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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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11 JANETTE OCEGUEDA, *et al.*,
12 Plaintiffs,
13 v.
14 AMERICAN HONDA MOTOR CO.,
15 *et al.*,
16 Defendants.
17

Case No. 2:23-cv-10870-FLA (SKx)

**ORDER REMANDING ACTION
FOR LACK OF SUBJECT MATTER
JURISDICTION [DKT. 15]**

18
19 **RULING**

20 On November 21, 2023, Plaintiffs Janette Ocegueda and Juan A. Ocegueda Jr.
21 (“Plaintiffs”) initiated this action against Defendant American Honda Motor
22 Company, Inc. (“Defendant”) in the Los Angeles County Superior Court. Dkt. 1-1 at
23 10–20 (“Compl.”). Plaintiffs assert claims for violations of the California Song-
24 Beverly Consumer Warranty Act (the “Song-Beverly Act”), Cal. Civ. Code § 1790, *et*
25 *seq.*, and the Magnusson-Moss Warranty—Federal Trade Commission Improvement
26 Act (the “Magnusson-Moss Act”), 15 U.S.C. § 2301, *et seq.* *Id.* ¶¶ 25–56.

27 On December 28, 2023, Defendant removed the action to this court, alleging the
28 existence of federal question jurisdiction based on Plaintiffs’ Magnusson-Moss Act

1 claim. Dkt. 1 (“NOR”). On April 2, 2024, the court ordered the parties to show cause
2 (“OSC”) why the action should not be remanded for lack of subject matter jurisdiction
3 due to an insufficient amount in controversy. Dkt. 15. Plaintiffs and Defendant filed
4 responses on April 16, 2024. Dkt. 20 (“Pls. Resp.”); Dkt. 21 (“Def. Resp.”).

5 Having reviewed and considered Defendant’s Notice of Removal and the
6 parties’ responses to the OSC, the court finds Defendant fails to establish federal
7 question jurisdiction and REMANDS the action to the Los Angeles County Superior
8 Court.

9 DISCUSSION

10 **I. Legal Standard**

11 Federal courts are courts of “limited jurisdiction,” possessing only “power
12 authorized by the Constitution and statute[.]” *Kokkonen v. Guardian Life Ins. Co. of*
13 *Am.*, 511 U.S. 375, 377 (1994); U.S. Const. art. III, § 2, cl. 1. Federal courts are
14 presumed to lack jurisdiction unless the contrary appears affirmatively from the
15 record. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n. 3 (2006). “Article III
16 generally requires a federal court to satisfy itself of its jurisdiction over the subject
17 matter before it considers the merits of a case.” *Ruhrigas AG v. Marathon Oil Co.*, 526
18 U.S. 574, 583 (1999).

19 Most commonly, federal courts have subject matter jurisdiction where: (1) an
20 action arises under federal law (federal question jurisdiction), 28 U.S.C. § 1331; or (2)
21 the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the
22 citizenship of each plaintiff is diverse from that of each defendant (diversity
23 jurisdiction), 28 U.S.C. § 1332(a). Except as otherwise provided by an act of
24 Congress expressly, “any civil action brought in a State court of which the district
25 courts of the United States have original jurisdiction[] may be removed by the
26 defendant or the defendants” to the district court for the district and division where the
27 action is pending. 28 U.S.C. § 1441.

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1 A defendant’s notice of removal must include “a plausible allegation that the
2 amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin*
3 *Operating Co. v. Owens*, 574 U.S. 81, 89 (2014). “[W]hen the plaintiff contests, or
4 the court questions, the defendant’s allegation,” “both sides [must] submit proof,” at
5 which point “the court decides, by a preponderance of the evidence, whether the
6 amount-in-controversy requirement has been satisfied.” *Id.* at 88–89. Courts “strictly
7 construe the removal statute against removal jurisdiction,” and “[f]ederal jurisdiction
8 must be rejected if there is any doubt as to the right of removal in the first instance.”
9 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). “The ‘strong presumption’
10 against removal jurisdiction means that the defendant always has the burden of
11 establishing that removal is proper.” *Id.*

12 **II. Analysis**

13 The Magnuson-Moss Act allows consumers to bring suits for damages and
14 other legal or equitable relief when a supplier fails to comply with an obligation under
15 a written or implied warranty. 15 U.S.C. § 2310(d)(1). Claims filed under the
16 Magnuson-Moss Act do not trigger federal question jurisdiction unless the amount in
17 controversy is equal to or greater than “the sum or value of \$50,000 (exclusive of
18 interests and costs) computed on the basis of all claims to be determined in [the]
19 suit[.]” *Id.* § 2310(d)(3)(B). Since the Magnuson-Moss Act does not specify the
20 appropriate measure and type of damages that are available, “a number of courts,
21 including the Ninth Circuit, have turned to the applicable state law to determine which
22 remedies are available under the Act, which of necessity informs the potential amount
23 in controversy.” *Romo v. FFG Ins. Co.*, 397 F. Supp. 2d 1237, 1239 (C.D. Cal. 2005)
24 (citing *Kelly v. Fleetwood Enters.*, 377 F.3d 1034, 1039 (9th Cir. 2004)). Based on
25 the allegations of the Complaint, the relevant state law here is the Song-Beverly Act.
26 Accordingly, the court must determine whether the remedies available to Plaintiffs
27 under the Song-Beverly Act are sufficient to place at least \$50,000 in controversy.

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1 Defendant argues the amount in controversy requirement is satisfied based on
2 Plaintiffs' requests for actual damages, civil penalties, and attorney's fees and costs of
3 suit. Def. Resp. at 21. The court will examine each category in turn.

4 **A. Actual Damages**

5 Under the Song-Beverly Act, the buyer of a vehicle may obtain "restitution in
6 an amount equal to the actual price paid or payable by the buyer," reduced by an
7 amount "directly attributable to use by the buyer." Cal. Civ. Code § 1793.2(d)(2)(B)–
8 (C). This reduction, also known as the mileage offset, reduces the buyer's recovery
9 by "that amount directly attributable to use by the buyer prior to the time the buyer
10 first delivered the vehicle to the manufacturer or distributor, or its authorized service
11 and repair facility for correction of the problem that gave rise to the nonconformity,"
12 with each mile driven reducing the purchase price by 1/120,000. *Id.*
13 § 1793.2(d)(2)(C).

14 Defendant states Plaintiffs have put at least \$17,091 in controversy, calculated
15 based on the Kelly Blue Book value for a vehicle of the same make and model with
16 70,000 miles. Def. Resp. at 2; Dkt. 21-1 at 5. Plaintiffs have not challenged this
17 evidence or established any other specific amount at issue. This evidence is sufficient
18 to establish that at least \$17,091 is in controversy here.

19 **B. Civil Penalties**

20 "A plaintiff who establishes that a violation of the Song-Beverly Act was
21 willful may recover a civil penalty of up to two times the amount of actual damages."
22 *Estrada v. FCA US LLC*, Case No. 2:20-cv-10453-PA (JPRx), 2021 WL 223249,
23 at *3 (C.D. Cal. Jan. 21, 2021) (citing Cal. Civ. Code § 1794(c)) (brackets omitted).
24 However, "[t]he civil penalty under California Civil Code § 1794(c) cannot simply be
25 assumed." *E.g., id.* (quotation marks omitted). "Rather, the defendant must make
26 some effort to justify the assumption." *Id.* (collecting cases finding civil penalties
27 under the Song-Beverly Act too speculative to be included in the amount in
28 controversy and remanding, where defendants did not explain why civil penalties were

1 reasonably likely to be awarded) (quotation marks omitted); *see also, e.g., Makol v.*
2 *Jaguar Land Rover N. Am., LLC*, Case No. 5:18-cv-03414-NC, 2018 WL 3194424,
3 at *3 (N.D. Cal. June 28, 2018) (“Simply assuming a civil penalty award is
4 inconsistent with the principle that the defendant must provide evidence that it is more
5 likely than not that the amount in controversy requirement is satisfied.”) (quotation
6 marks omitted).

7 Defendant argues Plaintiffs’ request for civil penalties brings the amount in
8 controversy over the \$50,000 jurisdictional minimum. Def. Resp. at 3–5. Defendant,
9 however, does not identify any specific facts or present evidence to establish Plaintiffs
10 have pleaded willfulness plausibly or that it is reasonable to double the amount of
11 actual damages in arriving at the size of a likely award. *See, e.g., Pennon v. Subaru of*
12 *Am., Inc.*, Case No. 2:22-cv-03015-SB (RAOx), 2022 WL 2208578, at *2 (C.D. Cal.
13 June 17, 2022) (remanding action where defendant provided no specific argument or
14 evidence for including a civil penalty in the amount in controversy). The court,
15 therefore, finds civil penalties under the Song-Beverly Act are not adequately
16 supported and too speculative to be included within the amount-in-controversy.

17 **C. Attorney’s Fees**

18 In the Ninth Circuit, attorney’s fees awarded under fee-shifting statutes may be
19 considered in assessing the jurisdictional threshold. *Gonzales v. CarMax Auto*
20 *Superstores, LLC*, 840 F.3d 644, 648–49 (9th Cir. 2016). A removing defendant,
21 however, must “prove that the amount in controversy (including attorneys’ fees)
22 exceeds the jurisdictional threshold by a preponderance of the evidence ... with
23 summary-judgment-type evidence.” *Fritsch v. Swift Transp. Co. of Ariz., LLC*,
24 899 F.3d 785, 795 (9th Cir. 2018). “A district court may reject the defendant’s
25 attempts to include future attorneys’ fees in the amount in controversy if the defendant
26 fails to satisfy this burden of proof.” *Id.*; *see also Johnson v. Mid-Century Ins. Co.*,
27 No. 23-35222, 2024 U.S. App. LEXIS 3949, at *3 (9th Cir. Feb. 21, 2024) (ordering
28 remand where defendant failed to establish plaintiff’s anticipated attorney’s fees were

1 more likely than not to bring the amount in controversy above the jurisdictional
2 minimum).

3 “While a defendant may meet its burden to establish a reasonable estimate of
4 attorneys’ fees by identifying awards in other cases, those cases must be similar
5 enough to the case at hand that the court can conclude that it is more likely than not
6 that the plaintiff may incur a similar fee award.” *Kaplan v. BMW of N. Am., LLC*,
7 Case No. 3:21-cv-00857-TWR (AGS), 2021 WL 4352340, at *6 (S.D. Cal. Sept. 24,
8 2021); *see D’Amico v. Ford Motor Co.*, Case No. 2:20-cv-02985-CJC (JCx),
9 2020 WL 2614610, at *4 (C.D. Cal. May 21, 2020) (recognizing “many cases alleging
10 violations of the [Song-Beverly] Act settle early” and remanding where defendant
11 provided no explanation for why the action was similar to those that went to trial).
12 Moreover, a defendant fails to show attorney’s fees are part of the amount in
13 controversy where it “makes no effort to explain what amount of attorney fees might
14 be sought or awarded in this case, neglecting to include so much as an estimate of the
15 hour or billing rates that might apply.” *Vega v. FCA US, LLC*, Case No. 2:21-cv-
16 05128-VAP (MRWx), 2021 WL 3771795, at *4 (C.D. Cal. Aug. 25, 2021).

17 Defendant cites *Selinger v. Ford Motor Company*, Case No. 2:22-cv-08883-
18 SPS (KSx), 2023 WL 2813510, at *11 (C.D. Cal. Apr. 5, 2023), to argue that a district
19 court has found \$50,000 to be a reasonable estimate of attorney’s fees for Song-
20 Beverly Act cases. NOR at 6. Defendant, however, fails to explain how the specific
21 facts at hand here are similar to those of *Selinger* or any other action where attorney’s
22 fees were awarded. *See id.*; Def. Resp. at 5–6.¹ It is Defendant’s burden to show that
23 at least \$32,909 in attorney’s fees is in controversy by a preponderance of the
24 evidence. Although Defendant “anticipates that Plaintiffs’ counsel will bill *at least*
25 100-120 hours litigating this matter,” Defendant does not offer any evidence or
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27 ¹ Defendant requests the court take judicial notice of Judgments and Orders in
28 unrelated actions. Dkt. 21-2. Defendant’s request is GRANTED, as to the existence
and legal effect of these documents.


1 argument for why Plaintiffs' claims are likely to result in such fees. *See* Def. Resp. at
2 5 (emphasis in original). That courts have awarded significant fee awards in other,
3 unrelated cases involving claims arising under the Song-Beverly and Magnusson-
4 Moss Acts is not sufficient to establish a fee award is reasonably likely here. *See, e.g.,*
5 *Kaplan*, 2021 WL 4352340, at *6. Given that the removal statute must be construed
6 strictly and all doubts are resolved in favor of remand, the court finds Defendant has
7 failed to demonstrate the amount in controversy exceeds the jurisdictional minimum
8 based on anticipated attorney's fees. *See Johnson*, 2024 U.S. App. LEXIS 3949, at *3.

9 **CONCLUSION**

10 For the aforementioned reasons, the court finds Defendant has failed to
11 demonstrate that the amount in controversy exceeds \$50,000 as required by the
12 Magnuson-Moss Act. The court, therefore, REMANDS the action to the Los Angeles
13 County Superior Court, Case No. 23TRCV03896. All dates and deadlines in this
14 court are VACATED. The clerk of the court shall close the action administratively.

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16 IT IS SO ORDERED.

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18 Dated: June 17, 2024

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21 FERNANDO L. AENLLE-ROCHA
22 United States District Judge
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