

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DONALD CARL BANKHEAD, and  
KEITH THOMPSON, Individually, and  
on behalf of a class of similarly situated  
persons,

Plaintiffs,

v.

CASTLE PARKING SOLUTIONS,  
LLC, and BEACON MANAGEMENT  
SERVICES, LLC,

Defendants.

Case No. \_\_\_\_\_

JUDGE \_\_\_\_\_

MAGISTRATE JUDGE  
\_\_\_\_\_

**DEFENDANT BEACON MANAGEMENT SERVICES, LLC'S NOTICE OF  
REMOVAL**

Defendant Beacon Management Services, LLC ("Beacon") removes this action from State Court of Fulton County, Georgia, No. 17EV003899, to the United States District Court for the Northern District of Georgia, Atlanta Division, pursuant to 28 U.S.C. §§ 1332, 1441(a), 1446, and 1453. In support of removal, Beacon states as follows:

**I. THE COMPLAINT AND STATUS OF PROCEEDING IN STATE COURT**

1. On August 16, 2017, Plaintiffs filed a "Class Action Complaint" in the State Court of Fulton County, Georgia against Defendants Beacon and Castle

Parking Solutions, LLC (“Castle”).

2. The Complaint and a summons were served via certified mail upon Beacon’s statutory agent on September 15, 2017. As required by 28 U.S.C. § 1446(a), a copy of the Complaint, as well as all process, pleadings, and orders, served on Beacon are attached as Exhibit 1.

3. No responsive pleadings have been filed by Beacon in the state court action.

4. As stated in more detail below, this case is properly removed to this Court pursuant to 28 U.S.C. § 1441 because Beacon has satisfied the procedural requirements for removal and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332.

**II. BEACON HAS SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL**

5. The removed action is a putative “class action” within the meaning of 28 U.S.C. §§ 1332(d)(1)(A), (B) and 1453, because it is a “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 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(A). The action brought by Plaintiffs is a putative class action, pursuant to Georgia’s Civil Practice Act, on behalf of a putative class of plaintiffs, as defined in 28 U.S.C. § 1332(d)(1)(A).

6. Beacon was served with the Complaint on September 15, 2017.

Accordingly, as this Notice of Removal is being filed within 30 days of service, removal is timely under 28 U.S.C. § 1446(b).

7. Venue in this Court is proper under 28 U.S.C. § 1441(a) as this Court is located in the same county as the State Court of Fulton County, Georgia. Thus, this Court “embrac[es] the place where such action is pending.” 28 U.S.C. § 1441(a).

8. No previous notice of removal has been filed in this action.

9. Beacon has filed this Notice of Removal with this Court, and this day will serve a copy of the Notice of Removal upon counsel for Plaintiffs and Defendant Castle, and file a copy of this Notice of Removal in the State Court of Fulton County, Georgia pursuant to 28 U.S.C. § 1446(d). A copy of the State Court of Fulton County, Georgia docket, as of October 12, 2017, for the matter removed to this Court, is attached as Exhibit 2.

### **III. BASIS FOR JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT**

10. This alleged class action is subject to removal pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2 (“CAFA”), codified in relevant part at 28 U.S.C. §§ 1332(d) and 1453.

11. As explained below, this is a putative class action in which (A) there are 100 or more members in Plaintiffs’ proposed class; (B) one or more members of the alleged class are citizens of a state different from that of Beacon and Castle;

and (C) the aggregate amount in controversy exceeds the sum or value of \$5 million, exclusive of interest and costs. Thus, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A).

**A. The Putative Class Contains More Than 100 Members.**

12. In the Complaint, Plaintiffs allege a national class composed of:

All persons who have been booted by Defendant Castle Parking and paid fines for removal of said device within the City of Atlanta from August 16, 2012, through present.

(Compl. ¶ 29(a).)

13. Plaintiffs also allege three subclasses composed of:

All persons who have been booted by Defendant Castle Parking at 502 Pryor St. SW, Atlanta, GA 30312 [“502 Pryor St.”], and have paid a fine for removal of said device from August 16, 2012, through present (the Bankhead/Thompson Castle subclass).

All persons who have been booted by [sic] at the direction of Beacon and paid fines for removal of said device within the City of Atlanta from August 16, 2012, through present (the Beacon Atlanta subclass); and

All persons who have been booted at the direction of Beacon at [502 Pryor St.], and have paid a fine for removal of said device from August 16, 2012, through present (the Bankhead/Thompson Beacon subclass).

(Compl. ¶ 29(b)-(d).)<sup>1</sup>

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<sup>1</sup> Defendants assume that, due to typographical error, the Beacon Atlanta and the Bankhead/Thompson Beacon subclasses include those persons who were allegedly booted by Castle only.

14. Plaintiffs allege that there are “thousands” of class members. (Compl. ¶ 31.) This allegation demonstrates that the putative class exceeds 100. 28 U.S.C. § 1332(d)(2)(A).

**B. At Least One Class Member Is A Citizen Of A State Different From Defendants.**

15. CAFA jurisdiction requires that “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).

16. Defendant Beacon is a Georgia limited liability company with its principal place of business in Georgia, and thus is a citizen of Georgia under 28 U.S.C. § 1332(c)(1).

17. Plaintiffs allege that Defendant Castle is a Georgia limited liability company with its principal place of business in Georgia, and thus is a citizen of Georgia under 28 U.S.C. § 1332(c)(1). (Compl. ¶ 4.)

18. Plaintiffs seek to represent “[a]ll persons who have been booted ... and paid fines for removal of said device within the City of Atlanta from August 16, 2012, through present.” (Compl. ¶ 29(a) (emphasis added).) The proposed class is not limited to citizens of Georgia, and thus Plaintiffs purport to represent “all persons” subjected to the alleged wrongful conduct, regardless of their citizenship.

19. At least one class member, out of the alleged class of “thousands,” is a citizen of a state other than Georgia, and thus satisfies the minimal diversity

requirement of 28 U.S.C. § 1332(d)(2).

**C. The Amount In Controversy Exceeds The \$5 Million Aggregate Threshold.**

20. Under 28 U.S.C. § 1332(d)(6), the claims of putative class members shall be aggregated to determine whether the amount in controversy exceeds the sum or value of \$5,000,000. This requirement is plainly satisfied by Plaintiffs' claims and alleged damages and other monetary relief sought or implicated by the allegations of the Complaint.

21. When a defendant seeks removal under CAFA, all that is required is "a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551, 554 (2014).

22. Defendant Beacon expressly disputes any liability to Plaintiffs or to a putative class for either monetary or equitable relief under any claim, and deny the alleged vehicle immobilization practices constitute false imprisonment, conversion/civil theft, negligence, negligence per se, money had and received, or violations under Georgia's Racketeer Influenced and Corrupt Organization Act ("Georgia RICO"), O.C.G.A. § 16-14-1, *et seq.*, deny that Plaintiffs or putative class members incurred any damages, and deny that a class exists.

23. Solely for purposes of this Notice of Removal, and no other, Beacon establishes that the amount in controversy exceeds the minimum \$5 million based

on the allegations of the Complaint, but does not hereby admit or acknowledge the allegations of the Complaint or that Beacon is liable to Plaintiffs or a putative class for monetary or equitable relief. *See Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751 (11th Cir. 2010) (“The amount in controversy is not proof of the amount the plaintiff will recover. Rather, it is an estimate of the amount that will be put at issue in the course of the litigation.”)

**1. Alleged Compensatory Damages**

24. A defendant can demonstrate the amount in controversy through various means, including through whether it is facially apparent from the Complaint. *Williams v. Best Buy Co., Inc.*, 269 F.3d 1316, 1319 (11th Cir. 2001) (“When the complaint does not claim a specific amount of damages, removal from state court is [jurisdictionally] proper if it is facially apparent from the complaint that the amount in controversy exceeds the jurisdictional requirement.”)

25. Plaintiffs allege that “[Castle] is a licensed vehicle immobilization service operating within the City of Atlanta” that “offers booting services to parking lots within the City of Atlanta.” (Compl. ¶¶ 12, 13.) Plaintiffs also allege that “Beacon directs [Castle], as well as other third parties, to immobilize vehicles located on properties managed by Beacon.” (*Id.* at ¶ 14.) The basis of Plaintiffs’ claims is that, allegedly, the “signs erected at every parking lot wherein [Castle] and Beacon operate do not comply with Atlanta Code of Ordinances, Chapter 162,

Art. 5 § 162-261.” (*Id.* at ¶ 15.)

26. Plaintiffs Bankhead and Thompson claim that, while parked in a Beacon-managed private parking lot located at 502 Pryor St. (*id.* at ¶ 18), “[Castle] placed a boot on Bankhead and Thompson’s vehicles and refused to remove it unless Plaintiffs paid a \$75 fine” (*id.* at ¶ 22). Plaintiffs claim that they paid Castle the \$75 fine. (*Id.* at ¶ 23.)

27. Because the signs erected at 502 Pryor St. did not allegedly comply with Atlanta Code of Ordinances, Chapter 162, Art. 5 § 162-261 (*id.* at ¶ 26), Plaintiffs contend that “Defendants booted Plaintiffs Bankhead and Thompson without legal authority and caused damages to Plaintiffs” (*id.* at ¶ 27).

28. Plaintiffs allege “on information and belief,” that “at all other locations within the City of Atlanta where Defendants engage in vehicle immobilization, the signs erected by Defendants do not comply with Atlanta Code of Ordinances, Chapter 162, Art. 5 § 162-261.”

29. Plaintiffs allege a class of individuals whose vehicles were booted from August 16, 2012 to present that allegedly include “thousands of Class members.” (Compl. ¶¶ 29, 31.)

30. Plaintiffs allege that Defendants “have collected millions of dollars in fees in an unlawful manner.” (Compl ¶ 1.) In addition to these alleged compensatory damages, for each claim, Plaintiffs allege that they and all other



class members “have incurred damages in an amount to be determined by the enlightened conscience of a jury as a result of Defendants’ conduct.” (*Id.* at ¶¶ 39, 45, 48, 52, 56, 67, 78.)

31. Given that Plaintiffs have alleged that Defendants unlawfully collected “millions of dollars in fees” (*Id.* ¶ 1), the alleged compensatory damages for the putative class on the face of the Complaint, before trebling, totals at least \$2 million.

**2. Alleged Treble Damages, Punitive Damages and Attorneys’ Fees**

32. In addition to compensatory damages, the Complaint seeks punitive damages and attorneys’ fees. (Compl. ¶¶ 78-82.) These damages are part of the amount in controversy calculation. *See Porter v. MetroPCS Commc ’ns Inc.*, 592 F. App’x 780, 783 (11th Cir. 2014) (noting that the court “[does] not doubt that” attorney’s fees and punitive damages are included in the amount in controversy calculation).

33. Punitive damages may be awarded for Plaintiffs’ tort claims under O.C.G.A. § 51-12-5.1, including false imprisonment and conversion and civil theft.

34. Plaintiffs allege defendants engaged in certain conduct that entitles Plaintiffs to punitive damages under O.C.G.A. § 51-12-5.1. (Compl. ¶ 81-82.)

35. Conservatively applying a factor of one to Plaintiffs’ alleged compensatory class damages equals \$2 million of punitive damages in controversy,

totaling a minimum of \$4 million in compensatory and punitive damages in controversy. But courts within this Circuit have affirmed larger punitive damages ratios, thus placing those damages “at issue.” *See e.g., Goldsmith v. Bagby Elevator Co.*, 513 F.3d 1261, 1284 (11th Cir. 2008) (noting that the 11th Circuit has upheld a 2173 to 1 ratio of punitive damages when Georgia had a compelling interest in deterring the alleged conduct); *Eastern Prop. Dev. LLC v. Gill*, 558 Fed.Appx. 882 (11th Cir. 2014) (affirming punitive damages in the ratio of 7-1 for tort claims under state law, including conversion).

36. Plaintiffs also seek treble damages (Compl. ¶ 18), which may be recovered under Georgia RICO. *See* O.C.G.A. § 16-14-6(c); *Glob. One Fin., Inc. v. Quest Healthcare LLC*, No. 1:09-CV-2446-WBH, 2010 WL 11509142, at \*3 (N.D. Ga. Feb. 22, 2010) (awarding treble damages on Georgia RICO claim). Trebling the compensatory damages amount in controversy of \$2 million would equal \$6 million in treble damages in controversy.

37. Moreover, Plaintiffs’ Georgia RICO, conversion, and civil theft claims allow for the recovery of attorneys’ fees. *See* O.C.G.A. § 16-14-6(c) (Georgia RICO); *Mays v. Lampkin*, 207 Ga. App. 739, 741, 429 S.E.2d 113, 116 (1993) (affirming grant of attorney’s fees in conversion action). Plaintiffs also request recovery of attorneys’ fees. (Compl. ¶¶ 79-80, 84(g).)

38. Here, a conservative estimate of Plaintiffs’ attorneys’ fees in

controversy would be more than \$1 million based on allegations of the Complaint. *In Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991 (finding that attorney's fees of 25% of common fund is appropriate "benchmark"); *Carpenters Health & Welfare Fund v. Coca-Cola Co.*, 587 F. Supp. 2d 1266, 1272 (N.D. Ga. 2008) (affirming award of attorneys' fees amounting to 21% of settlement fund).

39. Based on the foregoing, the total compensatory damages, as well as punitive damages, treble damages, and attorneys' fees placed in controversy by the allegations of the Complaint, are at least \$11 million, well exceeding the jurisdictional minimum of \$5 million.

40. Therefore, Defendant Beacon respectfully requests that this Court assume full jurisdiction over this case as provided by law.

*Signatures on next page*

This 16 day of October, 2017.

Respectfully submitted,

WALDON ADELMAN CASTILLA  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy was served via e-mail and first-class U.S. Mail, postage pre-paid, upon the following this 16 day of October, 2017, upon the following:

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