UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

DAVID FALTERMEIER, on behalf of himself and all others similarly situated,	)	
Plaintiff,	)	
vs.	)	Case No. 4:15-cv-00491-DGK
FCA US LLC,	)	
Defendant.	)	

ORDER DENYING PLAINTIFF'S MOTION TO REMAND AND DEFENDANT'S MOTION TO TRANSFER

This is a putative class action arising from alleged violations of the Missouri Merchandising Practices Act ("MMPA"). On June 2, 2015, Plaintiff David Faltermeier initiated this action in the Circuit Court of Jackson County, Missouri, against Defendant FCA US LLC ("FCA"). Plaintiff alleges that FCA's misrepresentations during a vehicle safety recall have caused Plaintiff and all other consumers who have purchased those vehicles since June 4, 2013, an ascertainable financial loss. On June 29, 2015, FCA removed the action to this Court, alleging jurisdiction based on the Class Action Fairness Act ("CAFA") and bankruptcy-related jurisdiction.

Now before the Court are Plaintiff's Motion to Remand (Doc. 8) and Defendant's Motion to Transfer (Doc. 11). In his Motion to Remand, Plaintiff argues the Court lacks jurisdiction to hear this case because the aggregate amount in controversy does not exceed $5 million, as required by CAFA. In its Motion to Transfer, Defendant argues transfer is appropriate under 28 U.S.C. § 1412 because this case is related to a case pending in the Southern District of New York and transfer would serve the interests of justice.

Finding that Defendant has carried its burden of establishing CAFA jurisdiction to hear this case, Plaintiff's Motion to Remand is DENIED. The Court further finds that the case does not arise under Title 11, as required for transfer under 28 U.S.C. § 1412. Defendant's Motion to Transfer is DENIED.

Standard

Federal courts are courts of limited jurisdiction and possess only the power authorized by the Constitution and statute. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A state court action may be removed by the defendant to federal court if the case falls within the original jurisdiction of the district courts. 28 U.S.C. § 1441(a). Typically, there is a presumption against the federal court's jurisdiction. *Kokkonen*, 511 U.S. at 377. *But see Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014) ("[N]o antiremoval presumption attends cases invoking CAFA."). The party seeking removal and opposing remand has the burden of establishing federal subject matter jurisdiction. *Kokkonen*, 511 U.S. at 377; *Bell v. Hershey Co.*, 557 F.3d 953, 956 (8th Cir. 2009). If federal subject matter jurisdiction is lacking, the district court must remand the case to state court. 28 U.S.C. § 1447(c).

Where removal is based on jurisdiction under CAFA, the notice of removal must contain a statement alleging minimal diversity, that the proposed class contains at least 100 members, and that the amount in controversy exceeds $5 million, exclusive of interest and costs. *See id.* § 1332(d). If removal is based on federal bankruptcy-related jurisdiction, the movant must allege the proceeding arises under the Bankruptcy Code or is related to a case under the Bankruptcy Code. *See id.* § 1334(b).

If the Court has jurisdiction over the proceeding, it "may transfer [the] case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." *Id.* § 1412.

Factual Background

Plaintiff David Faltermeier is a citizen of the state of Missouri who purchased a 2003 Jeep Liberty for personal use in August of 2013. Pet. ¶ 5 (Doc. 1-1). Defendant FCA US LLC is a company organized under Delaware law with its principal place of business in Michigan. *Id.* ¶ 6. In 2009, FCA purchased assets and liabilities, including those associated with vehicle safety recalls, from Chrysler LLC (n/k/a Old Carco Liquidation Trust) ("Old Carco") after Old Carco filed for Chapter 11 bankruptcy protection in the Bankruptcy Court of the Southern District of New York ("Bankruptcy Proceeding").[1] *See In re Chrysler LLC*, 405 B.R. 84, 87 (Bankr. S.D.N.Y. 2009); *In re Chrysler LLC*, No. 09-50002 (Bankr. S.D.N.Y. June 1, 2009), ECF No. 3232 ("Sale Order"). Plaintiff maintains FCA has consistently and affirmatively misrepresented the design, safety, and performance of Model Year 2002-2007 Jeep Liberty and Model Year 1993-1998 Jeep Grand Cherokee vehicles (collectively, "Jeep Vehicles") from June 4, 2013, to the present. Pet. ¶ 29. Misrepresentations during the safety recall have caused Plaintiff and all other consumers who have purchased Jeep Vehicles since June 4, 2013, an ascertainable financial loss. *Id.* ¶¶ 32-33. Specifically, Plaintiff contends he and other putative class members were deprived of the benefit of the bargain when they purchased Jeep Vehicles that were represented as safe and non-defective, but were actually worth less than represented due to a defective, rear-mounted fuel tank design. *Id.* ¶ 32.

[1] The court may "take judicial notice of judicial opinions and public records." *Stutzka v. McCarville*, 420 F.3d 757, 760 n.2 (8th Cir. 2005); *Young v. Time Warner Cable Capital, L.P.*, No. 04-0651-CV-W-HFS, 2006 WL 2927569, at *1 n.2 (W.D. Mo. Oct. 12, 2006) (taking judicial notice of the pleadings in plaintiff's bankruptcy case).

Plaintiff initiated this putative class action in the Circuit Court of Jackson County, Missouri, seeking compensatory damages for a violation of the Missouri Merchandising Practices Act. Subsequently, Defendant FCA timely removed to the District Court, asserting (1) CAFA jurisdiction, 28 U.S.C. § 1332(d), and (2) federal bankruptcy-related jurisdiction, 28 U.S.C. § 1334(b). FCA further moved to transfer the case to the Southern District of New York under 28 U.S.C. § 1412.

Discussion

I. FCA has provided evidence sufficient to support the Court's jurisdiction under CAFA and Plaintiff fails to prove to a legal certainty the amount in controversy could not exceed $5 million.

Plaintiff contends remand is necessary because this claim does not meet the requisite amount in controversy for subject matter jurisdiction under CAFA. Specifically, Plaintiff argues: (1) FCA has not provided a credible estimate of the number of putative class members in this case; (2) FCA has not provided a credible estimate of the compensatory damages at issue in this case; and (3) the statutory allowance for punitive damages and attorneys' fees does not satisfy CAFA's requisite amount in controversy. Defendant asserts it submitted sufficient evidence that a fact finder might legally conclude the amount in controversy requirement has been satisfied and jurisdiction is appropriate.

The Class Action Fairness Act grants subject matter jurisdiction to federal courts in putative class actions where (1) any plaintiff has diversity of citizenship from any defendant; (2) the total amount in controversy exceeds $5 million; and (3) the alleged plaintiff class contains at least 100 members. 28 U.S.C. § 1332(d). The burden of establishing federal jurisdiction is on the party seeking removal. *Bell,* 557 F.3d at 956; *see also Autoport LLC v. Volkswagen Grp. of Am., Inc.,* No. 2:15-cv-04260-NKL, 2016 WL 123431, at *2 (W.D. Mo. Jan. 11, 2016)

(collecting post-*Dart Cherokee* cases from the Fifth, Ninth, and Eleventh Circuits stating the defendant still carries the burden of proof where removal under CAFA is challenged). In a notice of removal, a defendant need only include a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. 28 U.S.C. § 1446(a); *see Dart Cherokee*, 135 S. Ct. at 554 n.1 (assuming, without deciding, that §§ 1446(c)(2) and 1446(c)(2)(B) apply to cases removed under § 1332(d), not just § 1332(a)); *Frederick v. Hartford Underwriters Ins. Co.*, 683 F.3d 1242, 1247 (10th Cir. 2012) ("[T]here is no logical reason why we should demand more from a CAFA defendant than other parties invoking federal jurisdiction." (internal quotations omitted)).

Evidence establishing the amount in controversy is required by § 1446(c)(2)(B) only when plaintiff contests, or the court questions, the defendant's allegation. *Dart Cherokee*, 135 S. Ct. at 553-54. Where the jurisdictional amount is in dispute, both sides submit proof and the Court decides, by a preponderance of the evidence, whether the amount in controversy requirement has been satisfied. *Id.* at 554. "Under the preponderance standard, the jurisdictional fact is not whether damages *are* greater than the requisite amount, but whether a fact finder *might* legally conclude that they are." *Bell*, 557 F.3d at 959 (internal quotation omitted). This inquiry is fact intensive. *Id.* Defendants may introduce affidavits, declarations, or other documentation to satisfy the preponderance of the evidence standard. *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 755 (11th Cir. 2010) (cited with approval in *Raskas v. Johnson & Johnson*, 719 F.3d 884, 888 (8th Cir. 2013)). If "the removing party has established by a preponderance of the evidence that the jurisdictional minimum is satisfied, remand is only appropriate if the plaintiff can establish to a legal certainty that the claim is for less than the requisite amount." *Bell*, 557 F.3d at 956.

Here, there are more than 100 putative class members and minimal diversity exists. Only the $5 million amount in controversy requirement is at issue. The amount in controversy in this case has three elements: (1) the number of putative class members; (2) the amount of compensatory damages available for each vehicle; and (3) punitive damages and attorneys' fees. For the reasons set forth below, the Court finds Defendant FCA has met its burden in establishing by a preponderance of the evidence that a fact finder might legally conclude more than $5 million is in controversy.

A. FCA has provided a credible estimate of the number of putative class members.

In its notice of removal, FCA asserts that 9,022 sales of 8,127 different Jeep Vehicles have occurred in Missouri since the Class Period began on June 4, 2013. Plaintiff argues this number is not corroborated or detailed in any fashion and the sales figures are merely stated in conclusory fashion without reference to records or the processes used by FCA to determine the sales included in the number.

Here, FCA has provided a sworn affidavit from Lawrence Brookes, Head of Product Analysis and Regulatory Processes for FCA (Doc. 16-1). In his affidavit, Brookes asserts there were 9,022 sales of Jeep Vehicles involving 8,127 unique vehicles during the Class Period. This total includes only those sales reported to FCA by dealerships or third parties and does not include sales to wholesale dealers, insurance companies, or salvage yards. Plaintiff disputes this number, stating FCA's own admission that its records may not be accurate or complete and providing figures that suggest FCA's sales number is inflated.[2] Plaintiff has offered no evidence

[2] Specifically, Plaintiff states the approximate nationwide total number of affected Jeep Vehicles is 1.56 million. Extrapolating from this estimate and Missouri's population relative to the entire U.S. population, Plaintiff asserts the number of affected Jeep Vehicles in Missouri could reasonably be expected to be 31,000. Based on this number and the age of the vehicles in question, Plaintiff contends FCA's assertion that resale of almost thirty percent of the affected Jeep Vehicles in Missouri within the last two years defies logic.

outside his own conjecture to rebut FCA's sworn testimony regarding the number of vehicles sold. FCA admits their records may not be accurate or complete, but includes only the numbers of sales reported to them by dealerships of third parties. This suggests that, while the sales figures proffered by FCA may not be entirely accurate, they may very well be skewed in Plaintiff's favor. The Court finds FCA has shown by a preponderance of the evidence that a fact finder might conclude over 9,000 people bought at least 8,000 different vehicles in the state of Missouri within the class period.

B. FCA has provided a credible estimate of the compensatory damages at issue in this case.

Next, Plaintiff contends FCA has not provided a credible estimate of the compensatory damages at issue in this case. FCA asserts Plaintiff may seek "benefit of the bargain" damages that would amount to at least $5 million in the aggregate. Given the number of unique vehicles sold asserted above, 8,127, the average claim per class member must meet or exceed approximately $616 to satisfy the amount in controversy requirement under CAFA.[3]

In deciding whether the amounts alleged satisfy the amount in controversy, "the court looks to state law to determine the nature and extent of the right to be enforced as well as the state measure of damages and the availability of special and punitive damages." *McGuire v. State Farm Fire & Cas. Co.*, 108 F. Supp. 3d 680, 684 (D. Minn. 2015). An amount is "not 'in controversy' if no fact finder could legally award it." *Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002). Compensatory damages on an MMPA claim are measured by the benefit of the bargain rule, "which compares the actual value of the item to the value of the item if it had been as

[3] The affidavit asserts a larger number of putative class members – 9,022. Because some of these class members may have been fully compensated by the subsequent sale of their vehicle at an inflated price due to the misrepresentations, the Court relies on the lower number of unique Jeep Vehicles sold in the state of Missouri to calculate the amount required to meet or exceed $5 million.

represented at the time of the transaction." *Plubell v. Merck & Co., Inc.*, 289 S.W.3d 707, 715 (Mo. Ct. App. 2009).

FCA has offered evidence showing Jeep Vehicles have sold for anywhere between $2,900 and $12,986.[4] The average sale price on these Jeep Vehicles was approximately $6,638. Based on this evidence, a jury need only find the vehicles were overvalued by approximately 11% for the jurisdictional amount in controversy requirement to be met. It is entirely plausible a jury could find a vehicle with a "lethal" defect posing a "substantial risk of harm" to be worth almost nothing.[5] In any case, FCA has shown by a preponderance of the evidence that a jury might reasonably conclude the actual value of the Jeep Vehicles with a fuel tank defect was at least 11% less than the purchase price of the vehicles.

In rebuttal, Plaintiff contends any Jeep Grand Cherokee owners who exercise a trade-in option under FCA's Consent Order would be fully compensated and have no claim under the MMPA, meaning the aggregate amount in controversy in this case would be significantly less than $5 million. However, jurisdiction is "determined at the time of removal, even though subsequent events may remove from the case the facts on which jurisdiction was predicated." *Hargis v. Access Capital Funding, LLC*, 674 F.3d 783, 789 (8th Cir. 2012) (quotations and citations omitted). FCA removed this case to federal court on June 29, 2015. The Consent Order was entered into on July 24, 2015. This post-removal offer and any subsequent exercises of trade-in options by potential class members do not affect this Court's determination of jurisdiction.

[4] *See* Def.'s Exhibits B-L (Docs. 16-2 to 16-12).

[5] *See* Pet. ¶¶ 2, 4 (describing the defect as one that "may result in fire and create a lethal hazard for vehicle occupants" and poses "a substantial risk of harm in ordinary operation").

Finally, Plaintiff argues he has pleaded damages for the cost of alternative repairs, not for lost value, and those repair costs would not exceed the $5 million threshold. Plaintiff fails to cite a single Missouri case involving personal property that applied the "cost of repair" method to the calculation of damages.[6] Even if the method were to apply to personal property, its application is only appropriate where "repairs amount to a small percent of the diminution in value." *Tull v. Hous. Auth. of City of Columbia*, 691 S.W.2d 940, 942 (Mo. Ct. App. 1985). Plaintiff has failed to produce any evidence that the proffered cost of repair, $320 per vehicle, would amount to a small percent of the overall diminution in value. *See* Pl.'s Reply Br. at 5 n.3 (Doc. 18).

In sum, FCA has shown by a preponderance of the evidence that a fact finder may conclude the benefit of the bargain compensatory damages would exceed an average of $5 million in the aggregate for this class. Plaintiff has failed to show that it is legally impossible for plaintiffs to recover this amount. Given that compensatory damages may be available in an amount greater than $5 million, the Court need not address arguments regarding punitive damages and attorney's fees. This Court has subject matter jurisdiction over this case under CAFA.[7]

II. The Court denies transfer because this action could not have been brought in the proposed transferee court at the time the complaint was filed.

Because this Court has subject matter jurisdiction under CAFA, it may decide Defendant's pending Motion to Transfer (Doc. 11). *See* 28 U.S.C. § 1447(c).

FCA asserts Plaintiff's claim arises directly out of the Old Carco bankruptcy proceedings. Alternatively, FCA contends the claim is related to the administration of Old Carco's estate and

[6] The "cost of repair" test is an exception to the general rule for *real* property damages in Missouri, diminution in value. *Bus. Men's Assur. Co. of Am. v. Graham*, 891 S.W.2d 438, 449 (Mo. Ct. App. 1994).

[7] Because the Court has jurisdiction under CAFA, it need not address arguments concerning federal bankruptcy-related jurisdiction. *See Keller v. Bass Pro Shops, Inc.*, 15 F.3d 122, 123 n.2 (8th Cir. 1994) (where federal subject matter jurisdiction was established on the basis of diversity of citizenship, court need not consider whether lower court judge was correct in finding a lack of federal question jurisdiction).

would require an interpretation and enforcement of the Bankruptcy Court's Sale Order and the interest of justice will best be served by a transfer to the Southern District of New York, where Old Carco's bankruptcy proceedings are pending. For the reasons listed below, the Court disagrees.

28 U.S.C. § 1412 governs the transfer of proceedings related to bankruptcy proceedings. *Thys Chevrolet, Inc. v. Gen. Motors LLC*, No. 10-CV-46-LRR, 2010 WL 4004328, at *10 (N.D. Iowa Oct. 12, 2010). Section 1412 provides that the motion to transfer a case "under title 11" may be granted "in the interest of justice or for the convenience of the parties." Deciding whether transfer is warranted "requires a case specific analysis that is subject to broad discretion of the district court." *Creekridge Capital, LLC v. La. Hosp. Ctr., LLC*, 410 B.R. 623, 629 (D. Minn. 2009).

The threshold question in deciding a transfer motion under 28 U.S.C. § 1412 is "whether this action could have been brought in the proposed transferee court at the time the complaint was filed." *Abbey v. Modern Africa One, LLC*, 305 B.R. 594, 600 (D.D.C. 2004); *see also Quick v. Viziqor Sols., Inc.*, No. 4:06CV637SNL, 2007 WL 494924, at *2 (E.D. Mo. Feb. 12, 2007) (in deciding whether transfer under § 1404 or § 1412 was appropriate, the "first question is whether the present action is a 'related to' action subject to transfer by this Court"). A federal court may have jurisdiction over civil proceedings "arising under" the Bankruptcy Code, or "arising in or related to" cases under the Bankruptcy Code. 28 U.S.C. § 1334(b). Civil proceedings in a bankruptcy case are divided into two categories: core proceedings and non-core, related proceedings. *Specialty Mills, Inc. v. Citizens State Bank*, 51 F.3d 770, 773 (8th Cir. 1995). Core proceedings are "those which arise only in bankruptcy or involve a right created by federal bankruptcy law." *Id.* (internal citations omitted). "The enforcement of orders resulting from

core proceedings are themselves considered core proceedings." *In re Williams*, 256 B.R. 885, 892 (B.A.P. 8th Cir. 2001). Non-core, related proceedings are "those which do not invoke a substantive right created by federal bankruptcy law and could exist outside of bankruptcy, although they may be related to a bankruptcy." *Specialty Mills*, 51 F.3d at 773-74. For a court to assert jurisdiction over a proceeding related to a bankruptcy case, the proceeding must have some conceivable effect on the estate being administered in the bankruptcy. *Id.* at 774.

FCA asserts Plaintiff's claim arises directly out of an alleged defect in the original vehicle that was not designed, manufactured, or sold by FCA. This is a mischaracterization of Plaintiff's claim. Plaintiff's claim arises under Missouri law and alleges liability for FCA's own, independent misrepresentations of the Jeep Vehicles after the Sale Order was entered. *See In re Farmland*, 567 F.3d 1010, 1017-18 (8th Cir. 2009) (finding bankruptcy court did not possess "arising under" jurisdiction where both claims were premised entirely upon Missouri law and did not invoke a substantive right provided by the Bankruptcy Code). FCA further contends this case is a "core proceeding" because it requires interpretation and enforcement of the Sale Order. However, the Sale Order is clear: FCA expressly assumed Old Carco's notification and remedy obligations pertaining to pre-existing defects. *See In re Chrysler LLC*, No. 09-50002, at 21 ¶ EE (Bankr. S.D.N.Y. June 1, 2009), ECF No. 3232; *see also* 49 U.S.C. § 30119 (describing consumer notification requirements for safety defects). The Sale Order does not absolve FCA from liability for any independent misrepresentations made during the course of the recall. Therefore, this MMPA claim does not "arise under" the Bankruptcy Code.

Further, this lawsuit asserts no claims against the debtor or FCA for the alleged defect in the Jeep Vehicles manufactured prior to the entry of the Sale Order. FCA does not assert any plausible way it could seek indemnification from Old Carco based on its alleged

misrepresentations during the safety recall. *Cf. In re Farmland*, 567 F.3d at 1020-21 (finding "related to" jurisdiction where nondebtor defendants had indemnification claims against the debtor that were not merely speculative). Plaintiff does not contend FCA has any successor liability for the defective vehicles. Defendant fails to illustrate any conceivable effect this case could have on the administration of the estate or the debtor. Therefore, this case is not "related to" the Bankruptcy Proceeding.

Because this case does not constitute a "case or proceeding under title 11," the Court need not address the interests of justice factors under 28 U.S.C. § 1412. Defendant's Motion to Transfer is DENIED.

Conclusion

Finding that Defendant has carried its burden of establishing CAFA jurisdiction to hear this case, Plaintiff's Motion to Remand is DENIED. The Court further finds that the case is not sufficiently related to a bankruptcy proceeding, as required for transfer under 28 U.S.C. § 1412. Defendant's Motion to Transfer is DENIED.

IT IS SO ORDERED.

Dated: February 10, 2016

/s/ Greg Kays
GREG KAYS, CHIEF JUDGE
UNITED STATES DISTRICT COURT