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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 MARK SELINGER

12 Plaintiff,

13 v.

14 FORD MOTOR COMPANY, and DOES
15 1 through 10, inclusive,

16 Defendants.
17

Case No. 2:22-CV-08883-SPG-KS

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND CASE TO
LOS ANGELES SUPERIOR COURT
[ECF Nos. 12, 13]**

18
19 Before the Court is Plaintiff Mark Selinger's ("Plaintiff") motion to remand case to
20 Los Angeles County Superior Court ("Motion"). (ECF No. 12 ("Mot.")). Having
21 considered the parties' submissions, the relevant law, the record in this case, and the
22 hearing on the Motion, the Court DENIES the Motion.

23 **I. BACKGROUND**

24 **A. Factual Background**

25 The complaint alleges as follows: Plaintiff is a resident of California. (ECF No. 1-
26 3 ¶ 1 ("Compl.")). Ford Motor Company ("Defendant") is incorporated in Delaware and
27 "has designated a principal place of business within California" (*Id.* ¶ 2). On or
28 about January 4, 2019, Plaintiff purchased a 2019 Ford Fusion, VIN

1 3FA6POHD3KR148844 (“Subject Vehicle”) from Defendant’s authorized retailer in
2 California. (*Id.* ¶ 4). The Subject Vehicle was manufactured and distributed by Defendant
3 and equipped with Defendant’s 1.5L EcoBoost engine. (*Id.* ¶ 5). Defendant gave Plaintiff
4 an express written warranty wherein Defendant undertook to preserve or maintain the
5 utility or performance of the Subject Vehicle or provide compensation if there was a failure
6 in utility or performance. (*Id.* ¶ 6). The warranty provided that if the Subject Vehicle were
7 to malfunction due to a defect, then Plaintiff could present the Subject Vehicle to
8 Defendant’s authorized repair facility(ies) during the warranty period for repairs of such
9 defect. (*Id.*).

10 During the warranty period, the Subject Vehicle contained and/or developed
11 defect(s) which manifested in symptoms including but not strictly limited to, engine
12 overheating; loss of coolant; coolant leaks; activation of diagnostic trouble codes (“DTCs”)
13 P0300, P0301-P0304, P0316, P0217, P1285 and/or P1299; coolant intrusion into the
14 engine cylinders; rough running; excessive smoking from the exhaust; lack of power;
15 sensation that the vehicle was struggling to accelerate; and failure of turbocharger. (*Id.* ¶
16 7). Plaintiff presented the Subject Vehicle for repairs to Defendant’s authorized repair
17 facility(ies). (*Id.* ¶ 8). However, Defendant, through its authorized repair facility(ies), was
18 unable to repair the Subject Vehicle within a reasonable number of opportunities. (*Id.*).

19 The complaint then alleges that, “[t]hrough its communications with its authorized
20 repair facilities and other information available to it (including [Defendant’s] numerous
21 service bulletins and recall campaigns, internal communications, and investigations into
22 the nature of the same defects in 2019 Ford Fusion vehicles equipped with the 1.5L
23 EcoBoost engine, warranty claims submitted to it, communications from its authorized
24 repair facilities, communication from its consumer, etc.), [Defendant] knew or should have
25 known that it was required to provide restitution (i.e., a repurchase) or replace the [Subject
26 Vehicle]. Notwithstanding such knowledge, [Defendant] willfully refused to do so.” (*Id.*
27 ¶ 9).

1 **B. Procedural History**

2 1. Complaint

3 On July 29, 2022, Plaintiff filed a complaint against Defendant in Los Angeles
4 County Superior Court. (Compl.). The complaint asserts four causes of action, all of which
5 are under state law: (1) Breach of Warranty Obligation to Provide Restitution or
6 Replacement, Cal. Civ. Code § 1793.2(d)(2), (*id.* ¶¶ 10-21); (2) Breach of Obligation to
7 Commence or Complete Repairs Within Thirty (30) Days, Cal. Civ. Code § 1793.2(b), (*id.*
8 ¶¶ 22-28); (3) Breach of Implied Warranty of Merchantability, Cal. Civ. Code § 1792, (*id.*
9 ¶¶ 29-33); and (4) Fraudulent Inducement–Concealment, (*id.* ¶¶ 34-60).

10 For its first cause of action, the complaint asserts that “Plaintiff is entitled to
11 damages, including restitution or replacement, for [Defendant’s] failure to comply with its
12 obligations under the Song-Beverly Consumer Warranty Act.” (*Id.* ¶ 18). The complaint
13 further alleges as to both the first and second causes of action that Defendant acted willfully
14 when it refused to comply with its obligations under the Song-Beverly Consumer Warranty
15 Act, and therefore under Cal. Civ. Code § 1794(c) “Plaintiff is entitled to civil penalty
16 damages of up to two times the amount of actual damages.” (*Id.* ¶¶ 20, 28).

17 For its third cause of action, the complaint asserts that Plaintiff “is entitled to[]
18 justifiably revoke acceptance of the [Subject Vehicle]. Accordingly, Plaintiff seeks
19 remedies provided in Cal. Civ. Code 1794(b), including recovery of the entire contract
20 price. Alternatively, Plaintiff seeks the diminution in value of the [Subject Vehicle]
21 resulting from the defect(s).” (*Id.* ¶ 33).

22 Finally, for its fourth cause of action, the complaint asserts that “[a]s a result of
23 [Defendant’s] fraudulent misconduct, Plaintiff has suffered and will continue to suffer
24 actual damages. Such damages include rescission of the contract, restitution of all payments
25 towards the purchase of the [Subject Vehicle], out of pocket expenses, diminution in value,
26 in addition to noneconomic damages (i.e., emotional distress).” (*Id.* ¶ 59).

27 The complaint’s prayer for relief requests the following in recovery: (1) “Plaintiff’s
28 actual economic damages (including the right of restitution, incidental damages, and

1 consequential damages, as outlined in Cal. Civ. Code 1793.2(d)(2) & 1794(b)) in an
2 amount according to proof”; (2) noneconomic damages; (3) “civil penalty damages of no
3 more than two times Plaintiff’s actual damages, as per Cal. Civ. Code 1794(c) or (e)”;

4 punitive damages; (5) “costs and expenses, including Plaintiff’s attorney’s fees, pursuant
5 to Cal. Civ. Code § 1794(d) and Cal. Code Civ. Proc. § 1032 & 1033.5”; (6) prejudgment
6 interest at the legal relief; and (7) “such other relief as the Court may deem proper.” (*Id.*
7 at 14). Notwithstanding these requests, the complaint does not state an amount-in-
8 controversy.

9 2. Defendant’s Notice of Removal

10 On December 7, 2022, Defendant removed the action to this Court based on diversity
11 jurisdiction. (ECF No. 1 (“Removal”)). In the Notice of Removal, Defendant explains that
12 “[a]t the outset of this litigation, the amount in controversy could not be ascertained on the
13 face of the Complaint.” (*Id.* ¶ 2). Defendant then states:

14
15 On October 5, 2022, [Defendant] served Requests for Production on Plaintiff,
16 which asked Plaintiff to provide any and all documents that refer or relate to
17 Plaintiff’s purchase of the Subject Vehicle. *See* [(ECF No. 1-6)]. On
18 November 7, 2022, Plaintiff served documents in response to [Defendant’s
19 Requests for Production including a copy of the sales contract which indicated
20 that the total purchase price was “\$33,526.80.” [(ECF No. 1-9)]. Further in
21 his Prayer for Relief, Plaintiff states that he seeks “restitution,” “civil penalty
22 damages of no more than two times Plaintiff’s actual damages,” and “punitive
damages.” [(ECF No. 1-3 at 12)]. Consequently, the total amount of damages
Plaintiff seeks exceed \$75,000 ($\$33,526.80 + (\$33,526.80 \times 2$ [Song Beverly
Act civil penalty]) $+ \$33,526.80 \times 9$ [punitive damages]) = \$402,321.60).

23 (*Id.* ¶ 12). The Notice of Removal also asserts that “[a] mileage offset calculation does not
24 need to be accounted for” in determining whether the amount-in-controversy requirement
25 was met, *see (id.* ¶¶ 13-14), and that Defendant “anticipates that past and future attorney’s
26 fees will total at least \$50,000” were Plaintiff to succeed in his action. *See (id.* ¶ 15).
27 Finally, to argue that complete diversity exists, the Notice of Removal asserts that
28 Defendant “is, and was at the time Plaintiff commenced this action, a corporation organized

1 under the laws of the State of Delaware with its principal place of business in Michigan.”
2 (*Id.* ¶ 17). The Notice of Removal includes a declaration by Defendant’s counsel, along
3 with eight different exhibits labelled A through H. (ECF Nos. 1-1; 1-2; 1-3; 1-4; 1-5; 1-6;
4 1-7; 1-8; 1-9).

5 3. Plaintiff’s Motion to Remand

6 On December 20, 2022, Plaintiff filed the instant Motion, supported by a declaration
7 of Plaintiff’s counsel and exhibits. (Mot.); (ECF Nos. 12-1; 12-2). The Motion argues that
8 remand is appropriate because Defendant’s removal was not filed within 30 days of service
9 of the pleadings and, therefore, is untimely under 28 U.S.C. § 1446(b)(1). *See (id.* at 5–6).
10 The motion also argues that Defendant has not sufficiently established the amount-in-
11 controversy requirement for a number of reasons. (*Id.* at 7–12). On January 6, 2023,
12 Plaintiff filed a supplemental memorandum, which argued that Defendant also failed to
13 account for a manufacturer’s rebate and negative equity in its amount-in-controversy
14 calculations. *See* (ECF No. 13 (“Supp.”)). On January 25, 2023, Defendant filed an
15 opposition to the Motion, along with a declaration from Defendant’s counsel and exhibits.
16 (ECF Nos. 19 (“Opp.”); 19-1; 19-2; 19-3). Plaintiff filed a reply to Defendant’s opposition
17 on January 27, 2023. (ECF No. 20 (“Reply”)).

18 **II. LEGAL STANDARD**

19 “Federal courts are courts of limited jurisdiction. They possess only that power
20 authorized by Constitution and statute. . . . It is to be presumed that a cause lies outside
21 this limited jurisdiction . . . and the burden of establishing the contrary rests upon the party
22 asserting jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377
23 (1994) (internal citations omitted). A suit filed in a state court may be removed to federal
24 court if the federal court would have had original jurisdiction over the suit. 28 U.S.C. §
25 1441(a). Federal courts have original jurisdiction where an action presents a federal
26 question under 28 U.S.C. § 1331, or diversity of citizenship under 28 U.S.C. § 1332. Thus,
27 a defendant may remove a case from state court to federal court pursuant to the federal
28 removal statute, 28 U.S.C. § 1441, based on either federal question or diversity jurisdiction.

1 Courts have diversity jurisdiction over cases where there is complete diversity of
2 parties and the amount “in controversy exceeds the sum or value of \$75,000, exclusive of
3 interest and costs. . . .” 28 U.S.C. § 1332(a). A defendant may remove an action to federal
4 court based on diversity jurisdiction “provided that no defendant ‘is a citizen of the State
5 in which such action is brought.’” *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996)
6 (quoting 28 U.S.C. § 1441(b)). An individual is a citizen of the state where he or she is
7 domiciled. This means the state where the person resides with the intent to remain or the
8 place to which he or she intends to return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853,
9 857 (9th Cir. 2001). “[A] corporation . . . [is] . . . deemed . . . a citizen of any state by
10 which it has been incorporated and of the state where it has its principal place of business.”
11 28 U.S.C. § 1332(c). A corporation’s “principal place of business” refers to “the place
12 where a corporation’s officers direct, control, and coordinate the corporation’s activities.”
13 *Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010). This is commonly known as the “nerve
14 center.” *Id.* at 92–93. “[I]n practice it should normally be the place where the corporation
15 maintains its headquarters.” *Id.*

16 The removal statute is strictly construed against removal jurisdiction. *See Shamrock*
17 *Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941). There is a “strong presumption”
18 against removal jurisdiction, and “[f]ederal jurisdiction must be rejected if there is any
19 doubt as to the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564,
20 566 (9th Cir.1992) (citation omitted). “The ‘strong presumption’ against removal
21 jurisdiction means that the defendant always has the burden of establishing that removal is
22 proper.” *Gaus*, 980 F.2d at 566 (citation omitted).

23 **III. DISCUSSION**

24 **A. Removal is Timely**

25 Plaintiff’s Motion first argues that remand is appropriate because Defendant’s
26 removal is untimely under 28 U.S.C. § 1446(b)(1). *See* (Mot. at 5–6). Citing *Harris v.*
27 *Bankers Life & Cas. Co.*, 425 F.3d 689, 693 (9th Cir. 2005), Defendant responds that its
28 notice of removal is timely because the 30-day deadline only began to run when a pleading

1 in the case revealed that the amount-in-controversy requirement was established. *See*
2 (Opp. at 12). The Court agrees that Defendant’s notice of removal is timely.

3 A plaintiff may file a motion to remand the case to state court within 30 days after
4 filing of the notice of removal for “any defect other than the lack of subject matter
5 jurisdiction.” 28 U.S.C. § 1447(c). Untimely removal is a procedural defect that may
6 defeat removal if properly raised by the party seeking remand. *See Smith v. Mylan Inc.*,
7 761 F.3d 1042, 1045 (9th Cir. 2014). The time period to file a notice of removal is
8 governed by 28 U.S.C. § 1446(b). Under section 1446(b), a defendant must remove an
9 action within thirty days if the case stated by the initial pleading is “removable on its face.”
10 *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 885 (9th Cir. 2010) (internal
11 quotations and citation omitted). However, where, as here, the basis for removal is not
12 apparent from the face of the complaint, “a notice of removal may be filed within [30] days
13 after receipt by the defendant, through service or otherwise, of a copy of an amended
14 pleading, motion, order or other paper from which it may first be ascertained that the case
15 is one which is or has become removable.” 28 U.S.C. § 1446(b)(3).

16 Defendant argues that Plaintiff’s responses to Defendant’s Requests for Production
17 on November 7, 2022, which included a document entitled “Retail Installment Sale
18 Contract – Simple Finance Charge” (“RISC”) that revealed the Total Sale Price for the
19 vehicle of \$33,526.80,¹ were the first to reveal that the amount-in-controversy exceeded
20 \$75,000 and therefore, the clock began to run on that date. (Opp. at 12). Plaintiff does not
21 dispute the substance of the RISC; rather, Plaintiff argues:

22 [W]hile [Defendant] may claim that it needed to serve discovery and obtain
23 the responses to ascertain the amount in controversy and whether the action
24 was removable, such is not the case. Indeed, in this action, [Defendant’s]
25 October 24, 2022 response to Plaintiff’s Requests for Production (as served in
26 the state court action) noted that [Defendant would produce the [RISC] for
27 [Plaintiff’s] vehicle. . . . And [Defendant’s] document production also
included a copy of the sales contract for [Plaintiff’s] vehicle as well. Such

28 ¹ The RISC defines “Total Sale Price” as: “The total cost of your purchase on credit,
including your down payment of \$1,800.” (ECF No. 1-9 at 2).

1 responses and agreement demonstrates [sic] that [Defendant] had access to the
2 very document it relied upon to remove the instant action. As such, it was
3 clear that [Defendant] had access to (and possibly had actual knowledge of)
4 the cost of the [S]ubject [V]ehicle for purposes to removing this matter as
5 early as October 24, 2022 (if not sooner) when it agreed to produce the sales
6 contract. Accordingly, the December 7, 2022[,] removal is well past the 30
7 day deadline for removal.

8 (Mot. at 6).

9 However, Defendant's *subjective* knowledge is irrelevant to determining when the
10 30-day clock begins. In *Harris*, the Ninth Circuit, quoting the Fourth Circuit, expressly
11 rejected "subjective knowledge as a test for notice" when it explained:

12 We will not require courts to inquire into the subjective knowledge of the
13 defendant, an inquiry that could degenerate into a mini-trial regarding who
14 knew what and when. Rather, we will allow the court to rely on the face of
15 the initial pleadings and on the documents exchanged in the case by the parties
16 to determine when the defendant had notice of the grounds for removal,
17 requiring that those grounds be apparent within the four corners of the initial
18 pleadings or subsequent paper.

19 425 F.3d at 695 (quoting *Lovdorn v. GMC*, 121 F.3d 160, 162 (4th Cir. 1997)). *Harris*
20 therefore held that the 30-day clock begins to run "if [the case] is rendered removable by
21 virtue of a change in the parties or other circumstances *revealed in a newly-filed 'paper.'*"
22 *Id.* at 694 (emphasis added). The term "other paper" generally includes any document in
23 the record of the state court proceedings or discovery responses. 28 U.S.C. §
24 1446(c)(3)(A); *see also De Paredes v. Walmart, Inc.*, 2:20-cv-08297-RGK-AFM, 2020
25 WL 6799074, at *2 (C.D. Cal. Nov. 17, 2020) (citation omitted). Thus, assuming the RISC
26 sufficiently establishes the requisite amount-in-controversy requirement (which, for the
27 following reasons, the Court finds that it does), the Court concludes that Defendant's
28 Notice of Removal is timely because the 30-day clock began to run on November 7, 2022,
and the Notice of Removal was filed on December 7, 2022.

1 **B. The Court Has Diversity Jurisdiction**

2 A plaintiff who contests the existence of removal jurisdiction may move to remand
3 by raising either a “facial” or “factual” attack on the defendant’s jurisdictional allegations.
4 *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). A facial attack accepts the
5 allegations as true, but asserts they are “insufficient on their face to invoke federal
6 jurisdiction.” *Id.* at 1121 (quoting *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039
7 (9th Cir. 2004)). A factual attack, by contrast, contests the truth of the allegations
8 themselves, either by introducing evidence outside the pleadings or “by making a reasoned
9 argument as to why any assumptions on which [the allegations] are based are not supported
10 by evidence.” *Harris v. KM Indus., Inc.*, 980 F.3d 694, 700 (9th Cir. 2020) (citations
11 omitted). Once a plaintiff mounts a factual attack, the defendant has the burden of proving,
12 by a preponderance of the evidence, the basis for removal jurisdiction. *See id.* at 700–01
13 (“[W]hen given the opportunity to present evidence, following [plaintiff’s] motion to
14 remand, [defendant] had the burden of supporting its jurisdictional allegations with
15 competent proof.” (internal quotation marks omitted)). “Both parties may submit evidence
16 supporting the basis for jurisdiction before the district court rules.” *Id.* at 699. The “burden
17 of persuasion for establishing diversity jurisdiction . . . remains on the party asserting it.”
18 *Hertz*, 559 U.S. at 96 (citations omitted). Thus, “[w]hen challenged on allegations of
19 jurisdictional facts, the parties must support their allegations by competent proof.” *Id.* at
20 96–97 (citations omitted).

21 1. Complete Diversity

22 The complaint alleges that Defendant is incorporated in Delaware and “has
23 designated a principal place of business within California” (Compl. ¶ 2). To dispute
24 this assertion, Defendant relies on the declaration of its own counsel, which states that Ford
25 is “incorporated in the state of Delaware, and the state of Michigan serves as its principal
26 place of business.” (ECF No. 1-1 ¶ 4). Attached to counsel’s declaration as one of its
27 exhibits is Defendant’s 10-K filing for the fiscal year ending December 31, 2020. (ECF
28

1 No. 1-2). This 10-K filing also indicates that Defendant’s “principal executive offices” are
2 in Dearborn, Michigan.² (*Id.*).

3 In response, Plaintiff does not challenge the existence of complete diversity. Nor
4 does Plaintiff dispute Defendant’s assertion or evidence demonstrating complete diversity
5 in either Plaintiff’s Motion or reply to the opposition. Thus, based on the evidence in the
6 record, the Court finds complete diversity to be established. *See Dalton v. FCA US LLC*,
7 8:20-cv-00694-JLS-DFM, 2020 WL 3868389, at *1 (C.D. Cal. July 9, 2020) (“As to
8 diversity of citizenship, ‘when a defendant’s allegations of citizenship are unchallenged,
9 nothing more is required.’” (quoting *Ehrman v. Cox Commc’ns, Inc.*, 932 F.3d 1223, 1228
10 (9th Cir. 2019)).

11 2. Amount-in-Controversy

12 Diversity jurisdiction also requires that “the matter in controversy exceeds the sum
13 or value of \$75,000, exclusive of interest and costs.” 28 U.S.C. § 1332(a). However,
14 where, as here, a plaintiff’s state court complaint does not specify a particular amount of
15 damages, and a plaintiff launches a factual attack as to the Defendant’s Notice of Removal
16 on this point, the removing party bears the burden of establishing, by a preponderance of
17 the evidence, that the matter in controversy exceeds the threshold at the time of removal.
18 *See Canela v. Costco Wholesale Corp.*, 971 F.3d 845, 849 (9th Cir. 2020) (citing *Sanchez*
19 *v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996)); *Ibarra v. Manheim Invs.*,
20 *Inc.*, 775 F.3d 1193, 1198 (9th Cir. 2015) (“[W]hen the defendant’s assertion of the amount
21 in controversy is challenged by plaintiffs in a motion to remand, the Supreme Court has
22 said that both sides submit proof and the court then decides where the preponderance lies.”
23

24 ² The Court notes that the Supreme Court has rejected the suggestion that “the mere filing
25 of a form like the Securities and Exchange Commissions’ Form 10-K listing a corporation’s
26 ‘principal executive offices’ would, without more, be sufficient proof to establish a
27 corporation’s ‘nerve center.’” *Hertz*, 559 U.S. at 97. “Such possibilities would readily
28 permit jurisdictional manipulation, thereby subverting a major reason for the insertion of
the ‘principal place of business’ language in the diversity statute.” (*Id.*). Instead, courts
consider as the “nerve center” the place of actual direction, control, and coordination. *Id.*

1 (citing *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 88-89 (2014));
2 *see also Anderson v. Starbucks Corp.*, 556 F. Supp. 3d 1132, 1136 (N.D. Cal. 2020) (“They
3 make a factual attack on Starbucks’ estimates of the amount in controversy by contesting
4 its evidence and reasoning, and without introducing extrinsic evidence of their own.”).
5 “Under this burden, the defendant must provide evidence establishing that it is ‘more likely
6 than not’ that the amount in controversy exceeds that amount.” *Sanchez*, 102 F.3d at 404
7 (citations omitted). “The amount in controversy is simply an estimate of the total amount
8 in dispute, not a prospective assessment of [a] defendant's liability.” *Arias v. Residence*
9 *Inn*, 936 F.3d 920, 927 (9th Cir. 2019) (quoting *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d
10 395, 400 (9th Cir. 2010)) (internal quotations omitted). When assessing the amount in
11 controversy, a court “may consider [the] allegations in the complaint and in the notice of
12 removal, as well as [relevant] summary-judgment-type evidence.” *Chavez v. JP Morgan*
13 *Chase & Co.*, 888 F. 3d 413, 416 (9th Cir. 2018). Additionally, a party’s allegations in its
14 opposition to a motion to remand are considered amendments to its notice of removal.
15 *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 n.1 (9th Cir. 2002).

16 Plaintiff raises four arguments in support of remanding the case for not meeting the
17 amount-in-controversy requirement: (1) any restitution sought would be deducted using a
18 “mileage offset” under the statute, and because Defendant fails to take this deduction into
19 account for its amount-in-controversy calculations, Defendant’s calculations are overly
20 speculative for purposes of this Motion, (Mot. at 7–8); (2) because civil penalty damages
21 under the Song-Beverly Consumer Warranty Act “*may* be awarded . . . if the buyer
22 establishes that the manufacturer willfully failed to comply with its obligations,” Defendant
23 was obligated to show why said damages should be assessed in order to be included in its
24 amount-in-controversy estimate, *see (id. at 8–11)*; (3) Defendant’s reliance on speculative
25 attorney’s fees, costs and expenses do not support its burden of proof, (*id. at 11–12*); and
26 (4) Defendant’s amount-in-controversy is also flawed because it does not consider either
27
28

1 the manufacturer’s rebate or negative equity.³ (Supp. at 3). As discussed below, the Court
2 disagrees with each of Plaintiff’s arguments.

3
4 *a. Mileage Offset*

5 Defendant argues that the Court “need not” calculate a mileage offset in this case
6 because Plaintiff seeks “recovery of the entire recovery price,” not the contract price minus
7 a mileage offset. (Opp. at 16–17). And even if a mileage offset is calculated, the amount-
8 in-controversy is still met. (*Id.* at 17–18). The Court agrees.

9 Plaintiff seeks damages pursuant to California Civil Code § 1793.2(d)(2). (Compl.
10 ¶ 18). California Civil Code 1793.2(d)(2) provides that, if a vehicle manufacturer is unable
11 to “conform [the vehicle] to the applicable express warranties after a reasonable number of
12 attempts,” the manufacturer must either “promptly replace the new motor vehicle” or
13 “promptly make restitution to the buyer in accordance with subparagraph (B).” California
14 Civil Code 1793.2(d)(2)(B) states:

15 In the case of restitution, the manufacturer shall make restitution in an amount
16 equal to the actual price paid or payable by the buyer, including any charges
17 for transportation and manufacturer-installed options, but excluding
18 nonmanufacturer items installed by a dealer or the buyer, and including any
19 collateral charges such as sales or use tax, license fees, registration fees, and
20 other official fees, plus any incidental damages to which the buyer is entitled
under Section 1794, including, but not limited to, reasonable repair, towing,
and rental car costs actually incurred by the buyer.

21 However, California Civil Code § 1793.2(d)(2)(C) further states: “[w]hen restitution is
22 made pursuant to subparagraph (B), the amount to be paid by the manufacturer to the buyer

23
24 ³ Plaintiff also argues Defendant has not sufficiently established the amount-in-controversy
25 requirement, in part, because Defendant did not include “summary judgment-type
26 evidence” in the Notice of Removal. (Mot. at 7). Defendant argues that “Plaintiff misstates
27 the law in arguing that [Defendant’s] Notice of Removal must prove that the amount in
28 controversy is satisfied with summary judgment type evidence.” (*Id.* at 13). Citing *Arias*,
936 F.3d at 920, Defendant asserts that it was “only required to offer proof of the amount
in controversy after Plaintiff has made an evidentiary challenge – with proof – that the
amount in controversy is actually under \$75,000.” (*Id.*). The Court agrees with Defendant.

1 *may* be reduced by the manufacturer by that amount directly attributable to use by the buyer
2 prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or
3 its authorized service and repair facility for correction of the problem that gave rise to the
4 nonconformity.” Commonly referred to as the “mileage offset,” this deduction “is
5 determined by multiplying the ‘actual price of the new motor vehicle paid or payable by
6 the buyer . . . by a fraction having as its denominator 120,000 and having its numerator the
7 number of miles traveled by the new motor vehicle prior to the time the buyer delivered
8 the vehicle’ for correction of the problem.” *Messih v. Mercedes-Benz USA, LLC*, Case No.
9 21-cv-03032-WHO, 2021 WL 2588977, at *5 (N.D. Cal. June 24, 2021) (quoting Cal. Civ.
10 Code § 1793.2(d)(2)(C)) (emphasis added).

11 The parties dispute whether a plaintiff is obligated to present evidence regarding this
12 mileage offset to show, by a preponderance of the evidence, that the amount in controversy
13 requirement is met. The Ninth Circuit has not addressed this precise question. However,
14 Courts in this Circuit have taken several different approaches to address this issue. First,
15 courts have looked to the plaintiff’s complaint to determine whether it requests “the entire
16 contract price,” as opposed to the contract price minus deductions. If the complaint has
17 not included deductions, courts have held the defendant did not need to present evidence
18 regarding this mileage offset for purposes of the amount-in-controversy requirement. *See,*
19 *e.g., Baumanns v. FCA US LLC*, No. 3:21-cv-1054-JLS-MSB, 2021 WL 5564497, at *5
20 (S.D. Cal. Nov. 29, 2021) (rejecting plaintiff’s argument that “it is insufficient to merely
21 point to [p]laintiff’s purchase price in ascertaining actual damages” because “Plaintiff
22 claims in his Complaint that ‘he seeks the remedies provided in California Civil Code
23 1794(b)(1), including the entire contract price.” (internal quotations omitted)); *Cruz v.*
24 *Mercedes-Benz USA, LLC*, No. 5:21-cv-00809-JGB-SHK, 2021 WL 2634819, at *2 (C.D.
25 Cal. June 25, 2021) (“Plaintiff is incorrect that Defendant has not sufficiently demonstrated
26 the amount in controversy because Defendant has not shown how many miles Plaintiff
27 drove before Plaintiff’s car broke down Plaintiff’s assertion on the face of the
28 Complaint that he is entitled to recover the entire value of his lease leads to a reasonable

1 inference on the part of Defendant that Plaintiff did not drive any miles before the car broke
2 down.”); *Gupta v. Mercedes-Benz USA, LLC*, No. CV 20-9295-GW-JEMX, 2020 WL
3 7423111, at *3 (C.D. Cal. Dec. 10, 2020) (including the entire purchase price in
4 determining amount in controversy and denying motion to remand when Plaintiff claimed
5 entitlement to recover “the entire price of subject vehicle”).

6 As a second approach, other courts have held that the mileage offset, along with
7 other vehicle-value reductions, are simply “not appropriate” for consideration for
8 determining the amount-in-controversy. *See, e.g., Tucker v. FCA US LLC*, No. 2:21-cv-
9 02908-GW-MAA, 2021 WL 3733243, at *3 (C.D. Cal. Aug. 23, 2021); *Wickstrum v. FCA*
10 *USA LLC*, No. 3:20-cv-00336-L-JLB, 2021 WL 532257, at *2 (S.D. Cal. Feb. 12, 2021);
11 *Pristave v. Ford Motor Co.*, No. CV 20-04892-AB (Ex), 2020 WL 4883878, at *3 (C.D.
12 Cal. Aug. 20, 2020).

13 Still other courts have held that a plaintiff should present evidence regarding the
14 mileage offset when arguing the requisite amount-in-controversy. *See, e.g., Bourland v.*
15 *Ford Motor Company*, Case No. 5:19-cv-08456-EJD, 2020 WL 5797915, at *4 (N.D. Cal.
16 Sept. 29, 2020) (“Defendants argue that this offset is irrelevant to the amount in
17 controversy, but cite no authority in support of their position. . . . Defendants are mistaken;
18 a mileage offset is both relevant and important to the calculation of amount in controversy.”
19 (citations omitted)); *Cox v. Kia Motors America, Inc.*, Case No. 20-cv-02380-BLF, WL
20 5814518, at *3 (N.D. Cal. Sept. 30, 2020) (“This statutory offset, referred to by some courts
21 as the “mileage offset,” properly is considered when determining the amount in controversy
22 for jurisdictional purposes.” (citation omitted)); *Hernandez v. FCA US, LLC*, CV 20-1058-
23 RSWL-MAA, 2020 WL 3497399, at *3 (C.D. Cal. June 29, 2020) (“Here, Defendant
24 neglected to take into account the mileage offset when alleging that the amount in
25 controversy exceeds the jurisdictional minimum. Accordingly, Defendant has failed to
26 prove actual damages by a preponderance of the evidence.” (citations omitted)); *Mulin v.*
27 *FCA US, LLC*, CV 20-2061-RSWL-PJW, 2020 WL 2509081, at *3 (C.D. Cal. May 14,
28 2020) (“Because Defendants neglected to take the mileage offset into account, they failed

1 to meet their burden of showing Plaintiff's actual damages based on the purchase price of
2 the vehicle.”).

3 Based on other Ninth Circuit caselaw discussing the amount in controversy
4 requirement, this Court agrees with the courts that have held a removing defendant is not
5 obligated to present evidence regarding the mileage offset to establish the amount-in-
6 controversy requirement for claims arising under the Song Beverly Act. “[T]he amount in
7 controversy is not a prospective assessment of [a] defendant’s liability. . . . Rather, it is the
8 amount at stake in the underlying litigation . . . whatever the likelihood” of success on the
9 merits. *Chavez*, 888 F.3d at 417 (internal quotations and citations omitted). “In that sense,
10 the amount in controversy reflects the *maximum* recovery the plaintiff could reasonably
11 recover,” and it is assessed at the time of removal. *Arias*, 936 F.3d at 927 (citing *Chavez*,
12 888 F.3d at 417) (emphasis in original). The amount-in-controversy should include “any
13 result of the litigation, excluding interests and costs, that entails a payment by the
14 defendant,” including “damages (compensatory, punitive, or otherwise), the costs of
15 complying with an injunction, and attorneys’ fees. . . .” *Fritsch v. Swift Transportation*
16 *Co. of Ariz., LLC*, 899 F.3d 785, 793 (9th Cir. 2018) (citations and internal quotations
17 omitted).

18 Of course, “an estimate of the amount in controversy must be reduced if ‘a specific
19 rule of law or measure of damages limits the amount of damages recoverable.” *Schneider*
20 *v. Ford Motor Co.*, 756 Fed. Appx. 699, 701 n.3 (9th Cir. 2018) (quoting *Morris v. Hotel*
21 *Riviera, Inc.*, 704 F.2d 1113, 1115 (9th Cir. 1983)). However, the “amount in controversy
22 represents only the ‘amount at stake in the underlying litigation,’ not the likely liability.”
23 *Greene v. Harley-Davidson, Inc.*, 965 F.3d 767, 774 (9th Cir. 2020) (citing *Gonzales v.*
24 *CarMax Auto Superstores, LLC*, 840 F.3d 644, 648 (9th Cir. 2016). Thus, “the ‘strength
25 of any defenses indicates the likelihood of the plaintiff prevailing; it is irrelevant to
26 determining the amount that is at stake in the litigation.” *Id.* (citing *Arias*, 936 F.3d at 928);
27 *In Re: Ford Motor Co. DPS6 Powershift Transmission Products Liab. Litig.*, No. 2:18-
28 ML-02814-AB-PVC, 2018 WL 5905942, at *4 (C.D. Cal. Sept. 10, 2018) (“But again, the

1 amount in controversy is established by what the plaintiff demands, not by any reductions
2 that a defendant might achieve through its defenses.” (citation omitted)). After all, “if a
3 district court had to evaluate every possible defense that could reduce recovery below the
4 jurisdictional amount[] the district court would essentially have to decide the merits of the
5 case before it could determine if it had subject matter jurisdiction.” *Geographic*
6 *Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka*, 599 F.3d 1102, 1108 (9th Cir. 2010).

7 Further, unlike statutory caps on damages, which are applied by obligation, the
8 mileage offset defense mentioned in section 1793.2 is not automatically applied in cases
9 arising under the Song-Beverly Act. Instead, section 1793.2 explicitly states that “when
10 restitution is made . . . the manufacturer . . . may [reduce the amount] . . . directly
11 attributable to [the prior] use.” *See also Niedermeier v. FCA US LLC*, 56 Cal. App. 5th
12 1052, 1064 (2020) (“the Act *permits* a manufacturer to reduce the restitution.” (emphasis
13 added)). In other words, if Defendant fails to affirmatively (and successfully) raise the
14 mileage offset defense at trial, then it would have to reimburse Plaintiff the entire purchase
15 price, without consideration of the Subject Vehicle’s mileage/use. *See Wickstrum*, 2021
16 WL 532257, at *2. However, here, consideration of the mileage offset at this stage is not
17 necessary because – to determine whether the amount-in-controversy requirement is
18 established – the Court is only concerned with the “maximum recovery” that Plaintiff can
19 reasonably recover in this action. *Arias*, 936 F.3d at 927. It is not concerned with a
20 potential defense which may or may not be raised by Defendant at a later stage of the
21 proceedings. The Court also finds that because the complaint seeks remedies provided in
22 California Civil Code section 1794(b)(1), “including recovery of the entire contract price,”
23 Plaintiff has effectively put the “entire contract price” of \$33,526.80⁴ in controversy for
24

25 ⁴ “Under the Song–Beverly Act, the actual price paid or payable by the buyer [only]
26 includes any paid finance charges.” *Alvarado v. FCA US, LLC*, No. EDCV 17-505 JGB
27 (DTBx), 2017 WL 2495495, at *4 (C.D. Cal. Jun. 8, 2017). Because the record does not
28 show whether Plaintiff has made all the installment payments, the Court cannot determine
whether Plaintiff has paid all the finance charges that are included in the total sale price of
the Vehicle. As such, for this Motion, the Court will use the total cash price of \$33,526.80

1 purposes of determining what the maximum amount-in-controversy is. (Compl. ¶ 33); *see*,
2 *e.g.*, *Baumanns*, 2021 WL 5564497, at *5 (S.D. Cal. Nov. 29, 2021); *Cruz*, 2021 WL
3 2634819, at *2; *Gupta*, 2020 WL 7423111, at *3.

4
5 *b. Civil Penalty Damages*

6 Plaintiff argues remand is appropriate because Defendant’s estimate of the amount
7 in controversy is speculative, given that it simply relies on the fact that the Complaint seeks
8 civil penalty damages under the Song-Beverly Act. (*Id.* at 8–11). Specifically, Plaintiff
9 argues that, although the Song-Beverly Act does permit up to two times the amount of
10 actual damages as a civil penalty, Defendant has “failed to (and will be unable to) provide
11 any evidence of whether (and how much) civil penalties are likely to be awarded,” thus
12 they should not be included. (Mot. at 11). Defendant responds that because the complaint
13 seeks civil penalty damages and alleges Ford acted willfully, civil penalties under the Song-
14 Beverly Act are “at stake” and should be included. (Opp. at 19). The Court agrees with
15 Defendant.

16 Under California Civil Code 1794(c), the buyer of a defective consumer good may
17 receive a civil penalty “not [to] exceed two times the amount of actual damages” if the
18 buyer establishes that the failure to comply was “willful.” Like the mileage offset, courts
19 also differ on whether the maximum civil penalty should be considered when assessing the
20 amount-in-controversy requirement. *See Verastegui v. Ford Motor Co.*, No. 19 CV-04806-
21 BLF, 2020 WL 598516, at *3 (N.D. Cal. Feb. 7, 2020) (“[C]ourts in this district have
22 varying views as to whether the maximum civil penalties should be considered when
23 deciding the amount in controversy.” (citations omitted)).

24
25 _____
26 listed in the RISC as the measure of actual damages to decide the actual price. *See* (ECF
27 No. 1-9); *see, e.g., Messih*, 2021 WL 2588977, at *4 (noting that district courts “have found
28 total cash price appropriate in calculating actual damages sought under the Song-Beverly
Act.” (citations omitted)).

1 However, this Court concludes that civil penalties should be considered. As already
2 discussed, in determining the amount-in-controversy, court are to consider the “maximum
3 recovery the plaintiff could reasonably recover.” *Arias*, 936 F.3d at 927. For this reason,
4 multiple courts have held that these civil penalties are properly considered when
5 determining whether the amount in controversy requirement is met. *See, e.g., Verastegui*,
6 2020 WL 598516, at *3 (recognizing split in authority regarding whether maximum civil
7 penalty should be considered as part of the amount in controversy and stating that “the
8 Court is persuaded by the decisions in which courts have considered the maximum
9 recoverable civil penalties because that is what Plaintiff put in controversy”); *Jimenez v.*
10 *Ford Motor Co.*, 3:21-cv-04967-VC, 2021 WL 5149865, at *1 (N.D. Cal. Nov. 5, 2021);
11 *Canesco v. Ford Motor Co.*, 570 F. Supp. 3d 872, 902 (S.D. Cal. Nov. 4 2021); *Treauhaf*
12 *v. Mercedes-Benz USA, LLC*, No. 2:20-cv-11155-SVW-GJS, 2021 WL 2864877, at *2
13 (C.D. Cal. July 16, 2021); *Rahman v. FCA US LLC*, Case No. 2:21-cv-02584-SB (JCx),
14 2021 WL 2285102, at *2-3 (C.D. Cal. June 4, 2021).

15 Here, the complaint alleges Defendant’s conduct to be willful for purposes of
16 assessing civil penalty damages. (Comp. ¶¶ 9, 20, 28, 60). In particular, the complaint
17 alleges that Defendant willfully violated the Song-Beverly Act in multiple ways, including
18 by refusing to comply with its obligations to: (1) promptly offer restitution or replacement
19 for the vehicle; and (2) commence service and repair within a reasonable time or to
20 complete such service or repairs within thirty days. (Compl. ¶¶ 17, 24). Plaintiff also
21 alleges that these violations entitle him to “civil penalty damages of no more than two times
22 Plaintiff’s amount of actual damages” pursuant to California Civil Code §§ 1794(c) or (e).
23 (*Id.* ¶¶ 20, 28). Thus, by alleging willfulness and requesting the maximum of civil
24 penalties, Plaintiff has put the maximum amount of civil penalties in controversy, and that
25 amount should therefore be included.

26 Moreover, Plaintiff’s argument that Defendant must provide evidence that civil
27 penalties will be awarded to include such penalties in the amount in controversy calculation
28 would lead to the untenable result of Defendant having to prove up its own liability for

1 civil penalties to demonstrate the amount in controversy. Multiple courts have rejected
2 Plaintiff’s argument for that very reason. *Canesco*, 2021 WL 5122231, at *20 (siding with
3 “the majority of courts and more recent cases” that “find civil penalties appropriate for
4 inclusion in the calculation of the amount in controversy without the defendant needing to
5 ‘prove a case against itself’ with respect to liability for civil penalties”); *Treauhaf*, 2021
6 WL 2864877, at *2 (holding civil penalty claim of twice actual damages requires including
7 that amount regardless of whether defendant presented evidence); *Rahman*, 2021 WL
8 2285102, at *2-3 (“Defendant is not required to prove the case against itself”).

9 Therefore, the Court finds that Defendant has shown, by a preponderance of the
10 evidence, that a civil penalty of up to two-times the vehicle price can be considered in
11 determining whether the amount-in-controversy requirement has been met. Combined
12 with actual damages of \$33,526.80, the addition of \$67,053.60 readily meets the amount-
13 in-controversy for purposes of this Motion.

14
15 *c. Punitive Damages*

16 Similarly, the Court finds that Defendant has shown by a preponderance of the
17 evidence that punitive damages should be included in the amount-in-controversy. While
18 the amount in controversy exceeds \$75,000 without punitive damages, such damages are
19 properly considered for purposes of this Motion. *See Fritsch*, 899 F.3d at 793 (amount-in-
20 controversy includes “any result of the litigation, excluding interests and costs, that entails
21 a payment by the defendant,” including “damages (compensatory, punitive, or otherwise)
22 . . .”).

23 Under California law, punitive damages may be awarded “where it is proven by clear
24 and convincing evidence that the defendant has been guilty of oppression, fraud, or
25 malice.” Cal. Civ. Code § 3294(a). “Indeed, California law is settled that punitive damages
26 are recoverable for fraudulent concealment and fraud in the inducement causes of action.”
27 *Luzaiich Striping v. Am. Asphalt S.*, CASE NO: 37-2020-00009193-CU-BC-NC, 2022 Cal.
28 Super. LEXIS 818, at *4 (Jan. 14, 2022) (citing *Nissan Motor Acceptance Cases*, 63 Cal.

1 App. 5th 793, 829 (2021)); *Alliance Mortgage Co.*, 10 Cal. 4th 1226, 1241 (1995)). To
2 determine punitive damages, “[the] party asserting federal diversity jurisdiction may
3 introduce evidence of jury verdicts in cases involving analogous facts.” *In re Volkswagen*
4 *“Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. 3:15-md-02672-CRB, 2019
5 WL 693234, at *5 (N.D. Cal. Feb. 19, 2019) (quoting *Surber v. Reliance Nat. Indem. Co.*,
6 110 F. Supp. 2d 1227, 1232 (N.D. Cal. 2000)).

7 Plaintiff’s complaint requests punitive damages for its fraudulent inducement–
8 concealment claim, alleging Defendant’s conduct “in refusing to disclose the Cooling
9 System Defect was malicious, willful, reckless in its disregard of the potential harm to
10 consumers, and reprehensible.” (Compl. ¶ 60). In opposition to the Motion, Defendant
11 cites *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Product Liability*
12 *Litigation* for the proposition that punitive damages of at least \$50,000 is a reasonable
13 estimate for present purposes. (Opp. at 26–27 (citing 2019 WL 693234, at *7)). Plaintiff
14 does not dispute this figure in its reply. *See* (Reply). Thus, for purposes of this Motion,
15 the Court finds that \$50,000 is a reasonable estimate of punitive damages in this action.
16 *See Arias*, 936 F.3d at 927 (“the amount in controversy reflects the maximum recovery the
17 plaintiff could reasonably recover”).

18
19 d. *Attorney’s Fees*

20 Plaintiff argues the Court should grant the Motion because, in asserting the amount
21 in controversy exceeds \$75,000, Defendant failed to provide any evidence of a reasonable
22 estimate of attorney’s fees, costs, or expenses likely to be incurred in this matter. (Mot. at
23 11–12). As Defendant points out, Plaintiff does not dispute he is seeking attorney’s fees
24 or that they should be included in the amount-in-controversy calculation, only that no
25 reasonable estimate was provided by Defendant. (Opp. at 23–25). The Court disagrees
26 with Plaintiff.

27 In the Ninth Circuit, courts can consider attorneys’ fees awarded under fee-shifting
28 statutes when assessing the amount in controversy. *Gonzales*, 840 F.3d at 649. But a

1 removing defendant must “prove that the amount in controversy (including attorneys’ fees)
2 exceeds the jurisdictional threshold by a preponderance of the evidence,” and must “make
3 this showing with summary-judgment-type evidence.” *Fritsch*, 899 F.3d at 795 (citation
4 omitted). “A district court may reject the defendant’s attempts to include future attorneys’
5 fees in the amount in controversy if the defendant fails to satisfy this burden of proof.” *Id.*
6 To determine whether a defendant has satisfied this burden, courts have considered whether
7 the proposed fees match those awarded in similarly situated cases, along with the history
8 of fees requested by the plaintiff’s counsel. *See, e.g., Fontana v. Volkswagen Grp. of Am.,*
9 *Inc.*, Case No. 2:22-cv-03148-ODW(AGR_x), 2022 WL 3335650, at *3 (C.D. Cal. Aug. 12,
10 2022) (“While a defendant may meet its burden . . . by identifying awards in other cases,
11 those cases must be similar enough to the case at hand that the court can conclude that it is
12 more likely than not that the plaintiff may incur a similar fee award.” (quoting *Kaplan v.*
13 *BMW of N. Am., LLC*, No. 21-CV-857 TWR (AGS), 2021 WL 4352340, at *6 (S.D. Cal.
14 Sept. 24, 2021)); *Coronel v. Ford Motors Co.*, No. CV1909841DSFJEM, 2020 WL
15 550690, at *6 (C.D. Cal. Feb. 4, 2020) (“The Court believes, based on its experience and
16 the declared experience of Mr. May, that Defendants have proven by preponderance of the
17 evidence that attorney’s fees will exceed \$50,000. This conclusion is further supported by
18 recent fee awards in other cases involving Plaintiff’s counsel’s law firm asserting claims
19 against car manufacturers under the Song-Beverly Act.” (citing cases)). “In estimating
20 future attorney’s fees, district courts may likewise rely on ‘their own knowledge of
21 customary rates and their experience concerning reasonable and proper fees.’” *Id.* at 795
22 (quoting *Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011)).

23 The complaint requests attorney’s fees pursuant to California Civil Code 1794(d),
24 along with California Civil Code Procedure 1032 and 1033.5. (Compl. at 14). Under
25 California Civil Code 1794(d), a buyer of a defective consumer good is allowed to recover,
26 as a part of the judgment, “a sum equal to the aggregate amount of costs and expenses,
27 including attorney’s fees based on actual time expended” In its Notice of Removal,
28 Defendant states that it “anticipates that past and future attorney’s fees will total at least

1 \$50,000. (Removal ¶ 15). However, the Notice of Removal lacks any evidence to support
2 this point. Thus, in his Motion, Plaintiff argues that Defendant has failed to provide “any
3 evidence of a reasonable estimate [of] attorney’s fees, costs or expenses likely to be
4 incurred in this matter.” (Mot. at 11).

5 In response, Defendant attaches to the opposition a declaration from its counsel. *See*
6 (ECF No. 19-1). In this declaration, Defendant’s counsel declares: “I anticipate that past
7 and future attorney’s fees will total at least \$50,000” on this case, based on the fact that
8 Plaintiff’s counsel has, to date: (1) conducted a pre-filing investigation; (2) filed a 60-
9 paragraph complaint alleging four different causes of action, including a fraud claim, in
10 state court (paying a \$450 filing fee that is recoverable); (3) propounded and received
11 responses to a complete set of written discovery in state court; (4) received and drafted
12 responses to Defendant’s written discovery requests in state court; (5) participated in a
13 conference of counsel pursuant to Federal Rule of Civil Procedure 26(f) and drafted the
14 Joint Report; and (6) filed the instant Motion, along with a reply brief. *Id.* ¶ 5. Defendant’s
15 counsel estimates that Plaintiff’s counsel’s hourly rate is “at least \$400 and likely much
16 higher” because, in 2020, Plaintiff’s counsel was an associate at a separate firm making
17 \$385, (*id.* ¶ 8), and now, Plaintiff’s counsel is lead partner at his own firm, and his rate
18 “has presumably increased substantially.” (*Id.*). Thus, given the activity in this case to
19 date and future anticipated activity, Defendant’s counsel estimates that attorney’s fees for
20 Plaintiff are likely to exceed \$50,000, representing “only 125 hours of work on the case”
21 at a rate of \$400 per hour. (*Id.*).

22 Defendant also cites to multiple cases arising under the Song-Beverly Act, showing
23 \$50,000 in attorney’s fees is, on average, commonly viewed as a reasonable estimate in
24 cases dealing with a plaintiff-purchaser suing a car manufacturer after their vehicle became
25 defective during the warranty period, and the defendant failed to make sufficient repairs.
26 *See* (Opp. at 25); *Coronel*, 2020 WL 550690, at *6 (“The Court believes, based on its
27 experience and the declared experience of Mr. May, that Defendants have proven by
28 preponderance of the evidence that attorney’s fees will exceed \$50,000.”); *Rahman*, 2021

1 WL 2285102, at *3 (finding award of \$40,000 to be reasonable); *see also Becker v. Ford*
2 *Motor Co. (In re Ford Motor Co. DPS6 Powershift Transmission Prods. Liab. Litig.)*, 2018
3 U.S. Dist. LEXIS 232980, at *18 (C.D. Cal. Sept. 10, 2018) (“Ford’s declaration that the
4 KLG Firm routinely seeks attorneys’ fees of more than \$100,000 in cases alleging the same
5 claims against Ford is sufficient to establish that this amount is in issue.”). Finally,
6 Defendant cites other cases arising under the Song-Beverly Act, showing that attorney’s
7 fees commonly *exceed* \$50,000 at trial. *See* (Opp. at 25–26); *Zomordian v. BMW of N.*
8 *Am., LLC*, No. 2:17-cv-05061-DMG-PLA, 2019 WL 6534513, at *10 (C.D. Cal. July 23,
9 2019) (awarding \$213,447.50 in attorneys’ fees); *Forouzan v. BMW of N. Am., LLC*, No.
10 2:17-cv-03875-DMG-GJS, 2019 WL 856395, at *9 (C.D. Cal. Jan. 11, 2019) (awarding
11 \$215,560.50 in attorneys’ fees); *Fuller v. FCA US LLC*, No. B286224, 2019 WL 2763114,
12 at *1 (C.D. Ct. App. July 2, 2019) (affirming attorney’s fee award of \$327,782.75).

13 In its reply, Plaintiff fails to address why the cases Defendant cites are factually
14 distinguishable from the present one. *See* (Reply at 7-10). Thus, because the Court finds
15 the cases cited by Defendant sufficiently similar to serve as a proxy for attorney’s fees in
16 this case, the Court also finds that Defendant has shown, by a preponderance of the
17 evidence, that an award of attorney’s fees of \$50,000 is a reasonable estimate for purposes
18 of determining the amount-in-controversy. *See, e.g., Fontana*, 2022 WL 3335650, at *3.

19
20 *e. Rebate or Negative Equity*

21 Finally, in its supplemental memorandum, Plaintiff argues that remand is appropriate
22 because Defendant “also . . . remain[s] notably silent on whether it would be seeking to
23 deduct the \$2,000 (listed on the [RISC] as a ‘Manufacturer’s Rebate’) from [Plaintiff’s
24 recovery,” (Supp. at 3), and whether Defendant would claim “a further deduction for the
25 negative equity—of \$5,200.000 (listed on the [RISC] as ‘Total Net Trade-in (Indicate if
26 negative number)’)—which was rolled into the financing for the Subject Vehicle.” Of
27 course, even if the Court were to assume the validity of these arguments, a deduction of
28 \$7,200.00 would not cause the amount-in-controversy to slip below the \$75,000.01

1 threshold for purposes of this Motion. Nevertheless, the Court concludes that these
2 arguments also fail as a matter of law.


3 As previously discussed, the “amount in controversy is established by what the
4 plaintiff demands, not by any reductions that a defendant might achieve through its
5 defenses.” *In Re: Ford Motor Co. DPS6 Powershift Transmission Products Liab. Litig.*,
6 2018 WL 5905942, at *4; *Becker*, 2018 U.S. Dist. LEXIS 232980, at *17. For this reason,
7 multiple courts have held that the amount-in-controversy should neither be reduced by a
8 manufacturer’s rebate nor negative equity. *See, e.g., Carillo*, 2021 WL 2711138, at *4
9 (refusing to reduce actual damages by manufacturer’s rebate and noting that courts
10 “routinely calculate the amount of restitution a plaintiff may be entitled to recover under
11 the Song-Beverly Act without applying any reduction for manufacturers’ rebates” and
12 collecting cases reaching the same conclusion); *Becker*, 2018 U.S. Dist. LEXIS 232980, at
13 *17-18. Thus, the Court finds that Defendant did not err when it did not account for the
14 manufacturer’s rebate or negative equity when calculating the amount-in-controversy.

15 Therefore, the Court concludes that Defendant has shown, through a preponderance
16 of the evidence, that the amount-in-controversy requirement is satisfied. With both
17 requirements for diversity jurisdiction shown, the Court finds remand inappropriate.

18 **IV. CONCLUSION**

19 For the foregoing reasons, Plaintiff’s Motion is DENIED.

20
21 Dated: April 5, 2023


HON. SHERILYN PEACE GARNETT
UNITED STATES DISTRICT JUDGE