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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SERGIO VAZQUEZ SAAVEDRA,  
  
Plaintiff,  
  
v.  
  
FORD MOTOR COMPANY, a Delaware  
Corporation; and DOES 1–10, inclusive  
  
Defendants.

Case No.: 21-cv-01193-AJB-BGS  
  
**ORDER DENYING MOTION TO  
REMAND**  
  
**(Doc. No. 13)**

Before the Court is Sergio Vazquez Saavedra’s (“Saavedra”) motion to remand. (Doc. No. 13.) Defendant Ford Motor Company (“Ford”) opposes the motion. (Doc. No. 15.) Having reviewed the parties’ moving papers and controlling legal authority, the Court finds the matter suitable for decision on the papers and without oral argument. Local Civ. R. 7.1.d. Accordingly, the motion hearing currently set for November 18, 2021 is hereby **VACATED**. For the reasons set forth below, the Court **DENIES** Saavedra’s motion.

1 **I. BACKGROUND**

2 This dispute arises from Saavedra’s claim that Ford violated California’s  
3 Song-Beverly Consumer Warranty Act (“Song-Beverly Act”). (Doc. No. 1-2 at 2.)<sup>1</sup>  
4 Saavedra alleges that Ford breached express and implied warranty obligations based on  
5 defects, including but not limited to the engine and transmission, of a 2018 Ford Mustang  
6 (“Mustang”) that Saavedra purchased from Ford. (*Id.* at 3–4.) On May 20, 2021, Saavedra  
7 instituted this action and brought two causes of action under the Song-Beverly Act in San  
8 Diego Superior Court. (*Id.* at 2.)

9 On June 29, 2021, Ford removed the action to federal court, asserting that this Court  
10 has diversity jurisdiction. (Doc. No. 1.) On September 21, 2021, Saavedra filed the instant  
11 motion to remand, arguing that Ford failed to carry its burden of establishing that the parties  
12 are in completely diversity and the amount in controversy exceeds \$75,000. (Doc. No.  
13 13-1.) Ford filed an opposition (Doc. No. 15), to which Saavedra replied (Doc. No. 16).  
14 This Order follows.

15 **II. LEGAL STANDARD**

16 The right to remove a case to federal court is entirely a creature of statute. *See*  
17 *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979). The removal  
18 statute, 28 U.S.C. § 1441, allows defendants to remove an action when a case originally  
19 filed in state court presents a federal question, or is between citizens of different states and  
20 involves an amount in controversy that exceeds \$75,000. *See* 28 U.S.C. §§ 1441(a), (b); 28  
21 U.S.C. §§ 1331, 1332(a). Only state court actions that could originally have been filed in  
22 federal court can be removed. 28 U.S.C. § 1441(a); *see also Caterpillar Inc. v. Williams*,  
23 482 U.S. 386, 392 (1987); *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1393 (9th Cir.  
24 1988).

25 “[J]urisdiction founded on [diversity] requires that parties be in complete diversity  
26 and the amount in controversy exceed \$75,000.” *Matheson v. Progressive Specialty Ins.*  
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28 <sup>1</sup> The pinpoint page citations refer to the ECF-generated page numbers at the top of each filing.

1 Co., 319 F.3d 1089, 1090 (9th Cir. 2003) (per curiam); see 28 U.S.C. § 1332(a)(1).  
2 Complete diversity requires that each plaintiff’s citizenship is diverse from that of each  
3 named defendant. 28 U.S.C. §§ 1332(a)(1), 1332(c)(1); *Caterpillar Inc. v. Lewis*, 519 U.S.  
4 61, 68 n.3 (1996). Whether or not complete diversity is present is determined at the time  
5 of removal. See *Am. Dental Indus., Inc. v. EAX Worldwide, Inc.*, 228 F. Supp. 2d 1155,  
6 1157 (D. Or. 2002) (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283  
7 (1938)).

8 The Ninth Circuit “strictly construe[s] the removal statute against removal  
9 jurisdiction,” and “[f]ederal jurisdiction must be rejected if there is any doubt as to the right  
10 of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (per  
11 curiam) (citations omitted). “The ‘strong presumption’ against removal jurisdiction means  
12 that the defendant always has the burden of establishing that removal is proper.” *Id.*; see  
13 also *McNutt v. Gen. Motors Acceptance Corp., Inc.*, 298 U.S. 178, 189 (1936) (finding that  
14 the removing party must prove its allegations by a preponderance of the evidence). The  
15 court takes this proof from the notice of removal and may, if it chooses, construe the  
16 opposition to the motion to remand as an amendment to the notice of removal. See *Cohn v.*  
17 *Petsmart Inc.*, 281 F.3d 837, 840 n.1 (9th Cir. 2002).

### 18 **III. DISCUSSION**

19 Saavedra contends that Ford has failed to establish complete diversity and the  
20 requisite amount in controversy for diversity jurisdiction over this case. (Doc. Nos. 13, 16.)  
21 The Court discusses each argument in turn.

#### 22 **A. Complete Diversity**

23 Removal based on diversity requires that the citizenship of each plaintiff be diverse  
24 from the citizenship of each defendant (e.g., complete diversity). *Caterpillar Inc.*, 519 U.S.  
25 at 68. For purposes of diversity jurisdiction, a corporation is “deemed to be a citizen of  
26 every State and foreign state by which it has been incorporated and of the State or foreign  
27 state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). The principal  
28 place of business refers “to the place where a corporation’s officers direct, control, and

1 coordinate the corporation’s activities” often called the “nerve center.” *Hertz Corp. v.*  
2 *Friend*, 559 U.S. 77, 92–93 (2010). A natural person’s state citizenship is determined by  
3 his or her state of domicile. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir.  
4 2001). “A person’s domicile is [the] person’s permanent home, where [he or] she resides  
5 with the intention to remain or to which [he or] she intends to return.” *Id.*

6 Here, Saavedra does not dispute that Ford is a citizen of Delaware and Michigan, its  
7 place of incorporation and principal place of business, respectively. Saavedra asserts,  
8 however, that Ford has not met its burden of showing by a preponderance of the evidence  
9 that he is a citizen of California. The Court disagrees.

10 To begin, Saavedra alleges in his state court complaint that he “is an individual  
11 residing in the City of Vista, County of San Diego, and State of California.” (Doc. No. 1-2  
12 at 3.) Although residence does not necessarily equate to domicile, “[t]he place where a  
13 person lives is taken to be his domicile until facts adduced establish the contrary.”  
14 *Anderson v. Watts*, 138 U.S. 694, 706 (1891); *Ha Nguyen v. BMW of N. Am., LLC*, No.  
15 20-cv-02432-JLS-BLM, 2021 WL 2411417, at \*3 (S.D. Cal. June 14, 2021). Additionally,  
16 the Court finds the Ninth Circuit’s decision in *Kanter v. Warner-Lambert Co.* instructive.  
17 *See* 265 F.3d at 857–58.

18 In *Kanter*, the Ninth Circuit found that the defendant failed to meet its burden of  
19 showing complete diversity because “neither [the] complaint nor [the] notice of removal  
20 made any allegation regarding [the plaintiffs’] state citizenship.” 265 F.3d at 857. In so  
21 finding, the *Kanter* court expressly noted that the defendant’s “failure to specify [the  
22 plaintiff’s] citizenship was fatal” to its claim of diversity jurisdiction, and that the  
23 defendant could have cured the defect by amending its notice of removal. *Id.* at 858. There  
24 is no such fatal defect here.

25 In its notice of removal, Ford specified that Saavedra is a citizen of California. (Doc.  
26 No. 1 at 3.) Tellingly, despite having exclusive possession of facts to the contrary, Saavedra  
27 submitted no controverting evidence. *See, e.g., Ayala v. Ford Motor Co.*, No. 20-cv-02383-  
28 BAS-KSC, 2021 WL 2644506, at \*2 (S.D. Cal. June 28, 2021) (finding that Ford

1 adequately alleged complete diversity of citizenship where it affirmatively alleged, upon  
2 removal, that the plaintiff is a citizen of California, and the plaintiff “never asserted that he  
3 is not in fact a California citizen.”). There is also no indication that Saavedra is domiciled  
4 in either of the states (Delaware or Michigan) that would destroy diversity in this case.  
5 Accordingly, based on the foregoing, the Court finds that Ford has demonstrated that it is  
6 more likely than not that there is complete diversity between the parties in this case.<sup>2</sup>

7 **B. Amount in Controversy**

8 “[A] defendant’s notice of removal need include only a plausible allegation that the  
9 amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin*  
10 *Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014). Where the plaintiff contests the  
11 defendant’s allegation, “both sides submit proof and the court decides, by a preponderance  
12 of the evidence, whether the amount-in-controversy requirement has been satisfied.” *Id.* at  
13 99. Courts have found that affidavits may be sufficient to satisfy a removing defendant’s  
14 burden. *See Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 397 (9th Cir. 2010).

15 As an initial matter, Saavedra objects to Ford’s counsel’s declaration and  
16 introduction of the Retail Installment Sales Contract (“RISC”) and Carfax Vehicle Report  
17 (“Carfax Report”) for the Mustang, arguing that the documents lack foundation,  
18 authentication, and contain hearsay. (Doc. No. 16-2.) The Court overrules Saavedra’s  
19 objections. Ford’s counsel attested that he is lead trial counsel in this case, reviewed the  
20 RISC and Carfax Report that his client obtained from its own as well as publicly available  
21 records, and has personal knowledge of the facts set forth in his declaration. (Doc. No. 15-1  
22 at 2.) In addition, the declaration shows how the potential damages in this case could  
23 exceed the jurisdictional amount, (*id.* at 2–4), and the Ninth Circuit has found such  
24 evidence sufficient. *See, e.g., Lewis*, 627 F.3d at 397 (“To satisfy its burden in this case,  
25 the removing defendant, Verizon Communications, Inc. (“Verizon”), supplied an affidavit  
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27 <sup>2</sup> The Court’s decision in *Paul Eugene Peters, et al. v. FCA US LLC, et al.*, No. 20-cv-00013-AJB-AGS  
28 (S.D. Cal. July 17, 2020) does not dictate the outcome in this case because Ford, unlike the defendant in  
*Peters*, presents different arguments and case law in support of its claims.

1 to show that the potential damages could exceed the jurisdictional amount. We conclude  
2 that this showing satisfies Verizon’s burden.”). Moreover, the facts that Ford’s counsel  
3 gleaned from the RISC and Carfax report are also detailed in the removal petition. (Doc.  
4 No. 1.) “[T]he court may consider facts in the removal petition, and may require parties to  
5 submit summary-judgment-type evidence relevant to the amount in controversy at the time  
6 of removal.” *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997)  
7 (internal quotation and citation omitted). Saavedra offers no controverting evidence or  
8 declaration, and there is no indication that the RISC and Carfax Report could not be  
9 presented in a form that would be admissible in evidence. *See id.*; Fed. R. Civ. P. 56(c)(2)  
10 (summary judgment rule providing “[a] party may object that the material cited to support  
11 or dispute a fact cannot be presented in a form that would be admissible in evidence”). As  
12 such, the Court finds the foregoing evidence appropriate for consideration for purposes of  
13 a motion to remand.

14 Turning to whether the amount in controversy exceeds \$75,000 in this case,  
15 Saavedra alleges in his complaint that he seeks, among other things, “rescission of the  
16 purchase contract and restitution of all monies expended,” “reimbursement of the price  
17 paid for the vehicle less that amount directly attributable to use by the Plaintiff prior to the  
18 first presentation to an authorized repair facility for a nonconformity,” “a civil penalty of  
19 up to two times the amount of actual damages,” and “attorney’s fees.” (Doc. No. 1-2 at 4–  
20 5.) Saavedra contends that Ford has not shown that the amount in controversy exceeds  
21 \$75,000. The Court disagrees.

22 To begin, California Civil Code section 1793.2(d)(2)(B) defines “restitution” in  
23 relevant part as “an amount equal to the actual price paid or payable by the buyer, . . .  
24 including any collateral charges such as sales or use tax, license fees, registration fees, and  
25 other official fees[.]” Section 1793.2(d)(2)(C) goes on to permit the defendant to reduce  
26 the amount payable to the buyer “by that amount directly attributable to use by the buyer  
27 prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or  
28 its authorized service and repair facility for correction of the problem that gave rise to the

1 nonconformity.” Cal. Civ. Code § 1793.2(d)(2)(C).

2 Here, the complaint does not allege the total amount of damages that Saavedra seeks.  
3 In support of its claim that the amount in controversy exceeds \$75,000, Ford points to the  
4 RISC for the Mustang, which establishes that the total sale price for the vehicle was  
5 \$44,782.25. (Doc. No. 15-2 at 8.) Included in the total price were an optional theft deterrent  
6 device for \$795 and an optional service contract for \$3,495. (*Id.*) Ford’s actual damages  
7 analysis deducts the price of these optional items, resulting in a more conservative estimate  
8 of \$40,492.25. Based on the plain text of California Civil Code section 1793.2(d)(2)(B),  
9 the Court finds \$40,492.25 to be a reasonable estimate of “the actual price paid or payable  
10 by” Saavedra.

11 This figure, however, does not end the inquiry. The restitution awardable under  
12 section 1793.2(d)(2)(B) must be reduced by the amount directly attributable to Saavedra’s  
13 use of the Mustang prior to the first repair or attempted repair. This set-off amount is  
14 determined by multiplying the “actual price of the new motor vehicle paid or payable by  
15 the buyer . . . by a fraction having as its denominator 120,000 and having as its numerator  
16 the number of miles traveled by the new motor vehicle prior to the time the buyer delivered  
17 the vehicle” for correction of the problem. Cal. Civ. Code § 1793.2(d)(2)(C). Ford claims  
18 that on that date, the Mustang had 20,657 miles on the odometer. (Doc. No. 15-3 at 4.)  
19 When Saavedra purchased the Mustang, it had 17,034 miles on the odometer. (*Id.*; Doc.  
20 No. 15-2 at 8.) Accordingly, the Court finds that Ford has presented sufficient evidence to  
21 establish that the mileage attributable to Saavedra’s use, for purposes of the instant motion,  
22 is 3,623 (20,657 miles – 17,034 miles = 3,623 miles). Utilizing the formula provided by  
23 section 1793.2(d)(2)(C), the mileage offset in this case is \$1,222.53 [ $\$40,492.25 \times (3,623$   
24  $\text{miles} / 120,000)$ ]. This reduces the actual damages at issue to \$39,269.72. Saavedra does  
25 not contest Ford’s calculation of the purchase price or mileage offset.

26 The \$39,269.72 figure does not end the inquiry either because Saavedra also seeks  
27 “a civil penalty of up to two times the amount of actual damages.” (Doc. No. 1-2 at 5.)  
28 “Courts[,] as a matter of law, calculate the amount in controversy based upon the maximum

1 amount of civil penalties available to plaintiff.” *Garcia v. FCA US, LLC*, No.  
2 16-cv-00730-DAD-BAM, 2016 WL 4445337, at \*4 (E.D. Cal. Aug. 24, 2016) (citation  
3 omitted). *See also Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n.3 (9th  
4 Cir. 2000) (noting district courts can consider treble damages where authorized by statute).  
5 Here, California Civil Code sections 1794(c) and (e) permit a buyer to recover a civil  
6 penalty not to exceed two times the amount of actual damages where the buyer establishes  
7 the defendant’s failure to comply with the Song-Beverly Act is willful. Because Saavedra  
8 “is seeking recovery from a pot that [Ford] has shown could exceed [\$75,000] and  
9 [Saavedra] has neither acknowledged nor sought to establish that the [ ] recovery is  
10 potentially any less,” the Court finds that inclusion of a full civil penalty award is  
11 appropriate. *Lewis*, 627 F.3d at 401; *see also id.* at 401 (“Once the proponent of federal  
12 jurisdiction has explained plausibly how the stakes exceed [the amount in controversy], . .  
13 . then the case belongs in federal court unless it is legally impossible for the plaintiff to  
14 recover that much.”) (citation omitted).

15 As previously determined, the actual damages at issue is \$39,269.72. Thus, the sum  
16 of Saavedra’s actual damages and civil penalties claims equate to \$117,809.16 [actual  
17 damages (\$39,269.72) + civil penalties (\$39,269.72 x 2)]. Because this figure exceeds the  
18 jurisdictional threshold, even without the inclusion of Saavedra’s claims for attorney’s fees  
19 and costs,<sup>3</sup> the Court finds that Ford has carried its burden of showing that the amount in  
20 controversy is satisfied in this case.

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27 <sup>3</sup> The Court also finds sufficient Ford’s counsel’s declaration that based on his litigation experience and  
28 reviewing Saavedra’s counsel’ fee motions in similar cases, the anticipated fees sought and awarded are  
beyond \$30,000. (Doc. No. 15-1 at 3–4 (collecting cases).)




1 **IV. CONCLUSION**

2 Based on the foregoing, the Court finds that Ford has demonstrated by a  
3 preponderance of evidence that: (1) the parties are in complete diversity and (2) the  
4 amount-in-controversy requirement is satisfied in this case. Accordingly, the Court  
5 **DENIES** Saavedra's motion to remand. (Doc. No. 13.) The Clerk of Court is **DIRECTED**  
6 to **VACATE** the scheduled motion hearing date for November 18, 2021.

7 **IT IS SO ORDERED.**

8 Dated: November 3, 2021

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10 Hon. Anthony J. Battaglia  
11 United States District Judge  
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