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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SIAMAK ALIYARZADEH,

Plaintiff,

v.

FCA US LLC et al.,

Defendants.

Case No. 2:21-cv-08039-MCS-PVC

**ORDER GRANTING MOTION TO
REMAND (ECF NO. 21)**

Plaintiff Siamak Aliyarzadeh moves to remand this case to the Los Angeles County Superior Court. (Mot., ECF No. 21-2.) Defendant FCA US LLC opposes the motion. (Opp'n, ECF No. 24.) The Court deems the motion appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15.

I. BACKGROUND

This is a case brought under the Song-Beverly Consumer Warranty Act ("SBA"). Aliyarzadeh bought a 2016 Jeep Wrangler in March 2016. This vehicle exhibited defects. FCA was unable to timely rectify the defects and refused to repurchase the vehicle or provide restitution. The Complaint seeks actual damages, restitution, rescission of the purchase contract, a civil penalty, consequential and incidental damages, punitive damages, reasonable attorneys' fees and costs, and other relief the

1 Court may deem proper. Aliyarzadeh alleges damages “not less than \$25,001.00.” (*See*
2 *generally* Compl., ECF No. 1-1.)

3 Aliyarzadeh initiated this proceeding in the Los Angeles County Superior Court,
4 No. 21STCV22939, naming as defendants FCA and the dealership from which
5 Aliyarzadeh bought the vehicle. Asserting diversity jurisdiction, FCA removed the case
6 after Aliyarzadeh dismissed the dealership, a nondiverse party. (Notice of Removal,
7 ECF No. 1.)

8 **II. LEGAL STANDARDS**

9 **A. Subject-Matter Jurisdiction**

10 Federal courts are of limited jurisdiction, having subject-matter jurisdiction only
11 over matters authorized by the Constitution and Congress. *Kokkonen v. Guardian Life*
12 *Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A defendant may remove a civil action in
13 state court to federal court if the federal court has original jurisdiction. 28 U.S.C.
14 § 1441(a). Federal courts have original jurisdiction where an action arises under federal
15 law or where each plaintiff’s citizenship is diverse from each defendant’s citizenship
16 and the amount in controversy exceeds \$75,000. *Id.* §§ 1331, 1332(a).

17 There is a “strong presumption” against removal jurisdiction, and the removing
18 party bears the burden of proving that removal is proper. *Gaus v. Miles, Inc.*, 980 F.2d
19 564, 566 (9th Cir. 1992). “Federal jurisdiction must be rejected if there is any doubt as
20 to the right of removal in the first instance.” *Id.*

21 **B. Amount in Controversy**

22 To invoke diversity jurisdiction, a party must demonstrate there is complete
23 diversity of citizenship between the parties and that the amount in controversy exceeds
24 the sum or value of \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a).
25 “[W]here it is unclear or ambiguous from the face of a state-court complaint whether
26 the requisite amount in controversy is pled,” the removing defendant must establish by
27 a preponderance of the evidence that the amount in controversy “more likely than not”
28 exceeds \$75,000. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir.

1 2007); *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

2 **III. DISCUSSION**

3 The parties dispute whether the amount in controversy exceeds the jurisdictional
4 threshold. The amount in controversy is not clear from the face of the Complaint:
5 Aliyarzadeh expressly pleads for damages “not less than \$25,001.00,” but the prayer
6 for relief does not indicate whether the total amount sought exceeds \$75,000. (Compl.
7 ¶ 10, Prayer for Relief.) *Cf. Schneider v. Ford Motor Co.*, 441 F. Supp. 3d 909, 913
8 (N.D. Cal. 2020) (“[T]he Complaint alleges that Plaintiff suffered damages in a sum to
9 be proven at trial in an amount that is *not less than* \$25,001.00. Hence, while Plaintiff
10 seeks restitution for the value of the car, civil penalties, and attorneys’ fees and costs, it
11 is unclear whether all these damages are subsumed within the request for \$25,001.”
12 (internal quotation marks and citation omitted)). Thus, FCA must show that the amount
13 in controversy more likely than not exceeds \$75,000.

14 **A. Actual Damages**

15 Actual damages under the SBA are “equal to the actual price paid or payable by
16 the buyer,” minus the reduction in value “directly attributable to use by the buyer.” Cal.
17 Civ. Code § 1793.2(d)(2)(B)–(C). The reduction is based on miles driven before the
18 first attempted repair of the defect. *Id.*

19 FCA submits the contract price less the offset for use is \$51,245.71. (Opp’n 15.)
20 FCA fails to meet its burden to show this calculation is appropriate. FCA calculates the
21 offset based on the mileage reading from Aliyarzadeh’s January 23, 2018 visit to the
22 dealership to remedy an issue with the vehicle. (Proudfoot Decl. Ex. 4, at 27–30, ECF
23 No. 24-1.) But Aliyarzadeh initiated multiple repair requests over several years. (*See*
24 Compl. ¶¶ 14–17; *see generally* Proudfoot Decl. Ex. 4.) FCA does not adduce evidence
25 showing why the mileage offset should be calculated based on the January 23, 2018
26 visit instead of a prior or subsequent visit to fix other complained-of defects. If based
27 on a later visit, the mileage offset would significantly diminish the measure of actual
28 damages. (*See, e.g.*, Proudfoot Decl. Ex. 4, at 36–38 (indicating Aliyarzadeh sought

1 repair of the vehicle when the odometer read 15,431 miles); *accord* Compl. ¶ 17.) FCA
2 fails to show by a preponderance of the evidence that a mileage offset based on the
3 January 23, 2018 repair visit provides the proper measure of actual damages. At best,
4 FCA’s calculation of actual damages is speculative and self-serving.

5 **B. Civil Penalties**

6 Aliyarzadeh may be entitled to a civil penalty no greater than twice the amount
7 of actual damages only if FCA’s violations were willful. Cal. Civ. Code § 1794(c).
8 However, in the jurisdictional analysis, “[t]he civil penalty . . . cannot simply be
9 assumed”; instead, “the defendant must make some effort to justify the assumption.”
10 *D’Amico*, 2020 U.S. Dist. LEXIS 90921, at *8 (internal quotation marks omitted)
11 (collecting cases). Courts do not include civil penalties in the jurisdictional analysis
12 “unless the removing defendant makes some showing regarding the possibility of civil
13 damages.” *Savall v. FCA US LLC*, No. 21cv195 JM (KSC), 2021 U.S. Dist. LEXIS
14 81477, at *7–8 (S.D. Cal. Apr. 28, 2021) (collecting cases).

15 The Complaint alleges Aliyarzadeh is entitled to a civil penalty. (Compl. ¶¶ 121,
16 128, 131, 135.) In support of its argument that the maximum civil penalty should factor
17 into the amount in controversy, FCA points to Aliyarzadeh’s allegations of willful
18 conduct in support of his fraudulent inducement claim. (Opp’n 18.) But those
19 allegations pertain to FCA’s purported fraudulent concealment of a known defect—not
20 its willful failure to comply with its obligations under the SBA. (*See* Compl. ¶¶ 142–
21 48.) In any event, FCA presents no evidence that a civil penalty is likely to be awarded
22 in this case, let alone evidence justifying the maximum penalty. *See, e.g., Savall*, 2021
23 U.S. Dist. LEXIS 81477, at *8 (“Other than referring to Plaintiff’s allegation that FCA
24 acted willfully, however, FCA provides no support for the likelihood that a civil penalty
25 based on its willfulness would actually be awarded in this case, or that the full civil
26 penalty would be awarded. . . . If such boilerplate allegations [in a complaint] were
27 sufficient to defeat remand, then virtually any [SBA] action involving a new vehicle
28 purchase would remain in federal court.”); *Chajon v. Ford Motor Co.*, No. 2:18-cv-

1 10533-RGK (RAOx), 2019 U.S. Dist. LEXIS 4254, at *3–4 (C.D. Cal. Jan. 8, 2019)
2 (“As to civil penalties, while authorized under the Song-Beverly Act, Defendants have
3 not offered any evidence to support such an award.”).

4 Even if FCA could support its argument for a civil penalty with evidence, because
5 FCA fails to establish actual damages beyond speculation, FCA fails to show the proper
6 measure of the civil penalty. *See Edwards v. Ford Motor Co.*, No. CV 16-05852 BRO
7 (PLAx), 2016 U.S. Dist. LEXIS 153618, at *14 (C.D. Cal. Nov. 4, 2016) (“Defendant
8 failed to establish the amount of actual damages at issue, which is necessary to
9 determine the total civil penalty.”); *cf. D’Amico*, 2020 U.S. Dist. LEXIS 90921, at *9
10 (“[T]here is no basis for concluding that the amount payable under the lease even
11 roughly approximates Plaintiff’s actual damages. There is equally little basis for
12 concluding that a civil penalty of double that amount would be awarded.”).

13 C. Fees

14 “Section 1332(a)’s amount-in-controversy requirement excludes only ‘interest
15 and costs’ and therefore includes attorneys’ fees.” *Guglielmino*, 506 F.3d at 700; *Fritsch*
16 *v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 794 (9th Cir. 2018) (“[A] court must
17 include future attorneys’ fees recoverable by statute or contract when assessing whether
18 the amount-in-controversy requirement is met.”).

19 FCA argues Aliyarzadeh’s request for fees should be considered in the
20 calculation for the jurisdictional minimum. FCA cites several cases in which “Plaintiff’s
21 attorneys in Song Beverly cases tried or prepared for trial regularly request more than
22 \$65,000.” (Opp’n 18–19.) Neither FCA nor its counsel provides an explanation
23 substantiating why this case will generate fees in that amount. FCA “provides no
24 explanation for why this case is similar to ones that went to trial.” *D’Amico*, 2020 U.S.
25 Dist. LEXIS 90921, at *10–11; *accord Schneider*, 441 F. Supp. 3d at 914 (“All that
26 Defendants claim is that the same counsel appears in each case and that the subject-
27 matter of the cases are the same. They do not, however, compare or contrast the
28 litigation strategies or the litigation timelines of the two cases.” (citation omitted)). Even

1 if fees recovered or sought in prior cases present competent evidence of counsel’s rates,
2 they do not provide probative evidence of the hours that might reasonably be expended
3 in this case. *Cf. Schneider*, 441 F. Supp. 3d at 914 (finding burden unmet where
4 “Defendants fail to provide the Court with specific evidence showing the attorneys’ fees
5 *in this case* are ‘more likely than not’” to bring the amount in controversy above the
6 jurisdictional threshold); *D’Amico*, 2020 U.S. Dist. LEXIS 90921, at *11 (finding
7 burden unmet where defendant failed to “provide an estimate of the hours that will be
8 incurred”).

9 **D. Summary**

10 The amount in controversy is not clear from the face of the Complaint. FCA fails
11 to present nonspeculative evidence that the amount in controversy exceeds \$75,000.
12 Accordingly, FCA has not shown the Court has subject-matter jurisdiction over the
13 case. Remand is appropriate. 28 U.S.C. § 1447(c).

14 **IV. CONCLUSION**

15 The Court grants the motion. The case is remanded to the Los Angeles County
16 Superior Court, No. 21STCV22939. The Court directs the Clerk to effect the remand
17 and close the case.

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19 **IT IS SO ORDERED.**

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21 Dated: February 18, 2022



22 MARK C. SCARSI
23 UNITED STATES DISTRICT JUDGE
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