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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

14 Cory Hazdovac, an individual, on behalf of
himself and all others similarly situated,

15 Plaintiff,

16 v.

17 Mercedes-Benz USA, LLC,

18 Defendant.
19

Case No. 20-cv-377

**NOTICE OF REMOVAL OF CIVIL ACTION
UNDER 28 U.S.C. §§ 1332(D), 1441, 1446 &
1453 (CLASS ACTION FAIRNESS ACT)**

20 TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES AND THEIR
21 COUNSEL OF RECORD:

22 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. sections 1332(d), 1441, 1446 and
23 1453, defendant Mercedes-Benz USA, LLC (“MBUSA”) by and through its counsel of record,
24 hereby removes to this Court the state-court action described herein.

25 Federal diversity jurisdiction exists under the Class Action Fairness Act (“CAFA”), 28
26 U.S.C. section 1332(d), because this case is a “class action” under CAFA, the CAFA diversity of
27 citizenship requirements are fully met, and the matter in controversy exceeds the sum or value of
28 \$5,000,000, exclusive of interest and costs. MBUSA states the following grounds for removal:

1 **I. INTRODUCTION**

2 1. On December 4, 2019, Plaintiff Cory Hazdovac filed a Class Action Complaint
3 against MBUSA in the Superior Court of California for the County of Alameda, styled *Cory*
4 *Hazdovac, an individual, on behalf of himself and all others similarly situated v. Mercedes-Benz*
5 *USA, LLC*, No. RG19045555 (“Class Action Complaint”). At the time of filing this Notice of
6 Removal, the case was still pending in the Superior Court of California for the County of
7 Alameda. *See* 28 U.S.C. § 1441(a).

8 2. The Class Action Complaint was served on MBUSA on December 18, 2019.

9 3. True and correct copies of the Class Action Complaint, Summons and all other
10 documents as served on MBUSA in this action are attached hereto as **Exhibit A**. *See* 28 U.S.C.
11 § 1446(a).

12 4. When a plaintiff files suit in state court but could have invoked the original
13 jurisdiction of the federal courts, a defendant may remove the action to federal court. 28 U.S.C.
14 § 1441(a).

15 5. This Court has original jurisdiction over this action under CAFA, 28 U.S.C.
16 section 1332 *et seq.*, and the action may be removed from the Superior Court of California for the
17 County of Alameda to this Court pursuant to 28 U.S.C. sections 1332(d), 1446 and 1453(b),
18 because, as Plaintiff here alleges in his complaint, it is a “class action” comprised of at least 100
19 members in the aggregate, minimal diversity of citizenship exists between the parties, and the
20 amount in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs. *See*
21 **Exhibit A** at 7 (Compl. ¶ 23) (“This Court has original jurisdiction over the subject matter of this
22 action pursuant to 28 U.S.C. § 1332(d)(2)(A) because: (i) members of the Class are citizens of a
23 state different from that of Defendant MBUSA; and (ii) aggregating the claims of individual
24 Class members, the total matter in controversy exceeds the sum or value of \$5,000,000, exclusive
25 of interests and costs. Further, 28 U.S.C. § 1332(d)(5) does not apply because (i) MBUSA is not
26 a state, state official, or other governmental entity against whom the Court may be foreclosed
27 from ordering relief, and (ii) the number of members of the Class in the aggregate exceeds 100.”).

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1 **II. THE REMOVED ACTION IS A CLASS ACTION SUBJECT TO CAFA REMOVAL**

2 6. This case is a “class action” as defined in 28 U.S.C. section 1332(d)(1)(B) and is
3 therefore removable under the provisions of CAFA. *See, e.g., Exhibit A* at 7 (Compl. ¶ 23)
4 (conceding CAFA jurisdiction); *see also id.* at 13–17 (Compl. ¶¶ 56–71) (“Plaintiff’s Class
5 Action Allegations”).

6 7. Further, in his Class Action Complaint, Plaintiff purports to bring all causes of
7 action “pursuant to California Code of Civil Procedure § 382” *Id.* at 13 (Compl. ¶ 57).
8 Further, the caption of Plaintiff’s Class Action Complaint denotes that it is a “Class Action.” *Id.*
9 at 2 (Compl. p. 1).

10 8. In the Class Action Complaint, Plaintiff defines the putative classes to include:

11 All persons in California who, within the last four years, have been
12 owners or lessees of MBUSA vehicles and who have paid for
13 repairs and parts that should have been covered under MBUSA's
14 “high-priced warranted parts” 7-year 70,000-mile California
15 emissions warranty (the “Class”).

14 and

15 All persons in California who are, or have been, owners or lessees
16 of MBUSA MY 2015 Mercedes C300 vehicles and who have paid
17 for repairs and parts for the vacuum pump, coolant pump, and
18 thermostat, which should have been covered under the 7-year
19 70,000-mile California Emissions Warranty (the “Subclass”).

18 *Id.* at 13–14 (Compl. ¶¶ 60–61).

19 9. Section 382 of the California Code of Civil Procedure authorizes actions to be
20 brought by “one or more” persons who may “sue or defend for the benefit of all” where “the
21 question is one of a common or general interest, of many persons, or when the parties are
22 numerous, and it is impracticable to bring them all before the court” Thus, actions alleged
23 under this section qualify as “class actions” for removal jurisdiction under CAFA because they
24 “authoriz[e] an action to be brought by 1 or more representatives as a class action.” *See* 28
25 U.S.C. § 1711(2); *Martinez v. Check ’N Go of Cal., Inc.*, No. 15-CV-1864 H (RBB), 2016 WL
26 6103166, at *3 (S.D. Cal. Feb. 18, 2016) (defendants properly removed case originally brought
27 under Cal. Civ. Proc. Code § 382 as a “class action” under CAFA); *Korn v. Polo Ralph Lauren*
28 *Corp.*, 536 F. Supp. 2d 1199, 1202 (E.D. Cal. 2008) (same).

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1 10. Accordingly, the Class Action Complaint falls within the definition of a “class
2 action” under CAFA. *See* 28 U.S.C. § 1332(d)(1)(8).

3 **A. MBUSA and a Member of the Putative Class Are Citizens of Different States**

4 11. Complete diversity of citizenship exists between a member of the proposed class
5 and at least one defendant, as required by CAFA. 28 U.S.C. § 1332(d)(2).

6 12. The named Plaintiff Cory Hazdovac alleges he is a citizen of the State of
7 California. **Exhibit A** at 8 (Compl. ¶ 26).

8 13. At the time this action was filed and at the time of removal, MBUSA was, and still
9 is, a Delaware limited liability company that maintained, and still maintains, its home office and
10 principal place of business in Georgia. *See Exhibit B* (Declaration of Greg Gunther in Support of
11 Notice of Removal of Civil Action (“Gunther Decl.”)) at ¶ 4.¹ MBUSA has only one member,
12 Daimler North America Corporation (“DNAC”). DNAC is a Delaware corporation with its
13 principal place of business in Michigan. *Id.* at ¶ 5. Both at the time this action was commenced
14 and at the time of the filing of the Notice of Removal, neither MBUSA nor DNAC were citizens
15 of the State of California. *Id.* at ¶ 6.

16 **B. The Amount in Controversy Exceeds \$5,000,000**

17 14. CAFA provides for original jurisdiction for “any civil action in which the matter in
18 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C.
19 § 1332(d)(2). Unlike traditional review of the amount in controversy for claims asserted by
20 individuals, in class actions, CAFA requires that claims of class members be aggregated:

21 In any class action, the claims of the individual class members shall
22 be aggregated to determine whether the matter in controversy
23 exceeds the sum or value of \$5,000,000, exclusive of interest and
costs. [28 U.S.C. § 1332(d)(6).]

24 15. The amount in controversy is determined by evaluating the Plaintiff’s complaint
25 and the record as a whole. *See Lewis v. Verizon Communications, Inc.*, 627 F.3d 395, 400 (9th
26

27 ¹ The Court is authorized to consider declarations and “summary-judgment type” evidence in
28 considering whether removal is proper. *See Lim v. Helio, LLC*, 2012 U.S. Dist. LEXIS 12871, at
*4 (C.D. Cal. Feb. 2, 2012); *see also Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81,
87–88 (2014) (removing defendant may rely on evidence).

1 Cir. 2010). “[W]hen a defendant seeks federal-court adjudication, the defendant’s amount-in-
2 controversy allegation should be accepted when not contested by the plaintiff [with evidence] or
3 questioned by the court.” *Dart Cherokee*, 574 U.S. at 87. Here, as discussed below in paragraph
4 16, Plaintiff does not contest the amount-in-controversy—but rather has himself admitted that the
5 requirement is met. Only if contested, “both sides submit proof and the court decides, by a
6 preponderance of the evidence, whether the amount-in-controversy requirement has been
7 satisfied.” *Id.* at 88. The amount in controversy is “simply an estimate of the total amount in
8 dispute, not a prospective assessment of defendant’s liability” or “proof of the amount the
9 plaintiff will recover.” *Lewis*, 627 F.3d at 400 (quoting *McPhail v. Deere & Co.*, 529 F.3d 947,
10 956 (10th Cir. 2008)).

11 16. MBUSA denies all of Plaintiff’s allegations and specifically denies that Plaintiff or
12 any putative class members are entitled to any relief. Without prejudice to its defenses in this
13 action, however, MBUSA avers that the amount in controversy exceeds the \$5,000,000 threshold
14 for removal jurisdiction under CAFA, 28 U.S.C. section 1332(d)(2), because Plaintiff alleges
15 “aggregating the claims of individual Class members, the total matter in controversy exceeds the
16 sum or value of \$5,000,000, exclusive of interests and costs.” **Exhibit A** at 7 (Compl. ¶ 23). His
17 claims are based on allegations that he and the class members are entitled to injunctive relief,
18 compensatory, exemplary, and statutory damages, pre- and post-judgment interest, repair costs,
19 disgorgement of profits, and attorneys’ fees and costs. *See, e.g.*, **Exhibit A** at 25–26 (Compl. pp.
20 22–23) (“Prayer for Relief”). The Court must accept Plaintiff’s allegations as true in measuring
21 the amount in controversy, and Plaintiff must be bound by those same allegations. *See Kenneth*
22 *Rothschild Tr. v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (“In
23 measuring the amount in controversy, a court must assume that the allegations of the complaint
24 are true and assume that a jury will return a verdict for the plaintiff on all claims made in the
25 complaint.”) (quotations and brackets omitted); *Crum v. Circus Circus Enters.*, 231 F.3d 1129,
26 1131 (9th Cir. 2000) (“Generally, the amount in controversy is determined from the face of the
27 pleadings. The sum claimed by the plaintiff controls so long as the claim is made in good faith.”)
28 (citation omitted); *Dejong v. Prod. Assocs.*, No. CV 14-02357 MMM (DTBx), 2015 U.S. Dist.

1 LEXIS 35286, at *11 (C.D. Cal. Mar. 19, 2015) (“[W]hen a complaint filed in state court alleges
 2 on its face an amount in controversy sufficient to meet the federal jurisdictional threshold, [the
 3 amount in controversy] requirement is presumptively satisfied unless it appears to a 'legal
 4 certainty' that the plaintiff cannot actually recover that amount.”) (alterations in original)
 5 (quoting *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007)); *cf. Flores v.*
 6 *Safeway, Inc.*, No. C19-0825-JCC, 2019 U.S. Dist. LEXIS 170498, at *9 (W.D. Wash. Oct. 1,
 7 2019) (“In a case for money damages . . . the appropriate focus in determining the amount in
 8 controversy is on plaintiff’s assessment of the value of her case, and the best evidence of that
 9 assessment is usually the plaintiff’s own statements.”) (quotations omitted ellipses in original).

10 17. Here, Plaintiff claims he incurred over \$1,200 in repair costs related to various
 11 repairs. **Exhibit A** at 9–10 (Compl. ¶¶ 34–42). The putative class potentially encompasses
 12 hundreds of thousands of vehicles, because it includes all Mercedes-Benz models sold in
 13 California for over a decade; vehicles sold in 2008 are the oldest vehicles that could still have
 14 been within the seven-year limitation of the warranty at the start of the putative class period four
 15 years ago in 2015. Assuming even a fraction of the vehicles at issue involved alleged costs
 16 similar to Plaintiff, CAFA’s \$5,000,000 amount-in-controversy requirement is easily met in this
 17 case.

18 18. Plaintiff also seeks “attorneys’ fees and costs.” **Exhibit A** at 25–26 (Compl. pp.
 19 22–23) (“Prayer for Relief”). Courts consider attorneys’ fees and costs in establishing the amount
 20 in controversy for removal jurisdiction under the CAFA amendments. *See, e.g., Gibson v.*
 21 *Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001); *accord Haldiman v. Continental Casualty Co.*,
 22 666 Fed. Appx. 612, 613–14 (9th Cir. Nov. 14, 2016). Coupled with Plaintiff’s concession that
 23 the amount in controversy exceeds CAFA’s jurisdictional minimum, as well as the fact that
 24 Plaintiff’s alleged repair costs when aggregated on a class-wide basis also exceed the
 25 jurisdictional minimum, the claim for attorneys’ fees and costs only further causes the \$5,000,000
 26 jurisdictional minimum to be met.

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1 **III. 28 U.S.C. § 1466 REQUIREMENTS**

2 19. **Removal Is Timely.** MBUSA was served on December 18, 2019, and timely filed
3 this Notice of Removal within 30 days of service of the Class Action Complaint. *See* 28 U.S.C. §
4 1446(b).

5 20. **Removal to This Court Is Proper.** The Class Action Complaint was filed in the
6 Superior Court of California for the County of Alameda. This Court is part of the “district and
7 division within which such action is pending” 28 U.S.C. § 1446(a).

8 21. **Pleadings and Process.** Pursuant to 28 U.S.C. section 1446(a), a “copy of all
9 process, pleadings, and orders served upon” MBUSA is attached to this Notice of Removal as
10 **Exhibit A**. MBUSA has not answered or otherwise filed a response to the Class Action
11 Complaint. Other than the documents attached as **Exhibit A**, no other pleadings, process, orders,
12 or other papers in this case have been filed, served, or otherwise received by defendant or, to its
13 knowledge, are presently on file in the Superior Court of California for the County of Alameda.
14 In the event that additional filings, if any, come to MBUSA’s attention, it will promptly provide
15 this Court with true and correct copies of all such papers.

16 22. **Notice to All Parties and the State Court.** Concurrent with the filing of this
17 Notice, MBUSA gave written notice of this Notice of Removal to Plaintiff’s counsel of record,
18 and will file a copy of this Notice of Removal with the Clerk of the Superior Court of California
19 for the County of Alameda. 28 U.S.C. § 1446(a), (d).

20 WHEREFORE, notice is given that this action is removed from the Superior Court of
21 California for the County of Alameda, to the United States District Court for the Northern District
22 of California, Oakland Division.

23 Dated: January 17, 2020

Squire Patton Boggs (US) LLP

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By: /s/ Troy M. Yoshino
Troy M. Yoshino

Attorneys for Defendant
Mercedes-Benz USA, LLC