

1 **DYKEMA GOSSETT LLP**  
 JOHN M. THOMAS, State Bar No. 266842  
 2 *JThomas@dykema.com*  
 PAUL L. NYSTROM, State Bar No. (*Pro Hac Vice to be submitted*)  
 3 *PNystrom@dykema.com*  
 ASHLEY R. FICKEL, State Bar No. 237111  
 4 *AFickel@dykema.com*  
 ABIRAMI GNANADESIGAN, State Bar No. 263375  
 5 *AGnanadesigan@dykema.com*  
 333 South Grand Avenue, Suite 2100  
 6 Los Angeles, California 90071  
 Telephone: (213) 457-1800  
 7 Facsimile: (213) 457-1850

8 Attorneys for Defendants  
 HARLEY-DAVIDSON, INC., HARLEY-DAVIDSON MOTOR  
 9 COMPANY, INC. and HARLEY-DAVIDSON MOTOR COMPANY  
 OPERATIONS, INC.

10  
 11 **UNITED STATES DISTRICT COURT**  
 12 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

14 MATTHEW D. GREENE, an  
 individual, on behalf of himself, the  
 15 proposed class(es), all others similarly  
 situated, and on behalf of the general  
 16 public

17 Plaintiff,

18 v.

19 HARLEY-DAVIDSON, INC., a  
 Wisconsin corporation; HARLEY-  
 20 DAVIDSON MOTOR COMPANY,  
 INC., a Wisconsin corporation;  
 21 HARLEY-DAVIDSON MOTOR  
 COMPANY OPERATIONS, INC., a  
 22 Wisconsin corporation; and DOES 1  
 through 10, inclusive,

23 Defendants.  
 24

Case No. 5:19-cv-01647

**DEFENDANT HARLEY-  
 DAVIDSON MOTOR COMPANY  
 OPERATIONS, INC.’S NOTICE OF  
 REMOVAL; EXHIBITS “A”  
 THROUGH “I”**

DYKEMA GOSSETT LLP  
 333 SOUTH GRAND AVENUE  
 SUITE 2100  
 LOS ANGELES, CALIFORNIA 90071

DYKEMA GOSSETT LLP  
333 SOUTH GRAND AVENUE  
SUITE 2100  
LOS ANGELES, CALIFORNIA 90071

1           **PLEASE TAKE NOTICE** that Defendant Harley-Davidson Motor Company  
2 Operations, Inc. (“HDMCOI”) hereby removes this action pursuant to U.S.C. §§  
3 1332(d), 1441(a), and 1446, from the Superior Court for the State of California for  
4 the County of Riverside to the United States District Court for the Central District of  
5 California. Removal is proper because this is a putative class action that satisfies the  
6 jurisdictional prerequisites under the Class Action Fairness Act (“CAFA”). Here, the  
7 proposed plaintiff class consists of over 100 members, and minimal diversity exists  
8 because HDMCOI is a citizen of Wisconsin and the putative class includes citizens  
9 of other states, including California. Additionally, the amount in controversy  
10 exceeds \$5,000,000. This Notice of Removal is timely because it has been filed  
11 within thirty days of the date HDMCOI was served with the summons and  
12 complaint. *See* U.S.C. § 1446(b).

13           **PROCEDURAL BACKGROUND AND TIMELINESS OF REMOVAL**

14           1.       On June 11, 2019, Plaintiff Matthew D. Greene (“Plaintiff”) filed a  
15 putative class action against HDMCOI, Harley-Davidson, Inc. (“HDI”), and Harley-  
16 Davidson Motor Company, Inc. (“HDMCI”) (collectively “Harley-Davidson”) in  
17 the Superior Court for the State of California, County of Los Angeles, captioned  
18 *Green v. Harley-Davidson, Inc. et al.*, Case No. RIC 1903312 (the “Superior Court  
19 Action”).

20           2.       On July 29, 2019, HDMCOI’s agent for service of process in  
21 Wisconsin received, via Certified Mail postmarked on July 25, 2019, the Superior  
22 Court Action Summons and Complaint. The time for filing a Notice of Removal  
23 does not run until a party has been formally served with the summons and complaint  
24 under the applicable state law “setting forth the claim for relief upon which such  
25 action or proceeding is based.” 28 U.S.C. §1446(b)(1). The service of process that  
26 triggers the 30-day period to remove is governed by state law. *City of Clarksdale v.*  
27 *BellSouth Telecomms., Inc.*, 428 F.3d 206, 210 (5th Cir. 2005) (“Although federal  
28 law requires the defendant to file a removal motion within thirty days of service, the

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333 SOUTH GRAND AVENUE  
SUITE 2100  
LOS ANGELES, CALIFORNIA 90071

1 term ‘service of process’ is defined by state law.”). This Notice of Removal is  
2 therefore timely because it is filed within thirty days of service of the Summons and  
3 Complaint, which is deemed complete on the 10th day after mailing to HDMCOI;  
4 an out of state corporation. *See* 28 U.S.C. § 1446(b); C.C.P § 415.40 (“A summons  
5 may be served on a person outside this state in any manner provided by this article  
6 or by sending a copy of the summons and of the complaint to the person to be  
7 served by first-class mail, postage prepaid, requiring a return receipt. Service of a  
8 summons by this form of mail is deemed complete on the 10th day after such  
9 mailing.”).

10 3. Pursuant to 28 U.S.C. §1446(a), HDMCOI has attached hereto as  
11 **Exhibits A through H** true and correct copy of all process, pleadings, and orders  
12 served upon HDMCOI in the Superior Court Action. An initial status conference in  
13 the Superior Court Action is currently set for September 27, 2019.

14 4. Harley-Davidson filed its Answer to Plaintiff’s Complaint in Riverside  
15 Superior Court. A true and correct copy of Harley-Davidson’s Answer filed to  
16 Plaintiff’s Complaint is attached hereto as **Exhibit I**.

17 5. Plaintiff purports to bring this action on behalf of himself and all other  
18 persons similarly situated. Specifically, he seeks to represent a putative class  
19 consisting of “[a]ll consumers, who, for the period beginning June 11, 2015 through  
20 August 22, 2017, purchased or leased from Riverside Harley-Davidson a new,  
21 assembled Harley-Davidson motorcycle.” (Complaint, ¶38).

22 6. Plaintiff alleges that Harley-Davidson deceptively stated on motorcycle  
23 price hang tags attached to new, assembled motorcycles that the retail prices for  
24 those motorcycles did not include freight and dealer preparation/setup fees.  
25 (Complaint, ¶20).

26 7. On behalf of Plaintiff and the putative class, the Complaint alleges  
27 claims against Harley-Davidson for False Advertising (Business & Professions  
28 Code §§17500, *et seq.*); Violations of the Consumer Legal Remedies Act (Civil

1 Code §§1770, *et seq.*); Breach of Express Warranty (California Commercial Code  
2 §2313(1)(A)); Negligent Misrepresentation (Civil Code §§ 1572, 1709, and 1710);  
3 Fraud and Deceit (Civil Code §§1572, 1709, and 1710); Quasi-Contract/Unjust  
4 Enrichment; Aiding and Abetting (Common Law and/or California Vehicle Code §  
5 11700.3); and Unfair Competition (Business & Professions Code §§17200, *et seq.*).  
6 (*See* Complaint ¶¶ 47- 108).

7 8. Plaintiff seeks damages, restitution, punitive and/or exemplary  
8 damages, injunctive relief, and attorneys’ fees and costs. *Id.* at 25 (*See* Prayer).

9 **JURISDICTION AND BASIS FOR REMOVAL**

10 9. This action is removable pursuant to 28 U.S.C. § 1441(a) because this  
11 is an action over which this Court has original jurisdiction.

12 10. The Court possesses original jurisdiction over this action under CAFA,  
13 28 U.S.C. §1332(d), which grants district courts original jurisdiction over class  
14 actions (1) involving a plaintiff class of 100 or more members; (2) where any  
15 member of the proposed class is a citizen of a state different from any defendant;  
16 and (3) the amount in controversy exceeds \$5,000,000 in the aggregate, exclusive of  
17 interests and costs. *See* 28 U.S.C. §1332(d)(2) and (5); *see also Dart Cherokee*  
18 *Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014) (explaining that  
19 “CAFA’s provisions should be read broadly” (internal quotation marks omitted)).  
20 These conditions are satisfied here for the reasons set forth below.

21 **The Plaintiff Class Consists of Over 100 Members**

22 11. This action meets the CAFA definition of a class action, which is “any  
23 civil action filed under [R]ule 23 of the Federal Rules of Civil Procedure or similar  
24 State statute or rule of judicial procedure.” 28 U.S.C. §1332 (d)(1)(B). Plaintiff  
25 purports to bring claims on behalf of “[a]ll consumers, who, for the period  
26 beginning June 11, 2015 through August 22, 2017, purchased or leased from  
27 Riverside Harley-Davidson a new, assembled Harley-Davidson motorcycle.”  
28 (Complaint, ¶38).

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1 12. Plaintiff also alleges that the proposed class “likely consists of  
2 thousands of members.” (Complaint, ¶37). Accordingly, based on the allegations  
3 contained in the Complaint, the aggregate number of class members exceeds 100  
4 persons. *See* 28 U.S.C. §1332 (d)(5)(B).

5 **There is Minimal Diversity of Citizenship**

6 13. Minimal diversity exists between HDMCOI and the members of the  
7 putative class under 28 U.S.C. §1332(d)(2)(A). Under CAFA, diversity of  
8 citizenship is satisfied where “any member of a class of plaintiffs is a citizen of a  
9 State different from any defendant.” 28 U.S.C. §1332 (d)(2)(A).

10 14. A corporation is “deemed to be a citizen of every State and foreign  
11 state by which it has been incorporated and of the State or foreign state where it has  
12 its principal place of business.” 28 U.S.C. §1332 (c)(1). “The term ‘principal place  
13 of business’ means ‘the place where a corporation’s officers direct, control, and  
14 coordinate the corporation’s activities.” *Martinez v. Michaels*, 2015 WL 4337059, at  
15 \*3 (C.D. Cal. July 15, 2015) (quoting *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93  
16 (2010)).

17 15. HDI, HDMCI, and HDMCOI are, and at all relevant times have been,  
18 Wisconsin corporations with their headquarters located in Milwaukee, Wisconsin.  
19 Accordingly, HDI, HDMCI, and HDMCOI are all citizens of Wisconsin for  
20 diversity purposes.

21 16. Plaintiff is a resident and citizen of the State of California. (Complaint,  
22 ¶ 4). For purposes of determining diversity, a person is a “citizen” of the state in  
23 which he or she is domiciled. *Kantor v. Wellesley Galleries, Inc.*, 704 F.2d 1088,  
24 1090 (9th Cir. 1983) (“To show state citizenship for diversity purposes under federal  
25 common law a party must...be domiciled in the state.”). Residence is *prima facie*  
26 evidence of domicile. *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th  
27 Cir. 1994).

28 17. The presence of Doe defendants in this case has no bearing on

1 diversity of citizenship for removal. *See* 28 U.S.C. §1441(b)(1) (“For purposes of  
2 removal under this chapter, “the citizenship of defendants sued under fictitious  
3 names shall be disregarded.”).

4 18. Thus, Harley-Davidson and Plaintiff are citizens of different states  
5 (Wisconsin and California), thereby satisfying minimal diversity for purposes of  
6 CAFA jurisdiction. *See* 28 U.S.C. §1332(d)(2)(A).

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

8 19. The amount in controversy in this action satisfies CAFA’s \$5,000,000  
9 jurisdictional threshold. Under CAFA, the claims of the individual class members  
10 are aggregated to determine if the amount in controversy exceeds the required “sum  
11 or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. §1332(d)(2).  
12 “The amount in controversy is simply an estimate of the total amount in dispute, not  
13 a prospective assessment of defendant’s liability.” *Lewis v. Verizon Commcuns, Inc.*,  
14 627 F.3d 395, 400 (9th Cir. 2010). To determine the amount in controversy, courts  
15 first look to the complaint and “the sum claimed by the plaintiff controls if the class  
16 is apparently made in good faith.” *Id.* (citation omitted). Accordingly, “in assessing  
17 the amount in controversy, a court must assume that the allegations of the complaint  
18 are true and assume that a jury will return a verdict for the plaintiff on all claims  
19 made in the complaint.” *Campbell v. Vitran Express, Inc.*, 471 F. App’x 646, 648  
20 (9th Cir. 2012) (citation omitted). Where a complaint does not specify the amount of  
21 damages sought, the removing defendant need only establish that it is more likely  
22 than not that the amount in controversy requirement has been met. *Abrego v. Dow*  
23 *Chem. Co.*, 443 F.3d 676, 683 (9th Cir. 2006). “The removing party’s burden is ‘not  
24 daunting,’ and defendants are not obligated to ‘research, state, and prove the  
25 plaintiff’s claims for damages.” *Behrazfar v. Unisys Corp.*, 687 F. Supp. 2d 999,  
26 1004 (C.D. Cal. 2009).

27 20. While HDMCOI contends that the allegations in the Complaint are  
28 without merit and that neither Plaintiff nor the putative class members have suffered



1 any injury whatsoever, the amount in controversy here exceeds \$5,000,000. Plaintiff  
2 seeks to represent a nationwide class of Harley-Davidson motorcycle consumers  
3 who purchased or leased new, assembled motorcycles from the Riverside Harley-  
4 Davidson dealership during the putative class period – June 11, 2015 through  
5 August 22, 2017. (Complaint, ¶38). Plaintiff alleges that the number of class  
6 members is likely “thousands of members.” (Complaint, ¶37). Plaintiff seeks to  
7 recover the full combined charge (or surcharge) for freight and prep (or  
8 freight/handling), which for his purchase, was \$1,399 (Complaint, ¶20). Plaintiff  
9 specifically claims damages “in an amount not less than \$1,000,000 for each year  
10 beginning June 11, 2015 and continuing to August 23, 2017.” Complaint at 24-25  
11 (Prayer). Based on Plaintiff’s specific allegation contained in the Prayer of the  
12 Complaint, for the two year and two month alleged class period, Plaintiff’s claimed  
13 damages amount to at least \$2,166,666.

14 21. Plaintiff also seeks punitive damages. Complaint at 25 (Prayer).  
15 Potential punitive damages are properly included in the amount in controversy.  
16 *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001) (“It is well established  
17 that punitive damages are part of the amount in controversy in a civil action.”).  
18 Courts have found that in calculating punitive damages for purposes of the amount  
19 in controversy, the use of ratios is appropriate. *See Zhao v. RelayRides, Inc.*, 2017  
20 U.S. Dist. LEXIS 204415, at \* 45 (“the ratio of 1:1 between punitive and economic  
21 damages used by Defendants is reasonable as it is a ‘conservative’ ratio for purposes  
22 of calculating the amount in controversy.”). Using a conservative 1:1 multiplier for  
23 punitive damages (in relation to alleged economic damages of approximately  
24 \$2,166,666) results in potential damages in the amount of approximately  
25 \$4,333,332.

26 22. In addition, Plaintiff seeks to recover his attorneys’ fees, which  
27 contribute to the alleged amount in controversy. *Id.* at 24 (Prayer); *see Lowdermilk*  
28 *v. U.S. Bank Nat’l Ass’n*, 479 F. 3d 994, 1000 (9th Cir. 2007) (including attorneys’

1 fees in calculating amount in controversy) *overruled on other grounds by Standard*  
2 *Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345 (2013); *Kroske v. U.S. Bank Corp.*, 432  
3 F.3d 976, 980 (9th Cir. 2005) (including attorneys’ fees in amount in controversy);  
4 *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998) (including  
5 attorneys’ fees in calculating the amount in controversy requirement for traditional  
6 diversity jurisdiction). “Where the law entitles the prevailing plaintiff to recover  
7 reasonable attorneys fees, a reasonable estimate of fees likely to be incurred to  
8 resolution is part of the benefit permissibly sought by the plaintiff and thus  
9 contributes to the amount in controversy.” *Brady v. Mercedes-Benz USA, Inc.*, 243  
10 F.Supp.2d 1004, 1010-11 (N.D. Cal. 2002).

11 23. The Ninth Circuit recently held that “a court must include future  
12 attorneys’ fees recoverable by statute or contract when assessing whether the  
13 amount-in-controversy requirement is met.” *Fritsch v. Swift Transp. Co. of Ariz.,*  
14 *LLC*, 899 F.3d 785, 2018 U.S. App. LEXIS 22036. District Courts within the Ninth  
15 Circuit agree. *Cortez v. United Nat. Foods, Inc.*, 2019 WL 955001, at \*7 (N.D. Cal.  
16 Feb. 27, 2019) (“The Court finds that the Defendants have sufficiently demonstrated  
17 the amount in controversy over \$5,000,000.”); *Lucus v. Michael Kors (USA), Inc.*,  
18 2018 WL 2146403 (C.D. Cal. May 9, 2018) (holding that “unaccrued post-removal  
19 attorneys’ fees can be factored into the amount in controversy” for CAFA  
20 jurisdiction).

21 24. With class actions, courts have found that 25 percent of the aggregate  
22 amount in controversy is a benchmark for attorneys’ fees awards under the  
23 “percentage of fund” calculation, and courts routinely move north of that  
24 benchmark. *See Powers v. Eichen*, 229 F.3d 1249, 1256-57 (9th Cir. 2000) (“We  
25 have also established twenty-five percent of the recovery as a ‘benchmark’ for  
26 attorneys’ fees calculations under the percentage-of-recovery approach.”).

27 25. Under the conservative benchmark of 25 percent of the aggregate  
28 amount in controversy, attorneys’ fees alone would be \$1,083,333. The conservative



1 nature of the 25 percent benchmark is supported by Plaintiff’s counsel’s request for  
2 an award of attorneys’ fees in the amount of 35 percent of the common fund in  
3 connection with a Motion for Final Approval of Proposed Class Action Settlement  
4 filed in the Superior Court for the State of California, County of Riverside, in the  
5 case entitled *Baker v. Temecula Motorsports, Inc.*, Case Number MCC1500556. *See*  
6 Request for Judicial Notice, ¶ 1, Exh. 1 to the Declaration of Ashley R. Fickel.

7 26. HDMCOI’s assertion that Plaintiffs will incur attorneys’ fees of at least  
8 \$1,083,333 during the course of litigation is also supported by Plaintiffs’ counsel’s  
9 request for attorneys’ fees in the amount of \$45,235 in connection with a motion to  
10 compel further responses to just *seven* interrogatories in a similar matter, alleging  
11 similar claims against Harley-Davidson, pending in the Superior Court for the State  
12 of California, County of San Diego entitled *Gomez v. Mycles Cycles Inc. et al.*, Case  
13 Number 37-2015-00043311-CU-BT-CTL. *See* Request for Judicial Notice, ¶ 2, Exh.  
14 2 to the Declaration of Ashley R. Fickel. Indeed, Plaintiff was and is a member of  
15 the putative class proposed in the *Gomez* matter (Complaint, ¶30).

16 27. Finally, Plaintiff seeks an injunction against Harley-Davidson  
17 “enjoining them from the unlawful acts alleged herein” Complaint at 25 (Prayer).  
18 The cost of compliance with such an injunction further adds to the amount in  
19 controversy. *See e.g., Bayol v. ZipCar, Inc.*, 2015 WL 4931756 (N.D. Cal. Aug. 18,  
20 2015). (“[A] defendant’s aggregate cost of compliance with an injunction is  
21 appropriately counted toward the amount in controversy.”).

22 28. Thus, while HDMCOI disputes that it is liable to Plaintiff or any  
23 putative class member – or that Plaintiff or any putative class member suffered  
24 injury or incurred damages in any amount whatsoever – to the extent Plaintiff seeks  
25 to recover not less than \$1,000,000 in damages for the two year and two month class  
26 period, attorneys’ fees, and punitive damages, and requests injunctive relief as  
27 alleged in the Complaint, the amount in controversy is at least \$5,416,665; well in  
28 excess of the \$5,000,000 threshold for satisfying CAFA’s jurisdictional

1 prerequisites.

2 **No Exception to CAFA Applies**

3 29. Although CAFA contains several exceptions, which, where applicable,  
 4 may prevent the Court from exercising jurisdiction under CAFA, these exceptions  
 5 do not impose additional jurisdictional requirements. *See Serrano v. 180 Connect,*  
 6 *Inc.*, 478 F.3d 1018, 1023 (9th Cir. 2007) (“[T]he provisions set forth in  
 7 §§1332(d)(3) and (4) are not part of the prima facie case for establishing minimal  
 8 diversity jurisdiction under CAFA, but, instead, are exceptions to jurisdiction.”).  
 9 Rather, it is Plaintiff’s burden to demonstrate that an exception to CAFA applies. *Id.*  
 10 at 1023-24 (requiring the party seeking remand to demonstrate the applicability of  
 11 the “home state” and “local controversy” exceptions to CAFA); *Korn v. Polo Ralph*  
 12 *Lauren Corp.*, 536 F. Supp. 2d 1199, 1206 (E.D. Cal. 2008). Plaintiff here will not  
 13 be able to demonstrate that an exception to CAFA applies.

14 **OTHER PROCEDURAL REQUIREMENTS**

15 30. *Venue.* Plaintiff filed this action in the Superior Court of the State of  
 16 California, County of Riverside. This action is thus properly removed to the United  
 17 States District Court for the Central District of California, Eastern Division, which  
 18 embraces Riverside County within its jurisdiction. 28 U.S.C. §§1441(a), 1446(a).

19 31. *Joinder.* HDI and HDMCI consent to the removal of this action. The  
 20 Doe defendants, who have not been named or served, need not consent to this  
 21 Notice of Removal. *See Soliman v. Phillip Morris, Inc.*, 311 F.3d 966, 971 (9th Cir.  
 22 2002).

23 32. *Notice.* Pursuant to 28 U.S.C. §1446(d), a copy of this Notice of  
 24 Removal is being filed with the Clerk of Court for the Superior Court for the State  
 25 of California, County of Riverside and served upon counsel for Plaintiff.

26 **CONCLUSION**

27 33. For the reasons set forth above, this action is within this Court’s  
 28 original jurisdiction and meets all of the requirements for removal, such that

1 removal is proper under 28 U.S.C. §§1332(d), 1441(a), and 1446. Accordingly,  
2 HDMCOI respectfully removes this action from the Superior Court for the State of  
3 California, County of Riverside, to this Court.

4 34. In removing this action, HDMCOI does not intend to waive any rights  
5 or defenses to which it is otherwise entitled under state or federal law, as applicable,  
6 including, but not limited to those set forth in the Federal Rules of Civil Procedure,  
7 including, but not limited to, lack of personal jurisdiction, improper service and  
8 improper venue.

9

10 DATED: August 28, 2019

DYKEMA GOSSETT LLP

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By: /s/ Abirami Gnanadesigan

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John M. Thomas

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Paul L. Nystrom

16

Ashley R. Fickel

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Abirami Gnanadesigan

18

Attorneys for Defendants

19

HARLEY-DAVIDSON, INC., HARLEY-  
DAVIDSON MOTOR COMPANY, INC.  
and HARLEY-DAVIDSON MOTOR  
COMPANY OPERATIONS, INC.

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DYKEMA GOSSETT LLP  
333 SOUTH GRAND AVENUE  
SUITE 2100  
LOS ANGELES, CALIFORNIA 90071