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VOLKSWAGEN GROUP OF AMERICA, INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

MICHAEL D'AMORE, on behalf of
himself and those others similarly
situated,

Plaintiffs,

vs.

VOLKSWAGEN GROUP OF
AMERICA, INC., VOLKSWAGEN
AKTIENGESELLSCHAFT, and DOES
1-10,

Defendants.

Case No. 2:18-cv-05682

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. §
1441 (b)**

[Class Action Fairness Act 28 U.S.C. §
1332(d)]

1 TO THE CLERK OF THE UNITED STATES COURT, CENTRAL
2 DISTRICT OF CALIFORNIA AND TO ALL PARTIES AND THEIR
3 ATTORNEYS OF RECORD:

4 Defendant, Volkswagen Group of America, Inc. (“VWGoA”), hereby files this
5 Notice of Removal pursuant to 28 U.S.C. §§ 1332(d) and 1441(a), and in support
6 thereof states as follows:

7 1. This civil action was commenced and is pending in the Superior Court
8 of the State of California, County of Ventura, a court located within this District
9 and this Division, under Case Number 56-2018-00510371-CU-BT-VTA.

10 2. The Summons and First Amended Complaint (“FAC”) in this action
11 were filed on May 8, 2018, and served upon VWGoA’s agent for service of
12 process on May 30, 2018.¹ A true and correct copy of the summons and FAC is
13 attached as Exhibit “A.”

14 3. The time within which to answer or move with respect to the FAC has
15 not expired, and removal is timely pursuant to 28 U.S.C. § 1446(b)(1); *Murphy*
16 *Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999) (time for
17 removal runs from receipt of formal service of process).

18
19 **FEDERAL JURISDICTION EXISTS UNDER THE CLASS ACTION**

20 **FAIRNESS ACT OF 2005, 28 U.S.C. § 1332(d)**

21 4. Defendant VWGoA may remove this case pursuant to the Class
22 Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4, codified in
23 relevant part at 28 U.S.C. §§ 1332(d) and 1453. Specifically, subject matter
24 jurisdiction exists under CAFA because: (a) at least one member of the potential
25 class is a citizen of a different state than VWGoA; (b) the proposed class exceeds
26

27 _____
28 ¹ This was the first and only pleading Plaintiff has ever served upon VWGoA. Plaintiff did not serve VWGoA with his original complaint.

1 one hundred members; and (c) the aggregate amount in controversy exceeds
2 \$5,000,000, exclusive of interest and costs.

3 **Minimal Diversity of Citizenship Exists**

4 5. Minimal diversity exists under CAFA where one or more class
5 members (named or unnamed) is a citizen of a state different from any defendant.
6 28 U.S.C. §§ 1332(d)(1)(D) and 1332 (d)(2)(A).

7 6. Defendant VWGoA is a citizen of New Jersey and Virginia within the
8 meaning of 28 U.S.C. § 1332. VWGoA is incorporated under the laws of the state
9 of New Jersey, FAC ¶ 25, and maintains its headquarters and principal place of
10 business in the State of Virginia.

11 7. Defendant Volkswagen Aktiengesellschaft (“Volkswagen AG”) has not
12 been served with process. For the Court’s information, Volkswagen AG is a
13 German corporation having its principal place of business in Wolfsburg, Germany.

14 8. Named Plaintiff Michael D’Amore is a citizen of California and
15 resides, within this District, in Ventura County. FAC ¶ 15.

16 9. Further, as Plaintiff seeks to certify a class of “[a]ll current and former
17 owners of Class Vehicles who reside in the State of California and/or who
18 purchased or leased Class Vehicles in California,” FAC ¶ 57, all members of the
19 proposed class, or at least the overwhelming majority, including Plaintiff
20 D’Amore, are citizens and residents of states other than New Jersey and Virginia,
21 thereby satisfying the requisite diversity of citizenship under 28 U.S.C. § 1332(d).

22 **The Proposed Class Exceeds 100 Members**

23 10. Under CAFA, federal courts have jurisdiction over proposed class
24 actions that encompass at least one hundred putative class members. 28 U.S.C. §
25 1332(d)(5)(B).

26 11. The FAC purports to be brought, *inter alia*, on behalf of a putative
27 California statewide class consisting of all current and former owners and lessees
28

1 of numerous Volkswagen model and model year vehicles² and specifically alleges
2 that the “proposed class is composed of tens of thousands of persons dispersed
3 throughout California.” FAC ¶ 58.

4 12. VWGoA records indicate that there are approximately 18,839 vehicles
5 in the putative class by Plaintiff. Accordingly, this criterion is easily satisfied

6 **The Amount in Controversy Exceeds \$5,000,000**

7 13. Based upon the allegations and requests for relief in the FAC, the
8 amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

9 14. The FAC alleges, *inter alia*, that Defendants misrepresented the
10 function of certain technology systems in all putative class vehicles, which
11 allegedly do not function as represented. The FAC asserts causes of action
12 sounding in Breach of Express Warranty; Breach of Implied Warranty; violation of
13 the Magnuson-Moss Warranty Act; violation of the Consumers Legal Remedies
14 Act (“CLRA”); violation of the California Unfair Competition Law (“UCL”),
15 violation of the California False Advertising Law (“FAL”); and for Common Law
16 Fraud. FAC ¶¶ 68-133. The relief sought in the FAC includes “full restitution of
17 all monies paid for the sales price of the Class Vehicles” along with
18 “compensatory” damages, punitive damages, disgorgement, and attorney fees
19 (FAC ¶ 107 and Prayer for Relief, p. 24).

20 15. Based upon the number of putative class vehicles sold or leased in
21 California (approximately 18,839), and the relief sought by Plaintiff (full refund of
22 purchase price of each vehicle and other damages), the amount in controversy
23 exceeds the sum of \$5,000,000, exclusive of interest and costs, required for CAFA
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25
26
27 ² Specifically, the class vehicles are defined as the following: 2016 Golf, Golf GTI, Golf R, e-
28 golf, Golf SportWagen; 2017 Golf, Golf GTI, Golf R, e-Golf, Golf Alltrack, Golf SportWagen;
2016-2017 CC; 2016-2017 Jetta; 2016-2017 Passat. FAC ¶ 11.

1 removal under 28 U.S.C. § 1332(d).³ See *Dart Cherokee Basin Operating Co. v.*
2 *Owens*, 135 S. Ct. 547, 554 (2014) (holding that a Notice of Removal need only
3 conform to the pleading requirements set forth in *Federal Rules of Civil Procedure*
4 *8(a)*).

5 16. Accordingly, the “matter in controversy” in this case as to the claims
6 of all individual putative class members clearly exceeds the sum or value of
7 \$5,000,000, exclusive of interest or costs, which vests this Court with jurisdiction
8 over this action under 28 U.S.C. § 1332(d). See 28 U.S.C. § 1332(d)(6) (“In any
9 class action, the claims of the individual class members shall be aggregated to
10 determine whether the matter in controversy exceeds the sum or value of
11 \$5,000,000, exclusive of interest and costs.”).

12 17. In making its good faith calculation of the amount in controversy,
13 according to the allegations pleaded in the FAC, VWGoA does not concede or
14 admit the legal or factual merits of Plaintiff’s liability and damages claims,
15 including the validity of any amount or measure of damages/relief sought.
16 Likewise, VWGoA does not concede or admit that this action satisfies the
17 requirements for certification and maintenance of a class action under Fed. R. Civ.
18 P. 23. VWGoA expressly reserves all substantive and procedural rights and
19 defenses with respect to all claims asserted and relief sought in this action.

20
21 **PROCEDURAL MATTERS**

22 18. Pursuant to 28 U.S.C. § 1441(a), venue is proper in the United States
23 District Court for the Central District of California, which is the federal district
24 encompassing the venue in which this action is currently pending.

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27 ³ Based upon publicly available information, retail prices of the putative class vehicles generally
28 exceed \$17,000. Nevertheless, given the number of putative class vehicles, even a retail
purchase price exceeding \$278 per vehicle would satisfy the CAFA amount in controversy.

1 19. Pursuant to 28 U.S.C. § 1446(a), attached as Exhibit “A” is a copy of
2 all process, pleadings and orders served upon VWGoA. Other than the documents
3 attached as Exhibit A, no pleadings, process, orders, or other documents in this
4 case have been served or otherwise received by VWGoA.

5 20. Promptly after the filing of this Notice of Removal, VWGoA will give
6 written notice thereof to the Plaintiff and will file a copy of the notice, together
7 with a copy of this Notice of Removal, in the Superior Court of Ventura County,
8 California, pursuant to 28 U.S.C. § 1446(d).

9 WHEREFORE, notice is given that this action is removed from the Superior
10 Court of California, Ventura County, to the United States District Court for the
11 Central District of California, Western Division.

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Dated: June 27, 2018

Respectfully submitted,
HERZFELD & RUBIN LLP

By: /s/ Craig L. Winterman
CRAIG L. WINTERMAN
Attorneys for Defendants
VOLKSWAGEN GROUP OF
AMERICA, INC.