2, 2005. Cingular had not previously received a copy of the Summons or Complaint. True and correct copies of all pleadings served on Cingular are attached hereto as Exhibit 1.¹

5.

This removal is timely under 28 U.S.C. § 1446(b) because it is submitted within thirty (30) days of the date Cingular was first served with, or received a copy of, or otherwise received notice of the Summons and Complaint in this civil action.

¹ The pleadings filed to date include: (1) Summons and Class Action Complaint; (2) Motion for Class Certification; (3) Declaration of Clinton A. Krislov In Support of Motion for Admission *Pro Hac Vice*; (4) Motion for Admission *Pro Hac Vice*; and (5) Amended Class Action Complaint.

6.

The Complaint alleges that Plaintiff City of Parma is a municipal corporation created under Ohio law. (*See* Compl. ¶ 5).

7.

The Complaint alleges that Defendant Cingular is a Delaware limited liability company headquartered in Atlanta, Georgia. (*See* Compl. ¶ 6).

8.

The Complaint alleges that AT&T Wireless Services, Inc. (“AWS”) entered into a license agreement on July 30, 1997 (the “Agreement”) under which AWS would pay the City of Parma a fee in exchange for authorization to construct and operate a tower site on the City’s property. (*See* Compl. ¶ 10). The Agreement had an initial term of five years, and automatically renews for additional five-year terms at the end of each term. (*See* Compl. ¶ 11). The current term expires on July 31, 2007.

9.

The Complaint alleges that AWS pays the City \$4414.93 monthly in accordance with the Agreement’s terms. (*See* Compl. ¶ 13).

10.

Cingular acquired AWS in October 2004. (*See* Compl. ¶ 8). The Complaint alleges that, because Cingular’s acquisition of AWS resulted in overlapping

coverage, Cingular attempted to reduce its payments for the “arguably redundant cell sites” by sending letters to the City and to “over 15,000 communities or lessors nationwide,” which letters allegedly asserted Cingular’s intent to amend the Agreement and other lease/license agreements due to overlapping coverage. (*See* Compl. ¶¶ 14, 17-19).

11.

City of Parma has brought this action pursuant to Ohio Rules of Civil Procedure 23(A) and 23(B)(1)-(3), on behalf of itself and a proposed nationwide class consisting of:

All lessors or licensors under AT&T Wireless or Cingular Wireless contracts for the construction, operation, maintenance, and/or use of cell sites, who, following the merger of AT&T Wireless and Cingular Wireless, were sent letters in substantially the same form, asserting Cingular’s intention to obtain changes in the lease/license on threat of termination due to overlapping coverage.

(Compl. ¶ 20). The City alleges that Cingular sent the letters described above to over 15,000 municipalities and lessors nationwide. (Compl. ¶ 19).

12.

City of Parma claims that, by sending the letters described above to the City and to other municipalities and lessors, Cingular has anticipatorily breached its agreements by threatening to terminate. (*See* Compl. ¶¶ 19, 28-30).

13.

The Complaint seeks a judgment for damages to the City and to the proposed class for anticipatory breach of contract. (*See* Compl. ¶ 30). The City additionally requests a declaration that Cingular has no right to terminate the contracts under the circumstances. (Compl. ¶ VII).

14.

Based on the allegations in the Complaint, the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000 because, as of the date the Complaint was filed, there were 28 months remaining in the current term of the Agreement and Cingular's monthly payment under the Agreement is \$4414.93.

15.

Based on the allegations in the Complaint, there exists diversity of citizenship under 28 U.S.C. § 1332(a)(1) because this is a civil action between citizens of different states.

16.

Thus, this Court has original jurisdiction over this matter under 28 U.S.C. § 1332(a)(1) because the alleged cause of action is a civil action in which the matter in controversy is alleged to exceed the sum of \$75,000, exclusive of interests and costs, and is between citizens of different states.

17.

Alternatively, this Court has original jurisdiction over this matter under 28 U.S.C. § 1332(d)(2)(A), as amended by the Class Action Fairness Act of 2005, because the cause of action is a class action in which the aggregate amount in controversy between all purported class members and Cingular, as alleged in the Complaint, exceeds the sum of \$5,000,000, exclusive of interests and costs, and a member of the proposed plaintiff class is a citizen of a state different from the defendant.

18.

Because this Court has original jurisdiction over this civil action, this case is removable to this Court under 28 U.S.C. § 1441(a).

19.


Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Clerk of the Court of Common Pleas, Cuyahoga County, Ohio, on this date, and is being served on all parties to this lawsuit on this date.

20.

Cingular, by virtue of filing this Notice of Removal, does not waive any defenses or objections available to it under the law.

WHEREFORE, Cingular Wireless LLC prays that this case proceed in this Court as a removed claim or cause of action under 28 U.S.C. §§ 1332, 1441, and 1446.

This 24th day of May, 2005.



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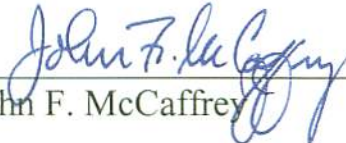
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing NOTICE OF REMOVAL upon counsel for all parties, or all parties, by causing same to be deposited in the United States Mail, postage prepaid, addressed as follows:

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Thomas Shaper, Esq.
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This 24th day of May, 2005.



John F. McCaffrey