

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
**CIVIL MINUTES – GENERAL**

Case No. **5:24-cv-00837-MCS-SHK** Date July 24, 2024  
Title **Juan Gomez Gomez v. Nissan N. Am., Inc.**

Present: The Honorable Mark C. Scarsi, United States District Judge

Stephen Montes Kerr  
Deputy Clerk

Not Reported  
Court Reporter

Attorney(s) Present for Plaintiff(s):  
None Present

Attorney(s) Present for Defendant(s):  
None Present

**Proceedings: (IN CHAMBERS) ORDER ON MOTION TO REMAND AND REQUEST FOR ORDER TO SHOW CAUSE PURSUANT TO FED. R. CIV. P. 11(c)(3) (ECF No. 11)**

Plaintiff Juan Gomez Gomez filed a motion to remand based on defects in the removal procedure and requested that the Court issue an order to show cause pursuant to Federal Rule of Civil Procedure Rule 11(c)(3).<sup>1</sup> (Mot., ECF No. 11.) Defendant Nissan North America, Inc., opposed the motion, (Opp'n, ECF No. 14), and Plaintiff replied, (Reply, ECF No. 15). The Court deems the motion appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15.

<sup>1</sup> Plaintiff separately filed three requests for judicial notice in support of his motion to remand. (RJN1, ECF No. 15-2; RJN2, ECF No. 24, RJN3, ECF No. 25.) The Court need not rely on the documents subject to these requests to decide the motion. Therefore, it declines to take judicial notice of them. *See Japanese Vill., LLC v. Fed. Transit. Admin.*, 843 F.3d 445, 454 (9th Cir. 2016).

## I. BACKGROUND

This is a case brought under the Song-Beverly Consumer Warranty Act (“SBA”). According to the complaint, Plaintiff purchased a 2021 Nissan Kicks (“Vehicle”) on September 8, 2021. The Vehicle suffered from “serious defects and nonconformities to warranty such as transmission, engine, suspension, structural, emission, and electrical system defects.” Defendant was unable to timely rectify the defects and refused to replace the vehicle or provide restitution. Separately, Plaintiff asserts he was fraudulently induced into purchasing the Vehicle, as Defendant knew of and failed to disclose a defect with the forward emergency braking system. The complaint seeks damages, rescission and restitution, diminution in value, incidental and consequential damages, a civil penalty, punitive damages, attorney’s fees and costs of suit, interest, and other relief. (*See generally* Compl., ECF No. 1-2.)

Plaintiff initiated this proceeding in the Riverside Superior Court of California, No. CVRI2302028. Asserting diversity jurisdiction, Defendant removed the case to this Court. (Notice of Removal, ECF No. 1.)

## II. LEGAL STANDARD

Federal courts are of limited jurisdiction, having subject-matter jurisdiction only over matters authorized by the Constitution and Congress. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A defendant may remove a civil action in state court to federal court if the federal court has original jurisdiction. 28 U.S.C. § 1441(a). Federal courts have original jurisdiction over civil cases between citizens of different states where the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a).

A complaint must be removed “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,” 28 U.S.C. § 1446(b)(1), or, where “the case stated by the initial pleading is not removable,” “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.” *Id.* § 1446(b)(3).

The Ninth Circuit has described this statute as providing “two thirty-day windows during which a case may be removed—during the first thirty days after the

defendant receives the initial pleading or during the first thirty days after the defendant receives a paper from which it may be ascertained that the case is one which is or has become removable.” *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 692 (9th Cir. 2005) (internal quotation marks omitted). Under the second “pathway” to removal at issue in the motion, the “removal clock does not start until a paper makes a ground for removal ‘unequivocally clear and certain.’” *Dietrich v. Boeing Co.*, 14 F.4th 1089, 1091 (9th Cir. 2021). While untimely removal is a procedural rather than jurisdictional defect, “a timely objection to a late petition will defeat removal.” *Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1212 (9th Cir. 1980).

### III. DISCUSSION

As a threshold matter, the Court addresses its jurisdiction to entertain the motion. *See Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012). The Court questioned its jurisdiction over the action pursuant to 28 U.S.C. § 1332(a) and ordered Defendant to show cause why the case should not be remanded for lack of jurisdiction. (OSC, ECF No. 20.) Defendant filed a response. (OSC Resp., ECF No. 23.) Based on its review of the record, the Court believes it has subject-matter jurisdiction over this action and discharges the order to show cause.<sup>2</sup>

In the instant motion, Plaintiff argues the action should be remanded on the basis that Defendant filed a procedurally defunct notice of removal pursuant to 28 U.S.C. § 1446(b)(3).<sup>3</sup> Specifically, Plaintiff argues the removal deadline was 30 days after it served its Case Management Conference Statement (“CMCS”) on Defendant, October 6, 2023. (Mot. 4 n.1.) Thus, he argues, Defendant’s removal in April 2024 was improper. (*Id.* at 5.) Defendant argues the CMCS did not make removability

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<sup>2</sup> The Court does not accept many of the assumptions, arguments, and calculations raised in Defendant’s response. However, Plaintiff asserts a fraud claim and pleads entitlement to punitive damages. (Compl. ¶¶ 126–44, Prayer for Relief ¶ 6.) Defendant’s response does not provide an estimate of punitive damages in controversy, but the Court assumes that punitive damages together with actual damages and attorney’s fees placed in controversy by Plaintiff’s claims exceed the jurisdictional threshold of \$75,000.

<sup>3</sup> The parties appear not to dispute, and the Court already implicitly found, that the removability of the action was not readily ascertainable from the face of Plaintiff’s complaint. (Opp’n 6; OSC 2.)

“unequivocally clear and certain,” and thus did not trigger the removal period under § 1446(b)(3). (Opp’n 5–10.)

The Court agrees with Defendant that the CMCS did not trigger the § 1446(b)(3) removal deadline. The CMCS did not make “unequivocally clear and certain” that removal was proper at that time. *Dietrich*, 14 F.4th at 1091 (internal quotation marks omitted). The CMCS provides that “Plaintiff’s restitution damages are in excess of \$50,000.00 and attorney’s fees and costs are currently in excess of \$20,000.” (Enav Decl. Ex. 5, at 7, ECF No. 11-6.) As this Court reasoned in a different case prosecuted by Plaintiff’s counsel, this statement of damages is ambiguous in that “it is not clear if Plaintiff’s \$50,000 calculation includes actual damages as well as the estimated civil penalties.” Order to Show Cause 2, *Castillo v. Nissan N. Am., Inc.*, No. 2:23-cv-10473-MCS-PVC (C.D. Cal. Feb. 7, 2024), ECF No. 12. As in *Castillo, id.*, Plaintiff’s damages estimate here appears untethered to the retail price of the Vehicle, (*see* Dye Decl. Ex. 1, ECF No. 23-1 (providing total cash price of \$31,225.80 and total sale price of \$47,922.00)). Thus, the estimated damages in the CMCS attachment would not suffice to establish the amount in controversy, let alone serve as an unequivocally clear and certain basis for removal. *See Aguilar v. Walmart Inc.*, No. SACV 23-00685-CJC (DFMx), 2023 U.S. Dist. LEXIS 107969, at \*4 (C.D. Cal. June 21, 2023) (“Accordingly, even when a plaintiff presents a statement of damages seeking more than \$75,000, the statement is not sufficient to carry the defendant’s burden on the amount in controversy requirement if there is not support for the estimate in the complaint or notice of removal.”). Instead, the Court accepts Defendant’s proffer that it did not ascertain whether removal was proper until the conclusion of its own investigation within 30 days of filing the notice of removal. (Opp’n 2–3; Dye Decl. ¶¶ 4–5; Notice of Removal ¶ 7.) Had Defendant elected to remove the case prior to concluding its investigation, “it may well have subjected itself to fees and costs, and potentially Rule 11 sanctions, for filing a baseless notice of removal.” *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1251 (9th Cir. 2006).

Thus, the Court finds Defendant’s removal was not untimely. Plaintiff’s motion is denied.<sup>4</sup>

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<sup>4</sup> A court may issue sanctions under Federal Rule of Civil Procedure 11(c) if the court determines that a filing was presented for an improper purpose or is factually or legally frivolous. Fed. R. Civ. P. 11(b)–(c). Plaintiff avers sanctions may be appropriate because Defendant’s removal was frivolous. (Mot. 2.) Because the Court

#### **IV. CONCLUSION**

The motion is denied in its entirety. The Court will enter a scheduling order in this case.

**IT IS SO ORDERED.**

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finds Defendant's removal was proper, rather than frivolous or improper, it denies Plaintiff's request.