

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

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CLERK US DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA FLORIDA

ARINDA RIVERA, on behalf of herself  
and on behalf of all others  
similarly situated,

Plaintiff,

v.

AIMBRIDGE HOSPITALITY, LLC,

Defendant.

CASE NO: 8:18-cv-02192-T-17-JSS

AIMBRIDGE HOSPITALITY, LLC'S NOTICE OF REMOVAL OF  
CIVIL ACTION

Defendant Aimbridge Hospitality, LLC ("Aimbridge"), by and through its counsel, hereby gives notice of removal of this action pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, from the Circuit Court for the Thirteenth Judicial Circuit, Hillsborough County, Florida to the United States District Court for the Middle District of Florida. In support of this removal, Defendant states as follows:

FACTUAL BACKGROUND

1. On or about August 14, 2018, Plaintiff Arinda Rivera ("Plaintiff") commenced a state court action against Defendant in the Circuit Court for the Thirteenth Judicial Circuit, Hillsborough County, Florida, styled *Arinda Rivera v. Aimbridge Hospitality, LLC* (the "State Court Action"). See *Rivera v. Aimbridge Hospitality, LLC*, No. 18CA7870 (Fla. 13th Cir. Ct. August 14, 2018) (hereinafter "Complaint"), a true and correct copy of which is attached hereto as "Exhibit A."

TPA 02834  
\$400.00

2. Defendant Aimbridge was served on August 15, 2018. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).

3. The State Court Action asserts claims for negligence, negligence per se, declaratory and injunctive relief, and violations of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA") arising out of a data breach incident that was discovered on March 21, 2018. *See* Complaint ¶ 1.

4. Plaintiff seeks certification of a class of: "[a]ll residents of the United States whose Personal Information was contained in the publicly-accessible database and compromised as a result of the Data Breach." *See* Complaint ¶ 55. Plaintiff also seeks certification of the following state subclass: "[a]ll residents of Florida whose Personal Information was contained in the publicly-accessible database and compromised as a result of the Data Breach." *See* Complaint ¶ 56.

5. In addition to class certification, Plaintiff seeks recovery for herself and the putative class in the form of damages in an amount to be determined at trial, injunctive relief prohibiting Aimbridge from "continuing to engage in the unlawful acts, omissions, and practices" alleged in the Complaint; disgorgement and restitution, declaratory relief, costs, and attorneys' fees. *See* Complaint, Prayer for Relief.

#### **GROUND FOR REMOVAL**

6. This case is removable pursuant to the Class Action Fairness Act of 2005 ("CAFA"). *See* 28 U.S.C. § 1332. CAFA extends federal jurisdiction over class actions where (1) any member of the proposed class is a citizen of a different state from any defendant (*i.e.* minimum diversity exists); (2) the proposed class consists of more than

100 members; and (3) the amount in controversy exceeds \$5,000,000, aggregating all claims and exclusive of interest and costs. 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B). As described below, each of these requirements is met here.

**A. Minimal Diversity Exists**

7. In accordance with 28 U.S.C. §§ 1332(d)(2), there is diversity in this action. The State Court Action alleges that Plaintiff Arinda Rivera is a resident of the State of Florida. *See* Complaint ¶ 15. Defendant Aimbridge is a limited liability company, organized and existing under the laws of the State of Delaware with its principal place of business in the State of Texas whose members are citizens of California and Texas. Ms. Rivera’s citizenship is diverse to members of Aimbridge Hospitality, LLC.

**B. The Proposed Class Consists of More Than 100 Members**

8. Plaintiff brings this action on behalf of “[a]ll residents of the United States whose Personal Information was contained in the publicly-accessible database and compromised as a result of the Data Breach.” *See* Complaint ¶ 55. In addition, Plaintiff has alleged that “based on the size of the exposed database – that there are possibly hundreds of thousands of affected persons.” *See* Complaint ¶ 58.

9. Accordingly, the putative class consists of more than 100 members satisfying the requirement of CAFA.

**C. Amount in Controversy Exceeds \$5,000,000**

10. Plaintiff does not allege an amount of damages in her Complaint. Instead, Plaintiff simply states that the amount in controversy exceeds \$15,000. *See* Complaint ¶

10. Where the plaintiff has not alleged a specific amount of damages, the defendant seeking removal must establish by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional minimum. *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 752 (11th Cir. 2010). A court may rely on evidence put forward by the removing defendant, as well as reasonable inferences and deductions drawn from that evidence, to determine whether the defendant has carried its burden. *Id.* at 753–54. *See also, S. Fla. Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312, 1315 (11th Cir. 2014)).

11. Based on the substance and scope of the claims that are asserted and the remedies requested, it can reasonably be deduced that the allegations in the Complaint give rise to an amount in controversy in excess of \$5,000,000.

12. As stated above, Plaintiff seeks to represent both a nationwide class and a Florida state subclass. *See* Complaint ¶¶ 55, 56. In addition, Plaintiff alleges, upon information and belief, that there are possibly hundreds of thousands of affected persons. *See* Complaint ¶ 58.

13. Plaintiff alleges that the putative class suffered a variety damages as a result of the alleged data breach incident. Specifically, Plaintiff alleges that one item of damages suffered by the putative class relates to “costs for credit monitoring services.” *See* Complaint ¶ 88(b). The Complaint alleges that Plaintiff and the putative class members have suffered and continue to suffer said injury. *Id.* at ¶ 88.

14. Credit monitoring services through LifeLock cost \$19.99 per month for LifeLock Advantage. *See* LifeLock Overview of standard, advantage, and ultimate plus credit monitoring and identity theft protection services (last viewed September 4, 2018)

available at <https://www.lifelock.com/store>, a true and correct copy of which is attached hereto as Exhibit “B.”

15. Therefore, the cost of credit monitoring alone for a nationwide class consisting of 100,000 individuals, even for a one-year period, would undoubtedly exceed the jurisdictional minimum requirement of \$5,000,000.

16. Additionally, Plaintiff alleges that the putative class suffered various other injuries including, unauthorized charges on their debit and credit accounts, ascertainable losses in the form of out-of-pocket expenses, ascertainable losses in the form of cash back or other benefits as a result of their inability to use certain accounts and cards, loss of use of, and access to, their account funds and costs associated with the inability to obtain money from their accounts. *See* Complaint ¶ 88.

17. Plaintiff also seeks reasonable attorneys’ fees. *See* Complaint, Prayer for Relief. Florida courts have awarded attorneys’ fees as high as 30% in class action matters. *See In re Checking Account Overdraft Litigation*, 830 F. Supp. 2d 1330 (S.D. Fla. 2011). Should the Plaintiff prevail in this matter, the attorneys’ fees could potentially be significant.

18. Therefore, by a preponderance of the evidence, the amount in controversy relating to the above-referenced injuries would certainly exceed the jurisdictional minimum of \$5,000,000 required under CAFA.

19. Accordingly, while Defendant does not concede that a class or classes can be certified in this matter, or that Plaintiff or members of the proposed classes are entitled

to the damages Plaintiff seeks, the amount in controversy exceeds the sum or value of \$5,000.000 based on the allegations of the Complaint.

**COMPLIANCE WITH REMOVAL STATUES**

20. This Notice of Removal is properly filed in the United States District Court for the Middle District of Florida because the Circuit Court for the Thirteenth Judicial Circuit, Hillsborough County, Florida is located within the Middle District of Florida. Venue for removal is therefore proper because this is the “district and division embracing the place where such action is pending.” 28 U.S.C § 1441(a).

21. The Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. 28 U.S.C. § 1446(a).

22. This Notice of Removal is timely under 27 U.S.C. § 1446(b), as it filed within thirty (30) days of service.

23. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 4.02(b), annexed hereto are copies of all process documents, pleadings and orders served upon Defendant with respect to this action, a true and correct copy of which is attached hereto as “Exhibit C.”

24. Pursuant to 28 U.S.C. § 1446(b), a copy of this Notice of Removal is being served upon counsel for Plaintiff and a copy, along with a Notice to Clerk of Removal, will be promptly filed with the Clerk in the Circuit Court for the Thirteenth Judicial Circuit, Hillsborough County, Florida.

**CONCLUSION**

For the foregoing reasons, Defendant Aimbridge respectfully requests that this Court exercise jurisdiction over this action and enter orders and grant relief as may be

necessary to secure removal and to prevent further proceedings in this matter in the Circuit Court for the Thirteenth Judicial Circuit, Hillsborough County, Florida. Defendant Aimbridge further requests that all such and further relief as this Court deems just and proper.

Dated: September 4, 2018

Respectfully submitted,

/s/ Francis M. McDonald, Jr.

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*Attorneys for Defendant,*

*Aimbridge Hospitality, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 4, 2018, the foregoing was submitted to the Clerk of the Court by hand delivery. A true and correct copy has been served via U.S. Mail to:

*Counsel for Plaintiff:*

Brandon J. Hill, Esq; Luis A. Cabassa, Esq., Wenzel Fenton Cabassa, P.A., 1110 N. Florida Ave, Ste. 300, Tampa, FL 33602, *bhill@wfclaw.com*; *lcabassa@wfclaw.com*; *twells@wfclaw.com* (*Attorneys for Plaintiff*)

*/s/ Francis M. McDonald, Jr.*

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