

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

LISA CERVERA, on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

AMAZON.COM, LLC,

Defendant.

CIVIL ACTION NO.  
\_\_\_\_\_

**NOTICE OF REMOVAL**

Defendant Amazon.com LLC hereby removes this civil action under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d) and 1446. This purported class action is removable because it involves more than 100 alleged class members, their claims exceed \$5 million in relief in the aggregate, and there is minimal diversity between the parties.

**I. THE STATE COURT ACTION**

Plaintiff Lisa Cervera filed a lawsuit in the Superior Court of Gwinnett County, Georgia, “on behalf of herself and all others similarly situated.” Ex. 3 at 1 [hereinafter “Compl.”]. She named Amazon.com

LLC as the sole defendant. *Id.* at 1-2, ¶¶ 2-5. Amazon was served with the Summons and Complaint on October 14, 2019. Ex. 1.

The Complaint is based on Ms. Cervera's dissatisfaction with the "Great Northern popcorn machine" she received "as a gift in September of 2019." Compl. at 3, ¶ 7. She alleges the following: Due to faulty manufacturing, "the 'POPCORN' lettering" on the machine she received was upside down. *Id.* at 6, ¶ 12. Amazon "refused to refund the purchase price" unless she returned the machine; doing so was impractical given the machine's size and the time and effort required to disassemble, repackage, and ship it. *Id.* at 2, ¶¶ 4-5. Amazon delivers "hundreds or thousands" of these popcorn machines with the same manufacturing defect "every year." *Id.* at 2, ¶ 5. And Amazon does so knowing that some customers will receive defective machines and will not be willing to spend the time and effort involved in returning the machines that is necessary to receive their refund. *See id.* at 11-12, ¶¶ 31-34. Based on those allegations, the Complaint brings three claims against Amazon for fraud, intentional misrepresentation, and unjust enrichment. *Id.* at 11-16, ¶¶ 30-57.

Ms. Cervera brings this action as a putative class action, seeking to represent a nationwide class of “all United States persons and entities who received a defective Great Northern Popcorn Machine from Amazon within the relevant statute of limitations period.” Compl. at 9, ¶ 20. She alleges that “hundreds or thousands of Amazon customers every year” are defrauded. *Id.* at 2, ¶ 5.

On behalf of herself and the putative nationwide class, Ms. Cervera seeks several forms of relief: declaratory relief, consequential and compensatory damages, punitive damages, restitution, any available penalties and interest, attorneys’ fees and costs, and any other relief this Court deems necessary. Compl. at 1, ¶ 1; *id.* at 17, ¶¶ b)-c).

## II. GROUNDS FOR REMOVAL

### A. This Action Is Removable Under CAFA

A defendant may remove “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a). This action is removable under 28 U.S.C. § 1441 because this Court has original jurisdiction under CAFA.

*See id.* § 1332(d); *see also id.* § 1453(b) (setting procedure for removing class actions).

CAFA gives federal courts original jurisdiction over putative class actions if three conditions are met. *See Wright Transp., Inc. v. Pilot Corp.*, 841 F.3d 1266, 1270 (11th Cir. 2016). First, “the suit must be brought as a ‘class action’ for a proposed class with at least one-hundred members.” *Id.* Second, the amount in controversy, “as aggregated from the claims of the individual class members,” must exceed the sum or value of \$5 million. *Id.* Third, there must be at least minimal diversity between the parties. *Id.* These three requirements can be satisfied by “a short and plain statement of the grounds for removal” in the defendant’s notice of removal. 28 U.S.C. § 1446(a); *see Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 83 (2014).

This action satisfies all three requirements and is removable to this Court.

**1. This Action Is a Putative Class Action with at Least 100 Members**

The first CAFA requirement is met because this action is a putative class action within the meaning of CAFA, and it satisfies the 100-member threshold.

To begin, this action is a putative class action. CAFA defines “class action” as “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 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B). That is the case here. The Complaint is styled as a “Class Action Complaint,” Compl. at 1, and it seeks class certification “pursuant to O.C.G.A. § 9-11-23” with Ms. Cervera “as class representative,” *id.* at 17, ¶ a). Section 9-11-23 of the Georgia Code permits “[o]ne or more members of a class” to “sue or be sued as representative parties on behalf of all” if certain conditions are met. O.C.G.A. § 9-11-23(a). Section 9-11-23 and Federal Rule of Civil Procedure 23 have the same basic four requirements for class actions: numerosity that makes joinder impracticable, common questions of law or fact, typical claims or defenses, and adequate representation of the

class interest. *Compare* O.C.G.A. § 9-11-23(a)(1)-(4), *with* Fed. R. Civ. P. 23(a)(1)-(4). Thus, Ms. Cervera has sought to bring a class action under the Georgia-law equivalent of Federal Rule 23. What's more, her Complaint makes specific allegations as to all four class-action requirements in a section labeled "Class Action Allegations." *See* Compl. at 9-11, ¶¶ 20-29. Clearly, this suit has been "brought as a 'class action.'" *Wright Transp.*, 841 F.3d at 1270.

In addition, the putative class contains "at least one-hundred members." *Id.* The Complaint alleges that there are "hundreds or thousands of Amazon customers *every year*" who fall into the class. Compl. at 2, ¶ 5 (emphasis added). It further asserts that "[t]he Class of persons" described in the Complaint are "so numerous that joinder of all is impracticable." *Id.* at 9, ¶ 21. The numerosity requirement is clearly met.

## **2. The Amount in Controversy Exceeds \$5 Million**

The amount in controversy "is an estimate of the amount that will be put at issue in the course of the litigation." *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751 (11th Cir. 2010) (citation omitted). A court

assesses “how much is in controversy at the time of removal, not later.”

*Id.* District courts can make “make ‘reasonable deductions, reasonable inferences, or other reasonable extrapolations’ from the pleadings to determine whether it is facially apparent that a case is removable.”

*Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1061-62 (11th Cir. 2010) (citation omitted).

The amount in controversy “concerns what the plaintiff is claiming ..., *not* whether plaintiff is likely to win or be awarded everything he seeks.” *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 449 (7th Cir. 2005) (emphasis added); *Pretka*, 608 F.3d at 751 (“[T]he pertinent question is what is *in controversy* in the case, not how much the plaintiffs are ultimately likely to recover.” (citation omitted)). Thus, parties seeking removal under CAFA need “show only and much more modestly that ‘a fact finder might legally conclude’ that damages exceed the statutory amount.” *Hammond v. Stamps.com, Inc.*, 844 F.3d 909, 912 (10th Cir. 2016) (Gorsuch, J.) (emphasis and citation omitted). In other words, the amount-in-controversy requirement is met if there is a

“possibility that a jury might lawfully award relief” worth more than \$5 million. *Id.*

Here, the relief Ms. Cervera requests on behalf of herself and the proposed nationwide class demonstrates that more than \$5 million is at issue.

**a. Compensatory Damages**

The Complaint lays out a smorgasbord of compensatory damages claims. For starters, the Complaint seeks compensatory damages for the money the class members paid to Amazon. It alleges that Amazon charges “nearly \$300 for each machine,” Compl. at 2, ¶ 3, and that the Amazon Prime service “costs \$119 per year.” *Id.* at 9, ¶ 22. And the Complaint claims that “Amazon has improperly obtained” these funds “based on the fraudulent conduct described” in the Complaint. *Id.* at 15, ¶ 48. Thus, if liability were proved, each class member’s claim could be worth between \$300 and \$419, depending on whether they are Prime Members.

The Complaint also seeks compensatory damages for the labor hours the class has expended assembling (and in some cases



disassembling) their popcorn machines. The Complaint claims that class members “should be made whole” for the “thousands of hours” they spent “assembling the defective product.” Compl. at 12, ¶¶ 33, 36; *see also id.* at 6, ¶ 14 (“Assembly usually takes over one hour for two persons.”). The Complaint also alleges that customers do not receive “a full refund” if they are not compensated for the “substantial work ... of disassembling the machine, repacking it in a box ..., and shipping it to Amazon.” *Id.* at 6, ¶¶ 15-, 16. Given the U.S. median wage of \$18.58 per hour,<sup>1</sup> and the allegation of at least two hours spent per class member, Compl. at 6, ¶ 14, that amounts to at least \$37.16 in alleged consequential damages per class member.

The Complaint also alleges that Amazon’s conduct inflicts a “painful experience” on “hundreds or thousands of Amazon customers every year,” Compl. at 2, ¶ 5, and that customers suffer “trauma” attempting “to gain the refund,” *id.* at 13, ¶ 38. “Georgia law generally allows” plaintiffs to receive “damages for mental pain and suffering” if

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<sup>1</sup> U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Employment Statistics*, [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm) (last modified Apr. 2, 2019).

“fraud is proven.” *Tindall v. H & S Homes, LLC*, 2011 WL 5007827, at \*3 (M.D. Ga. Oct. 20, 2011) (collecting Georgia cases).

**b. Punitive Damages**

The Complaint seeks punitive damages, which CAFA includes in the amount-in-controversy calculation. *See Pirozzi v. Massage Envy Franchising, LLC*, 938 F.3d 981, 984 (8th Cir. 2019); *Fritsch v. Swift Transp. Co. of Ariz.*, 899 F.3d 785, 793 (9th Cir. 2018). Georgia law permits punitive damages for fraud claims and authorizes unlimited punitive damages if the jury finds that the defendant acted with a specific intent to harm. *See McDaniel v. Elliott*, 269 Ga. 262, 263-65 (1998) (citing O.C.G.A. § 51-12-5.1(b), (g)). In Georgia, the ratio of punitive damages awards to compensatory damages received by plaintiffs is regularly 10:1. *See, e.g.*, Ex. 5 (reporting a \$10,000,000 punitive damages award in a fraud case where plaintiffs received \$892,434 in compensatory damages); *Ledee v. Devoe*, 250 Ga. App. 15, 15 & n.1 (2001) (“awarding \$10,000 in compensatory damages and \$100,000 in punitive damages against” one defendant and “\$5,000 in compensatory damages and \$50,000 in punitive damages against” the other). And punitive

damages have been awarded—and upheld on appeal—in much higher ratios.<sup>2</sup>

**c. Attorneys' Fees**

When a state statute “provides for the recovery of attorneys’ fees, prospective attorneys’ fees must be included in the assessment of the amount in controversy.” *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 922 (9th Cir. 2019); *see also Waithe v. Arrowhead Clinic, Inc.*, 2010 WL 5463106, at \*2 (S.D. Ga. Dec. 29, 2010) (noting that statutory attorneys’ fees count toward CAFA’s jurisdictional amount). Georgia law authorizes attorneys’ fees in cases where the plaintiff establishes fraud. *See* O.C.G.A. § 13-6-11; *St. Paul Fire & Marine Ins. Co. v. Clark*, 255 Ga. App. 14, 24 (2002). Empirical evidence, including a study by the Federal Judicial Center, indicates that plaintiff attorneys in class action cases are typically awarded fees between 25% and 31% of the judgment. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 303 (3d Cir. 2005). The Eleventh

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<sup>2</sup> *See, e.g., Bibb Distrib. Co. v. Stewart*, 238 Ga. App. 650, 653-55 (1999) (affirming a 53:1 punitive-to-compensatory ratio, with \$12.5 million in punitive damages and \$236,000 in actual damages in a shareholder suit); *Tunsil v. Jackson*, 248 Ga. App. 496, 496 (2001) (23:1 punitive-to-compensatory ratio, with \$200,000 in punitive damages and \$8,750 in actual damages, in a breach-of-fiduciary-duty case).

Circuit has acknowledged that “courts typically award between 20–30%” of the judgment awarded to the class. *In re Home Depot Inc.*, 931 F.3d 1065, 1076 (11th Cir. 2019).

\* \* \*

Based on the allegations in the Complaint, the amount in controversy is easily met. The Complaint sets out to establish a class of “thousands of Amazon customers every year,” Compl. at 2, ¶ 5, and the statute of limitations for fraud in Georgia is four years. *Anthony v. Am. Gen. Fin. Servs., Inc.*, 626 F.3d 1318, 1321 (11th Cir. 2010) (citing O.C.G.A. § 9-3-31). Thus, at the outset of this suit, Ms. Cervera has put “in controversy” a class of at least 8,000 members (4 years x 2,000, which is the logical minimum for the “thousands” alleged in the Complaint). *Pretka*, 608 F.3d at 751. Even a conservative estimate of the class’s compensatory damages—assuming that liability were proved and each member recovered only the cost of the machine and the value of two hours of labor—yields a total of \$2,697,280 (8,000 x \$337.16). And given past punitive damages awards for fraud claims in Georgia, a jury might lawfully award \$26,972,800 in punitive damages (\$2,697,280 x 10).

Additionally, even assuming the low end of the range for attorneys' fees, that amount of compensatory and punitive damages would yield fees of \$5,934,016 (\$29,670,080 x 20%). Based on the face of the Complaint, the potential amount in controversy is in the tens of millions, which satisfies the \$5 million minimum for CAFA jurisdiction.

### **3. The Parties Are Minimally Diverse**

The parties are also minimally diverse. CAFA's minimal-diversity requirement is met so long as "any member of [the class] of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A). Ms. Cervera "is a Georgia citizen." Compl. at 2, ¶ 5. Amazon is a limited liability company, but under CAFA, the citizenship of an unincorporated association is based on its place of incorporation and its principal place of business. 28 U.S.C. § 1332(d)(10); *see also Ferrell v. Express Check Advance of SC LLC*, 591 F.3d 698, 699-700 (4th Cir. 2010) (holding that a limited liability company is an "unincorporated association" for CAFA jurisdiction). Amazon.com LLC is organized in Delaware and its principal place of business is in Washington, so it is a citizen of Washington and Delaware. Thus, the minimal diversity

requirement is met, given that at least one putative class member—Ms. Cervera—is diverse from Amazon.

\* \* \*

In sum, this action is removable under CAFA because it is a putative class action involving more than 100 alleged class members, claiming more than \$5 million in relief in the aggregate, and involving minimal diversity between Ms. Cervera and Amazon.

**B. None of CAFA’s Exceptions Bar Removal of this Case**

Moreover, this action does not fall within the exclusions to removal jurisdiction under CAFA. Section 1332(d)(4) requires a federal court to decline jurisdiction over a class action when, among other things, “greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed,” and at least one defendant whose “alleged conduct forms a significant basis for the claims asserted by the proposed class ... is a citizen of the State in which the action was originally filed.” 28 U.S.C. § 1332(d)(4)(A); *see also id.* § 1332(d)(4)(B) (similarly excluding cases where “two thirds or more of” the class members and “the primary

defendants[] are citizens of the State in which the action was originally filed”). Section 1332(d)(4) does not apply here because Amazon is not a citizen of Georgia, where the action was originally filed.

Sections 1332(d)(9) and 1453(d) exempt certain securities and corporate-governance cases from CAFA’s broad jurisdictional grant. *See* 28 U.S.C. § 1332(d)(9) (explaining that § 1332(d)(2) does not apply to cases arising under several sections of the Securities Act of 1933, several sections of the Securities Exchange Act of 1934, and certain state corporate governance laws); *id.* § 1453(d) (same). Those provisions do not bar jurisdiction here because the Complaint’s claims do not arise under the Securities Act of 1933 or the Securities Exchange Act of 1934, nor do they involve state-centric corporate governance issues.

### **C. Venue and Intra-District Assignment Are Proper**

The Northern District of Georgia, Atlanta Division, is the proper venue and intra-district assignment for this action upon removal because this “district and division embrac[e]” the Superior Court of Gwinnett County, Georgia, where the Complaint was filed and is currently pending. *See* 28 U.S.C. § 1441(a).

**D. Amazon Has Satisfied All Other Required Removal Procedures**

Amazon has satisfied all other procedural requirements under the applicable statutory provisions. Amazon has timely filed this Notice of Removal. Amazon was served with the Summons and Complaint on October 14, 2019. Ex. 1; Ex. 4. Amazon filed and served this Notice of Removal within the 30-day limit set by 28 U.S.C. § 1446(b). *See Bailey v. Janssen Pharmaceutica, Inc.*, 536 F.3d 1202, 1205 (11th Cir. 2008).

Further, and as required by 28 U.S.C. § 1446(a), Amazon has filed with this Notice of Removal true and correct copies of all process, pleadings, and orders served upon Amazon in the state-court action. Copies of the Notice of Service of Process, Summons, and Complaint are attached as Exhibits 1-3. As of the date of filing of this Notice of Removal, no other filings have been made in this matter in the Superior Court of Gwinnett County. A true and correct copy of the electronic version of the state court's docket is attached hereto as Exhibit 4.

Finally, Amazon is serving on Ms. Cervera and filing with the Superior Court a "Notice to Adverse Party of Removal to Federal Court" and will also file with this Court a "Certificate of Service of Notice to



Adverse Party of Removal to Federal Court.” 28 U.S.C. § 1446(d); Fed. R. Civ. P. 5(d).

### **III. RESERVATION OF RIGHTS AND DEFENSES**

Amazon reserves all of its defenses and rights, and nothing in this Notice of Removal or its attachments in any way concedes the truth of any of Ms. Cervera’s allegations or waives any of Amazon’s defenses, including Amazon’s right to arbitrate this matter on an individual basis. Amazon also reserves its right to amend or supplement this Notice of Removal.

### **IV. CONCLUSION**

Amazon requests that this Court consider this Notice of Removal as provided by law governing the removal of cases to this Court; that this Court take such steps as are necessary to achieve the removal of this matter to this Court from the Superior Court of Gwinnett County, Georgia; and that this Court make such other orders as may be appropriate to effect the preparation and filing of a true record in this cause of all proceedings that may have been had in the state-court action.

Dated: November 13, 2019

Amazon.com LLC.

By: /s/ Brennan W. Bolt

One of Its Attorneys

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused a true and correct copy of the foregoing to be filed with the Clerk of the Court using the CM/ECF system. I further certify that I have this day served upon all counsel of record a copy of the foregoing **NOTICE OF REMOVAL** by both emailing and depositing a copy in the First Class United States Mail, postage prepaid, addressed as follows:

E. Adam Webb  
**Webb, Klase & Lemond, LLC**  
1900 The Exchange, S.E.  
Suite 480  
Atlanta, Georgia 30339

Dated: November 13, 2019

By: /s/ Brennan W. Bolt  
Counsel for Amazon.com LLC

# **Exhibit 3**

IN THE SUPERIOR COURT OF GWINNETT COUNTY  
STATE OF GEORGIA

*Robert J. Alumbaugh*  
CLERK OF SUPERIOR COURT

_____ )	
LISA CERVERA, on behalf of herself )	
and all others similarly situated, )	
)	
Plaintiff, )	CIVIL ACTION
)	FILE NO. <u>19-A-10123-7</u>
v. )	
)	
AMAZON.COM, LLC, )	
)	JURY TRIAL DEMANDED
Defendant. )	
_____ )	

**CLASS ACTION COMPLAINT**

COMES NOW Plaintiff Lisa Cervera and files this Class Action Complaint on behalf of herself and all others similarly situated and alleges the following based upon personal knowledge regarding Plaintiff and on information and belief as to other allegations.

**INTRODUCTION AND PARTIES**

1.

This class action seeks monetary damages, declaratory relief, and other equitable relief from Defendant based on its improper practice of knowingly selling a defective product. Further, Defendant refuses to honor its refund promises for the defective product.

2.

Defendant Amazon.com, LLC (“Amazon”) is the largest online retailer in the United States. Amazon is publicly traded and has a market capitalization of nearly one trillion dollars. Amazon does substantial business in the State of Georgia and may be served via its registered agent: Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Georgia 30092. This address is in Gwinnett County.

3.

One of the more popular products that Amazon sells is a full-size popcorn machine marketed by Great Northern Popcorn. Amazon sells hundreds of these popcorn machines each week, charging nearly \$300 for each machine. For years, the Great Northern popcorn machine has been manufactured in a careless and defective manner in China. Amazon is well aware of these defects and yet continues to sell the product.

4.

After customers have spent an hour of more assembling the Great Northern popcorn machine they learn that the product has been defectively manufactured. Because of the time that has been spent on such assembly, and the massive size of the assembled popcorn machine, it is impossible for customers to then return the product and be made whole. Thus, Amazon does not honor its refund promise in a meaningful way.

5.

As is discussed fully below, Plaintiff was a victim of Amazon's sales practices. Plaintiff is a Georgia citizen who obtained the Great Northern popcorn machine from Amazon.com. The machine was defective. After over one hour of assembly work by two persons, the defect became apparent. Amazon refused to refund the purchase price or otherwise make Plaintiff whole. This painful experience is shared by hundreds or thousands of Amazon customers every year.

#### **JURISDICTION AND VENUE**

6.

Jurisdiction is proper in this Court because Amazon does regular and substantial business in Georgia and several of the events complained of herein occurred in Georgia. Venue is proper in this Court because Defendant has its registered agent in this County.

**FACTUAL ALLEGATIONS**

7.

Plaintiff received her Great Northern popcorn machine as a gift in September of 2019. The product came in a very large box.

8.

On September 31, 2019, Plaintiff and her family opened the box and began the assembly process. The product comes in dozens of pieces and requires substantial assembly work.

9.

After over one hour of work by two persons the product was fully assembled. The product stands nearly five feet tall and is over two feet wide in each horizontal dimension.

10.

Once assembled, the defective nature of the product became apparent. This photo shows the finished product:

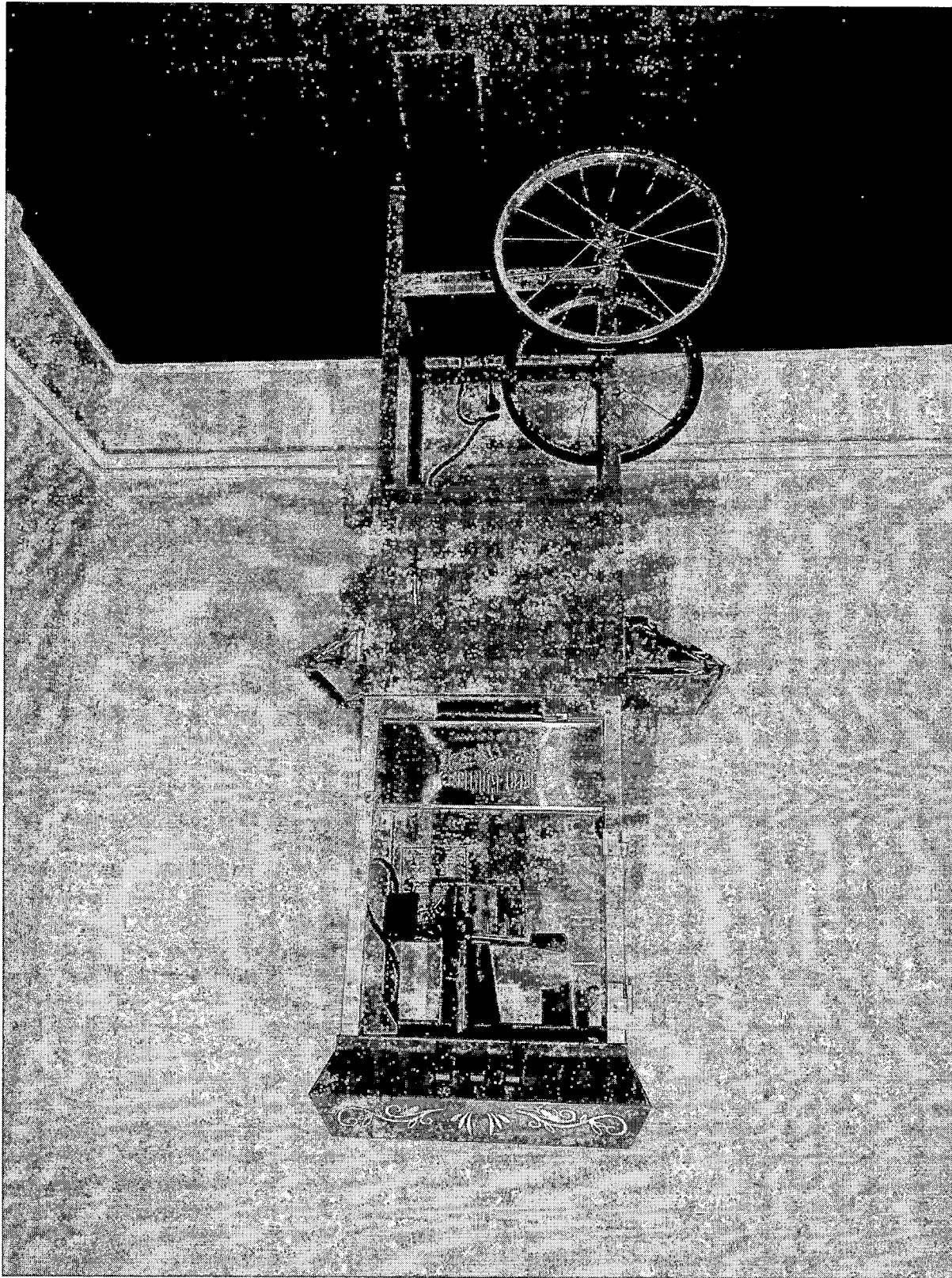
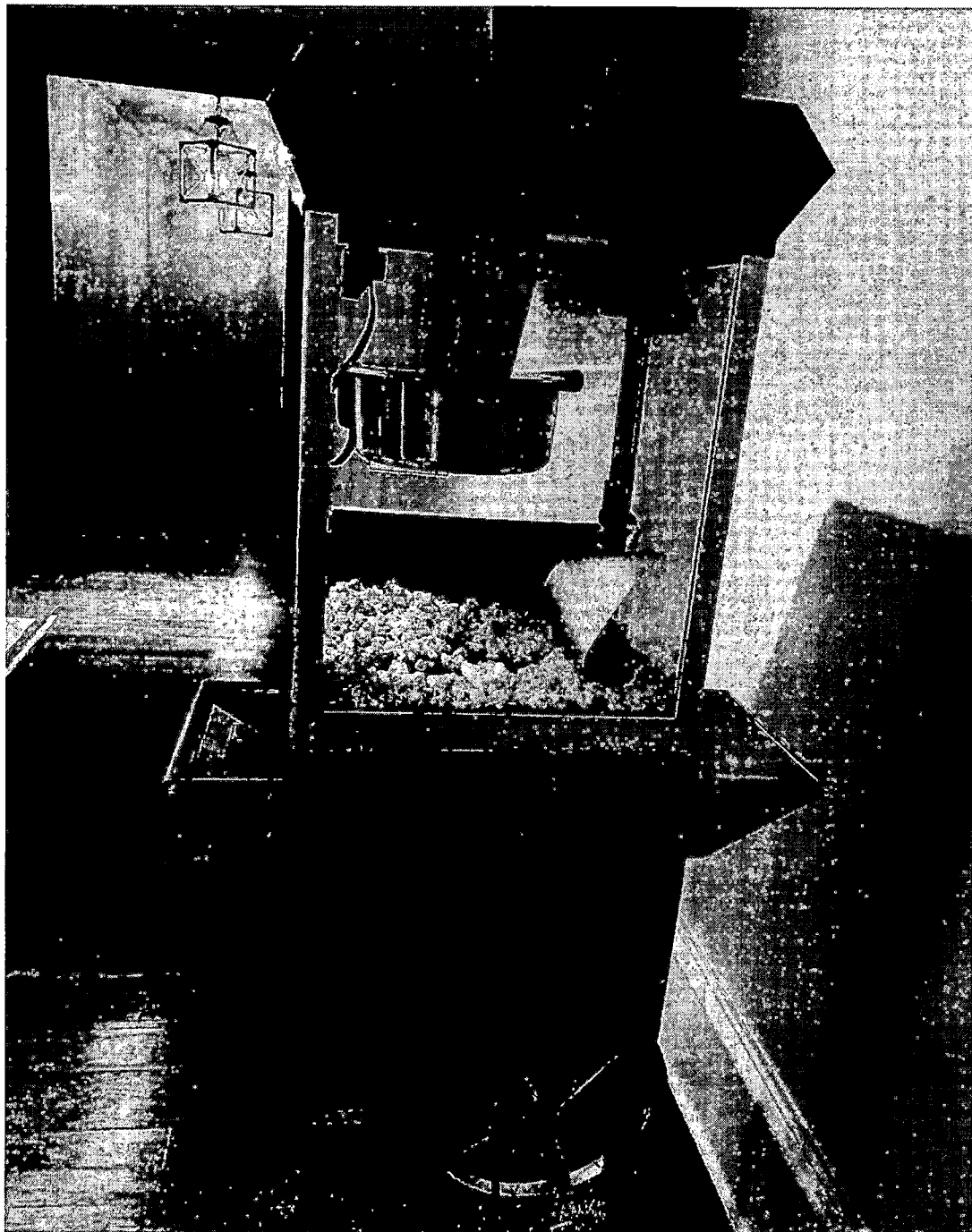


Exhibit 3, p. 4



11.

The first assumption upon seeing the upside down "POPCORN" sign on the machine is to assume improper assembly by the customer. A photograph of the back of the same machine, however, immediately disproves this notion:



5

Exhibit 3, p. 5

12.

The red rectangular box on which the “POPCORN” lettering is written comes as one piece in the delivered box. There is no way for the customer to have caused the problem. There is also no way to correct the problem. The door with the upside down lettering cannot be removed and reinstalled, at least not without ruining the machine.

13.

The popcorn machine is purchased as a festive addition to parties and social occasions. It is obviously not acceptable to have upside down lettering on the primary facing of the machine – the side with the door where popcorn is removed.

14.

The amount of time and effort spent to assemble the machine is substantial. Assembly usually takes over one hour for two persons.

15.

The assembled product cannot be returned to Amazon without further substantial work. It is far too bulky to be shipped without being disassembled. The process of disassembling the machine, repacking it in a box (the original box is generally destroyed in the unpacking process), and shipping it to Amazon would take several hours. In most cases, it would not be possible to repack and ship the defective machine.

16.

In this way, Amazon refuses to reasonably honor its promise of a full refund for this defective product.

17.

Amazon's representative confirmed that they were aware of the defect because they did not want or need a photograph to see the defect.

18.

In disbelief, Plaintiff researched the defect and found numerous complaints from other victims, including complaints from other Amazon purchasers.

19.

For example, these are several of the many identical comments:

Allen Dunn

*1.0 out of 5 stars*Disappointed

September 9, 2016

Color: Black Verified Purchase

Just received mine looks sharp except the door to the box is upside down. The box needs to be replaced, the cut out for electric is on the bottom, and the metal on the bottom of popper is dented by the cardboard packing, or a really good discount!



12 people found this helpful

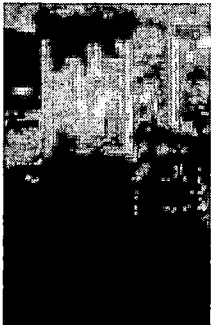
Amazon Customer

*1.0 out of 5 stars*Upside down.

December 26, 2017

Color: Red Verified Purchase

Haven't used our Christmas present yet because of this. ☹️



Amazon Customer

3.0 out of 5 stars Other than that it was good

May 24, 2017

Color: Red Verified Purchase

Came with upside down door, so I had to order replacement. Other than that it was good

adam sears

2.0 out of 5 stars Door or sticker upside down

August 10, 2016

Color: Red Verified Purchase

The word POPCORN IS UPSIDE DOWN. And get be fixed.



michelle

1.0 out of 5 stars You need to open box before send for costumers

August 18, 2017

Color: Red Verified Purchase

I bought this product twice with upside down part



Ann M. Pearson

2.0 out of 5 stars It is quite beautiful, but there is a definite problem

October 25, 2017

Color: Red Verified Purchase

It is quite beautiful, but there is a definite problem. It took hours to put together an when I was finished there was definite flew. The area where the cord was to come out of was cut out of on the wrong side! I cannot imagine taking it all apart and returning to you. I don't understand how your quality control could overlook such a flaw, package it and ship it to a customer.

I should be compensated for receiving this defective merchandise. It still works but the defect is a serious and I should not have to accept this popper after spending over \$200.00 for it. What is awful, is that it was a gift!

LonePalm

3.0 out of 5 stars Instructions unclear, parts factory installed wrong, inside small and hard to work with

September 13, 2018

Color: Red Verified Purchase

Just put this together and used it once so far. It wasn't difficult to put together, but the instructions leave out to use the washers on the bolts when to put most of it together. Also, the instructions for how to pop the popcorn are different in the instructions, the sticker on the glass, and the proportioned popcorn packs. I guess they aren't really sure how you should use it.

My biggest complaint is the kettle part. It was ridiculously difficult to attach, partly because the holders were partially bent inward, but also because the kettle is too big for the machine in my opinion. Scooping the popped corn into a bowl or bag is incredibly difficult if you do it inside the machine as there's just not a lot of room. The kettle doesn't detach for dumping the contents. It only swivels in place. Other brands can have the ability to detach for dumping which makes it easier.

Finally, the back part of the cart was done upside down and reversed at the factory. The cut out for the cord was at the bottom left instead of to right. I guess quality control isn't a strong suit . . . .

These are but a few of the dozens of such comments. Clearly Amazon has known about this defect for at least three years but continues to sell the product – and not make proper provision for victims.

**CLASS ACTION ALLEGATIONS**

20.

Plaintiff brings this action both individually and on behalf of all United States persons and entities who received a defective Great Northern Popcorn Machine from Amazon within the relevant statute of limitations period (the “Class”).

21.

The Class of persons and entities described above is so numerous that joinder of all members is impracticable. Amazon sells nearly 100 billion dollars worth of “Furniture and Home Decorations” and “Electronics and Appliances” each year. This chart shows Amazon’s revenues in these categories in millions of dollars:

	2014	2015	2016	2017	2018
Furniture and home decorations	5,748	8,762	12,129	16,787	23,240
Electronics and appliances	25,327	34,576	42,990	53,560	65,846

22.

There are over 100 million Amazon Prime customers. Amazon Prime is a premium service which costs \$119 per year. Amazon also has millions of additional non-Prime customers.

23.

The popularity of the Great Northern popcorn machine is shown by the number of comments listed on Amazon's website. There are hundreds of recent comments. A substantial fraction of the comments describe the same defect suffered by Plaintiff.

24.

Important questions of law and fact exist which are common to the entire Class and predominate over any questions that may affect individual Class Members in that Defendant has acted on grounds generally applicable to the entire Class.

25.

All questions as to the actions attributable to Defendant at issue herein are similarly common. A determination of liability for such conduct will also be applicable to all Members of the Class. Furthermore, whether Defendant violated any applicable laws and pursued the course of conduct complained of herein and the extent of the appropriate measure of damages and restitutionary relief are common questions to all Class Members.

26.

The claims of Plaintiff are typical of the claims of the Class because she purchased the defective popcorn machine and was not provided a full refund by Amazon.

27.

Plaintiff will fully and adequately protect the interests of the Class because of the common injuries of the Class Members and the singular conduct of Defendant applicable to all Class Members. Plaintiff strongly believes that Defendant must be prevented from misleading its customers. Plaintiff has retained counsel she knows to be competent and experienced in the

prosecution of class action litigation. Plaintiff has no interests that are contrary to or in conflict with those of the Class it seeks to represent.

28.

A class action is superior to all other available methods for fair and efficient adjudication of this controversy. There is no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

29.

The prosecution of separate actions by individual Class Members would create a risk of inconsistent and varying adjudications concerning the subject of this action, which adjudications could establish incompatible standards for Defendant under the laws alleged herein.

**REQUESTS FOR RELIEF**

**COUNT ONE**

**FRAUD**

30.

Plaintiff incorporates all paragraphs above and below as if set forth verbatim herein.

31.

Amazon is well aware that customers have purchased popcorn machines primarily for parties and other social occasions. Defendant knows that having the large and prominent “POPCORN” sign upside down on the front of the machine is not acceptable to customers. For at least three years, Amazon has known that at least a substantial percentage of the popcorn machines are being shipped with this defect.

32.

Despite knowing full well about this defect, Amazon has not ceased marketing and selling the product. Each day, including the day of filing this Class Action Complaint, Amazon prominently displays the Great Northern popcorn machine with the “POPCORN” lettering with the correct side up.

33.

Despite knowing full well that hundreds of customers will waste thousands of hours assembling the defective product, Amazon continues to sell the product.

34.

Amazon has established a policy of not providing a refund for the defective product, knowing that customers will then be stuck with the assembled item because the alternative of disassembling the item, repacking it, and shipping it will only increase their harm.

35.

But for the false photographs and promises made by Amazon in accordance with Defendant’s uniform corporate practices and procedures, Plaintiff and the Class Members would not have obtained the defective product.

36.

Because the procurement of the Great Northern popcorn machine resulted only from fraudulent inducement, all victims should be made whole. Plaintiff and the Class should be made whole to include return of improper rents paid, reimbursement of security deposits, and the ability to terminate without penalty.



**COUNT TWO**

**INTENTIONAL MISREPRESENTATION**

37.

Plaintiff incorporates all paragraphs above and below as if set forth verbatim herein.

38.

Amazon represented to Plaintiff and the Class that the Great Northern popcorn machine was not defective. Further, Amazon promised a full refund for defective products, a promise that it does not keep with the Great Northern popcorn machine because it requires victims to spend several hours of total labor in order to build, and then disassemble, repackage, and ship the defective product back to Amazon before a refund will be provided. Amazon is aware that almost no customer will go through this trauma in order to gain the refund.

39.

These misrepresentations are false because Amazon in fact knows about the defect based on hundreds of complaints received since at least 2016. Further, Amazon knows it will not provide refunds for the defective product in a reasonable fashion.

40.

Amazon's misrepresentations are material because customers only purchase or receive the popcorn machine for social occasions. It is not the type of item that will be locked away in a closet. If Amazon truthfully marketed the product – for example by explaining “a substantial portion of the machines are defective,” “you will not become aware of the defect until you have spent over one hour assembling the machine,” “the machine cannot be returned if you discover a defect without spending another few hours disassembling, packaging, and shipping the defective

product back to Amazon,” and “we will not refund you unless you return to entire product to us” – no one would buy it.

41.

Amazon knows that its misrepresentations are false because it in fact has been aware of the defects for years and has established the useless refund policy as a standard business practice.

42.

Amazon intended for Plaintiff and the Class to rely upon the misrepresentation so that Plaintiff and Class Members would make the purchase or request the item as a gift from others despite Defendant’s knowledge of the defect.

43.

Plaintiff and the Class Members were unaware of the falsity of Amazon’s misrepresentations until after they had assembled the defective popcorn machine and called for a refund.

44.

Plaintiff and the Class Members relied upon the truth of Amazon’s representations. Plaintiff and the Class Members would not have ordered or requested the popcorn machine had they known Amazon’s representations were false.

45.

Plaintiff and the Class Members had a right to rely upon Amazon’s representations.

46.

Plaintiff and the Members of the Class were consequently and proximately injured by Amazon’s misrepresentations when Plaintiff and the Class purchased or obtained the defective popcorn machine instead of one of the numerous competitive alternatives.

**COUNT THREE**

**UNJUST ENRICHMENT**

47.

Plaintiff incorporates all paragraphs above and below as if set forth verbatim herein.

48.

Unjust enrichment requires disgorgement of the funds Amazon has improperly obtained based on the fraudulent conduct described above.

49.

Plaintiff, on behalf of itself and the Class, asserts a common law claim for unjust enrichment.

50.

By means of Defendant's wrongful conduct alleged herein, Defendant knowingly engaged in practices which harmed Plaintiff and Members of the Class and that were unfair, unconscionable, and oppressive. Moreover, Defendant's conduct is improper and/or illegal as a matter of law.

51.

Defendant knowingly received and retained wrongful benefits and funds from Plaintiff and Members of the Class. In so doing, Defendant acted with conscious disregard for the rights of Plaintiff and Members of the Class.

52.

As a result of Defendant's wrongful conduct as alleged herein, Amazon has been unjustly enriched at the expense of, and to the detriment of, Plaintiff and Members of the Class.

53.

Plaintiff and the Class Members have conferred a benefit upon Defendant in the form of payments and assembly work.

54.

Defendant's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

55.

Under the doctrine of unjust enrichment, as interpreted under Georgia law, it is inequitable for Defendant to be permitted to retain the benefits it has received, and is still receiving, without justification, by inducing Plaintiff and Class Members to purchase or receive the defective popcorn machine through misrepresentations and other wrongful conduct. Defendant's retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

56.

The financial benefits derived by Defendant rightfully belong to Plaintiff and Members of the Class. Defendant should be compelled to disgorge into a common fund for the benefit of Plaintiff and Members of the Class all wrongful or inequitable proceeds. A constructive trust should be imposed upon all wrongful or inequitable sums received by Defendant traceable to Plaintiff and the Members of the Class.

57.

Plaintiff and Members of the Class have no adequate remedy at law.

WHEREFORE, Plaintiff, on behalf of itself and the proposed Class, requests that this Court enter judgment against Defendant and:

- a) Certify this case as a class action pursuant to O.C.G.A. § 9-11-23 and appoint Plaintiff as class representative and Plaintiff's counsel as class counsel;
- b) Award Plaintiff and the Class actual, incidental, nominal, and consequential damages in an amount to be proven at trial, including any and all compensatory damages, punitive damages, restitution, any applicable penalties and interest, authorized attorneys' fees and costs, and any further relief as the Court deems just, equitable, and proper;
- c) For an award of all reasonable costs and attorneys' fees incurred by Plaintiff;
- d) For trial by jury of all matters; and
- e) For such other and further relief as the Court may deem just and equitable.

DATED this 7th day of October, 2019.

Respectfully submitted,

BY: WEBB, KLASE & LEMOND, LLC

/s/ E. Adam Webb

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Extra Butter: Class Action Alleges Amazon 'Knowingly' Sold Defective Great Northern Popcorn Makers](#)

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