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The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JO-HANNA READ as Guardian ad Litem
for KOBE KEMP, a minor, and
MARCELUS KEMP, individually,

Plaintiffs,

v.

GRACO CHILDREN'S PRODUCTS, INC.
and its parent company, NEWELL
BRANDS INC., MERCEDES-BENZ USA,
LLC, and its parent company, DAIMLER
AG, and LINDSAY MILLEA, jointly and
individually,

Defendants.

No. 2:20-cv-00901-MJP

DEFENDANTS' MOTION TO REMAND
REMOVED ACTION AND PROPOSED
ORDER

(King County Superior Court Case Number
20-2-08713-1 KNT)

MOTION

GRACO CHILDREN'S PRODUCTS, INC. ("Graco"), NEWELL BRANDS INC.
("Newell"), and MERCEDES-BENZ USA, LLC ("MBUSA") (together "Removing
Defendants") move for remand of this case to the King County Superior Court because diversity
of citizenship no longer exists.¹

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¹ It is Removing Defendants understanding that Plaintiffs do not oppose remand of this case. To the extent Plaintiffs do intend to oppose remand, we will notice this motion for consideration.

DEFENDANTS' MOTION TO REMAND REMOVED ACTION - 1

1 On or about May 11, 2020, Plaintiffs filed *Read, et al. v. Graco Children's Products, et*
2 *al.*, Case No. 20-2-08713-1 KNT, in the Superior Court of Washington, in and for King County.
3 Plaintiffs served MBUSA with the Complaint on May 12, 2020.

4 MBUSA wishes to advise this Court that plaintiffs' counsel has refused to communicate
5 with MBUSA's counsel about this case, including specific inquires made about service on the
6 non-diverse defendant prior to MBUSA's last day to remove this case on diversity grounds.

7 On May 12, 2020, MBUSA's national counsel telephoned plaintiffs' counsel to discuss
8 the case generally. Plaintiffs' counsel never returned the call – and national counsel provided his
9 personal cell number. Then, on May 15, 2020, national counsel for MBUSA emailed plaintiffs'
10 counsel in another attempt to discuss the case. (Ex. A hereto.) Plaintiffs' counsel did not
11 respond.

12 With a removal deadline of June 11, 2020, on June 8, 2020, MBUSA's retained counsel
13 emailed a letter to plaintiffs' counsel specifically asking whether defendant Lindsay Millea, an
14 alleged Washington resident, had been served. (Ex. B hereto.) Plaintiffs' counsel did not
15 respond any time prior to June 11, 2020 suggesting that Ms. Millea had been served. Indeed, on
16 June 9, 2020, plaintiffs' counsel sent a letter to counsel for MBUSA, Graco and Newell only,
17 which further suggested Ms. Millea had not been served. (Ex. C hereto.)

18 Counsel for MBUSA emailed plaintiffs' counsel again on June 10, 2020, and placed a
19 telephone call to them that same day, in a final attempt to determine whether plaintiffs had
20 served Ms. Millea. Plaintiffs' counsel did not reply to the email or return the call. As a result,
21 Removing Defendants removed the case to this Court on diversity grounds on June 11, 2020, and
22 served plaintiffs' counsel with the removal papers. Following service of the Notice of Removal,
23 plaintiffs' counsel for the first time on June 14, 2020 asserted that Ms. Millea had been served on
24 June 3, 2020, and provided a purported proof of service to that effect.

25 Notwithstanding the refusal of plaintiffs' counsel to respond to MBUSA's specific
26 inquiry about the status of any service on Ms. Millea before the removal deadline, Removing

DEFENDANTS' MOTION TO REMAND REMOVED ACTION - 2

1 Defendants now agree that diversity of citizenship no longer exists. Plaintiffs’ counsel has been
2 unwilling to agree to an appropriate stipulation for remand, so Removing Defendants submit this
3 motion to accomplish that and avoid wasting federal judicial resources. Accordingly, this case
4 should be remanded to the King County Superior Court.

5 Dated: June 22, 2020

Dated: June 22, 2020

6 STOEL RIVES LLP

CORR CRONIN LLP

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12 *Attorneys for Defendant Mercedes-Benz USA,
13 LLC*

Dated: June 22, 2020

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SCHIFF HARDIN LLP

15

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19 *Attorneys for Defendants Graco Children’s
20 Products Inc. and Newell Brands Inc.*

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ORDER

Pursuant to the motion set forth above, the Court having reviewed that motion and good cause appearing, orders as follows:

1. Western District of Washington case number 2:20-cv-00901-MJP styled READ ET AL. v. GRACO CHILDREN’S PRODUCTS, INC., ET AL., is hereby remanded to the King County Superior Court;

2. Each party shall bear her/his/its own costs and attorneys’ fees with respect to the removal and subsequent remand.

IT IS SO ORDERED.

Dated: July 22, 2020


UNITED STATES DISTRICT JUDGE