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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THOMAS SALVESTRINI,

Plaintiff,

v.

GENERAL MOTORS, LLC, a limited
liability company; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 3:23-cv-1556-W-DDL

**ORDER DENYING MOTION TO
REMAND [DOC. 10]**

Pending before the Court is Plaintiff Thomas Salvestrini’s motion ([Doc. 10] “Motion for Remand”) to remand this case to the San Diego Superior Court. Defendant opposes ([Doc. 14] “Opposition”). Plaintiff has failed to reply.

The Court decides the matter on the papers submitted and without oral argument. *See* Civ. R. 7.1(d)(1). For the following reasons, the Court **DENIES** the Motion.

I. RELEVANT BACKGROUND

This case arises from Plaintiff’s alleged purchase of a 2021 Chevrolet Bolt (the “Vehicle”) from one of General Motors, LLC’s (“Defendant”) “authorized dealer[‘s]” for

1 an unspecified amount. (*Complaint* at ¶¶ 7-9.¹) According to Plaintiff, the vehicle was
2 covered by: (1) an express warranty, under which Defendant promised that the Vehicle
3 “would be free from defects in materials, nonconformities, or workmanship during the
4 applicable warranty period and to the extent the [Vehicle] had defects, [Defendant] would
5 repair the defects”; as well as (2) an implied warranty that the “[Vehicle] would be of the
6 same quality as similar vehicles . . . [and] would be fit for the ordinary purposes for
7 which similar vehicles are used.” (*Id.* ¶¶ 10, 11.) The Complaint alleges, however, that
8 during the warranty period, the Vehicle “exhibited defects” and that when Plaintiff
9 notified Defendant of such “defects” and “attempted to invoke the applicable warranties,”
10 Defendant “represented to PLAINTIFF that they could and would make the [Vehicle]
11 conform to the applicable warranties” (*Id.* ¶ 13-14.) Specifically, Plaintiff alleges
12 that Defendant “issued a recall notice for the [Vehicle]” warning Plaintiff not to charge
13 the Vehicle’s battery above “90%”; not to let the battery’s mileage “fall below seventy
14 (70) miles remaining”; and not to “park[] [the Vehicle] indoors overnight” because the
15 Vehicle’s battery “may ignite.” (*Id.* at ¶ 18.) Yet, Plaintiff alleges that Defendant has
16 since failed to “make the [Vehicle] conform to the applicable warranties.” (*Id.* at ¶ 15.)

17 On August 17, 2023, Plaintiff filed a lawsuit against Defendant in the San Diego
18 Superior Court, entitled *Thomas Salvestrini v. General Motors, LLC, et al.*, No.37-2023-
19 00035602-CU-BC-CTL. The Complaint asserts three causes of action under the Song-
20 Beverly Consumer Warranty Act (Cal. Civ. Code § 1790, *et seq.*) (the “Song-Beverly
21 Act”); one cause of action alleging fraud; and another alleging violations of the
22 California Business & Professions Code § 17200. (*Complaint* at ¶¶ 35-120.) Plaintiff
23 seeks, among other things, general, special, and actual damages; rescission of the
24 purchase contract and restitution of all monies expended; compensatory damages for the
25 diminution in value of the Vehicle; a civil penalty of two times Plaintiff’s actual,
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28 ¹ The Complaint is attached to the Notice of Removal [Doc. 1] as Exhibit A [Doc. 1-2].

1 incidental, and consequential damages; consequential and incidental damages, punitive
2 damages, attorney’s fees and costs, and prejudgment interest at the legal rate. (*Id.* Prayer
3 ¶¶ a–j.)

4 On or about August 22, 2023, Defendant removed the case to this Court based on
5 diversity jurisdiction. (*Notice of Removal* [Doc. 1].) Plaintiff now moves to remand,
6 arguing that Defendant has not met its burden of overcoming the presumption against
7 removal. (*Motion for Remand* at 6:19-26.) While Plaintiff does not actually contest any
8 of Defendant’s allegations regarding the existence of diversity jurisdiction, Plaintiff
9 contends that Defendant must presently prove the existence of diversity jurisdiction by a
10 preponderance of the evidence and complains that Defendant has not yet produced such
11 evidence. (*Motion for Remand* at 7:16-11:2.) Defendant responds that it is not required
12 to prove the existence of jurisdiction by a preponderance of the evidence at this stage.
13 (*Opposition* at 6:12-25.) Plaintiff has not filed a reply.

14 15 **II. LEGAL STANDARD**

16 “The district courts shall have original jurisdiction of all civil actions where the
17 matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and
18 costs, and is between— (1) citizens of different States” 28 U.S.C. § 1332.

19 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins.*
20 *Co. of Am.*, 511 U.S. 375, 377 (1994). “They possess only that power authorized by
21 Constitution or a statute, which is not to be expanded by judicial decree.” *Id.* (internal
22 citations omitted). “It is to be presumed that a cause lies outside this limited jurisdiction
23 and the burden of establishing the contrary rests upon the party asserting jurisdiction.”
24 *Id.* (internal citations omitted).

25 Consistent with the limited jurisdiction of federal courts, the removal statute is
26 strictly construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
27 (9th Cir. 1992). “The strong presumption against removal jurisdiction means that the
28 defendant always has the burden of establishing that removal is proper.” *Id.* “Federal

1 jurisdiction must be rejected if there is any doubt as to the right of removal in the first
2 instance.” *Id.*

3 In this vein, Plaintiff’s Motion argues that Defendant has the “burden of proving,
4 by a preponderance of the evidence” that removal is proper. (*Motion for Remand* at 7:5-
5 8.) However, for purposes of the amount in controversy requirement, “the notice of
6 removal must include only ‘a plausible allegation that the amount in controversy exceeds
7 the jurisdictional threshold.’” *Schneider v. Ford Motor Co.*, 756 F. App’x 699, 700 (9th
8 Cir. 2018) (quoting *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89
9 (2014)); *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018) (applying
10 *Dart Cherokee*’s holding regarding the preponderance of the evidence standard to
11 diversity cases beyond the CAFA context). Courts only move to Plaintiff’s desired
12 preponderance of the evidence standard “after ‘the plaintiff contests, or the court
13 questions, the defendant’s allegation’ and ‘both sides submit proof.’” *Schneider*, 756 F.
14 App’x at 700. The same is true for the diversity of citizenship requirement. *Acad. of*
15 *Country Music v. Cont’l Cas. Co.*, 991 F.3d 1059, 1068 (9th Cir. 2021) (“[N]otice of
16 removal ‘need not contain evidentiary submissions’ but only plausible allegations of the
17 jurisdictional elements.”).

18 Here, Defendant’s Notice of Removal plainly alleges that the diversity of
19 citizenship and amount in controversy requirements are met and does so in detail.
20 (*Notice of Removal* at ¶¶ 10-24; *see infra* Section III.) Specifically, the Notice of
21 Removal alleges that Plaintiff is a citizen of California while Defendant is a citizen of
22 Michigan and Detroit. (*Complaint* at ¶ 1; *Notice of Removal* at ¶ 11-14.) The Notice of
23 Removal also alleges that the amount in controversy in this case is: (1) approximately
24 \$38,467.00² in actual damages; plus (2) roughly \$50,000 in potential attorney’s fees;
25 along with (3) a civil penalty up to twice the amount of actual damages (~\$76,934.00).
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28 ² *See infra* Section III(b)(1).

1 (*Notice of Removal* at ¶¶ 17-19; *see infra* Section III.) Thus, Defendant has plausibly
2 alleged that both the diversity of citizenship and amount in controversy requirements are
3 met.

4 From there, Plaintiff *could* require Defendant prove these allegations by a
5 preponderance of the evidence if he actually contested any of these allegations in his
6 Motion. However, Plaintiff’s Motion does *not* actually contest any of Defendant’s
7 allegations. Instead, the Motion simply asserts that Defendant has the burden of
8 establishing jurisdiction by a “preponderance of the evidence” without ever identifying
9 which of Defendant’s allegations Plaintiff contests. (*See Motion for Remand* at 9:22-24.)
10 If Plaintiff cannot or will not identify which of Defendant’s diversity of citizenship or
11 amount in controversy allegations he contests, the preponderance of the evidence
12 standard is not triggered.

13 Regardless, even if Plaintiff had identified allegations in the Notice of Removal
14 that he contests, or if the Court questioned such allegations, Defendant has also satisfied
15 the more stringent preponderance of the evidence standard by attaching a declaration to
16 the Notice of Removal containing evidence supporting its contention that the parties are
17 diverse and that the amount in controversy exceeds \$75,000. (*See Notice of Removal* at
18 Exs. A-C; *infra* Section III.) Plaintiff, meanwhile, failed to present the Court with any
19 contradictory evidence.

20 21 **III. DISCUSSION**

22 As outlined above, the Court will not require Defendant to prove its allegations of
23 diversity of citizenship and amount in controversy by a preponderance of the evidence
24 (although Defendant has also satisfied that burden). From here, the Court turns to
25 evaluating whether Defendant has met its burden of plausibly alleging that the parties are
26 diverse and that the amount in controversy exceeds \$75,000.00.

1 **A. Diversity of Citizenship**

2 To establish citizenship for diversity purposes, a natural born person must be a
3 citizen of the United States and be domiciled in a particular state. *Kantor v. Wellesley*
4 *Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). Persons are domiciled in the place
5 they reside with the intent to remain or to which they intend to return. *See Kanter v.*
6 *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). A corporation is a citizen of the
7 state in which it is incorporated and of the state where it has its principal place of
8 business. 28 U.S.C. 1332(d). LLCs are citizens of the states in which its members are
9 citizens. *See Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir.
10 2006) (“[L]ike a partnership, an LLC is a citizen of every state of which its
11 owners/members are citizens.”).

12 Here, the Notice of Removal alleges that there is complete diversity of citizenship
13 in this case. (*Notice of Removal* at ¶ 10.) Specifically, Defendant alleges that Plaintiff is
14 a citizen of California while Defendant (an LLC) is 100% owned by General Motors
15 Holdings, LLC; who in turn is 100% owned by General Motors Company—which is a
16 Delaware corporation with its principal place of business in Michigan. (*Id.* at ¶ 12.)
17 Thus, Defendant alleges complete diversity exists because it is a citizen of Delaware and
18 Michigan while Plaintiff is a citizen of California. (*Id.* at ¶ 14.) Furthermore, Plaintiff’s
19 own Complaint alleges that he is a citizen of California. (*Complaint* at ¶ 1.) Nor does
20 Plaintiff ever actually contest that the parties are diverse. Accordingly, the Court finds
21 that Defendant has met its burden of plausibly alleging that the diversity of citizenship
22 requirement is met.

23
24 **B. Amount in Controversy**

25 In calculating the amount in controversy, courts must consider “the ‘amount at
26 stake in the underlying litigation.’” *Fritsch v. Swift Transportation Co. of Arizona, LLC*,
27 899 F.3d 785, 793 (9th Cir. 2018) (quoting *Chavez*, 888 F.3d at 417-18). Thus, “the
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1 amount in controversy includes all relief claimed at the time of removal to which the
2 plaintiff would be entitled if she prevails.” *Id.*

3
4 **1. Actual Damages**

5 While the Complaint does not specify a damages figure, Defendant’s Notice of
6 Removal and accompanying Kuhn Declaration³ alleges that the average manufacture’s
7 suggested retail price of the 2021 Chevrolet Bolt (the same model year Plaintiff alleges
8 he purchased) was \$38,467.00. (*Notice of Removal* at ¶ 17; *Kuhn Decl.* at ¶ 8.) *See*
9 *Schneider*, 756 F. App’x at 701 (“Ford satisfied that more stringent [preponderance of the
10 evidence] standard by attaching a declaration to its notice of removal. That declaration
11 provided evidence that approximately 68,255 new F-150s from model years 2015-2017
12 were sold in California during the five years between the class date and the date the
13 lawsuit was filed, and that the F-150s’ average MSRP was \$45,498.94 for those model
14 years.”). Since Plaintiff does not allege how much he actually paid for the Vehicle (a
15 number which he undoubtedly knows) the Court will accept Defendant’s allegations that
16 the actual damages at issue are \$38,467.00.

17 Defendant now states in its Opposition that Plaintiff actually purchased the Vehicle
18 for \$40,235.00. (*Opposition* at 9:7-10.) However, since (as explained above) the Court
19 is deciding the Motion simply based on the allegations in the Notice of Removal and the
20 amount in controversy requirement is easily met using the lower \$38,467.00 figure, the
21 Court will not look to extrinsic sources like the Opposition in determining the actual
22 damages at issue. For purposes of this order, the Court will consider \$38,467.00 to be the
23 actual damages at issue.

24 Accordingly, Defendant must find at least an additional \$36,533.01 to exceed the
25 required \$75,000 in controversy.

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³ The Kuhn Declaration is attached to the Notice of Removal as Doc. 1-4.

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2 **2. Attorney’s Fees**

3 28 U.S.C. section 1332 instructs that when calculating the amount in controversy,
4 courts should exclude “interest and costs.” However, the Ninth Circuit has made clear
5 that “attorneys’ fees award under fee-shifting statutes or contracts are included in the
6 amount in controversy.” *Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d
7 785, 794 (9th Cir. 2018). Indeed, Cal. Civ. Code section 1793.4 states that when a
8 plaintiff prevails in an action brought under Cal. Civ. Code section 1793.2, the plaintiff
9 “shall be allowed by the court to recover as part of the judgment a sum equal to the
10 aggregate amount of costs and expenses, including attorney’s fees” (Emphasis
11 added).

12 Here, since Plaintiff’s first three causes of action allege violations of the Song-
13 Beverly Act, he will be entitled to recover his reasonable attorney's fees under section
14 1793.4 if he prevails. (*See Complaint* at ¶¶ 65 (“PLAINTIFF is entitled under the Act to
15 recover . . . actual attorney’s fees reasonably incurred in connection with the
16 commencement and prosecution of this action.”; 46; 54.) As such, the Court must
17 consider what attorney’s fees Plaintiff would likely be entitled to if he prevailed when
18 calculating the amount in controversy.

19 Defendant alleges in its Notice of Removal that attorney fees in similar Song-
20 Beverly Act cases “regularly approach or exceed \$50,000.00.” (*Notice of Removal* at ¶
21 19.) Indeed, Defendant attaches to its Notice of Removal (by way of the Kuhn
22 Declaration) a number of cases and court orders awarding plaintiffs roughly \$50,000 or
23 more in Song-Beverly Act cases regarding single vehicles. (*Kuhn Decl. Ex. C. (Bowser*
24 *v. Ford Motor Company*, 78 Cal. App. 5th 587 (2022) (upholding trial court’s award of
25 \$836,528.12 in attorney’s fees to Plaintiff in case over a single \$43,084.68 vehicle));
26 *Kuhn Decl. Ex. B (Anderson v. Ford Motor Company*, 74 Cal. App. 5th 946 (2022)
27 (upholding trial court’s award of \$643,615.00 in attorney’s fees to Plaintiff in case over a
28 single \$47,715.60 vehicle)); *Kuhn Decl. Ex. A* at 120 (*Zargarian v. BMW of North*

1 *America, LLC*, 442 F. Supp. 3d 1216 (C.D. Cal. 2020) (awarding Plaintiff \$145,538.50 in
2 attorney’s fees in case over a single vehicle)); *Kuhn Decl. Ex. A* at 99 (*Jurosky v BMW of*
3 *North America, LLC*, (No. 19cv706 JM (BGS)) (S.D. Cal. August 25, 2020) (awarding
4 Plaintiff \$106,703.00 in attorney’s fees in case over a single \$61,298.40 vehicle)); *Kuhn*
5 *Decl. Ex. A* at 181 (*Zomorodian v. BMW of North America, LLC*, No. CV 17-5061-DMG
6 (C.D. Cal. July 23, 2019) (awarding Plaintiff \$213,447.50 in attorney’s fees in case over
7 a single vehicle)); *Kuhn Decl. Ex. A* at 88 (*Nisim v. Mercedes-Benz USA, LLC*, No.
8 20STCV48243 (Los Angeles Super. Ct., August 28, 2023) (awarding Plaintiff \$43,169.00
9 in attorney’s fees in case over a single vehicle)); *Kuhn Decl. Ex. A* at 90 (*Urquiza v. Ford*
10 *Motor Company*, No. 20STCV16064 (Los Angeles Super. Ct., June 3, 2022) (awarding
11 Plaintiff \$82,000.00 in attorney’s fees in case over a single vehicle)).)

12 In estimating the amount of reasonable attorney’s fees Plaintiff would likely incur
13 (and thus be entitled to receive if he were to prevail) in this case, the Court may “rely on
14 ‘[its] own knowledge of customary rates and [the Court’s] experience concerning
15 reasonable and proper fees.’” *Fritsch*, 899 F.3d at 795 (quoting *Ingram v. Oroudjian*,
16 647 F.3d 925, 928 (9th Cir. 2011)). Given the Court’s own knowledge of customary
17 rates for Song-Beverly Act cases and experience concerning reasonable and proper
18 attorney’s fees in such cases; Defendant’s allegations that Plaintiffs attorney’s fees in this
19 case would likely be around or exceed \$50,000.00 (along with supporting cases); and
20 Plaintiff’s lack of presenting any argument or evidence to the contrary; the Court finds
21 that Plaintiff’s likely recoverable attorney’s fees in this case (if successful)—when
22 combined with the actual damages at issue—would push Plaintiff’s recovery over
23 \$75,000.

24 25 **3. Civil Penalties**

26 While the damages at issue in this case plus Plaintiff’s potential attorney’s fees
27 exceed \$75,000, Defendant also argues the Court should include the Song-Beverly Act’s
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1 civil penalty provision when calculating the amount in controversy requirement. (*Notice*
2 *of Removal* at ¶ 18.)

3 Cal. Civ. Code section 1794(d) states that “[i]f the buyer establishes that the failure
4 to comply was *willful*, the judgment may include . . . a civil penalty which shall not
5 exceed two times the number of actual damages.” (Emphasis added). There is a split
6 among district courts in the Ninth Circuit about when to include potential Song-Beverly
7 Act civil penalties when calculating the amount in controversy. *E.g.*, *Ferguson v. KIA*
8 *Motors Am. Inc.*, 2021 WL 1997550, at *3 (E.D. Cal. May 19, 2021) (collecting and
9 comparing cases in Southern and Central Districts of California and stating “[d]istrict
10 courts in the Ninth Circuit are split on whether to include Song-Beverly Act civil
11 penalties in calculations to assess the amount in controversy.”) In the past this Court—
12 like many others—has taken the position that civil penalties under the Song-Beverly Act
13 should not count towards the amount in controversy requirement where the complaint
14 merely requests civil penalties in the prayer for relief. *Ronquillo v. BMW of N. Am., LLC*,
15 2020 WL 6741317, at *2 (S.D. Cal. Nov. 17, 2020). Instead, there must actually be
16 allegations of willfulness in the complaint. *E.g.*, *id.* at *3 (“Rather than assuming that
17 because a civil penalty is available, one will be awarded, the defendant must make some
18 effort to justify the assumption by, for example, pointing to allegations in the Complaint .
19 . . .”); *Ferguson*, 2021 WL 1997550, at *4 (holding that the court will only include the
20 Song-Beverly Act’s civil penalties in calculating the amount in controversy where
21 defendant points out where in the complaint “plaintiffs allege willfulness”); *Villegas v.*
22 *Ford Motor Co.*, 2023 WL 3144540, at *10 (E.D. Cal. Apr. 28, 2023), report and
23 recommendation adopted, 2023 WL 4669863 (E.D. Cal. July 20, 2023) (“[w]here a
24 plaintiff properly alleges entitlement to the Act’s civil penalty, which includes allegations
25 of the requisite willfulness by the defendant, up to two times the amount of actual
26 damages is put at issue whether or not that amount is ultimately awarded.”).

27 Here, the Complaint goes beyond merely requesting the Song-Beverly Act’s civil
28 penalties in the prayer for relief. Instead, Plaintiff makes numerous allegations of willful

1 misconduct against Defendant in the body of the Complaint. (*Complaint* at ¶¶ 43 (“The
2 failure of [Defendant] to make the SUBJECT VECHICLE conform to the applicable
3 express warranties was willful”); 44 (“The failure of [Defendant] to replace the
4 SUBJECT VEHICLE or make restitution to PLAINTIFF was willful”); 45 (“The
5 failure of [Defendant] to refund the consideration paid . . . or to replace the SUBJECT
6 VEHICLE . . . was willful”); 69 (“[Defendant] willfully, falsely, and knowingly
7 marketed the subject vehicle as having a range capacity to reach 259-miles on a full
8 charge.”).) If such allegations of willfulness are proven true in this case, the Song-
9 Beverly Act’s civil penalty award of up to twice Plaintiff’s actual damages (~\$38,467.00)
10 would be available—and thus could total as high as \$76,934.00 in civil penalties alone.
11 This would more than exceed the required \$75,000.00.

12 13 **C. Procedural Requirements**

14 Lastly, Plaintiff asserts in its Motion for Remand that “Defendant must
15 demonstrate that all of the requirements of 28 U.S.C. § 1446 are present, including
16 that (1) a notice of removal containing the required allegations was filed within the
17 time allowed, (2) all relevant parties have joined in the removal, and (3) Defendant
18 attached all of the relevant pleadings from the Superior Court to the notice of
19 removal.” (*Motion for Remand* at 11:13-18.) However, Plaintiff does not actually
20 argue that Defendant’s Notice of Removal fails to meet any of these requirements.
21 Thus, the Court does not interpret Plaintiff to be moving to remand on these
22 grounds. Especially where Defendant states that: (1) Defendant was served with
23 the Complaint on July 31, 2023 and then removed on August 22, 2023 (i.e. within
24 the required 30 days) (*Opposition* at ¶ 13:16-18; *see Notice of Removal* at ¶ 3); (2)
25 the only named defendant is the one who filed the Notice of Removal (*see* 28
26 U.S.C. § 1446(b)(1) (“all defendants who have been properly joined and served
27 must join in or consent to the removal of the action”); *Tucker v. Royal Adhesives &*
28 *Sealants, LLC*, 2023 WL 2666056, at *6 (C.D. Cal. Mar. 28, 2023) (citing *Soliman*

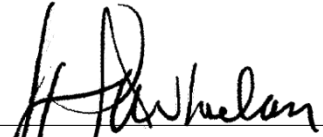
1 v. *Philip Morris Inc.*, 311 F.3d 966, 966 (9th Cir. 2002)) (“[p]er its terms,
2 fictitiously named defendants are not to be considered when assessing the propriety
3 of removal jurisdiction based on diversity.”)); and (3) all the relevant state court
4 pleadings plainly *are* attached to the Notice of Removal (*see generally Notice of*
5 *Removal* at ¶ 4, Exs. A-B).

6
7 **IV. CONCLUSION & ORDER**

8 Because Defendant has sufficiently established that the amount in controversy
9 exceeds \$75,000 and that there is complete diversity between the parties, the Court
10 **DENIES** Plaintiff’s Motion [Doc. 10].

11 **IT IS SO ORDERED.**

12 Dated: November 29, 2023

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14 
15 Hon. Thomas J. Whelan
United States District Judge