

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 FRANCESCO N. GUTIERREZ JR.,
12 Plaintiff,

13 v.

14 NISSAN NORTH AMERICA INC.; and
15 DOES 1 through 10, inclusive,
16 Defendant.
17

Case No. 2:24-cv-00843-SPG-SP

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND [ECF NO. 22]**

18
19 Before the Court is Plaintiff Francesco N. Gutierrez Jr.'s motion to remand. (ECF
20 No. 22 ("Motion")). Defendant Nissan North America Inc. opposes the Motion. (ECF
21 No. 23 ("Opp.")). The Court has read and considered the matters raised with respect to
22 the Motion and determined that this matter is suitable for decision without oral argument.
23 *See* Fed. R. Civ. P. 78(b); C.D. Cal. L. R. 7-15. For the reasons stated below, the Court
24 **DENIES** Plaintiff's Motion.

1 **I. BACKGROUND AND PROCEDURAL HISTORY**

2 On May 8, 2023, Plaintiff filed his state court complaint alleging several claims
3 under California’s Song-Beverly Consumer Warranty Act, as well as a claim under
4 California’s Business and Professions Code § 17200. (ECF No. 1, Exh. A (“Compl.”)).
5 Defendant filed its answer on July 21, 2023. On February 26, 2024, during discovery,
6 Defendant requested sales documents from Plaintiff’s counsel. *See* (ECF No. 22, Exh. A
7 (“Stewart Decl.”) ¶ 5).¹ Plaintiff’s counsel provided the requested documents one day later.
8 (Stewart Decl. ¶ 6).² On April 22, 2024, Defendant filed its Notice of Removal. (ECF No.
9 1). Thirty-two days later, on May 24, 2024, Plaintiff filed the instant Motion.

10 **II. LEGAL STANDARD**

11 Federal courts are courts of limited jurisdiction, with subject-matter jurisdiction only
12 over matters authorized by the Constitution and Congress. *See* U.S. Const. art. III, § 2, cl.
13 1; *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A suit filed in
14 state court may be removed to federal court if the federal court would have had original
15 jurisdiction over the suit. 28 U.S.C. § 1441(a). Federal courts have original jurisdiction
16 where an action presents a federal question under 28 U.S.C. § 1331 or there is diversity
17 jurisdiction under 28 U.S.C. § 1332. Courts have diversity jurisdiction over cases where
18 there is complete diversity of parties and the amount “in controversy exceeds the sum or
19 value of \$75,000, exclusive of interest and costs. . . .” 28 U.S.C. § 1332(a).

20 A defendant may remove an action to federal court based on diversity jurisdiction
21 “provided that no defendant ‘is a citizen of the State in which such action is brought.’”
22

23 ¹ At various points, Plaintiff states that the request for sales documents happened on
24 February 26, 2023. *See, e.g.*, (ECF No. 22 at 3). At other points, however, Plaintiff states
25 that the request occurred on February 26, 2024. *See* (ECF No. 22 at 5). Because the case
26 was initiated *after* February 26, 2023, the Court interprets Plaintiff to mean that the event
27 occurred on February 26, 2024, despite the declarations of counsel.

28 ² Plaintiff similarly states, at various points, that this event occurred in 2023. For reasons
articulated in footnote 1, the Court interprets Plaintiff to mean that the event occurred on
February 27, 2024.

1 *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996) (quoting 28 U.S.C. § 1441(b)); *see also*
2 *Abrego Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 679 (9th Cir. 2006) (the presence
3 “of a single plaintiff from the same State as a single defendant deprives the district court
4 of original diversity jurisdiction over the entire action.” (citations omitted)). An individual
5 is a citizen of the state where he or she is domiciled, meaning the state where the individual
6 resides and intends to remain or to which the individual intends to return. *Kanter v.*
7 *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

8 The removal statute is strictly construed against removal jurisdiction. *See Shamrock*
9 *Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941). There is a “strong presumption”
10 against removal, and “[f]ederal jurisdiction must be rejected if there is any doubt as to the
11 right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.1992)
12 (citation omitted). “The presumption against removal means that ‘the defendant always
13 has the burden of establishing that removal is proper.’” *Moore-Thomas v. Alaska Airlines,*
14 *Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (quoting *Gaus*, 980 F.2d at 566). Courts resolve
15 any doubt about the right of removal in favor of remand. *Grancare, LLC v. Thrower by &*
16 *through Mills*, 889 F.3d 543, 550 (9th Cir. 2018).

17 **III. DISCUSSION**

18 Plaintiff challenges Defendant’s removal on one main ground—namely, that
19 Defendant failed to timely remove this action. Defendant denies that its removal was
20 untimely and levels a similar accusation at Plaintiff, i.e., that Plaintiff’s remand request is
21 untimely. The Court considers these arguments now.

22 Defendant removed this action on April 22, 2024, on the basis of diversity
23 jurisdiction. (ECF No. 1). Defendant asserts, and Plaintiff does not contest, that complete
24 diversity exists between the parties. (ECF No. 1 at 4). Defendant likewise asserts that the
25 amount in controversy in this action exceeds \$75,000, exclusive of interest and costs. *Id.*
26 Although Plaintiff does not contest that the amount in controversy exceeds \$75,000 in this
27 action, Plaintiff is skeptical that Defendant did not know of this fact until 276 days after
28 filing its answer. (ECF No. 22 at 4) (“While Plaintiff first finds it hard to believe that an

1 attorney as accomplished as Defendant’s counsel did not review the sales contract in a
2 lemon law case for nearly a year, Defendant’s Notice of Removal would suggest that it did,
3 in fact, know of the amount in controversy at the time it filed its Answer.”). The Court
4 agrees with the parties that the jurisdictional elements articulated under 28 U.S.C. § 1332
5 have been satisfied. Thus, the Court turns to whether Defendant has complied with the
6 procedural requirements of 28 U.S.C. § 1446.

7 Section 1446(b) identifies two thirty-day periods for removing a case. “The first
8 thirty-day removal period is triggered if the case stated by the initial pleading is removable
9 on its face.” *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 885 (9th Cir. 2010)
10 (internal quotes omitted). “The second thirty-day removal period is triggered if the initial
11 pleading does not indicate that the case is removable, and the defendant receives ‘a copy
12 of an amended pleading, motion, order or other paper’ from which removability may first
13 be ascertained.” (*Id.*) (quoting § 1446(b)(3)). To toll the initial thirty-day clock, “the
14 ground for removal must be revealed affirmatively in the initial pleading.” *Harris v.*
15 *Bankers Life & Cas. Co.*, 425 F.3d 689, 695 (9th Cir. 2005).

16 Here, Defendant claims that “Plaintiff’s Complaint did not reveal whether the
17 amount in controversy meets or exceeds the amount in controversy threshold under 28
18 U.S.C. § 1332(a), nor did it indicate any demand for a specific amount.” (ECF No. 1 at 3).
19 Because Plaintiff’s complaint merely states – in accordance with California’s Civil Case
20 Cover Sheet – that the amount demanded exceeds \$25,000, the Court agrees with
21 Defendant that the grounds for removal were not “revealed affirmatively” in the initial
22 pleading. *Harris*, 425 F.3d at 695. The question, then, is whether Defendant timely filed
23 for removal under the second removal window.

24 Defendant claims that “Nissan files this Notice of Removal on April 22, 2024, or
25 within 30 days after determining through its investigation that the amount in controversy
26 reaches the minimum threshold.” (ECF No. 1 at 3). Defendant determined that the amount
27 in controversy threshold was met by reviewing the Retail Installment Sales Contract for
28 the vehicle, which Defendant received on February 27, 2024, and conducting “an

1 investigation.” (Opp. at 15). Defendant alleges that it “first reviewed” this sales contract
2 on April 19, 2024. (ECF No. 1 at 3). Thus, from the time Defendant received the Sales
3 Contract to the time of removal, fifty-five days had elapsed. Plaintiff argues that this fact
4 is dispositive of the issue. Defendant missed the deadline under § 1446(b)(3), and that’s
5 that. (Mot. at 5). This Court disagrees.

6 Here, Defendant alleges that it became aware of the possibility of removal from
7 review of the Sales Contract *and* an investigation. As the Ninth Circuit has held, §§ 1441
8 and 1446, read together, “permit a defendant to remove outside the two thirty-day periods
9 on the basis of its own information, provided that it has not run afoul of either of the thirty-
10 day deadlines.” *Roth v. CHA Hollywood Medical Center, L.P.*, 720 F.3d 1121, 1125 (9th
11 Cir. 2013). Since the grounds for removal only became manifest to Defendant through
12 review of the sales document and an investigation, the relevant thirty-day window under
13 § 1446(b)(3) began to run at or around April 19, 2024, on the assumption that neither the
14 investigation nor the sales document were alone sufficient to disclose grounds for removal
15 prior to April 19, 2024. Plaintiff has done nothing to rebut this assumption. Thus,
16 Defendant timely filed for removal in this case.

17 Finally, even if Defendant failed to satisfy the requirements of § 1446(b)(3) – it did
18 not – the Court notes that Plaintiff’s Motion is untimely under § 1447(c) because the
19 Motion was not filed “within 30 days after the filing of the notice of removal under
20 1446(a).” 28 U.S.C. § 1447(c). *See also, Corona-Contreras v. Gruel*, 857 F.3d 1025, 1029
21 (9th Cir. 2017) (“Therefore, even if a defendant fails to satisfy the time requirements of §
22 1446(b), the district court may not remand on that basis unless the plaintiff files a timely
23 motion to remand.”).

24 //
25 //
26 //
27 //
28 //

1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiff's Motion to Remand is **DENIED**.

3 **IT IS SO ORDERED.**

4
5 Dated: July 22, 2024



6 HON. SHERILYN PEACE GARNETT
7 UNITED STATES DISTRICT JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28