

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION**

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WILLIAM HOWARD; JASON  
DUEMPLER; NICOLE DUEMPLER; ANN  
DUEMPLER; MICHAEL LUTZ; SHERRI  
HOWELL; ROCHELLE JAMMER; and  
MARK KOHLHORST, individually and  
on behalf of all others similarly situated,

Plaintiffs,

v.

UBP BAY CITY, LLC d/b/a BAY CITY  
BRIDGE PARTNERS and  
CITY OF BAY CITY,

Defendants.

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No. 25-cv-

Hon.

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant UBP Bay City, LLC d/b/a Bay City Bridge Partners (“UBP”), by and through its undersigned counsel, hereby removes this case from the 18th Circuit Court for the County of Bay, Michigan to the U.S. District Court for the Eastern District of Michigan, Northern Division. In support of removal, UBP states as follows:

**JURISDICTION AND VENUE**

1. This Court has original jurisdiction over this civil action under 28 U.S.C. § 1332(d)(2). This action is therefore removable pursuant to the Class Action

Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d) and 1453(b). This is a class action in which the size of the proposed class exceeds 100 members; there is diversity of citizenship between at least one member of the putative class of plaintiffs and one defendant; and the amount in controversy exceeds \$5 million, exclusive of interest and costs.

2. Removal to this Court is proper because the U.S. District Court for the Eastern District of Michigan, Northern Division, embraces the Circuit Court for the County of Bay, Michigan, where Plaintiffs filed this action. *See* 28 U.S.C. § 1441(a) (“any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending”) (emphasis added).

### **STATE COURT ACTION**

3. On March 4, 2025, Plaintiffs filed a putative class action complaint against UBP and the City of Bay City in the Circuit Court for the County of Bay, Michigan (the “Complaint”). A copy of the Complaint and all exhibits thereto is attached as Exhibit A.

4. The allegations in the Complaint relate to UBP’s leasing and operation of a bascule bridge named the “Independence Bridge.” *See generally* Compl. ¶¶ 18-85.

5. Independence Bridge opened in 1976. *See id.* ¶ 19. While it was originally operated by the City of Bay City, a lack of municipal funding for essential “maintenance and repairs” meant that the condition of Independence Bridge “deteriorated over time.” *Id.* ¶¶ 23, 24.

6. Ultimately, the City of Bay City “determined it could no longer sustain the cost of maintaining and operating [Independence Bridge] while also providing free access to non-residents who used [it] regularly.” *Id.* ¶ 25. Therefore, on May 1, 2023, the City of Bay City entered into a Concession and Lease Agreement with UBP (the “Agreement”), a copy of which is attached as Exhibit 1 to the Complaint.

7. Under the terms of the Agreement, UBP undertook responsibility for the “modernization, upgrade and rehabilitation” of the Independence Bridge, as well as its maintenance and upkeep for the next 75 years. *See Agreement* at 1. In return, UBP was entitled to collect tolls from drivers using the Independence Bridge, subject to certain restrictions. *See id.* § 18. For example, UBP and Bay City agreed no tolls would be collected until Independence Bridge had been “open and operational for use by the public for highway purposes, 24 hours a day, in the ordinary course for thirty consecutive (30) days” (defined as “Completion”), and that no tolls would be collected from residents of Bay City in non-commercial vehicles for five years following Completion. *See id.* §§ 16, 18; *see also* at Exhibit C to Agreement.

8. At the same time that the City of Bay City and UBP entered into the Independence Agreement, they also entered into a substantively similar concession and lease agreement concerning Liberty Bridge, another bridge located in the City of Bay City. *See Comp.* ¶¶ 27-28.

9. Between 2020 and 2025, UBP expended approximately \$170 million repairing, rehabilitating, and modernizing Independence Bridge and Liberty Bridge. Tolls have been collected for use of the Liberty Bridge since June 2023, and Completion of the Independence Bridge, as such term is defined in the Agreement, occurred in 2024.

10. On January 1, 2025, with Completion having occurred the previous year, UBP began to collect tolls from non-Bay City residents for use of the Independence Bridge. *See Compl.* ¶ 76. The Complaint (incorrectly) alleges that “Completion” had not occurred by January 1, 2025, and hence no tolls should have been collected for use of the Independence Bridge as of that date. *See id.* ¶ 75.

11. The Complaint further alleges that UBP supposedly made “repeated public representations”—including that “toll rates would be reasonable and affordable and that “[Independence Bridge] would be available for use without significant disruptions”—and that “[c]ontrary to these representations, [UBP] failed to make Independence Bridge an operational crossing by repeatedly closing it during overnight hours since January 1, 2025.” *Id.* ¶¶ 38-41.

12. Plaintiffs are six citizens of Michigan and one citizen of Indiana, who were allegedly charged tolls for using Independence Bridge on or after January 1, 2025. *See id.* ¶¶ 7-13.<sup>1</sup> Plaintiffs seek to represent a class of “all non-Bay City residents and drivers who have crossed the Independence Bridge and paid any toll or purchased an unlimited pass [for use of the bridge].” *Id.* ¶ 87. Plaintiffs estimate the putative class includes “thousands” of members, based in part on “historical daily counts of approximately 20,000 crossings per day. *Id.* ¶¶ 89-90.

13. Plaintiffs seek extensive monetary and injunctive relief against UBP, including:

- a. the forfeiture of all tolls collected for use of the Independence Bridge to date;
- b. compensation for the putative class members’ “loss of expected savings, and additional financial burdens”;
- c. the forfeiture of other, unspecified, “gains”;
- d. the imposition of “statutory penalties, fines, or any other remedies available under the Michigan Consumer Protection Act” and/or any

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<sup>1</sup> Although the Complaint alleges that Plaintiffs are “residents,” UBP has not found any information to find that those persons are not citizens of Michigan and Indiana, and that this serves a prima facie proof of citizenship. *See Naji v. Lincoln*, 665 F. App’x 397, 400 (6th Cir. 2016) (“residency may serve as prima facie evidence of a party’s domicile where the record reveals no contrary indications.”) (citing *Fort Knox Transit v. Humphrey*, 151 F.2d 602, 602–03 (6th Cir. 1945) (per curiam).

other applicable laws;

- e. “treble damages” under the Michigan Consumer Protection Act;
- f. “actual attorney fees incurred to date, as well as all future attorney fees and litigation costs necessary to prosecute this action”; and
- g. burdensome and dangerous injunctive relief, including “an injunction preventing [UBP] from . . . regularly closing and continuing to close the Independence Bridge” to conduct repairs and maintenance work, and an injunction “[p]rohibiting [UBP] from charging tolls or collecting fees for unlimited passes until the Independence Bridge is fully operational 24 hours per day, 7 days per week.”

Compl. ¶¶ 112, 122, 129-130, 143, 153, 160, 165.

14. The relief Plaintiffs are seeking against the City of Bay City consists of requests for an injunction or court order that would:

- a. “[r]equire City of Bay City and [UBP] to conduct a comprehensive review of tolling policies and implement corrective measures”; and
- b. “[c]ommand[] the City of Bay City [to] find [UBP] is in violation of its contractual obligations under the Concession and Lease Agreement and require the City of Bay City to, in turn, require [UBP] to implement a contractually-proper, fair, and transparent tolling system.”

Compl. ¶¶ 112, 122.

15. In other words, the only substantive relief sought from the City of Bay City is that it be compelled to join Plaintiffs in taking adverse action against UBP.

**TIMELINESS**

16. Removal is timely because UBP filed this Notice within thirty days of service of the Complaint, which was attempted on March 10, 2025.<sup>2</sup> *See* 28 U.S.C. § 1446(b)(1); Fed. R. Civ. P. 6(a)(1)(C). UBP has not been properly served in this matter, and thus “the 30-day removal period under § 1446 never commenced” for UBP. *See Dernis v. Amos Fin.*, 701 F. App’x 449, 453 (6th Cir. 2017); *see also Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999).

**GROUND FOR REMOVAL: CLASS ACTION FAIRNESS ACT**

17. This Court has original jurisdiction under CAFA because (a) the putative class includes more than 100 members; (b) there is minimal diversity of citizenship; and (c) the amount in controversy exceeds \$5 million.

18. CAFA applies to “any class action before or after the entry of a class certification order by the court with respect to that action.” 28 U.S.C. § 1332(d)(8). CAFA’s “provisions should be read broadly,” and there is a “strong preference” that interstate actions like this one “should be heard in a federal court if properly removed

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<sup>2</sup> UBP’s registered agent received a copy of the Complaint via registered mail on March 10, 2025. But Michigan Court Rules do not permit service of process via mail on a corporation that maintains a registered agent within the state. *See* MCR 2.105; *see also Walker v. Aleritas Cap. Corp.*, No. 326354, 2016 WL 3749410 (Mich. Ct. App. July 12, 2016).

by any defendant.” *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014) (quoting S. Rep. No. 109-14 at 43 (2005)).

### CLASS SIZE

19. For purposes of CAFA, “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.” 28 U.S.C. § 1332(d)(1)(B). Plaintiffs allege that this is a class action. *See, e.g.*, Compl. ¶ 87. Further, the Complaint does not allege any facts or raise any legal questions specific to the individual Plaintiffs, rather, every allegation is made, and every claim is asserted, on behalf of all members of the proposed Class. There can be no dispute that this case is a “class action” as defined by CAFA.

20. The class Plaintiffs seek to represent includes more than 100 members. The proposed class includes “all non-Bay City residents and drivers who have crossed the Independence Bridge and paid any toll or purchased an unlimited pass [for use of the bridge].” *See id.* Plaintiffs’ proposed putative class includes “thousands” of members, based in part on “historical daily counts of approximately 20,000 crossings per day.” *Id.* ¶¶ 89-90.

21. Solely for the purposes of removal, and without conceding the certifiability of the putative class or that any putative class member is entitled to

relief, UBP will assume Plaintiffs’ allegations about the putative class size are true. *See, e.g., Adelstein v. Walmart, Inc.*, No. 1:23-CV-00067, 2023 WL 5607457, at \*3 (N.D. Ohio Aug. 30, 2023) (if “a plaintiff explicitly asserts in his or her complaint that the putative class meets CAFA’s numerosity requirements, defendants are ‘entitled to rely on this fact as an admission in favor of jurisdiction.’”) (citation omitted).

### **MINIMAL DIVERSITY OF CITIZENSHIP**

22. There is minimal diversity of citizenship among the parties. Minimal diversity exists when “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

23. Plaintiffs allegedly consist of six citizens and residents of Michigan, and one citizen and resident of Indiana. *See* Compl. ¶¶ 7-13. The putative class contains no geographic limitation on its members except that they are “non-Bay City residents,” which means it necessarily includes citizens of foreign states who happened to be visiting or traveling through Michigan on or after January 1, 2025, and used the Independence Bridge. *See* Compl. ¶¶ 13, 87.

24. Defendant City of Bay City is a municipality formed under the laws of the State of Michigan and located in Michigan. *See* Compl. ¶ 15.

25. Defendant UBP is a limited liability company organized under the laws of Delaware. Its sole member (with exclusive responsibility for UBP’s management

and business decisions) is also a limited liability company organized under the laws of Delaware, which maintains its offices in Colorado.

26. Accordingly, minimal diversity exists under 28 U.S.C. § 1332(d)(2)(A).

### **AMOUNT IN CONTROVERSY**

27. The amount in controversy under CAFA is satisfied if “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). For purposes of determining the amount in controversy, “the claims of the individual class members shall be aggregated.” 28 U.S.C. § 1332(d)(6).

28. “Removal is proper on the basis of an amount in controversy asserted by the defendant if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 88 (2014) (citation omitted). “Even though there is usually a presumption to resolve doubts regarding removal in favor of remand, ‘[t]here is no presumption against removal of cases under CAFA.’” *Pantel v. Gen. Motors, LLC*, No. 19-13219, 2020 WL 3867278, at \*10 (E.D. Mich. July 9, 2020) (modification in original, citations omitted).

29. UBP denies Plaintiffs’ allegations, denies that the action is appropriate for class treatment, and denies that it is liable to Plaintiffs, or the proposed putative

class on any theory or in any amount. UBP reserves all rights and defenses, and no statement herein shall constitute an admission of liability or a suggestion that Plaintiffs, or any member of the Class, will or could recover any damages based upon the allegations contained in the Complaint or otherwise.

30. Where, as here, “the plaintiff’s complaint does not state the amount in controversy, the defendant’s notice of removal may do so.” *Dart Cherokee*, 574 U.S. at 84. “[O]nly a plausible allegation that the amount in controversy exceeds the jurisdictional threshold” is required. *Id.* at 89. Without conceding that Plaintiffs or the putative class are entitled to any recovery whatsoever, it is clear that aggregate amount in controversy in the action exceeds \$5 million.

31. All of Plaintiffs’ requested relief may be considered in calculating the amount in controversy. As set forth above, Plaintiffs are seeking a wide array of monetary relief, including statutory penalties and treble damages on behalf of thousands of putative class members. Setting aside whether Plaintiffs would ultimately be able to recover statutory and/or treble damages for every crossing of the Independence Bridge by a non-resident, in-and-of themselves these demands are sufficient to conclude the amount-in-controversy likely exceeds \$5 million. *See Freeman v. Blue Ridge Paper Prods., Inc.*, 551 F.3d 405, 409 (6th Cir. 2008) (“[P]laintiffs’ claim of damages exceeding the federal amount in controversy is presumed correct unless shown to a legal certainty that the amount is actually less

than the federal standard.”); *Badeen v. PAR, Inc.*, No. 19-10532, 2020 WL 6135656, at \*4 (E.D. Mich. Mar. 31, 2020) (“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.”).

32. Furthermore, Plaintiffs are seeking onerous injunctive relief that would limit the ability of UBP to exercise its contractual rights under the Agreement and collect tolls for use of the Independence Bridge. The potential costs imposed by injunctive relief must also be considered for purposes of determining the amount-in-controversy. *See Kendrick v. FCA US LLC*, No. 21-CV-12995, 2022 WL 2758518, at \*6 n. 5 (E.D. Mich. July 14, 2022) (“Plaintiffs are also seeking injunctive relief, and it is appropriate to consider the value of injunctive relief when determining the amount in controversy.”) (citing *Cleveland Hous. Renewal Project v. Deutsche Bank Tr. Co.*, 621 F.3d 554, 560 (6th Cir. 2010)).

33. To date, UBP has invested approximately \$170 million repairing, rehabilitating, and modernizing the fifty-year-old Independence Bridge and Liberty Bridge, and has an ongoing contractual obligation to maintain the Independence Bridge for another 75 years. UBP undertook these costly expenditures and burdensome obligations on the understanding that it would be able to recoup its losses through the collection of tolls. If UBP is enjoined from collecting tolls for

use of the Independence Bridge in accordance with what it understood to be its contractual rights when it entered into the Agreement, this will inflict an irreparable injury on UBP that far exceeds \$5 million. *See Kendrick*, 2022 WL 2758518, at \*6 n. 5 (citing *Cleveland Hous. Renewal Project*, 621 F.3d at 560)).

34. Accordingly, UBP has carried its burden of demonstrating that there is a reasonable probability the amount in controversy exceeds \$5 million, such that jurisdiction exists under 28 U.S.C. § 1332(d)(2). *See Dart Cherokee Basin Operating Co.*, 574 U.S. at 88; *Pantel*, 2020 WL 3867278, at \*10.

#### **COMPLIANCE WITH 28 U.S.C. § 1446**

35. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure as required by 28 U.S.C. § 1446(a).

36. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the Docket, Summons, Complaint, and Notices of Service of Process are attached hereto as Exhibit B.

37. This Notice of Removal is timely, as it is filed within thirty (30) days of UBP's receipt of the Summons and Complaint. *See* 28 U.S.C. § 1446(b)(2)(B); *Murphy Bros v. Michetti Pipe Stringing*, 526 U.S. 344, 347–48 (1999) (“service of the summons and complaint” triggers removal deadline).

38. UBP will promptly provide written notice to Plaintiffs, through counsel, of the removal and will file a copy of its Notice of Removal with the Clerk

of the Circuit Court for the County of Bay, Michigan, in accordance with 28 U.S.C. § 1446(d).

### **NON-WAIVER**

39. If this Court determines that the pleadings and other documents to date lack adequate information from which to ascertain the prerequisites to jurisdiction under CAFA, the removal clock will have not begun to run, and UBP reserves the right to remove this action at the appropriate time.

40. UBP reserves all defenses and objections it may have to this action, without conceding either the Complaint's allegations or that Plaintiffs have pleaded claims upon which relief may be granted.

### **CONCLUSION**

For the foregoing reasons, UBP respectfully removes this action from the 18th Circuit Court of Bay County, in the State of Michigan, bearing case number 25-3177-CZ, to the United States District Court for the Eastern District of Michigan, Northern Division.

Dated: April 1, 2025

Respectfully submitted,

/s/ Benjamin W. Jeffers

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