No. ___

In the

United States Court of Appeals

for the

Fourth Circuit

MICHAEL A. SCOTT,

Plaintiff-Respondent,

– v. –

CRICKET COMMUNICATIONS, LLC,

Defendant-Petitioner.

PETITION FOR PERMISSION TO APPEAL PURSUANT TO 28 U.S.C. § 1453(c)

From the August 19, 2016 Order of the United States District Court for the District of Maryland in Case Nos. 1:15-cv-03330-GLR and 1:15-cv-03759-GLR

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INTRODUCTION

This petition presents a significant issue arising under the Class Action Fairness Act of 2005 (CAFA) that this Court has not yet addressed. Congress enacted CAFA to "facilitate adjudication of certain class actions in federal court." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014). Under CAFA, a defendant may remove a class action when, among other things, the amount in controversy exceeds $5 million. 28 U.S.C. §§ 1332(d)(2), 1453(b).

Here, plaintiff Michael Scott brought a class action in Maryland state court against defendant Cricket Communications, LLC, describing the class to include all Maryland citizens who purchased specified types of mobile phones from Cricket during the class period. Cricket removed the case to federal court, offering evidence that it sold more than 47,000 of the phones in question to customers listing a Maryland address on their account; that each phone was worth at least $200; and that the amount in controversy thus approached $10 million. But the district court refused jurisdiction and remanded the case, holding that Cricket's evidence was "over-inclusive" because it addressed *all* customers with Maryland addresses even though the class was defined to include only Maryland *citizens* (*i.e.*, customers domiciled in Maryland), and that the court therefore

would have to "speculate" as to the amount in controversy. In doing so, the district court expressly declined to follow the contrary rulings of *three* federal courts of appeals, which had reversed materially identical remand decisions by district courts that held "over-inclusive" evidence insufficient to establish CAFA jurisdiction.

This Court should review and set aside that decision. By departing from the approach taken by other courts of appeals, the decision below misstates basic rules of jurisdiction and creates uncertainty about the proper resolution of a significant and recurring question of great practical importance. When faced with district court decisions of this sort, courts of appeals routinely have recognized that interlocutory review under CAFA is appropriate. And the district court's holding here plainly is wrong: given the number of phones sold in Maryland to customers who identified their addresses as being in Maryland and the value of each device, the amount in controversy is nearly $10 million. It cannot be halved, to less than $5 million, unless almost *half* of Cricket's customers with a Maryland address are actually domiciled in other States. Scott did not try to support (much less prove with evidence) this proposition, which is highly implausible. Therefore, Cricket has more than carried its burden of establishing federal jurisdiction. Accordingly, this Court should grant review to correct the dis-

trict court's error and resolve the split between the decision below and every other circuit to consider the question.

FACTS NECESSARY TO UNDERSTAND THE QUESTION PRESENTED

Scott is a former customer of Cricket. He purchased a Samsung Galaxy S4 mobile phone from Cricket and activated it in December 2013. Ex. D at 1-2. About a week later, Scott called Cricket with a complaint about that phone and requested a replacement phone. He activated that new phone in January 2014. *Id.* at 2.

On September 24, 2015, Scott filed a putative class action complaint in Maryland state court ("*Scott I*") alleging claims under the federal Magnuson-Moss Warranty Act (MMWA). *See* Ex. B ¶ 3. The complaint alleged that Scott's cell phones could be used only on Code Division Multiple Access (CDMA) networks, but that by the time Scott acquired the phones, Cricket already knew that it would be transitioning all of its customers to a Global Systems for Mobile (GSM) network. *Id.* ¶ 5. Scott alleged that this fact rendered his CDMA phones "useless and worthless." *Id.* ¶ 7. Scott asserted a single claim under the MMWA for alleged breaches of express and implied warranties, seeking to represent a putative class of "[a]ll Maryland citizens who, between July 12, 2013 and March 13, 2014, purchased a CDMA mobile telephone from Cricket which was locked for use

only on Cricket's CDMA network." *Id.* ¶¶ 51, 60-66.

On October 30, 2015, Cricket timely removed *Scott I* to the U.S. District Court for the District of Maryland. *See* Ex. A. In its notice of removal, Cricket explained that *Scott I* was subject to federal jurisdiction under CAFA because it was a class action consisting of more than 100 members; satisfied CAFA's minimal diversity requirement; and the amount in controversy exceeded $5,000,000. *Id.* at ¶¶ 1-11.[1] Cricket subsequently moved to compel arbitration in *Scott I*, based on the arbitration provision in Cricket's terms and conditions of service. *See* Ex. E.[2]

Scott moved to remand the case to state court. As to *Scott I*, Scott argued that Cricket had not proven that the class action had the requisite number of class members and amount in controversy for CAFA jurisdiction. In response, Cricket produced a declaration from its employee Rick Cochran, a Strategic Business Systems and Operations Professional.

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[1] Cricket also raised and preserved the argument that the action invokes federal-question jurisdiction because Scott's claim arises under the MMWA. That argument is laid out in more detail in Cricket's notice of removal. *See* Ex. A ¶ 11.

[2] On November 10, 2015, Scott filed a Complaint Petitioning To Stay Threatened Arbitration in Maryland state court (Ex. C) ("*Scott II*"). Cricket removed *Scott II* as well, invoking federal jurisdiction under the "look-through" doctrine of *Vaden v. Discover Bank*, 556 U.S. 49 (2009), because the parties' underlying controversy was a putative class action that qualified for federal jurisdiction under CAFA. *See* Ex. A at ¶¶ 2-3.

Cochran testified that during the class period, Cricket customers who had listed a Maryland address on their accounts purchased at least 47,760 phones that were "locked" to Cricket's CDMA network (as Scott's complaint had defined that term). *See* Ex. 1 to Ex. D at ¶ 6. Given that Scott himself alleged that his phones cost "hundreds of dollars each" (Ex. B ¶ 27), Cricket conservatively estimated the alleged damages per phone at $200 (the minimum amount signified by "hundreds") and thus calculated that the amount in controversy exceeded $9.5 million. Ex. D at 11.

On August 19, 2016, the district court granted Scott's motion to remand. It held that Cricket had not proven the existence of CAFA jurisdiction in *Scott I* by a preponderance of the evidence because the court viewed Cricket's evidence as "over-inclusive—the Class [as defined by Scott] includes only Maryland *citizens*, but Cricket's evidence pertains to all consumers who provided Maryland addresses. Residency is not tantamount to citizenship." Ex. F at 15 (emphasis added).[3] Rejecting decisions from three courts of appeals that had held to the contrary (*see id*. 12 n.2), the district court held that for it to rely upon Cricket's evidence would involve improper "speculat[ion]" regarding how many of the purchasers of Cricket cell

[3] As we discuss below (at 16), the determination of a person's citizenship looks to a range of factors related to the individual's ties to the State.

phones with Maryland addresses were domiciled in Maryland and thus eligible to be members of the class that Scott had defined. *Id.* at 16.

In reaching this conclusion, the district court acknowledged that, "[b]y strategically defining the class as including Maryland citizens, Scott places Cricket in somewhat of a predicament" because Cricket "does not possess any information relevant to the domiciles of customers." *Id.* at 10-11. But the court nevertheless held that because the plaintiff "is the master of his complaint, and he can choose to circumscribe his class definition to avoid federal jurisdiction under CAFA" (*id.* at 17), a case must be remanded when "defendants present evidence [of the amount in controversy] that is broader than the class defined in the complaint." *Id.* at 12.[4]

QUESTION PRESENTED

Whether the district court erred in holding that federal jurisdiction is unavailable under CAFA solely because the evidence offered by the defendant in support of jurisdiction is "over-inclusive."

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[4] Given its holding as to *Scott I*, the district court also remanded *Scott II*, holding that because it did not have subject-matter jurisdiction over *Scott I*, it could not exercise subject-matter jurisdiction over *Scott II* under *Vaden*. Ex. F at 19-20. A few days after the district court issued its remand order, Scott voluntarily dismissed the *Scott II* complaint. *See* Not. of Voluntary Dismissal Without Prejudice, *Scott v. Cricket Communications, LLC*, No. 03C15012335 (Md. Cir. Ct. Balt. Cnty. Aug. 22, 2016). Thus, only *Scott I* remains pending in state court following the remand order.

RELIEF SOUGHT

Cricket requests that this Court grant its petition for permission to appeal, reverse the order below, and remand with instructions that the district court retain its CAFA jurisdiction over this putative class action.

STATUTORY AUTHORIZATION FOR THE APPEAL

Under CAFA, "a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not more than 10 days after entry of the order." 28 U.S.C. § 1453(c)(1). This petition has been timely filed.

REASONS WHY THE APPEAL SHOULD BE ALLOWED

We respectfully submit that the district court misapplied CAFA. When, as in this case, "a CAFA defendant's assertion of the amount in controversy is challenged," "both sides submit proof and the court decides, by a preponderance of the evidence, whether the amount-in-controversy requirement has been satisfied." *Dart Cherokee,* 135 S. Ct. at 554. "Once 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 less than the requisite amount.** The plaintiff must establish that it is legally

impossible to recover in excess of the jurisdictional minimum." *Cova v. Charter Commc'ns, Inc.*, 2016 WL 4368100, at *4 (E.D. Mo. Aug. 16, 2016) (internal quotation marks and citations omitted) (emphasis added).

Here, the district court did not engage in the proper inquiry. The only prerequisite for CAFA jurisdiction questioned by the district court was the $5 million amount-in-controversy requirement of 28 U.S.C. § 1332(d)(2). On that point, Cricket produced evidence showing that at least 47,760 CDMA phones were shipped to persons with Maryland addresses during the class period. Thus, assuming a conservative damages figure of $200 per phone—a figure the district court never questioned—the amount in controversy would be more than $9.5 million, well above CAFA's $5 million threshold. But despite this showing, the district court held that Cricket failed to prove the amount in controversy by a preponderance of the evidence because its showing was "over-inclusive"; the evidence related to Maryland *residents*, whereas Scott's class definition speaks in terms of Maryland *citizens*. Ex. F at 15.

This was error. As other courts of appeals uniformly have recognized, a removing defendant is not required to adduce evidence of federal jurisdiction that is precisely tailored to the plaintiff's class definition, so long as the evidence that *is* produced "has explained plausibly how the

stakes exceed $5 million." *Spivey v. Vertue*, 528 F.3d 982, 986 (7th Cir. 2008). In this case, where there is every reason to believe that the vast majority of persons who purchased Cricket phones are putative class members—and where the plaintiff produced *no* evidence to the contrary—Cricket's evidence easily satisfied that standard. This case should therefore remain in federal court.

A. The District Court Erred By Rejecting Cricket's Evidence Of The Amount In Controversy As "Over-Inclusive."

The district court's principal reason for remand was its observation that Cricket "present[s] evidence that is broader than the class defined in the complaint" (Ex. F at 12; *see id*. at 15 (Cricket presents "evidence that is over-inclusive")), leading the court to conclude that it "would have to speculate to determine the number of class members that purchased CDMA cellphones and the amount in controversy." *Id*. at 16. But that conclusion is wrong in two respects: (1) presenting "over-inclusive" evidence that otherwise is probative is not a justification for refusing jurisdiction; and (2) the evidence here in fact plausibly establishes the jurisdictional amount.

1. There is no rule against consideration of "over-inclusive" evidence. To begin with, as the district court evidently recognized (when it expressly declined to follow appellate decisions from other Circuits, *see* Ex. F at 12 & n.2), courts of appeals uniformly have rejected the "over-

inclusive" evidence argument accepted below—in each case rejecting a district court remand decision very much like the one challenged here.

First, in *Spivey*, the Seventh Circuit held that the defendant had proved CAFA jurisdiction in a putative class action lawsuit to recover alleged unauthorized credit card charges. *Id.* at 983. In support of removal, the defendant had based its amount-in-controversy calculation on the total amount of the charges it submitted in Illinois, rather than try to determine (and thus implicitly concede) the amount of charges that were "unauthorized" under plaintiffs' theory. *Id.* at 985-86.

The district court there held that this evidence was insufficient because it did not indicate what portion of the charges that the defendant submitted was "unauthorized," but the Seventh Circuit rejected that reasoning, explaining that CAFA "does not make federal jurisdiction depend on how much the plaintiff is *sure to recover*." *Id.* at 985 (emphasis added). Writing for the court, Judge Easterbrook explained that, "[o]nce the proponent of federal jurisdiction has explained plausibly how the stakes exceed $5 million, then the case belongs in federal court unless it is legally impossible for the plaintiff to recover that much." *Id.* at 986 (internal citation omitted) (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283 (1938)). Although there was no suggestion that *all* charges imposed by

the defendant were unauthorized, the defendant's purportedly overinclusive evidence nevertheless demonstrated that it was not "legally impossible" for the judgment to exceed $5 million.

Next, in *Lewis v. Verizon Communications, Inc.*, 627 F.3d 395 (9th Cir. 2010), the Ninth Circuit likewise rejected an overinclusiveness argument. There, the plaintiff alleged that Verizon had unlawfully charged some customers for landline telephone service without their consent. *Id.* at 400-02. Verizon submitted evidence that its total billings in California during the putative class period exceeded $5 million, but the district court held that this was insufficient because "the complaint placed only the *unauthorized* charges into controversy." *Id.* at 398. Here again, although there was no allegation that the entirety of the charges were improper, the court of appeals reversed, explaining that "[t]he amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of [a] defendant's liability." *Id.* at 400.

Finally, in *Raskas v. Johnson & Johnson*, 719 F.3d 884, 887 (8th Cir. 2013), the Eighth Circuit held that defendants properly proved the amount in controversy by producing data of the "total sales of their respective medications in Missouri" when plaintiffs alleged that consumers were deceived into throwing away some amount of unused medications based on

incorrect expiration dates. *Id.* at 886-87. The plaintiffs argued and the district court held that the defendants' evidence was "overinclusive, as Plaintiffs are only attempting to recover damages for the medications *wrongfully discarded and replaced*," and not for medications that were used. *Id.* at 887 (emphasis added). But the court of appeals held that "when determining the amount in controversy, the question is not whether the damages *are* greater than the requisite amount, but whether a fact finder *might* legally conclude that they are." *Id.* (internal quotation marks omitted). The court held that the defendants' evidence of the total amounts of their sales in Missouri satisfied that standard. *Id.* at 888.

2. The evidence here establishes jurisdiction. Accordingly, overinclusive evidence may suffice to establish jurisdiction; the question is whether, under a preponderance standard, it plausibly does so. Here, it plainly does. The evidence shows that Cricket sold more than 47,000 CDMA devices to customers with a Maryland address; assuming damages of $200 for each device (an amount not questioned by the district court), the amount of potential damages could exceed $9.5 million if these customers all are Maryland citizens. On this record, jurisdiction exists unless it is assumed that almost *half* of Cricket's Maryland customers are not domiciled in the State. But that possibility is counterintuitive at best and

absurd at worst. It surely is a permissible and "reasonable assumption[]" (*Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1198 (9th Cir. 2015)) that most telephone customers are domiciled in the State where their accounts are billed. As the Eleventh Circuit has put it, "[E]stimating the amount in controversy is not nuclear science" and "does not demand decimal-point precision"; "the undertaking is not to be defeated by unrealistic assumptions that run counter to common sense." *S. Fla. Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312, 1317 (11th Cir. 2014). By the same token, it clearly is *not* "legally impossible" for the amount in controversy to exceed $5 million, the showing that Scott must make to preclude jurisdiction once Cricket's case is found to be plausible. *See Spivey*, 528 F.3d at 986.

Moreover, it is notable that Scott has not offered any competing evidence. That failure is telling: "[t]he decision as to whether the defendants have met their burden 'may well require analysis of what *both* parties have shown.' Thus, it is not enough for the plaintiffs to '[m]erely label[ ] the defendant's showing as "speculative" without discrediting the facts upon which it rests."' *Pazol v. Tough Mudder Inc.*, 819 F.3d 548, 552 (1st Cir. 2016) (citation omitted)). Scott has not, for example, offered evidence about how many people residing in Maryland are not legally domiciled here. That omission supports the common-sense understanding that at least a

very substantial number of state residents are citizens.

3. The district court did not address *Spivey*, *Lewis*, or *Raskas*, relying instead on decisions from the Southern District of West Virginia and the District of Maryland and concluding that "courts in the Fourth Circuit have consistently remanded putative class actions when defendants present evidence that is broader than the class defined in the complaint." Ex. F at 12. But none of these decisions supports the categorical rule against "over-inclusive" evidence that the district court applied.

First, it is doubtful whether the reasoning of these decisions survives *Dart Cherokee*. Several of them relied on a supposed presumption in favor of remand. *See, e.g.*, *Pauley v. Hertz Glob. Holdings, Inc.*, 2014 WL 2112920, at *2 (S.D. W. Va. May 19, 2014); *Caufield v. EMC Mortg. Corp.*, 803 F. Supp. 2d 519, 529 (S.D. W. Va. 2011); *Krivonyak v. Fifth Third Bank*, 2009 WL 2392092, at *7 (S.D. W. Va. Aug. 4, 2009). But the Supreme Court rejected that premise in *Dart Cherokee*, squarely holding that "no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court." 135 S. Ct. at 554. *Dart Cherokee* thus undermines those decisions.

Second, the district court cited one post-*Dart Cherokee* decision, *James v. Santander Consumer USA, Inc.*, 2015 WL 4770924, at *5 (D. Md.

Aug. 12, 2015), which is inapposite. There, the plaintiff purported to represent a putative class of "individuals whose cars were repossessed by [the defendant] under [closed end credit] contracts who did not receive proper pre- and post-sale notifications" required by law. *Id.* at *3. But the defendant presented evidence of how many cars it had repossessed without regard to pre- and post-sale notifications. The court held this evidence insufficient because the defendant had attempted to redefine the class rather than producing evidence addressing the class defined in the complaint. *Id.* But Cricket did not attempt to redefine the class; on the contrary, it produced evidence tailored to the question of how many CDMA phones it sold to Maryland citizens—who make up the putative class defined by Scott.

In sum, the case law does not support the district court's broad rule against "over-inclusive" evidence. True, sometimes the removing defendant's evidence will have so little relationship to the recoveries sought by the class that it will not satisfy the preponderance of the evidence standard. But this is not even a close case: Cricket's evidence showed that it is far more likely than not that the amount in controversy exceeds $5 million. The district court thus should have retained jurisdiction over this action.

B. A Rule Requiring Defendants To Adduce Evidence Perfectly Tailored To The Plaintiff's Class Definition Would Undermine CAFA.

The district court's rule against "over-inclusive" evidence of federal jurisdiction not only lacks support in the case law—in this context, it also would have deleterious consequences for the jurisdictional regime Congress adopted in CAFA. Under that rule, plaintiffs could easily evade CAFA by defining their classes in terms of state citizenship, knowing that it will almost always be impossible at the removal stage for defendants to produce evidence restricted to citizens of a particular state.

That is because companies like Cricket simply do not keep track of all of the information relevant to where customers are legally domiciled. Domicile depends on a host of factors, including, among other things, a person's "'current residence; voting registration and voting practices; location of personal and real property; location of brokerage and bank accounts; membership in unions; fraternal organizations, churches, clubs, and other associations; place of employment or business; driver's license and automobile registration; [and] payment of taxes.'" *Dyer v. Robinson*, 853 F. Supp. 169, 172 (D. Md. 1994) (internal citations omitted). Most of this personal information is simply irrelevant to everyday consumer transactions, which is why companies like Cricket do not collect it.

Moreover, even if companies *did* collect this information (and consumers were willing to provide it), that *still* would not be enough to enable defendants to satisfy the requirement imposed by the district court here. Whether an individual is legally domiciled in a state ultimately depends on whether the person "inten[ds] to make the State a home." *Johnson v. Advance Am.*, 549 F.3d 932, 937 n.2 (4th Cir. 2008). The question of intent, in turn, is a difficult inquiry requiring a weighing of all the factors listed above. Hence, to tailor evidence to a class defined in terms of state citizenship, a defendant like Cricket would need to perform a separate, time-intensive domicile determination for every member of the putative class (which might number in the thousands or more) ***and*** convince the district court that each of its domicile determinations was correct. Defendants simply could not do this at the removal stage. The consequence of requiring defendants to tailor their evidence to classes based on state citizenship would accordingly be to allow plaintiffs to avoid CAFA jurisdiction at will.

That result is directly contrary to Congress's goal in CAFA, which was to "ensur[e] Federal court consideration of interstate cases of national importance." *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1350 (2013) (internal quotation marks omitted). Congress wanted large class actions to be heard in federal courts, which could be relied upon to follow

uniform procedures that would protect the rights of both plaintiffs and defendants. *See* S. Rep. 109–14, at 4-5 (2005). But the district court's approach would allow plaintiffs simply to opt out of CAFA's entire framework by framing class definitions in terms of citizenship or domicile.

This would be especially problematic given that—despite the district court's contrary view (*see* Ex. F at 18)—class actions defined in terms of state citizenship are among the *most* important to adjudicate in federal court because of the potential for state-court procedural abuse and discrimination against out-of-state defendants. Were the class action here to be certified and proceed to a judgment, Cricket would have a federal due process right to test whether each putative class member is actually a citizen of Maryland before that class member could recover. *See, e.g.*, *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 367 (2011) (holding that class could not be certified if doing so would deprive the defendant of its right "to litigate its . . . defenses to individual claims"). Yet the district court's holding means that classes based on state citizenship, where the danger of discrimination against out-of-state entities is greatest, are now more likely to be litigated in state court than other class actions. That unacceptable result requires reversal of the decision below.

C. Appeal Is Warranted In This Case.

Finally, in light of the manifest errors in the district court's reasoning and of the harmful consequences of its holding, leave to appeal is warranted here. Courts of appeals ordinarily consider several factors in deciding whether to grant leave to appeal under Section 1453(c)(1), including:

> (1) "the presence of an important CAFA-related question"; (2) whether the question is "unsettled"; (3) "whether the question, at first glance, appears to be either incorrectly decided or at least fairly debatable"; (4) "whether the question is consequential to the resolution of the particular case"; (5) "whether the question is likely to evade effective review if left for consideration only after final judgment"; (6) whether the question is likely to recur; (7) "whether the application arises from a decision or order that is sufficiently final to position the case for intelligent review"; and (8) whether "the probable harm to the applicant should an immediate appeal be refused [outweighs] the probable harm to the other parties should an immediate appeal be entertained."

BP Am., Inc. v. Oklahoma ex rel. Edmondson, 613 F.3d 1029, 1034 (10th Cir. 2010) (quoting *Coll. of Dental Surgeons of Puerto Rico v. Conn. Gen. Life Ins. Co.*, 585 F.3d 33, 38-39 (1st Cir. 2009)).

Here, nearly all of those factors weigh heavily in favor of granting permission to appeal. The question of what sort of evidence suffices to prove the amount in controversy is "important" and "CAFA-related." The issue also is "unsettled" and at least "fairly debatable," as evidenced by the district court's failure to follow the decisions of three courts of appeals

(which had all reversed district court decisions). It is "consequential" to the outcome here, given that Cricket's evidence should suffice to satisfy its burden under CAFA. It is likely to recur, because similar issues have arisen frequently in the past and the district court's opinion gives plaintiffs a roadmap for evading CAFA that they will follow in many future cases. And the decision below is perfectly amenable to "intelligent review."

The balance of hardships also weighs in favor of review. The harm that denial of review would cause to Cricket is considerable: there is powerful reason to think that a federal court would enforce Cricket's arbitration provision, but a state court bound by the Maryland Court of Appeals' decision in *Koons Ford* definitely will not.[5] By contrast, the harm to Scott of granting review is minimal: the suit has yet to proceed past the answer stage in state court, and CAFA's 60-day time limit on this Court's consideration of the appeal will ensure that the appeal causes minimal delay in the resolution of the case. *See* 28 U.S.C. § 1453(c)(2). In light of these considerations, this Court should grant Cricket's application.

CONCLUSION

The district court's order should be reversed.

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[5] *See Koons Ford of Baltimore, Inc. v. Lobach*, 919 A.2d 722, 737 (Md. 2007) (holding that "the MMWA precludes the resolution of MMWA claims through binding arbitration").

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 5(c) and 32(a)(7)(C), the undersigned counsel for Defendant-Petitioner Cricket Communications, LLC certifies that this brief:

(i) complies with the page limitation of Rule 5(c) because it does not exceed 20 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 5(b)(1)(E); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2007 and is set in Century Schoolbook font in a size equivalent to 14 points or larger.

Dated: August 29, 2016 /s/ *Archis A. Parasharami*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Petition for Permission to Appeal Pursuant to 28 U.S.C. § 1453(c) was served the 29th day of August, 2016, by UPS delivery on:

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