No. _____

IN THE
Supreme Court of the United States

RENOVO SERVICES, LLC, REMARKETING SOLUTIONS, LLC, PAR, INC.,

Petitioners,

v.

GEORGE BADEEN, MIDWEST RECOVERY AND ADJUSTMENT, INC.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This appeal presents important questions not yet settled by this Court related to federalism and the separation of powers. Specifically, the case presents the Court with the opportunity to clarify the impact and importance of deadlines set by Congress in federal statutes and distinguish them from court-set deadlines. The Rules Enabling Act, 28 U.S.C. § 2072, delegates to the courts only the "general rules of practice and procedure," thereby reserving exclusively to Congress all other rules governing the federal courts. At issue here is the federal removal statute, which calls for motions to remand to be filed within 30 days of removal. 28 U.S.C. § 1447(c). But the District Court in this case *sua sponte* extended that deadline by more than seven months, exceeding its constitutional authority by disregarding a mandatory statutory deadline set by Congress. And although the clock for removal under the Class Action Fairness Act, 28 U.S.C. §§ 1332(d), 1453, and 1711-1715 ("CAFA"), does not begin to run until a defendant receives from a plaintiff a document demonstrating the amount in controversy, the District Court in this case held that a vague and subsequently retracted "open letter" posted online and never delivered by Plaintiffs to Defendants was enough for Defendants to "unambiguously ascertain" the amount in controversy. This Court has not addressed these specific issues, and this appeal gives the Court the opportunity to resolve ambiguities in CAFA jurisprudence.

The questions presented are:

1. Can a District Court extend the mandatory statutory deadline set by Congress to file a motion for

remand under 28 U.S.C. § 1447(c) without violating the constitutional separation of powers?

2. Does a letter posted online but not sent by any plaintiff to any defendant constitute "other paper" sufficient to start the removal clock under 28 U.S.C. § 1446(b)(3)?

3. In assessing whether a defendant has sufficient information to determine that the CAFA amount in controversy exceeds $5 million, is it appropriate for the District Court to require the defendant to engage in extrapolation and speculation?

PARTIES TO THE PROCEEDING

Petitioners PAR, Inc. ("PAR"), Renovo Services, LLC ("Renovo"), and Remarketing Solutions, LLC ("Remarketing") (collectively, "Defendants"), are the defendants in the District Court and appellants in the Court of Appeals. Respondents George Badeen and Midwest Recovery and Adjustment, Inc. ("Midwest Recovery") (collectively, "Plaintiffs"), are the plaintiffs in the District Court and appellees in the Court of Appeals.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, PAR states that it is a wholly owned subsidiary of ADESA, Inc., which itself is a wholly owned subsidiary of KAR Auction Services, Inc., which is a publicly held corporation. Renovo and Remarketing state that they are privately held limited liability companies, and no publicly held corporations own 10% or more of their stock.

RELATED CASES STATEMENT

- *Badeen, et al. v. PAR, Inc. d/b/a PAR North America, et al.*, No. 19-cv-10532, U.S. District Court for the Eastern District of Michigan. Remand order entered March 31, 2020.

- *In re PAR, Inc., et al.*, No. 20-103, U.S. Court of Appeals for the Sixth Circuit. Order granting permission to appeal entered October 15, 2020

- *Badeen, et al. v. Renovo Services, LLC, et al.*, No. 20-2008, U.S. Court of Appeals for the Sixth Circuit. Order denying permission to appeal entered December 2, 2020.

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This case concerns three critical issues related to removal and federal court jurisdiction. These issues are appropriate for review by this Court because they present important errors that are likely to be repeated on a regular basis by lower courts evaluating removal and remand issues and because the District Court's and Sixth Circuit's approach to these issues in this case is such a significant departure from the accepted and usual course of judicial proceedings. Indeed, in allowing the District Court decision to stand, the Sixth Circuit has split not only with its sister circuits but also with precedent within the Sixth Circuit.

First, the Court has the opportunity here to determine whether district courts have the constitutional authority to extend or stay the statutory deadline to seek remand under Section 1447(c). Second, this case will allow the Court to determine, as a matter of first impression, whether the clock for removal under CAFA begins to run when the "other paper" described in Section 1446(b)(3) that could potentially be used to determine the amount in controversy is not provided by the plaintiff directly to the defendant but rather posted on a Web site. Finally, this case will allow the Court to clarify what is necessary for a defendant to ascertain the value of a putative class action lawsuit under CAFA.

By declining to review the District Court's remand decision in this case, the Sixth Circuit tacitly approved the District Court's extension of the remand deadline and its remand based on Defendants' alleged failure to seek removal within 30 days after Plaintiffs posted an "open letter" on the Internet that was later

retracted and regardless did not clearly and definitely establish an amount in controversy greater than $5 million. The Court should grant this petition so that these errors can be corrected and the Court can provide guidance to courts and litigants in the future about mandatory statutory deadlines and CAFA removal and remand.

OPINIONS BELOW

The Sixth Circuit's order denying rehearing *en banc* is available in the attached Appendix. App. 26a-27a. The Sixth Circuit's order dismissing the appeal as improvidently granted (App. 1a-2a) is reported at 2020 WL 9218084. The District Court's opinion granting remand (App. 14a-25a) is reported at 2020 WL 6135656.

JURISDICTION

The Sixth Circuit, after initially granting permission to appeal, dismissed the appeal after finding that leave to appeal was improvidently granted and denied rehearing *en banc* on January 5, 2021. Thus this Court has jurisdiction under 28 U.S.C. § 1254(1). *See Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 591 (2013) (granting writ of *certiorari* after lower court denial of leave to appeal and denial of *en banc* review). This petition is timely pursuant to the Court's March 19, 2020 Order extending the deadlines for any petition for a writ of *certiorari* to 150 days based on the ongoing public health concerns related to COVID-19.

RELEVANT PROVISIONS OF LAW

The relevant provisions of law for this appeal are the federal procedural statutes relating to removal and remand under CAFA. The language of 28 U.S.C. § 1332 is reproduced at App. 28a-37a. The language of 28 U.S.C. § 1446 is reproduced at App. 38a-41a. The language of 28 U.S.C. § 1447 is reproduced at App. 42a-43a. The language of 28 U.S.C. § 1453 is reproduced at App. 44a-46a.

STATEMENT OF THE CASE

A. Factual and Procedural Background

Plaintiffs commenced this putative class action in the Circuit Court of Wayne County, Michigan on April 5, 2010, naming as defendants only a handful of many forwarders that were operating in Michigan. (Compl., D. Ct. ECF 1-2, PageID# 36-47). The operative second amended complaint was filed on September 7, 2010, alleging various causes of action related to the vehicle repossession process in Michigan. ("SAC," D. Ct. ECF 1-2, PageID# 76-93). The two groups of defendants are the "Lender Defendants" and the "Forwarder Defendants." (Remand Order, App. 15a). The Lender Defendants are allegedly lending institutions that finance vehicles purchased by customers or purchase finance contracts from dealers. (SAC, D. Ct. ECF 1-2, PageID# 83). The Forwarder Defendants are alleged to forward repossessions on behalf of the Lender Defendants to Michigan debt collection agencies, such as Plaintiffs. (*Id.*).

Plaintiffs allege that the Forwarder Defendants' conduct in Michigan was improper because they did

not obtain licenses during the putative class period. (*Id*.). Plaintiffs, a Michigan collection agency and its owner, George Badeen, thus purport to represent a putative class of "every automobile repossession agency or owner who held a license as a debt collector in the State of Michigan [from April 5, 2004 through April 4, 2010]." (*Id*. at PageID# 79-80, 85).

A key dispute in this appeal concerns when Defendants were sufficiently on notice that the amount in controversy exceeded CAFA's $5 million jurisdictional threshold. 28 U.S.C. § 1332(d). It is undisputed that the SAC, which prays for relief in each count of "not less than $25,000.00, plus interest, costs, and attorney fees," is by itself insufficient. (SAC, D. Ct. ECF 1-2, PageID# 88-93). It was not until Plaintiffs responded to Defendants' initial written discovery requests on January 24, 2019, and disclosed their theory of damages that Defendants had sufficient notice of CAFA removal jurisdiction. Plaintiffs' relevant interrogatory response states:

> Discovery as to total repossessions done by Forwarders is still ongoing. As an individual, George Badeen would be entitled to $175 per motor vehicle, or $50.00 per motor vehicle tripled under the statute, MCL 339.916, plus attorney's fees and costs. As to the unnamed class members, damages would be the total number of repossessions times $175 net proceeds per repossession.

(Plaintiffs' Interrog. Resp., D. Ct. ECF 1-4, PageID# 256). With that new information, Defendants were for the first time able to unambiguously ascertain that the amount in controversy exceeded CAFA's $5

million threshold. (Notice of Removal, D. Ct. ECF 1, PageID# 7). Defendants then timely removed this case on February 21, 2019. (Notice of Removal, D. Ct. ECF 1, PageID# 1-14).

More than eight months later, on October 23, 2019, Plaintiffs moved to remand on the basis that Defendants' removal was purportedly untimely. (Mot. to Remand, D. Ct. ECF 45, PageID# 691-714). Plaintiffs argued, and the District Court agreed, that an "open letter" authored by Plaintiffs on July 25, 2014, which alleged "1.8 million misdemeanor violations," provided unambiguous notice to Defendants that the amount in controversy exceeded $5 million. (D. Ct. ECF 45-3, PageID# 745). The following facts related to that open letter are undisputed:

- Plaintiffs did not send the open letter directly to any Defendant;

- The open letter was posted online for public consumption without notice of publication from Plaintiffs to any Defendant, and the Forwarder Defendants were not its expressly intended recipients;

- The open letter was authored in 2014, four years after the class period defined in the SAC closed, and does not contain any information about when the conduct alleged in the open letter occurred;

- The open letter does not specifically identify any Defendant, but instead broadly refers to "any forwarders" that may include the Forwarder Defendants, or may not, and may

include other forwarding companies that are not named as Defendants; and

- After PAR demanded that Plaintiffs retract the open letter because it contained false and defamatory information, Plaintiffs complied and issued an email with the subject line "Retraction" to the letter's audience. (Retraction, D. Ct. ECF 52-2, PageID# 880-81).

Nevertheless, the District Court held that the open letter in combination with the operative complaint allowed Defendants to unambiguously ascertain the amount in controversy in 2014. (Remand Order, App. 20a-23a). The District Court further held that the more than eight-month delay between removal and Plaintiffs' Motion to Remand did not constitute a waiver of Plaintiffs' objections because the District Court had stayed the case while the parties conducted a settlement conference. (Reconsideration Order, App. 11a).

The Sixth Circuit originally granted Defendants' 28 U.S.C. § 1453(c) Petition because, in part:

> We have never considered . . . in a published decision, whether the thirty-day period in 28 U.S.C. § 1447(c) is a procedural or jurisdictional requirement or, if the former, whether equitable exceptions apply to that rule.

(Permission to Appeal Order, App. 5a). The Sixth Circuit panel also observed that this appeal involved a CAFA-related legal issue of statutory interpretation that could be decided on the record and allowed the Court to further define what information is

needed to "permit a defendant to unambiguously ascertain CAFA jurisdiction." (*Id.*).

After the parties briefed the appeal on an expedited basis, the panel dismissed the appeal as "improvidently granted." (Order Dismissing Appeal, App. 2a). Plaintiffs then sought *en banc* review, but the Sixth Circuit denied such review. (Order Denying *En Banc* Review, App. 27a).

B. Legal Framework

The District Court exceeded its constitutional authority in staying, then extending, the congressionally mandated remand deadline at 28 U.S.C. § 1447(c). *See Tennial v. REI Nation, LLC* (*In re Tennial*), 978 F.3d 1022, 1028 (6th Cir. 2020) (finding statutory-based deadline mandatory); *Naji v. Lincoln*, 665 Fed. App'x 397, 402 (6th Cir. 2016) (finding district court lacked power to *sua sponte* extend remand deadline); *Page v. City of Southfield*, 45 F.3d 128, 133 (6th Cir. 1995) (same); *Pettitt v. Boeing Co.*, 606 F.3d 340, 343 (7th Cir. 2010) ("[E]ven if the 'defect in the removal process could have justified a remand . . . because 30 days passed without protest — and the problem does not imperil subject-matter jurisdiction — the case is in federal court to stay.'"); *In re Bethesda Mem. Hosp., Inc.*, 123 F.3d 1407, 1411 (11th Cir. 1997) ("The court acted outside of its statutory authority by remanding for a procedural defect after thirty days of the notice of removal."); *Pavone v. Miss. Riverboat Amusement Corp.*, 52 F.3d 560, 566 (5th Cir. 1995) ("[A] district court has no discretion to remand to state court when a motion to do so is grounded on improper removal procedures and that motion is not made within thirty days following filing."); *see also* Rules Enabling Act, 28

U.S.C. § 2072 (delegating only "general rules of practice and procedure" to the courts); *In re Shell Oil Co.*, 932 F.2d 1523, 1529 n.9 (5th Cir. 1991) ("Congress' desire that remand be handled expeditiously is reflected in the plain language of § 1447(c): the motion to remand 'must be made within thirty days after [removal].'").

The District Court's improper extension cannot be excused by Federal Rule of Civil Procedure 6(b), which allows district courts to extend certain deadlines for "good cause," because that rule applies only to time periods set forth in the federal rules or by court order and cannot be used to extend the statutory deadlines related to removal and remand. *See, e.g., Castillo v. Hongjin Crown Corp.*, No. DR-08-CV-00031-AML-VRG, 2009 WL 10669499, at *16 (W.D. Tex. July 14, 2009) (holding that "Rule 6(b) does not apply to the time period set forth in 28 U.S.C. § 1447(c)"); *Johnson v. USAA Cas. Ins. Co.*, 900 F. Supp. 2d 1310, 1312 (M.D. Fla. Oct. 23, 2012) (holding that federal courts may not "enlarge statutory periods based on 'good cause' under [Rule 6(b)]" and "Section 1446(b)'s mandatory removal period cannot be enlarged by court order, stipulation of the parties, or otherwise"); *see also Sherrod v. Breitbart*, 720 F.3d 932, 938 (D.C. Cir. 2013) ("Motions under Federal Rule of Civil Procedure 6(b) cannot extend statutory time limits.").

In remanding, the District Court also disregarded precedent holding that the "other paper" giving rise to removability must be provided by the plaintiff to the defendant and must be sufficiently clear to allow the parties and the courts to unambiguously ascertain CAFA jurisdiction. *Graiser v. Visionworks of Am., Inc.*, 819 F.3d 277, 285 (6th Cir. 2016).

Acknowledging that this case implicates exceptionally important questions of federal jurisdiction, the Sixth Circuit initially ***granted review*** of Appellants' 28 U.S.C. § 1453(c) Petition for Permission to Appeal. But then the Sixth Circuit — after full briefing — dismissed the appeal as "improvidently granted." Although the panel's decision didn't elaborate, the decision blessed the District Court's erroneous rulings and sends a message to all courts and litigants in the Sixth Circuit that the District Court's conduct was appropriate. Instructive on this point is this Court's decision in *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81 (2014). In that case, the Tenth Circuit rejected discretionary appeal under CAFA and then rejected *en banc* review. *Dart Cherokee Basin Operating, Co. v. Owens*, No. 13-603, 2013 U.S. App. LEXIS 26133, *1 (10th Cir. June 20, 2013); *Dart Cherokee Basin Operating Co. v. Owens*, 730 F.3d 1234, 1234 (10th Cir. 2013). Recognizing the importance of federal jurisdiction issues, the Supreme Court granted *certiorari* and vacated the judgment of the Tenth Circuit. *Dart*, 574 U.S. at 96. In so doing, the Supreme Court rejected the appellee's argument that there was nothing to reverse because there was no judgment by the Tenth Circuit. *Id*. at 90-92. The Court held that the "case was 'in' the Tenth Circuit because of Dart's application for leave to appeal, and the Court has jurisdiction to review what the Court of Appeals did with that application." *Id.* at 90. According to the Supreme Court majority, the Tenth Circuit declination of discretionary appeal under CAFA and of *en banc* review equated to approval of the district court decision. *Id.*; *see also Standard Fire Ins. Co.*, 568 U.S. at 591-92 (granting petition for writ of

certiorari after Eighth Circuit declined to hear CAFA-related appeal).

This Court should apply the same legal standard here and grant *certiorari* to correct the manifest errors made by the District Court and tacitly approved by the Sixth Circuit, and to establish the appropriate standards for addressing the removal and remand issues in this case.

REASONS FOR GRANTING THE WRIT

Pursuant to Supreme Court Rule 10, in evaluating a petition for writ of *certiorari*, the Court should consider whether:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; . . . or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> . . .
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Here, the case presents important questions regarding CAFA removal and the timing of remand, both of which impact the fundamental question of federal court jurisdiction. By *sua sponte* disregarding the

Congressionally established statutory deadline for remand, the District Court acted in a manner that raises significant concerns about the separation of powers under the U.S. Constitution, which not only justifies an exercise of this Court's supervisory power but also presents an important question of federal law that has not been addressed by this Court. Moreover, the Sixth Circuit's decision conflicts with decisions from other Circuits, and within the Sixth Circuit itself, (1) that neither the district court nor litigants can extend mandatory statutory deadlines; (2) that the "other paper" under 28 U.S.C. § 1446(c)(3) notifying a defendant of a basis to remove must be provided by the plaintiff to the defendant; and (3) about what constitutes sufficient evidence to "unambiguously ascertain" that the CAFA amount in controversy exceeds $5,000,000, giving defendants and courts notice that a case is removable under CAFA.

A. This case involves important issues of federal law that remain unresolved by this Court.

This case presents important issues related to the rules and standards governing removal and remand, which are fundamental to issues of federal jurisdiction. Although the appellate court has discretion in reviewing remand orders under CAFA, "[d]iscretion to review a remand order is not rudderless." *Dart*, 574 U.S. at 90. "When the CAFA-related question presented in an appeal from a remand order is 'important, unsettled, and recurrent,' . . . a court of appeals should inquire: 'Absent an interlocutory appeal, [will the question] in all probability escape meaningful appellate review.'" *Id.* at 91. Or, "if a district court's remand order remains undisturbed, will the

case 'leave the ambit of the federal courts for good, precluding any other opportunity for [the defendant] to vindicate its claimed legal entitlement [under CAFA] . . . to have a federal tribunal adjudicate the merits?'" *Id.*

Here, as in *Dart*, the case presents important federal jurisdiction questions that are currently unresolved, namely whether the District Court can extend the deadline to seek remand under Section 1447(c) and what constitutes unambiguous notice for the defendant to ascertain the CAFA amount in controversy. These are issues that lower courts must address every day, and without guidance from this Court, the problems seen here will continue to reoccur regularly. Upon remand to Michigan state court, this matter is unlikely to return to federal court in a manner that would allow Defendants to vindicate their entitlement under CAFA to have a federal tribunal adjudicate this case.

Moreover, courts and litigants need to know when federal jurisdiction is ascertainable under CAFA. In creating CAFA, Congress expressed that the primary objective of CAFA is to "ensur[e] 'Federal court consideration of interstate cases of national importance.'" *Dart*, 574 U.S. at 89 (internal citation omitted). In fact, the Sixth Circuit acknowledged that the question of what constitutes sufficient evidence to "unambiguously ascertain" whether a case is removable under CAFA is one of exceptional importance by noting that the appeal will "allow us to further define what information is needed to permit a defendant to unambiguously ascertain CAFA jurisdiction." (Permission to Appeal Order, App. 5a) (citing *Coll. of Dental Surgeons of P.R. v. Conn. Gen. Life Ins. Co.*, 585 F.3d 33,

38 (1st Cir. 2009)). Given that recognition by the Sixth Circuit (and the three independent reversible errors set forth in this petition), the Court should grant *certiorari* to review this matter.

B. The Sixth Circuit's decision conflicts with decisions holding that mandatory statutory deadlines cannot be extended by courts or litigants.

In declining to review the District Court's remand order, the Sixth Circuit tacitly affirmed the District Court's *sua sponte* stay of the deadline to seek remand. But the Sixth Circuit's own decision in *In re Tennial* and other precedent in the Sixth and other circuits make clear that the District Court had no authority to extend the Section 1447(c) deadline.

Section 1447(c) provides in relevant part:

> A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction ***must be made within 30 days*** after the filing of the notice of removal under section 1446(a). . . .

28 U.S.C. § 1447(c) (emphasis added).

Plaintiffs failed to move to remand under Section 1447(c) within the prescribed 30-day period. The District Court nevertheless granted Plaintiffs' Motion to Remand, holding on reconsideration that "a stay order and a subsequent order" entered by the District Court "prevented" Plaintiffs from timely filing their motion for remand. (Reconsideration Order, App. 11a). But the District Court had no authority to unilaterally extend Plaintiffs' waived objection. The Court should grant this petition to correct this clear error.

This is not a narrow issue that is limited to the facts of this case, and this is an error that is capable of being repeated often. If a district court can unilaterally extend mandatory statutory deadlines, it can deprive Congress of its exclusive authority to mandate deadlines via statute, thereby undermining the separation of powers. Only Congress can delegate the authority to extend the statutory deadlines through the Rules Enabling Act of 1934, 28 U.S.C. §§ 2017-2077, and Congress clearly has not done so in the context of Section 1447(c). In fact, Congress has done the exact opposite and made the 30-day deadline to remand mandatory by the use of the word "must" in the statute. If the 30-day deadline were among the "general rules of practice and procedure" delegated to the courts by the Rules Enabling Act, 28 U.S.C. § 2072, then perhaps the District Court would have the authority to extend the deadline. But dispensing with a statutory deadline set by Congress in this manner raises significant concerns about the separation of powers mandated by the U.S. Constitution.

In *In re Tennial*, the Sixth Circuit held that the 14-day deadline to appeal a bankruptcy court's order to the district court under 28 U.S.C. § 158(c)(2) and Bankruptcy Rule 8002(a)(1) was mandatory. 978 F.3d at 1028. In so reasoning, the Court emphasized the word "shall" in the statute. *Id.* Similarly, Section 1447(c) contains the word "must" and goes even further than the statute at issue in *In re Tennial* by specifying exactly what the time frame is — 30 days. 28 U.S.C. § 1447(c). Unlike the statute at issue in *In re Tennial*, Section 1447(c) does not delegate specification for the time frame to the rules. Therefore, the

justification for finding the time frame mandatory here is even stronger than it was in *In re Tennial*.

This approach is consistent with other precedent in the Sixth Circuit holding that district courts are not authorized to *sua sponte* revive forfeited procedural bases for remand, such as timeliness. *See Naji*, 665 F. App'x at 402 (holding that district court had no power to remand *sua sponte* after plaintiffs forfeited their ability to file a motion to remand based on a procedural defect); *Page*, 45 F.3d at 133 ("Section 1447(c) does not authorize *sua sponte* remands for purely procedural defects" that have been waived by the plaintiff.). By unilaterally staying, then extending, Plaintiffs' 30-day deadline to seek remand by more than seven months, the District Court exceeded its authority, in violation of the statutory deadline and in conflict with the Sixth Circuit's rulings in *In re Tennial, Naji*, and *Page*.

Precedent in other Circuits also holds that a district court "lacks the authority to extend the time for plaintiff to file a motion to remand asserting a procedural defect in the removal." *Ariel Land Owners, Inc. v. Dring*, 351 F.3d 611, 616 (3d Cir. 2003) (holding that "a district court has no authority to order remand on [a procedural defect] without a timely filed motion"); *see also Holbein v. TAW Enters.*, 983 F.3d 1049, 1053 (8th Cir. 2020) ("If the motion to remand is based on any removal 'defect other than lack of subject matter jurisdiction,' that motion 'must be made within 30 days after the filing of the notice of removal.' . . . Otherwise, objections to removal based on such defects are waived."); *Pettitt*, 606 F.3d at 343 (enforcing 30-day limit); *In re Bethesda*, 123 F.3d at 1411 (same); *Pavone*, 52 F.3d at 566 (same); *FDIC v. Loyd*, 955 F.2d

316, 322 (5th Cir. 1992) ("We interpret the first sentence of § 1447(c) as precluding all remands for procedural defects after the expiration of the thirty-day remand period.").

Although it does not appear that this Court has directly addressed this issue, the Court has repeatedly acknowledged that "Section 1447(c) requires that a motion to remand for a defect in removal procedure be filed within 30 days of removal." *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 128 n.3 (1995); *see also Powerex Corp. v. Reliant Energy Services, Inc.*, 551 U.S. 224, 229 (2007); *Wis. Dep't. of Corr. v. Schacht*, 524 U.S. 381, 392 (1998); *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 69 n.6 (1996). The Court also has unequivocally held that a Congressionally established deadline cannot be extended by a district court:

> Within constitutional bounds, Congress decides what cases the federal courts have jurisdiction to consider. Because Congress decides whether federal courts can hear cases at all, it can also determine when, and under what conditions, federal courts can hear them.

Bowles v. Russell, 551 U.S. 205, 212-13 (2007) (holding that a district court lacked authority to extend an appeal deadline). The Court should grant *certiorari* here to establish that this same standard applies to the 30-day deadline in Section 1447(c).

Although not expressly stated in the Remand Order (App. 11a), the District Court treated the Section 1447(c) deadline as one that could be extended under Rule 6(b). But that rule simply does not apply here. As the D.C. Circuit succinctly explained:

> Motions under Federal Rule of Civil Procedure 6(b) cannot extend statutory time limits. "Every court to have considered this question has held that Rule 6(b) may be used only to extend time limits imposed by the court itself or by other Federal Rules, but not by statute." The reason is apparent. Rule 6(b) gives district courts wide discretion to modify the time limits set forth in the rules. Statutory time limits are different. Whether a statute of limitations may be tolled requires the court to engage in statutory interpretation. This is not a matter of the court's discretion. The intent of the legislature is controlling. As in *Argentine Republic*, "the district court could not, as a matter of law, have granted the motion because Rule 6(b) may not be used to extend periods of time dictated by statute."

Sherrod, 720 F.3d at 938 (citations and footnotes omitted); *see also Argentine Republic v. Nat'l Grid PLC*, 637 F.3d 365, 368 (D.C. Cir. 2011) (holding that Rule 6(b) cannot be used to extend statutory deadlines and citing, among other decisions, *United States v. Easement & Right-of-Way 100 Feet Wide and 747 Feet Long Over Certain Land in Cumberland Cnty., Tenn.*, 386 F.2d 769, 771 (6th Cir. 1967)). To avoid these sorts of errors in the future, the Court should grant *certiorari* to clarify that Rule 6(b) cannot be applied to the 30-day deadline in Section 1447(c).

Moreover, the period during which there was no stay in the District Court exceeded 30 days. Excluding the full time during which the District Court action was stayed, the 30-day period to assert procedural objections expired while the case was unstayed

after the settlement conference. Twelve days passed between removal of this case on February 21, 2019, and the first stay of this case on March 5, 2019. (D. Ct. ECF 19, PageID# 360). The case was then stayed through the parties' settlement conference on October 1, 2019, after which the stay was lifted, and Plaintiffs waited another 22 days before filing their first (defective) motion to remand. (D. Ct. ECF 43, PageID# 522). The combination of 12 days before the stay and 22 days after (totaling 34 days) exceeded the 30 days allowed under Section 1446(b). Thus, even if the District Court had the power to extend the statutorily mandated 30-day deadline under Section 1447(c) (which it didn't), more than 30 days ran without a stay, and as such, Plaintiffs waived remand regardless.

The Court therefore should grant *certiorari* to reiterate that mandatory statutory deadlines cannot be extended by courts or litigants.

C. The Sixth Circuit's decision conflicts with decisions holding that the "other paper" from which a defendant can ascertain removability under CAFA must be provided by the plaintiff to the defendant.

CAFA provides that a defendant must file a notice of removal within 30 days of "receipt by the defendant . . . of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446(b)(3). In *Graiser*, the Sixth Circuit adopted a "bright-line rule" that "the thirty-day clocks of § 1446(b) begin to run only when the defendant receives a document *from the plaintiff* from which

the defendant can unambiguously ascertain CAFA jurisdiction." 819 F.3d at 285 (emphasis in original).

The District Court held that Defendants' notice of removal was untimely because "the 30-day clock under § 1446(b)(3) began to run when PAR received [the open letter]; by then PAR could have unambiguously ascertained CAFA jurisdiction by reading the [open letter] in conjunction with the [SAC]." (Remand Order, App. 20a-21a). But nothing in the record demonstrates Defendants received the open letter "from the Plaintiff." *Graiser*, 819 F.3d at 285. In fact, it is clear that Defendants did ***not*** receive the open letter from Plaintiffs. *See, e.g.,* D. Ct. ECF 45-3, PageID# 745 (open letter addressed to "Fellow Michigan Recovery Agent," not any Defendant); D. Ct. ECF 52-1, PageID# 840 (Plaintiffs' counsel stating that Defendants "got ahold of this letter"). Instead, the District Court based its ruling on the presumption that Defendants possessed the letter because they demanded that Plaintiffs retract it. (Remand Order, App. 21a). That finding is plainly erroneous because mere possession of a document allegedly establishing the basis for removal was deemed insufficient to trigger the removal deadline in *Graiser*. 819 F.3d at 283 (holding that internal sales data in the defendant's possession from the outset could not serve as the removal trigger because the defendant had not received from the plaintiff any document unambiguously establishing CAFA jurisdiction).

Other Circuits agree that the "other paper" must be provided by a plaintiff to a defendant. Indeed, the Sixth Circuit in *Graiser* acknowledged that "'[e]very circuit to have addressed this issue has . . . adopted some form of a bright-line rule that limits the court's

inquiry to the clock-triggering pleading or other paper' provided *by the plaintiff* to the defendant." 819 F.3d at 284 (emphasis in original); *see also Gibson v. Clean Harbors Envtl. Servs., Inc.*, 840 F.3d 515, 519-20 (8th Cir. 2016) ("We hold that, in the CAFA context, the thirty-day removal period set forth in § 1446(b)(3) does not begin to run until the defendant receives from the plaintiff an amended pleading, motion, order, or other paper 'from which the defendant can unambiguously ascertain' that the CAFA jurisdictional requirements have been satisfied.") (citing *Graiser v. Visionworks of Am., Inc.*, 819 F.3d 277, 285 (6th Cir. 2016)); *Romulus v. CVS Pharmacy, Inc.*, 770 F.3d 67, 76 (1st Cir. 2014) (stating that determining whether 1446(b) clock started requires focuses "exclusively on . . . other papers provided by the plaintiffs"); *Cutrone v. Mortg. Elec. Registration Sys.*, 749 F.3d 137, 145-46 (2d Cir. 2014) (applying similar bright-line rule requiring that "the plaintiff serve[] the defendant" with a document establishing CAFA jurisdiction); *Walker v. Trailer Transit, Inc.*, 727 F.3d 819, 824 (7th Cir. 2013) (adopting the "from the plaintiff" bright-line rule and affirming denial of motion to remand).

"Congress clearly 'intended [CAFA] to expand substantially federal court jurisdiction over class actions' and directed that CAFA's 'provisions should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant.'" *Graiser*, 819 F.3d at 287 (quoting S. REP. NO. 109-14, at 43 (2005)). Recognizing this intent, this Court held that "no anti-removal presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of

certain class actions in federal court." *Dart*, 574 U.S. at 89.

The Sixth Circuit's ruling amounts to a presumption in favor of remand and conflicts with not only the Sixth Circuit's own standard, but the standards of every other circuit to address this issue. It empowers a plaintiff to post a statement online from which the amount in controversy could arguably be deduced, provide no direct notice to a defendant, and potentially foreclose removal of an interstate putative class action. This is despite Congress's intent to facilitate these sorts of cases in federal court, as acknowledged by this Court in *Dart*.

Accordingly, the Court should grant *certiorari* to establish a clear, bright-line rule by ratifying the various Circuit Court decisions holding that the "other paper" used to determine removability must be provided ***by the plaintiff to the defendant*** to start the 30-day clock.

D. The Sixth Circuit's decision conflicts with decisions regarding what constitutes sufficient evidence to allow a litigant to "unambiguously ascertain" removability under CAFA.

Under Section 1446(b)(3), the 30-day clock begins to run when the defendant receives a document "from which it may first be ascertained that the case is one which is or has become removable." But the Supreme Court has not established a standard for determining when a removability can be "ascertained." In the context of CAFA removal, the Sixth Circuit and its sister circuits have held that a document cannot start the removal clock in Section 1446(b)(3) unless a defendant

can "unambiguously ascertain CAFA jurisdiction" from it. *Graiser*, 819 F.3d at 285; *see also Gibson*, 840 F.3d at 521-22 (holding that a settlement letter with no factual support is insufficient to "unambiguously" apprise the defendants of the true amount in controversy); *Romulus*, 770 F.3d at 74-76 ("Section 1446(b)(3) does not apply until removability can first be ascertained from the plaintiffs' own papers."); *Cutrone*, 749 F.3d at 145 (holding that defendant is "not required to perform an independent investigation into a plaintiff's indeterminate allegations to determine removability"); *Kuxhausen v. BMW Fin. Servs. NA LLC*, 707 F.3d 1136, 1140-42 (9th Cir. 2013) (noting that courts do not impose on defendants a duty to ascertain removability under CAFA until they've "received a paper that gives them enough information to remove") (internal citation omitted). This test is not satisfied unless it is "apparent from the allegations of an initial pleading or subsequent document" that jurisdiction lies. *Graiser*, 819 F.3d at 285. In this case, the open letter does not come close to satisfying that standard, but the Sixth Circuit nonetheless tacitly endorsed the District Court's remand order. Thus, the Court should take this opportunity to establish a clear rule governing ascertainability.

In *Graiser*, the plaintiff argued that the defendant should have known that the case was removable because the defendant possessed the sales records that would have revealed that the amount in controversy exceeded $5,000,000 under the plaintiff's theory of damages. *Id*. But the Sixth Circuit rejected that argument by holding that although the defendant could have investigated its own sales records and made "extrapolations or engaged in guesswork" regarding

removability, it had no duty to do so. *Id.* (quoting *Kuxhausen v. BMW Fin. Servs. NA LLC*, 707 F.3d 1136, 1140 (9th Cir. 2013)). In so holding, the Sixth Circuit sought to address a fundamental policy goal of avoiding the "guesswork and [] ambiguity" of determining on what date a defendant discovered documents in its possession. *Id.*

This standard is appropriate because it is reasonable for the federal courts to discourage removals based on ambiguous guesswork. But the District Court's decision in this case completely disregards that standard and it would, if enforced universally, force litigants to remove if they had even the slightest (and often baseless) suspicion that a case might be removable, lest they risk an untimely removal. In the open letter, Plaintiffs stated, in relevant part: "Despite the approximate 1.8 million misdemeanor violations, (the estimated number of vehicles repossessed via these unlicensed Forwarders), it is now apparent that [the Attorney General's] delay has been intentional to allow time for the construction of a special fast track to legal acceptability for these Forwarders." (D. Ct. ECF 45-3, PageID# 745). From that single sentence, the District Court's decision suggests that Defendants were able to "unambiguously ascertain" each of the following factual conclusions: (1) that reference to "these forwarders" was an exclusive reference to the Forwarder Defendants and the Forwarder Defendants were exclusively responsible for each of the alleged 1.8 million violations; (2) that the 1.8 million alleged violations all occurred during the class period of April 5, 2004 to April 5, 2010, even though the open letter was posted in 2014; (3) that the unexplained estimate of 1.8 million violations should be taken as true

and used as a basis to assert federal jurisdiction; and (4) that each putative class member's actual damages is at least one dollar per repossession. Each one of these holdings constitutes the kind of guesswork impugned by *Graiser*, and yet the Sixth Circuit's ruling accepted all four by allowing the District Court's ruling to stand. Moreover, the open letter was retracted. (Retraction, D. Ct. ECF 52-2, PageID# 880-81). How a retracted letter could serve as notice of the CAFA amount in controversy is lost on Defendants.

Thus, the Court should grant *certiorari* to address the question of when jurisdiction is ascertainable under CAFA and establish a clear standard for avoiding speculative removals.

CONCLUSION

The petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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June 4, 2021

APPENDIX

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED DECEMBER 2, 2020

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 20-2008

GEORGE BADEEN, AN INDIVIDUAL AND ON BEHALF OF A PROPOSED CLASS; MIDWEST RECOVERY AND ADJUSTMENT, INC., A MICHIGAN FOR PROFIT CORP., INDIVIDUALLY AND ON BEHALF OF A PROPOSED CLASS,

Plaintiffs-Appellees,

v.

RENOVO SERVICES, LLC, A DELAWARE LIMITED LIABILITY COMPANY; REMARKETING SOLUTIONS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FOR ITSELF AND AS SUCCESSORS IN INTEREST; PAR, INC., AN INDIANA CORPORATION, DBA PAR NORTH AMERICA,

Defendants-Appellants.

On Appeal from the United States District Court
for the Eastern District of Michigan

Appendix A

ORDER

Before: SUTTON, COOK, and WHITE, Circuit Judges.

On further review, the court decides that permission to appeal under 28 U.S.C. § 1453(c)(1) was improvidently granted.

ENTERED BY ORDER OF THE COURT

/s/_____
Deborah S. Hunt, Clerk

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED OCTOBER 15, 2020

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 20-0103

IN RE: PAR, INC., DOING BUSINESS AS PAR NORTH AMERICA, AN INDIANA CORPORATION, *et al.*,

Petitioners.

October 15, 2020, Filed

ORDER

Before: SUTTON, COOK, and WHITE, Circuit Judges.

Defendants PAR, Inc., Renovo Services, LLC, and Remarketing Solutions, LLC removed a putative class action filed by Plaintiffs George Badeen and Midwest Recovery and Adjustment, Inc. to the district court under the Class Action Fairness Act ("CAFA"). Defendants petition for permission to appeal the district court's order remanding the action on Plaintiffs' motion, filed more than eight months after the action was removed, based on its conclusion that Defendants untimely removed the action and its conclusion, upon reconsideration, that Plaintiffs timely moved for remand. Plaintiffs oppose the petition. Defendants have since notified the court that its

motion for reconsideration was fully briefed and, later, denied. Plaintiffs move to strike these notifications as unauthorized attempts to reply in support of their petition or, alternatively, for leave to file a sur-reply. Defendants did not respond to the motion to strike.

First, we address Plaintiffs' motion to strike. Federal Rule of Appellate Procedure 5, governing petitions for permission to appeal, does not provide for a reply to petitions for permission to appeal. Fed. R. App. P. 5(b)(1)-(2). A party, however, may move for relief not otherwise afforded by the rules. Fed. R. App. P. 27(a)(1). While replies are generally permitted to motions, the "reply must not present matters that do not relate to the response." Fed. R. App. P. 27(a)(4). Defendants' notifications, to the extent they append documents filed in the district court, are otherwise electronically available to us. Defendants never sought or received leave of court to file a reply; thus, we will not consider any substantive arguments in support of their petition presented in their notifications.

Next, we consider the merits of the petition. Granting a CAFA petition is within our discretion. *See* 28 U.S.C. § 1453(c)(1). Although § 1453 does not provide criteria for accepting or denying review, our discretion "is not rudderless." *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 90, 135 S. Ct. 547, 190 L. Ed. 2d 495 (2014). A key factor is "the presence of an important CAFA-related question." *Coll. of Dental Surgeons of P.R. v. Conn. Gen. Life Ins. Co.*, 585 F.3d 33, 38 (1st Cir. 2009). An unsettled question of CAFA law or an incorrectly decided CAFA issue also favors granting the petition. *Id.* Case-specific factors include whether the CAFA-related question is consequential to the resolution of the case,

whether the question is likely to evade review absent an appeal, whether the question is likely to recur, and whether the record is sufficiently developed for review. *Id.* Finally, we balance the relevant harms to the parties should an immediate appeal be granted. *Id.* at 39.

We have previously considered when the thirty-day period for removing a class action under the CAFA commences if it cannot be unambiguously ascertained from the complaint that the action satisfies the prerequisites for CAFA jurisdiction. *Graiser v. Visionworks of Am., Inc.*, 819 F.3d 277, 285 (6th Cir. 2016). We have never considered, however, in a published decision, whether the thirty-day period in 28 U.S.C. § 1447(c) is a procedural or jurisdictional requirement or, if the former, whether equitable exceptions apply to that rule. The appeal, if granted, will thus involve a CAFA-related legal issue of statutory interpretation that can be decided on the record, and allow us to further define what information is needed to permit a defendant to unambiguously ascertain CAFA jurisdiction. *See Coll. of Dental Surgeons*, 585 F.3d at 38. The question is likely to recur. *See id.* Finally, without an appeal, the issue will evade review because the case has been remanded to state court. *See id.*

The petition for permission to appeal and the motion to strike are **GRANTED**. A decision on a CAFA appeal should be rendered within sixty days, unless an extension of time is agreed to by all parties or an up-to-ten-day extension is granted for good cause. 28 U.S.C. § 1453(c)(2). This period begins to run when the petition is granted. *In re Mortg. Elec. Registration Sys., Inc.*, 680 F.3d 849, 852-53 (6th Cir. 2012). In view of these strict time limitations for resolution of the appeal, briefing and

submission will be accelerated. The clerk is **DIRECTED** to enter an abbreviated briefing schedule and to expedite the submission to the court.

Judge White would deny the petition for permission to appeal.

ENTERED BY ORDER OF THE COURT

/s/_____
Deborah S. Hunt, Clerk

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, FILED MAY 21, 2020

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 19-10532

GEORGE BADEEN, *et al.*,

Plaintiffs,

v.

PAR, INC., D/B/A PAR NORTH AMERICA, *et al.*,

Defendants.

May 21, 2020, Decided
May 21, 2020, Filed

Honorable Victoria A. Roberts

ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION BUT GRANTING MOTION FOR STAY PENDING APPEAL [ECF NO. 56]

I. INTRODUCTION

On March 31, 2020, the Court entered an order remanding this case to state court.

Appendix C

Defendants filed a motion for reconsideration or stay of the Court's remand order. The motion is fully briefed.

Defendants' motion is GRANTED IN PART and DENIED IN PART. The Court **DENIES** the motion for reconsideration but **GRANTS** their motion for stay pending appeal.

II. DISCUSSION

A. Jurisdiction

Normally, a remand order based on the absence of subject matter jurisdiction is not reviewable. *See* 28 U.S.C. § 1447(d). However, Congress expressly authorized federal appellate courts to accept an appeal from a remand order under the Class Action Fairness Act ("CAFA") "notwithstanding section 1447(d)." 28 U.S.C. § 1453(c).

Courts interpret "the CAFA exception to provide continuing jurisdiction to reopen a previously remanded case." *Perez-Reyes v. Nat'l Distrib. Ctrs., LLC*, 2018 U.S. Dist. LEXIS 221808, 2018 WL 7077183, at *2 (C.D. Cal. Feb. 8, 2018) (exercising jurisdiction to decide a motion to reconsider a remand order); *Wingo v. State Farm Fire & Cas. Co.*, 2013 U.S. Dist. LEXIS 104135, 2013 WL 3872199, at *2 (W.D. Mo. July 25, 2013) (exercising jurisdiction over a motion to reconsider a remand order); *see also Zielinski v. First Nat'l Ins. Co. of Am.*, 2020 U.S. Dist. LEXIS 87506, 2020 WL 2507993, at *1 (W.D. Wash. May 15, 2020) (exercising jurisdiction over a motion to stay); *Manier v. Medtech Prods.*, 29 F. Supp. 3d 1284, 2014 WL 2919204, at *1 (S.D. Cal. 2014) (same).

The Court concludes it has jurisdiction to consider Defendants' motion for reconsideration or stay.

B. Motion for Reconsideration

"A motion for reconsideration is governed by the local rules in the Eastern District of Michigan, which provide that the movant must show both that there is a palpable defect in the opinion and that correcting the defect will result in a different disposition of the case." In pertinent part, Local Rule 7.1(h)(3) provides that:

> [T]he court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication. The movant must not only demonstrate a palpable defect by which the court and the parties and other persons entitled to be heard on the motion have been misled but also show that correcting the defect will result in a different disposition of the case.

E.D. Mich. LR 7.1(h)(3). "A 'palpable defect' is a defect which is obvious, clear, unmistakable, manifest, or plain." *Ososki v. St. Paul Surplus Lines Ins. Co.*, 162 F. Supp. 2d 714, 718 (E.D. Mich. 2001). "A motion for reconsideration should not be used liberally to get a second bite at the apple, but should be used sparingly to correct *actual* defects in the court's opinion." *Oswald v. BAE Indus., Inc.*, No. 10-12660, 2010 U.S. Dist. LEXIS 137584, 2010 WL 5464271, at *1 (E.D. Mich. Dec. 30, 2010).

"[A] motion for reconsideration is not an appropriate vehicle for raising new facts or arguments." *United States v. A.F.F.*, 144 F. Supp. 2d 809, 812 (E.D. Mich. 2001). Indeed, motions for reconsideration do not permit "the losing party to attempt to supplement the record with previously available evidence" or "raise new legal theories that should have been raised earlier." *Allen v. Henry Ford Health Sys.*, No. 08-14106, 2010 U.S. Dist. LEXIS 14612, 2010 WL 653253, at *1 (E.D. Mich. Feb. 18, 2010). *See also Bank of Ann Arbor v. Everest Nat. Ins. Co.*, 563 Fed. Appx. 473, 476 (6th Cir. 2014) ("It is well-settled that 'parties cannot use a motion for reconsideration to raise new legal arguments that could have been raised before a judgment was issued.' Furthermore, a party may not introduce evidence for the first time in a motion for reconsideration where that evidence could have been presented earlier." (citation omitted)); *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir.1998) (motions for reconsideration "are aimed at *re* consideration, not initial consideration" (citation omitted)).

Defendants make several arguments in support of their motion for reconsideration. However, none of Defendants' arguments demonstrates a palpable defect by which the Court and the parties have been misled. Nor do they demonstrate any correction would result in a different disposition of the case.

Although it is unnecessary to address all arguments Defendants raise in their motion for reconsideration, the Court does address two arguments not addressed in the Court's order remanding the case.

The first argument is that Plaintiffs' open letter is insufficient evidence of removability under the applicable standards as of July 2014. Defendants did not raise this argument in their briefing before the Court remanded the case; thus, it is improper. *See Bank of Ann Arbor*, 563 Fed. Appx. at 476.

Defendants' other argument that the Court addresses is that the Court failed to address their argument that Plaintiffs' motion for remand was untimely. Defendants are correct that the Court did not address this argument; the Court believes it to be meritless. Due to a stay order and a subsequent order entered by the Court, Plaintiffs were prevented from filing a remand order earlier. Once the Court lifted the stay order and settlement attempts failed, Plaintiffs filed their motion for remand in a timely manner and in compliance with Court orders.

The Court DENIES Defendants' motion for reconsideration.

C. Motion for Stay Pending Appeal

In deciding a motion to stay pending appeal, the Court considers four factors:

> (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay.

SEIU Local 1 v. Husted, 698 F.3d 341, 343 (6th Cir. 2012) (per curiam) (citation omitted). The factors are "interrelated considerations that must be balanced together." *Id.*

Although the Court finds that Defendants do not have a strong likelihood to prevail on the merits of the appeal, it finds that balancing the factors weighs in favor of a stay.

Section 1453(c) encourages federal appellate courts to adjudicate reviews of CAFA remand orders in an expedited manner — typically within 60 days of the date the appeal was filed. *See* 28 U.S.C. § 1453(c)(2) ("If the court of appeals accepts an appeal under paragraph (1), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under paragraph (3).").

This case has been pending for over ten years. In the scheme of things, staying the litigation for two months for the outcome of this appeal will cause minimal — if any — harm to Plaintiffs. On the other hand, requiring the parties to continue to litigate in state court could cause irreparable harm to all the parties if the Court of Appeals finds this Court has jurisdiction. The parties would incur unnecessary expenses and have no way to recover them. Moreover, a stay advances the public interest by avoiding the risk that judicial resources of the state courts be wasted.

Because balancing the factors weighs in favor of a stay, the Court GRANTS Defendants' motion for stay pending appeal.

III. CONCLUSION

The Court **DENIES** Defendants' motion for reconsideration and **GRANTS** Defendants' motion for stay pending appeal.

IT IS ORDERED.

/s/ Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: May 21, 2020

APPENDIX D — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, FILED MARCH 31, 2020

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 19-10532

GEORGE BADEEN, *et al.*,

Plaintiffs,

v.

PAR, INC., D/B/A PAR NORTH AMERICA, *et al.*,

Defendants.

March 31, 2020, Decided
March 31, 2020, Filed

Honorable Victoria A. Roberts,
United States District Judge

ORDER GRANTING PLAINTIFFS' MOTION TO REMAND [ECF NO. 45] AND REMANDING THE CASE TO STATE COURT

Appendix D

I. INTRODUCTION

Plaintiffs filed this proposed class action in state court in April 2010. On February 21, 2019, three Defendants — PAR, Inc. ("PAR"), Remarketing Solutions, LLC, and Renovo Services, LLC — removed the case.

This removal was untimely. Plaintiffs' motion to remand [ECF No. 45] is **GRANTED**.

II. BACKGROUND

This case involves the motor vehicle repossession business. The parties are various entities that intersect when vehicles are repossessed.

There are two groups of Defendants — the "Lender Defendants" and the "Forwarder Defendants."

The "Lender Defendants" are lending institutions who make secured automobile loans to individuals or businesses, or purchase the secured notes of other lenders; motor vehicles are the collateral for these secured loans.

The "Forwarder Defendants" are repossession forwarding servicers. They are large scale companies doing business on a national level.

Plaintiff George Badeen owns Plaintiff Midwest Recovery and Adjustments, Inc. ("Midwest"; collectively, "Plaintiffs"). Midwest is a licensed collection agency in Michigan with repossession powers.

Appendix D

Plaintiffs allege that the Lender Defendants historically hired Michigan debt collectors like Midwest to seize vehicle collateral within the State of Michigan, in the event of default, on a case by case basis. However, Plaintiffs allege the Forwarder Defendants routinely advertised and approached the Lender Defendants to solicit the accounts Plaintiffs historically managed. Plaintiffs say the Forwarder Defendants are not licensed to collect on such debt. Nonetheless, the Lender Defendants hired the Forwarder Defendants. The Forwarder Defendants — in turn — hired local, licensed repossession agents such as Midwest to carry out the actual repossessions. And paid them less for their repossession services than the Lender Defendants paid them when they were hired directly.

In their second amended complaint, Plaintiffs allege: (1) the Forwarder Defendants operated as unlicensed collection and repossession agencies in violation of the Michigan Occupational Code and Michigan Regulation of Collection Practices Act; and (2) the Lender Defendants conspired with the Forwarder Defendants to violate the law by employing the Forwarder Defendants directly.

Plaintiffs seek to represent a class consisting of "every automobile repossession agency or owner who held a license as a debt collector in the State of Michigan during the last 6 years [— i.e., April 2004 to April 2010]." Plaintiffs say the class will represent approximately 150 agencies.

In Count VII of the second amended complaint, Plaintiffs allege that the Forwarder Defendants willfully

violated the Michigan Occupation Code. Plaintiffs seek treble damages, costs, and attorney fees pursuant to Mich. Comp. Laws § 339.916. Under that statute, "[i]f the court finds that the method, act, or practice was a wil[l]ful violation, it may award a civil penalty of not less than 3 times the actual damages, or $150.00, whichever is greater and shall award reasonable attorney's fees and court costs incurred in connection with the action." Mich. Comp. Laws § 339.916(2).

III. DISCUSSION

Defendants removed this case pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d). Under CAFA, this Court has original jurisdiction to hear a class action if: (1) the class has at least 100 members, *see* § 1332(d)(5); (2) "any member of a class of plaintiffs is a citizen of a State different from any defendant," *see* § 1332(d)(2)(A); and (3) aggregating the claims of individual members of the proposed class, the matter in controversy exceeds $5,000,000, exclusive of interest and costs, *see* § 1332(d)(6). *See Graiser v. Visionworks of Am., Inc.*, 819 F.3d 277, 282 (6th Cir. 2016).

Although Plaintiffs filed the second amended complaint in September 2010, Defendants did not remove until February 21, 2019.

Plaintiffs move to remand to state court. They say Defendants' removal was untimely.

Appendix D

"Defendants removing under CAFA must comply with the time limits of the general removal statute, 28 U.S.C. § 1446, except that the one-year deadline for removing cases under diversity jurisdiction does not apply to cases removed under CAFA." *Graiser*, 819 F.3d at 282 (citing 28 U.S.C. § 1453).

Typically, a defendant has thirty days to file a notice of removal after receiving a copy of the complaint. 28 U.S.C. § 1446(b)(1). However, "if the case stated by the initial pleading is not removable," § 1446(b)(3) allows a defendant to file a notice of removal within 30 days after receiving a copy of "an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." *Id.; Graiser*, 819 F.3d at 282.

"A defendant's failure to comply with the thirty-day limitation set forth in Section 1446(b) is an absolute bar to removal regardless of whether the removal would have been proper if timely filed." *Groesbeck Investments, Inc. v. Smith*, 224 F. Supp. 2d 1144, 1148 (E.D. Mich. 2002). The burden is on Defendants to show that they complied with procedural requirements for removal. *Id.*

Defendants say removal was timely under 28 U.S.C. § 1446(b)(3), because Plaintiffs disclosed their damages theory for the first time in discovery responses signed January 24, 2019. Defendants claim that they were unable to ascertain that the amount in controversy exceeded $5,000,000 before then. Plaintiffs' discovery response stated:

> Discovery as to total repossessions done by Forwarders is still ongoing. As an individual, George Badeen would be entitled to $175 per motor vehicle, or $50.00 per motor vehicle tripled under the statute, MCL 339.916, plus attorney's fees and costs. As to the unnamed class members, damages would be the total number of repossessions times $175 net proceeds per repossession.

[ECF No. 1-4, PageID.256].

Graiser sets forth the Sixth Circuit's standard for determining when the 30-day period under § 1446(b)(3) begins:

> [I]n CAFA cases, the thirty-day clocks of § 1446(b) begin to run only when the defendant receives a document *from the plaintiff* from which the defendant can unambiguously ascertain CAFA jurisdiction. Under this bright-line rule, a defendant is not required to search its own business records or "perform an independent investigation into a plaintiff's indeterminate allegations to determine removability." We agree with the Second Circuit, however, that a defendant *does* have a duty to "apply a reasonable amount of intelligence to its reading of a plaintiff's complaint" or other document. For example, a defendant cannot prevent the beginning of the thirty-day window by

> refusing to "multiply figures clearly stated in a complaint." But "if removability is not apparent from the allegations of an initial pleading or subsequent document" sent from the plaintiff, the thirty-day clocks of § 1446(b) do not begin.

Graiser, 819 F.3d at 285 (internal citations and brackets omitted; emphasis in original).

Defendants say that they were unable to "unambiguously ascertain CAFA jurisdiction" until they received Plaintiffs' discovery response. However, Plaintiffs say they provided Defendants with documents over four years ago which would have allowed them to unambiguously ascertain that the amount in controversy exceeded $5,000,000. As support, Plaintiffs rely upon the combination of: (1) their second amended complaint, which includes the number of class members as well as their claim for treble damages under Mich. Comp. Laws § 339.916; (2) an open letter sent by Plaintiffs to licensed Michigan "recovery agencies" — including PAR — on July 25, 2014; and (3) their class certification brief filed twice in state court on unspecified dates, which stated that "[t]he damages in this case will total in the millions."

The class certification brief does not help Plaintiffs.

However, the Court finds that the 30-day clock under § 1446(b)(3) began to run when PAR received Plaintiffs' July 25, 2014 open letter; by then, PAR could have unambiguously ascertained CAFA jurisdiction by reading

the July 25, 2014 open letter in conjunction with the second amended complaint.

PAR received the July 25, 2014 open letter. PAR was a licensed recovery agency at that time, [*see* ECF No. 53, PageID.883-84]. And — on July 30, 2014, through its attorneys — PAR sent Plaintiffs a cease and desist letter responding to the July 25 open letter; this cease and desist letter referenced the open letter and attached a copy of it for reference.

Plaintiffs' July 25 open letter discusses an opinion from the Michigan Supreme Court from an earlier appeal in this case and states that "these . . . Forwarders" — meaning the Forwarder Defendants — were responsible for "approximate[ly] 1.8 million misdemeanor violations[] ([i.e.,] the estimated number of vehicles repossessed via these unlicensed Forwarders)." [ECF No. 45-3, PageID.744-45].

Defendants claim that Plaintiffs retracted the open letter and say the Court should disregard it. This is incorrect; Plaintiffs never retracted the letter or their allegation that the Forwarder Defendants were responsible for 1.8 million repossessions/violations.

Defendants argue that the letter does not unambiguously establish that the amount in controversy exceeds $5,000,000 because it: (1) does not state how many of the alleged repossessions are attributable to the Forwarder Defendants; and (2) provides no time frame for when the alleged repossessions occurred.

The Court disagrees. The letter discusses Plaintiffs' case against Defendants; then, it refers to "these Forwarders." It is clear that Plaintiffs refer to the Forwarder Defendants.

Defendants' time frame argument is a merits issue which they can raise in defense of Plaintiffs' *allegations*. The amount in controversy is determined based on Plaintiffs' allegations; here, Plaintiffs allege that the number of violations (i.e., repossessions) the Forwarder Defendants committed under Mich. Comp. Laws § 339.916 is 1.8 million. Thus, the relevant number of repossessions/violations for determining the amount in controversy is 1.8 million.

Considering Plaintiffs' allegation of 1.8 million repossessions together with their request for treble damages under Mich. Comp. Laws § 339.916, it is unambiguously ascertainable that the amount in controversy exceeds $5,000,000. In fact, multiplying the trebled damages available under § 339.916 by the alleged 1.8 million repossessions/violations, the amount in controversy is at least $270,000,000 (i.e., 1.8 million * $150). *See* Mich. Comp. Laws § 339.916(2) (if it is a willful violation, the Court "may award a civil penalty of not less than 3 times the actual damages, **or $150.00, whichever is greater** . . ." (emphasis added)).

This statute — along with Plaintiffs' allegation that the Forwarder Defendants' violations were willful and Plaintiffs' request for treble damages — are clearly expressed in the second amended complaint. Thus, once

Plaintiffs' sent PAR the July 25, 2014 open letter indicating that they were alleging that Forwarder Defendants were responsible for 1.8 million repossessions/violations as part of this case, all that was required to ascertain CAFA jurisdiction was to "apply a reasonable amount of intelligence" and "multiply figures clearly stated" in the second amended complaint and open letter. *See Graiser*, 819 F.3d at 285. Accordingly, the 30-day clock under § 1446(b)(3) began to run no later than July 30, 2014 — i.e., the date of PAR's cease and desist letter. Removal was untimely. *See id.*

Defendants argue that the statutory damages under Mich. Comp. Laws § 339.916 — $150 per willful violation — are irrelevant for purposes of determining the amount in controversy; they say that, because this is a class action, Plaintiffs and the putative class members can only recover actual damages and are not entitled to statutory damages pursuant to Michigan Court Rule 3.501(A)(5).

While this may be true in state court, "federal procedural rules . . . govern cases in federal courts, not their state counterparts." *Martin v. Trott Law, P.C.*, 265 F. Supp. 3d 731, 750 (E.D. Mich. 2017) (rejecting defendant's argument to apply Mich. Ct. R. 3.501(A)(5) to preclude plaintiffs from proceeding with a class action claim for statutory damages under the Regulation of Collection Practices Act). *See also Am. Copper & Brass, Inc. v. Lake City Indus. Prods.*, 757 F.3d 540, 546 (6th Cir. 2014) (rejecting defendant's argument to apply Mich. Ct. R. 3.501(A)(5) to dismiss class action claims and noting that "the Supreme Court recently held in a case involving a

conflict between Rule 23 and a New York procedural rule prohibiting class actions in cases involving a statutory penalty [that] a 'Federal Rule governing procedure is valid whether or not it alters the outcome of the case in a way that induces forum shopping'" (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 416, 130 S. Ct. 1431, 176 L. Ed. 2d 311 (2010))).

Because federal procedural rules would allow Plaintiffs and the proposed class members to recover statutory damages, and any removed case would be governed by federal procedural rules, the statutory damages recoverable under Mich. Comp. Laws § 339.916(2) are relevant for purposes of determining the amount in controversy. *See id.*

However, even disregarding statutory damages, CAFA jurisdiction was still unambiguously ascertainable based on the open letter and the second amended complaint. Assuming only actual damages were recoverable in this Court, the amount in controversy exceeds $5,000,000 even if Plaintiffs were only alleging $1 in actual damages per repossession — which is an amount below what any reasonable person could believe Plaintiffs were seeking for actual damages per repossession.

Using $1 in actual damages per repossession, the amount in controversy would be no less than $5,400,000 — considering Plaintiffs' allegation that Lender Defendants' violations were willful and Mich. Comp. Laws § 339.916(2) provides for an award of "not less than 3 times the actual damages" for willful violations. Thus, trebling the

hypothetical $1 in actual damages, Plaintiffs could recover $3 for each of the 1.8 million repossessions/violations they allege, such that the amount in controversy for Count VII of the second amended complaint would be at least $5,400,000 (i.e., 1.8 million * $3).

Defendants untimely removed under 28 U.S.C. § 1446(b)(3).

IV. CONCLUSION

The Court **GRANTS** Plaintiffs' motion to remand [ECF No. 45].

The Court **REMANDS** this case to the Third Judicial Circuit Court in Wayne County, Michigan.

IT IS ORDERED.

/s/ Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: March 31, 2020

APPENDIX E — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED JANUARY 5, 2021

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 20-2008

GEORGE BADEEN, AN INDIVIDUAL AND ON BEHALF OF A PROPOSED CLASS; MIDWEST RECOVERY AND ADJUSTMENT, INC., A MICHIGAN FOR PROFIT CORP., INDIVIDUALLY AND ON BEHALF OF A PROPOSED CLASS,

Plaintiffs-Appellees,

v.

RENOVO SERVICES, LLC, A DELAWARE LIMITED LIABILITY COMPANY; REMARKETING SOLUTIONS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FOR ITSELF AND AS SUCCESSORS IN INTEREST; PAR, INC., AN INDIANA CORPORATION, DBA PAR NORTH AMERICA,

Defendants-Appellants.

ORDER

BEFORE: SUTTON, COOK, and WHITE, Circuit Judges.

Appendix E

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/_____
Deborah S. Hunt, Clerk

APPENDIX F — RELEVANT STATUTORY PROVISIONS

28 U.S.C. § 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between–

(1) Citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title [28 USCS § 1603(a)], as plaintiff and citizens of a State or of different States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or

counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title [28 USCS § 1441]–

> **(1)** a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of–
>
> > **(A)** every State and foreign state of which the insured is a citizen;
> >
> > **(B)** every State and foreign state by which the insurer has been incorporated; and
> >
> > **(C)** the State or foreign state where the insurer has its principal place of business; and
>
> **(2)** the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

Appendix F

(d)(1) In this subsection–

> **(A)** the term "class" means all of the class members in a class action;
>
> **(B)** the term "class action" means 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;
>
> **(C)** the term "class certification order" means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and
>
> **(D)** the term "class members" means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which–

> **(A)** any member of a class of plaintiffs is a citizen of a State different from any defendant;
>
> **(B)** any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

(3) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of–

(A) whether the claims asserted involve matters of national or interstate interest;

(B) whether the claims asserted will be governed by laws of the State in which the action was originally filed or by the laws of other States;

(C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;

(D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

(E) whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of

the proposed class is dispersed among a substantial number of States; and

(F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

(4) A district court shall decline to exercise jurisdiction under paragraph (2)–

(A)(i) over a class action in which–

(I) 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;

(II) at least 1 defendant is a defendant–

(aa) from whom significant relief is sought by members of the plaintiff class;

(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

(cc) who is a citizen of the State in which the action was originally filed; and

(III) principal injuries resulting from the alleged conduct or any related conduct of

each defendant were incurred in the State in which the action was originally filed; and

(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

(5) Paragraphs (2) through (4) shall not apply to any class action in which–

(A) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

(B) the number of members of all proposed plaintiff classes in the aggregate is less than 100.

(6) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.

(7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of

paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.

(8) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

(9) Paragraph (2) shall not apply to any class action that solely involves a claim–

> **(A)** concerning a covered security as defined under [section] 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3) [15 USCS § 77p(f)(3)]) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));
>
> **(B)** that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or
>
> **(C)** that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

(10) For purposes of this subsection and section 1453 [28 USCS § 1453], an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

(11)(A) For purposes of this subsection and section 1453 [28 USCS § 1453], a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

(B)(i) As used in subparagraph (A), the term "mass action" means any civil action (except a civil action within the scope of section 1711(2) [28 USCS § 1711(2)]) in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

(ii) As used in subparagraph (A), the term "mass action" shall not include any civil action in which–

(I) all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;

(II) the claims are joined upon motion of a defendant;

(III) all of the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

(IV) the claims have been consolidated or coordinated solely for pretrial proceedings.

(C)(i) Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407 [28 USCS § 1407], or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407 [28 USCS § 1407].

(ii) This subparagraph will not apply–

(I) to cases certified pursuant to rule 23 of the Federal Rules of Civil Procedure; or

(II) if plaintiffs propose that the action proceed as a class action pursuant to rule 23 of the Federal Rules of Civil Procedure.

(D) The limitations periods on any claims asserted in a mass action that is removed to Federal court

pursuant to this subsection shall be deemed tolled during the period that the action is pending in Federal court.

(e) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

Appendix F

28 U.S.C. § 1446. Procedure for removal of civil actions

(a) Generally. A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) Requirements; generally. (1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

(2)(A) When a civil action is removed solely under section 1441(a) [28 USCS § 1441(a)], all defendants who have been properly joined and served must join in or consent to the removal of the action.

(B) Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.

(C) If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

(3) Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

(c) Requirements; removal based on diversity of citizenship.

(1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 [28 USCS § 1332] more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a) [28 USCS § 1332(a)], the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that–

(A) the notice of removal may assert the amount in controversy if the initial pleading seeks–

(i) nonmonetary relief; or

(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a) [28 USCS § 1332(a)].

(3)(A) If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a) [28 USCS § 1332(a)], information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an "other paper" under subsection (b)(3).

(B) If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).

(d) Notice to adverse parties and State court. Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof

to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect removal and the State court shall proceed no further unless and until the case is remanded.

(e) Counterclaim in 337 proceeding. With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930 [19 USCS § 1337(c)], the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act [19 USCS § 1337].

(f) [Redesignated]

(g) Where the civil action or criminal prosecution that is removable under section 1442(a) [28 USCS § 1442(a)] is a proceeding in which a judicial order for testimony or documents is sought or issued or sought to be enforced, the 30-day requirement of subsection (b) of this section and paragraph (1) of section 1455(b) [28 USCS § 1455(b)] is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.

Appendix F

28 U.S.C. § 1447. Procedure after removal generally

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a) [28 USCS § 1446(a)]. If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title [28 USCS § 1442 or 1443] shall be reviewable by appeal or otherwise.

(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

Appendix F

28 U.S.C. § 1453. Removal of class actions

(a) Definitions. In this section, the terms "class", "class action", "class certification order", and "class member" shall have the meanings given such terms under section 1332(d)(1) [28 USCS § 1332(d)(1)].

(b) In general. A class action may be removed to a district court of the United States in accordance with section 1446 [28 USCS § 1446] (except that the 1-year limitation under section 1446(c)(1) [28 USCS § 1446(c)(1)] shall not apply), without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed by any defendant without the consent of all defendants.

(c) Review of remand orders.

(1) **In general.** Section 1447 [28 USCS § 1447] shall apply to any removal of a case under this section, except that notwithstanding section 1447(d) [28 USCS § 1447(d)], a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not more than 10 days after entry of the order.

(2) **Time period for judgment.** If the court of appeals accepts an appeal under paragraph (1), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under paragraph (3).

(3) **Extension of time period.** The court of appeals may grant an extension of the 60-day period described in paragraph (2) if—

(**A**) all parties to the proceeding agree to such extension, for any period of time; or

(**B**) such extension is for good cause shown and in the interests of justice, for a period not to exceed 10 days.

(4) **Denial of appeal.** If a final judgment on the appeal under paragraph (1) is not issued before the end of the period described in paragraph (2), including any extension under paragraph (3), the appeal shall be denied.

(d) Exception. This section shall not apply to any class action that solely involves—

(**1**) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3) [77p(f)(3)]) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

(**2**) a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

(3) a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).