

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

MARIE DUGAS

CIVIL ACTION NO. 12-CV-346

VERSUS

JUDGE DOHERTY

MERCEDES-BENZ USA, LLC

MAGISTRATE JUDGE HANNA

SUE SPONTE BRIEFING ORDER

This case was recently removed from a local state court based on the allegation of the defendant that the plaintiffs had “proposed to convert this matter to a class action proceeding and thus that the case had become removable pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d) and §1453.” [Rec. Doc. 1, p. 2, para. 3] It is further alleged that the proposed pleading had been forwarded to the defendant, along with a Motion and Order for Leave to File Supplemental and Amending Petition for Damages. *Id.*

On February 3, 2012, the Notice of Removal was filed, and the state court record was submitted to this court. [Rec. Doc. 1] That record demonstrates that on January 4, 2012, the plaintiff filed a Motion and Order for Leave to File Supplemental and Amending Petition for Damages. [Rec. Doc. 1-2, p. 9] An unsigned Order is in the record at Rec. Doc. 1-2, p. 11. On March 21, 2012, a Notice of Corrective Action was entered in the record indicating that the matter was removed to this court before the subject Motion for Leave was ruled on in the state court.

On review of the record as presented, the undersigned finds that the assertions in the removal documents are based upon the language of an amended pleading which has, to date, only been proposed; it has not been approved for filing in either the state or federal court. Since the 'proposed' pleading forms the basis/grounds for removal in this case, and since the plaintiff has yet to obtain leave of any court for filing of that pleading, it is questioned whether removal in this posture is premature which goes directly to the issue of the subject matter jurisdiction of the court *at the time of removal*.

Therefore, **IT IS ORDERED** that, not later than **April 17, 2012**, the removing defendant shall file a memorandum setting forth specific facts and legal analysis to establish whether, at the time of removal, subject matter jurisdiction existed in this Court. The plaintiff will be allowed until **April 25, 2012** to respond to the defendant's submission.

Signed at Lafayette, Louisiana this 4th day of April, 2012.



United States Magistrate Judge