

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JESSENIA GONZALEZ DE VIDAL, et
al.,

Plaintiffs,

v.

FORD MOTOR COMPANY, et al.,

Defendants.

Case No. 2:21-cv-07115-FLA (JPRx)

**ORDER DENYING PLAINTIFFS’
MOTION TO REMAND [DKT. 11]**

RULING

Before the court is Plaintiffs Jessenia Gonzales De Vidal and Billy H Vidal’s (collectively, “Plaintiffs”) Motion to Remand (“Motion”). Dkt. 11 (“Mot.”). Defendant Ford Motor Company (“Defendant” or “Ford”) filed an Opposition, and Plaintiffs filed a Reply. Dkts. 15 (“Opp’n”), 16 (“Reply”).

On November 30, 2021, the court found this matter appropriate for resolution without oral argument and vacated the hearing set for December 3, 2021. Dkt. 18; *see* Fed. R. Civ. P. 78(b); Local Rule 7-15. For the reasons stated herein, the court DENIES Plaintiffs’ Motion.

///

1 **BACKGROUND**

2 Plaintiffs filed this action in Los Angeles Superior Court (“LASC”) on July 30,
3 2021. Dkt. 1-1 (“Compl.”). Plaintiffs allege they purchased a 2020 Ford Explorer
4 vehicle on or about April 18, 2020, that was manufactured and/or distributed by
5 Defendant. *Id.* ¶ 6. The Complaint asserts causes of action for breach of express and
6 implied warranties under California’s Song-Beverly Consumer Warranty Act (“Song-
7 Beverly Act”), Cal. Civ. Code §§ 1790-1795. *See generally* Compl. Plaintiff states
8 the “total amount paid and payable, incidental and consequential damages and civil
9 penalties exceeds \$25,000.” *Id.* ¶ 7. Plaintiffs seek actual damages, restitution, a civil
10 penalty in the amount of two times Plaintiffs’ actual damages, consequential and
11 incidental damages, and reasonable attorneys’ fees. *See id.*, Prayer for Relief.

12 On September 2, 2021, Defendant filed a notice of removal, invoking this
13 court’s diversity jurisdiction pursuant to 28 U.S.C. § 1332. *See generally* Dkt. 1
14 (“NOR”). Plaintiffs now move to remand to LASC. *See generally* Mot.

15 **LEGAL STANDARD**

16 A defendant may remove an action from state court to federal court if the
17 plaintiff could have originally filed the action in federal court. *See* 28 U.S.C.
18 § 1441(a). Under 28 U.S.C. § 1332, a district court has original jurisdiction over a
19 civil action where (1) the amount in controversy exceeds the sum or value of \$75,000,
20 exclusive of interest and costs, and (2) the dispute is between “citizens of different
21 States.” “[T]he amount in controversy includes damages (compensatory, punitive, or
22 otherwise), the costs of complying with an injunction, and attorneys’ fees awarded
23 under fee-shifting statutes or contract.” *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899
24 F.3d 785, 793 (9th Cir. 2018).

25 Courts strictly construe the removal statutes, rejecting removal jurisdiction in
26 favor of remand to the state court if any doubts as to the right of removal exist.
27 *Nevada v. Bank of Am. Corp.*, 672 F.3d 661, 667 (9th Cir. 2012). “If at any time
28

1 before final judgment it appears that the district court lacks subject matter jurisdiction,
2 the case shall be remanded.” 28 U.S.C. § 1447(c).

3 DISCUSSION

4 First, Plaintiffs argue the amount in controversy does not meet the necessary
5 threshold of \$75,000, making diversity jurisdiction improper. Mot. at 2. Second,
6 Plaintiffs contend Defendant has failed to establish diversity of citizenship exists
7 between the parties. *Id.*

8 **I. Amount in Controversy**

9 Removability is determined based on the removal notice and the complaint as it
10 existed at the time of removal. *See Miller v. Grgurich*, 763 F.2d 372, 373 (9th Cir.
11 1985). The removing party need only include a “short and plain statement” setting
12 forth “a plausible allegation that the amount in controversy exceeds the jurisdictional
13 threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 83, 89
14 (2014). Where the plaintiff contests the removing defendant’s allegations, however,
15 “both sides submit proof and the court decides, by a preponderance of the evidence,
16 whether the amount-in-controversy requirement has been satisfied.” *Id.* at 82.

17 In circumstances where it is “unclear or ambiguous from the face of a state-
18 court complaint whether the requisite amount in controversy is pled, the removing
19 defendant bears the burden of establishing, by a preponderance of the evidence, that
20 the amount in controversy exceeds the jurisdictional threshold.” *Fritsch*, 899 F.3d at
21 793 (citation omitted). “The amount in controversy is simply an estimate of the total
22 amount in dispute, not a prospective assessment of [the] defendant’s liability.” *Lewis*,
23 627 F.3d at 400. Accordingly, in assessing the amount in controversy, a court must
24 “assume that the allegations of the complaint are true and assume that a jury will
25 return a verdict for the plaintiff on all claims made in the complaint.” *Kenneth*
26 *Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D.
27 Cal. 2002) (cleaned up).

28 ///

1 Here, although Plaintiffs' Complaint alleges only that the amount in
2 controversy exceeds \$25,000 (Compl. ¶ 7), Defendant has met its burden of showing
3 that the jurisdictional minimum is satisfied. The court considers restitution, civil
4 penalty, and attorneys' fees in its determination. *See Ortega v. Toyota Motor Sales,*
5 *USA, Inc.*, 572 F. Supp. 2d 1218, 1221 (S.D. Cal. 2008) ("Damages recoverable under
6 the Song-Beverly Act include restitution, incidental and consequential damages,
7 attorneys' fees and costs, and, if there has been a 'willful' violation of the Act, a civil
8 penalty.")

9 *I. Restitution*

10 Under the Song-Beverly Act, restitution is measured by the "amount equal to
11 the actual price paid or payable [for the vehicle] by the buyer," less the reduction in
12 value to the vehicle "directly attributable to use by the buyer prior to the time the
13 buyer first delivered the vehicle to the manufacturer or distributor ... for correction of
14 the problem that gave rise to the nonconformity." Cal. Civ. Code § 1793.2(d)(2)(B)-
15 (C). The calculation of restitution also excludes "nonmanufacturer items installed by
16 a dealer or the buyer." *Id.*

17 "[T]he actual price paid or payable by the buyer [only] includes any paid
18 finance charges." *Alvarado v. FCA US, LLC*, Case No. 5:17-cv-00505-JGB (DTBx),
19 2017 WL 2495495, at *4 (C.D. Cal. Jun. 8, 2017). Where the record does not show
20 whether a plaintiff has made all installment payments for the amount financed, courts
21 have found the total "cash price" listed on a Retail Installment Sale Contract is a
22 reasonable estimate of "the actual price paid or payable" for the vehicle. *See Luna v.*
23 *FCA US, LLC*, Case No. 4:21-cv-01230-LHK, 2021 WL 4893567, at *7 (N.D. Cal.
24 Oct. 20, 2021); *Messih v. Mercedes-Benz USA, LLC*, Case No. 3:21-cv-03032-WHO,
25 2021 WL 2588977, at *4 (N.D. Cal. June 24, 2021) (collecting cases).

26 To determine the restitution amount, the cash price is then reduced by a
27 "mileage offset" to account for the vehicle's reduction in value attributable to use by
28 the plaintiff prior to the first repair or attempted repair, as required by Cal. Civ. Code

1 § 1793.2(d)(2)(C). *See Messih*, 2021 WL 2588977, at *5. The mileage offset is
2 determined by multiplying the “actual price of the new motor vehicle paid or payable
3 by the buyer ... by a fraction having as its denominator 120,000 and having as its
4 numerator the number of miles traveled by the new motor vehicle prior to the time the
5 buyer delivered the vehicle” for correction of the defect. Cal. Civ. Code
6 § 1793.2(d)(2)(C).

7 Here, at the time of removal, Defendant did not have the underlying purchase
8 agreement for Plaintiffs’ vehicle. Opp’n at 5. Instead, Defendant provided the
9 vehicle’s Manufacturer’s Suggested Retail Price (“MSRP”) of \$34,010 in support of
10 Plaintiffs’ potential actual damages at the time. *Id.*; Dkt. 1-3. In opposing the Motion
11 to Remand, Defendant supplemented its argument and provided the purchase
12 agreement, Retail Installment Sale Contract (“RISC”), reflecting a total purchase price
13 of \$53,138.72. Dkt. 15-1. However, Defendant does not consider, nor does the record
14 show, the number of installment payments Plaintiffs made for the amounts financed.
15 Therefore, for purposes of this Motion, the court will consider the cash price of
16 \$33,250¹ reflected in the RISC (Dkt. 15-1 at 3, ¶1(A)) as a reasonable estimate for the
17 actual price paid. *See Luna*, 2021 WL 4893567, at *7; *Messih*, 2021 WL 2588977, at
18 *4.

19 Further, Defendant has not applied any offset in calculating actual damages.
20 Plaintiffs argue Defendant fails to consider the mileage offset, and such an offset
21 could significantly reduce Plaintiffs’ actual damages.” Mot. at 6. Yet, despite arguing
22

23 ¹ The total cash price as calculated in the RISC does not include the following
24 additional charges Plaintiffs agreed to pay: document processing fee (\$85), sales tax
25 (\$3,166.83), electronic vehicle registration or transfer charge (\$30), optional services
26 contracts (\$1,740 and \$2,954), optional debt cancellation agreement (\$895), license
27 fee (\$216), registration fee (\$228), tire fee (\$8.75), and finance charge (\$10,565.14).
28 *See* Dkt. 15-1 at 2-3. The \$53,138.72 amount Defendant refers to includes the total
cash price, the additional charges as stated, and Plaintiffs’ down payment of \$6,500.
Id.

1 this could significantly reduce the amount in controversy, Plaintiffs are silent as to
2 when, if ever, Plaintiffs first provided the vehicle for repairs, the mileage upon doing
3 so, or how many miles Plaintiffs drove the vehicle. Such information is needed to
4 calculate the offset Plaintiffs seek.

5 Although the court cannot account for a potential use offset, it does not mean
6 Defendant's evidentiary showing of amount in controversy is insufficient. *See*
7 *Schneider v. Ford Motor Co.*, 756 F. App'x 699, 702 (9th Cir. 2018) (Ninth Circuit
8 reversed the district court's decision remanding a case where the defendant's estimate
9 did not account for the use offset). In *Schneider*, the court determined it was
10 reasonable to assume that "the [vehicles] did not lose nearly all of their value after a
11 few years of use" and potential use offset would not reduce actual damages so
12 substantially that it would fall below the jurisdictional minimum. *Id.*

13 2. Civil Penalties

14 The Song-Beverly Act allows a plaintiff to recover a civil penalty of twice the
15 amount of actual damages if the defendant's conduct was "willful." Cal. Civ. Code
16 § 1794(c), (e). Here, Plaintiffs allege Defendant's "failure to comply with its
17 obligations under [the Song-Beverly Act] was willful, in that Defendant and its
18 representative were aware that they were unable to service or repair the Vehicle to
19 conform to the applicable express warranties after a reasonable number of repair
20 attempts, yet Defendant failed and refused to promptly replace the Vehicle or make
21 restitution." Compl. ¶ 23. Thus, according to Plaintiffs, they are "entitled to a civil
22 penalty of two times Plaintiffs' actual damages." *Id.*

23 Courts "have varying views as to whether the maximum civil penalties should
24 be considered when deciding the amount in controversy." *Verastegui v. Ford Motor*
25 *Co.*, Case No. 5:19-cv-04806-BLF, 2020 WL 598516, at *3 (N.D. Cal. Feb. 7, 2020).
26 This court is persuaded that the maximum recoverable civil penalty should be
27 considered for purposes of determining the amount in controversy "because that is
28 what Plaintiff put in controversy." *Cox v. FCA US LLC*, Case No. 3:20-cv-03808-

1 WHO, 2020 WL 5046103, at *2 (N.D. Cal. Aug. 24, 2020); *Saulic v. Symantec Corp.*,
2 Case No. 8:07-cv-00610-AHS (PLAx), 2007 WL 5074883, at *4 (C.D. Cal. Dec. 26,
3 2007) (“Courts as a matter of law, calculate the amount in controversy based upon the
4 maximum amount of civil penalties available to plaintiff.”).

5 Plaintiffs allege Defendant acted willfully and that they are entitled to the
6 maximum civil penalty. Defendant should not be required to put forth evidence of its
7 own willfulness to oppose a motion to remand. *See Canesco v. Ford Motor Co.*, 570
8 F. Supp. 3d 872, 902 (S.D. Cal. 2021) (declining to require the defendant to “prove a
9 case against itself” with respect to liability for civil penalties in the calculation of the
10 amount in controversy); *Rahman v. FCA US LLC*, Case No. 2:21-cv-02584-SB (JCx),
11 2021 WL 2285102, at *2-3 (C.D. Cal. June 4, 2021) (same). Accordingly, the court
12 finds that for jurisdictional purposes, the civil penalty available to Plaintiffs amounts
13 to approximately twice the amount of \$33,250, which equals \$66,500. Adding this
14 figure to Plaintiffs’ actual damages, the amount in controversy, exclusive of attorneys’
15 fees, is \$99,750.

16 3. Attorneys’ Fees

17 Plaintiffs’ Complaint also seeks reasonable attorneys’ fees as authorized by Cal.
18 Civ. Code § 1794(d). *See* Compl., Prayer for Relief. Prospective attorneys’ fees are
19 properly included in the court’s assessment of the amount in controversy. *See Arias v.*
20 *Residence Inn by Marriott*, 936 F.3d 920, 922 (9th Cir. 2019) (“[W]hen a statute or
21 contract provides for the recovery of attorneys’ fees, prospective attorneys’ fees must
22 be included in the assessment of the amount in controversy.”); *Gonzales v. CarMax*
23 *Auto Superstores, LLC*, 840 F.3d 644, 648-49 (9th Cir. 2016) (noting the amount in
24 controversy includes “damages (compensatory, punitive, or otherwise) ... as well as
25 attorneys’ fees awarded under fee shifting statutes”).

26 Here, defense counsel submits a declaration stating she has litigated cases under
27 the Song-Beverly Act for approximately five years, and in her experience with
28 Plaintiffs’ counsel, Consumer Law Experts P.C., she estimates attorneys’ fees to be

1 between \$25,000 to \$40,000 before trial. Opp’n at 15 (Hughes Decl.), ¶ 4. Indeed,
2 Plaintiffs’ counsel, Consumer Law Experts P.C., has sought much more than \$40,000
3 in attorneys’ fees in this district after settlement in actions brought under the Song-
4 Beverly Act. See *Velasco v. Mercedes-Benz USA, LLC*, Case No. 2:18-cv-7880-MWF
5 (SKx), 2021 WL 945259, at *2 (C.D. Cal. Jan. 4, 2021) (seeking \$81,936.50 in fees
6 and \$19,578.90 in costs after settlement); *Servin v. FCA US LLC*, Case No. 5:20-cv-
7 00647-SB (KKx), 2021 WL 4860691, at *1 (C.D. Cal. Aug. 20, 2021) (seeking
8 \$101,995.60 in fees, costs, and expenses settlement).

9 Plaintiffs, on the other hand, argue this estimate of attorneys’ fees is speculative
10 and without justification. Reply at 12-13. The court, however, has no difficulty
11 finding Defendant has shown it is more likely than not that Plaintiffs’ demand for
12 attorneys’ fees is sufficient to push the amount in controversy well over the
13 jurisdictional threshold, to the extent it was not already met between actual damages
14 and civil penalty.

15 **II. Diversity of Citizenship**

16 The Supreme Court held “diversity jurisdiction does not exist unless each
17 defendant is a citizen of a different State from each plaintiff.” *Owen Equip. &*
18 *Erection Co. v. Kroger*, 437 U.S. 365, 373 (1978). “Individuals are citizens of their
19 state of domicile.” *Muñoz v. Small Bus. Admin.*, 644 F.2d 1361, 1365 (1981); *Kanter*
20 *v. Warner-Lambert Co.*, 265 F.3d 853, 857 (2001) (“A person’s domicile is her
21 permanent home, where she resides with the intention to remain or to which she
22 intends to return”). A corporation is a “citizen” of both the state in which it was
23 incorporated and the state where it has its principal place of business. See 28 U.S.C. §
24 1332(c). Further, “a removing defendant’s notice of removal ‘need not contain
25 evidentiary submissions’ but only plausible allegations of the jurisdictional
26 elements.” *Arias*, 936 F.3d at 922 (quoting *Ibarra v. Manheim Invs., Inc.*, 775 F.3d
27 1193, 1197 (9th Cir. 2015)).

28 ///

1 Courts in this district have held a party may rely on an address listed in a
2 purchase agreement to meet its burden of establishing an individual’s citizenship.
3 *Ghebrendrias v. FCA US LLC*, Case No. 2:21-cv-06492-VAP (PDx), 2021 WL
4 5003352, at *3 (C.D. Cal. Oct. 28, 2021) (Finding citizenship where purchase
5 agreement and repair order listed a California address, and plaintiffs did not deny they
6 were citizens of California); *El-Said v. BMW of N. Am., LLC*, Case No. 8:19-cv-
7 02426-JLS (JDEx), 2020 WL 1187171, at *3 (C.D. Cal. Mar. 11, 2020) (Finding
8 citizenship where purchase agreement listed a California address and plaintiff did not
9 deny he was a citizen of California).

10 Here, Plaintiffs argue Defendant has failed to establish Plaintiffs are domiciled
11 in California. Mot. at 4, 9-10. Plaintiffs’ argument is unavailing. In the Notice of
12 Removal, Defendant alleges “[u]pon information and belief, at the time this action
13 was commenced, Plaintiffs Jessenia Gonzalez De Vidal and Billy H Vidal were
14 residents of California.” NOR at 4. Defendant argues this was based on knowledge at
15 the time that Plaintiffs had purchased or leased the vehicle in California, had the
16 vehicle serviced in California, and filed this action in California with a California
17 attorney. Opp’n at 9-10.

18 Moreover, in opposing the Motion to Remand, Defendant submitted the RISC
19 along with Accurant reports on Plaintiffs dated October 15, 2021, a CarFax report on
20 the vehicle, vehicle repair records, and vehicle registration through April 20, 2022.
21 Dkts. 15-1, 15-2, 15-3, 15-4, 15-5, 15-6. First, the RISC indicates Plaintiffs purchased
22 the vehicle in California and provided a California residence at the time of sale. Dkt.
23 15-1. This alone supports a finding of California citizenship. *See El-Said*, 2020 WL
24 1187171, at *3; *Ghebrendrias*, 2021 WL 5003352, at *3. Likewise, the Accurant
25 reports list only California addresses for Plaintiffs, and the vehicle was last registered
26 to a California address. Dkts. 15-1, 15-2, 15-6. Further, the CarFax report and repair
27 records show the vehicle has only been serviced in California. Dkts. 15-4, 15-5.

1 Notably, Plaintiffs fail to state their citizenship and at no point contend they are *not*
2 citizens of California.

3 Accordingly, Plaintiffs appear to be citizens of California. Plaintiffs do not
4 dispute Defendant is a citizen of Michigan and Delaware. The court is satisfied
5 Defendant has shown complete diversity of citizenship exists.

6 **CONCLUSION**

7 The court finds Defendant has shown by a preponderance of the evidence that
8 the amount in controversy exceeds \$75,000, and the parties are of diverse citizenship.
9 Jurisdiction is proper under 28 U.S.C. § 1332. For the foregoing reasons, the court
10 DENIES Plaintiffs’ Motion to Remand (Dkt. 11).

11
12 IT IS SO ORDERED.

13
14 Dated: November 21, 2022



15
16 FERNANDO L. AENLLE-ROCHA
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28