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## UNITED STATES DISTRICT COURT

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## FOR THE EASTERN DISTRICT OF CALIFORNIA

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LARRY CELESTINE,

No. 2:17-cv-00597-DAD-JLT

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Plaintiff,

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v.

ORDER DENYING PLAINTIFF'S MOTION  
FOR REMAND

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FCA US, LLC, a Delaware limited liability  
company; and DOES 1 through 10,  
inclusive,

(Doc. No. 5)

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Defendants.

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On November 22, 2016, plaintiff Larry Celestine filed this action against defendant FCA US, LLC and Skibbereen, Inc. in the San Joaquin Superior Court, alleging state law causes of action for breach of express and implied warranties under the Song-Beverly Consumer Warranty Act, California Civil Code § 1794, et seq. (hereinafter referred to as the “Song-Beverly Act”), and fraudulent inducement – concealment. (See Doc. No. 1-1.) On February 21, 2017, at plaintiff’s request, the state court entered the dismissal of Skibbereen, Inc. from the action with prejudice. (Doc. No. 1-6 at 1.) Defendant FCA US removed the action to this court on March 20, 2017 pursuant to 28 U.S.C. §§ 1332, 1441(a), and 1446(a). (Doc. No. 1.)

On May 18, 2017, plaintiff filed a motion to remand the case to state court, alleging that: (1) defendant had failed to establish the amount in controversy exceeded \$75,000 as required by 28 U.S.C. § 1332, and (2) defendant had failed to establish the citizenship of defendant’s foreign

1 members. (Doc. No. 5.) On June 6, 2017, defendant filed an opposition. (Doc. No. 9.) The  
2 court heard oral argument on August 1, 2017. Attorney Alastair F. Hamblin appeared  
3 telephonically on behalf of plaintiff and attorney Kristi Livedalen appeared telephonically on  
4 behalf of defendant. (Doc. No. 14.)

5 Having considered the parties' filings and arguments and for the reasons set forth below,  
6 plaintiff's motion to remand will be denied.

### 7 **I. Legal Standard**

8 A defendant in state court may remove a civil action to federal court so long as that case  
9 could originally have been filed in federal court. 28 U.S.C. § 1441(a); *City of Chicago v. Int'l*  
10 *Coll. of Surgeons*, 522 U.S. 156, 163 (1997). Thus, removal of a state action may be based on  
11 either diversity jurisdiction or federal question jurisdiction. *City of Chicago*, 522 U.S. at 163;  
12 *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Removal jurisdiction is based entirely on  
13 federal statutory authority. See 28 U.S.C. § 1441 et seq. These removal statutes are strictly  
14 construed, and removal jurisdiction is to be rejected in favor of remand to the state court if there  
15 are doubts as to the right of removal. *Nevada v. Bank of Am. Corp.*, 672 F.3d 661, 667 (9th  
16 Cir.2012); *Geographic Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d 1102, 1107 (9th Cir. 2010);  
17 *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009); *Gaus*  
18 *v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The defendant seeking removal of an action  
19 from state court bears the burden of establishing grounds for federal jurisdiction. *Geographic*  
20 *Expeditions*, 599 F.3d at 1106–07; *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir.  
21 2009); *Gaus*, 980 F.2d at 566–67. The district court must remand the case “[i]f at any time before  
22 final judgment it appears that the district court lacks subject matter jurisdiction.” 28 U.S.C.  
23 § 1447(c); see also *Smith v. Mylan, Inc.*, 761 F.3d 1042, 1044 (9th Cir. 2014); *Bruns v. NCUA*,  
24 122 F.3d 1251, 1257 (9th Cir. 1997) (holding that remand for lack of subject matter jurisdiction  
25 “is mandatory, not discretionary”).<sup>1</sup>

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27 <sup>1</sup> An order remanding a case based on a lack of subject matter jurisdiction is not appealable.  
28 28 U.S.C. § 1447(d); *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 638–39 (2009).

1 Diversity jurisdiction exists in actions between citizens of different States where the  
2 amount in controversy exceeds \$75,000 exclusive of interest and costs. 28 U.S.C. § 1332.  
3 Diversity of citizenship must be complete, and the presence “of a single plaintiff from the same  
4 State as a single defendant deprives the district court of original diversity jurisdiction over the  
5 entire action.” *Abrego Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 679 (9th Cir. 2006)  
6 (citations omitted). “In calculating the amount in controversy, a court must assume that the  
7 allegations in the complaint are true and that a jury will return a verdict for plaintiffs on all claims  
8 alleged.” *Page v. Luxottica Retail North Am.*, No. 2:13-cv-01333-MCE-KJN, 2015 WL 966201,  
9 at \*2 (E.D. Cal. Mar. 4, 2015) (citing *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199,  
10 1205 (E.D. Cal. 2008)); see also *Campbell v. Vitran Express, Inc.*, 471 Fed. Appx. 646, 648 (9th  
11 Cir. 2012).<sup>2</sup>

12 In the absence of an amount in controversy alleged in the complaint, the defendant bears  
13 the burden to establish the amount in controversy at removal. *Rodriguez v. AT & T Mobility*  
14 *Servs. LLC*, 728 F.3d 975, 981 (9th Cir. 2013); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117  
15 (9th Cir. 2004). A removing party must initially file a notice of removal that includes “a plausible  
16 allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee*  
17 *Basin Operating Co., LLC v. Owens*, \_\_\_U.S.\_\_\_, \_\_\_, 135 S. Ct. 547, 554 (2014). A  
18 defendant’s amount in controversy allegation “should be accepted when not contested by the  
19 plaintiff or questioned by the court.” *Id.* at 553. If “defendant’s assertion of the amount in  
20 controversy is challenged . . . both sides submit proof and the court decides, by a preponderance  
21 of the evidence, whether the amount-in-controversy requirement has been satisfied.” *Id.* at 554.  
22 This proof can include affidavits, declarations, or other “summary-judgment-type evidence  
23 relevant to the amount in controversy at the time of removal.” *Ibarra v. Manheim Investments,*  
24 *Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015) (quoting *Singer v. State Farm Mut. Auto. Ins. Co.*, 116  
25 F.3d 373, 377 (9th Cir. 1997)). Additionally, the court may rely on “reasonable assumptions  
26 underlying the defendant’s theory of damages exposure.” *Ibarra*, 775 F.3d at 1198.

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27 <sup>2</sup> Citation to this unpublished Ninth Circuit opinion is appropriate pursuant to Ninth Circuit Rule  
28 36–3(b).

1           **II. Analysis**

2           Plaintiff contends that defendant failed to establish facts necessary to support diversity  
3 jurisdiction in this case. First, plaintiff argues that defendant has failed to establish the citizenship  
4 of defendant’s foreign members, thereby also failing to establish complete diversity of  
5 citizenship. (Doc. No. 5-1 at 9–10.) Second, plaintiff argues that defendant has failed to prove  
6 by a preponderance of the evidence the amount in controversy in this case exceeds \$75,000. (Id.  
7 at 7–9.)

8                           A. Diversity of Citizenship

9           Section 1332 requires complete diversity of citizenship. A natural person who is a United  
10 States citizen is a citizen of the state in which he is domiciled. *Kanter v. Warner-Lambert Co.*,  
11 265 F.3d 853, 857 (9th Cir. 2001). “A person’s domicile is her permanent home, where she  
12 resides with the intention to remain or to which she intends to return.” *Id.* (citing *Lew v. Moss*,  
13 797 F.2d 747, 749 (9th Cir. 1986)). “An LLC is a citizen of every state of which its  
14 owners/members are citizens.” *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894,  
15 899 (9th Cir. 2006). To determine the citizenship of foreign legal entities, the court asks whether  
16 “the entity is considered a juridical person under the law that created it.” *Cohn v. Rosenfeld*, 733  
17 F.2d 625, 629 (9th Cir. 1984); see also *Stiftung v. Plains Marketing, L.P.*, 603 F.3d 295, 298 (5th  
18 Cir. 2010). Thus, in concluding that the foreign corporate entity at issue in *Cohn* was a juridical  
19 person<sup>3</sup> under the laws of Liechtenstein, the Ninth Circuit considered the capability of the entity  
20 to both sue and be sued in its own name under the laws of Liechtenstein, whether any recovery in  
21 such litigation becomes an asset of the entity, and whether the laws of Liechtenstein recognize the  
22 entity as a legally independently organized enterprise. *Cohn*, 733 F.2d at 629.

23           Defendant FCA US, LCC is a limited liability corporation organized under the laws of the  
24 state of Delaware. (Doc. Nos. 1 at 2–3; 1-9 at 2–3.) The sole member of the LLC is FCA North  
25 America Holding LLC, a limited liability company organized under the laws of the state of  
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27 <sup>3</sup> A “juridical person” is defined as an “Entity, as a firm, that is not a single natural person, as a  
28 human being, authorized by law with duties and rights, recognized as a legal authority having a  
distinct identity, a legal personality. *Black’s Law Dictionary* (2d Ed.)

1 Delaware. (Id.) The sole member of FCA North America Holding LLC is Fiat Chrysler  
2 Automobiles, N.V., a publically traded company incorporated under the laws of the Netherlands,  
3 with its principal place of business in London, England. (Id.) Since both defendant FCA US,  
4 LLC and its sole member FCA North America Holding LLC are LLCs, their citizenship depends  
5 on the citizenship of Fiat Chrysler Automobiles, N.V., the sole member of FCA North American  
6 Holding LLC. Because Fiat Chrysler Automobiles, N.V. is a foreign corporate entity, the court  
7 inquires whether it is considered a juridical person under the laws of the Netherlands.

8 Defendant has submitted the declaration of Kris Krueger, the Senior Staff Counsel of  
9 defendant FCA US, LLC describing Fiat Chrysler Automobiles N.V. as a public limited liability  
10 company (naamloze vennotschap) pursuant to the laws of the Netherlands, which may sue in its  
11 own name in the courts of the Netherlands, and may obtain recovery on its own behalf from such  
12 lawsuit under the laws of the Netherlands. (Doc. No. 1-9 at 2–3.) Based on the evidence  
13 submitted by defendant, the court finds defendant has adequately asserted and established that  
14 Fiat Chrysler Automobiles, N.V. is a juridical person under the laws of Netherlands and that  
15 defendant FCA US, LLC is not a citizen of California.<sup>4</sup>

16 Plaintiff, on the other hand, is a citizen of California. His complaint states that he resides  
17 in the city of Tracy in the state of California. (Doc. No. 1-1 at 3.) The notice of removal states  
18 that “[p]laintiff is, and was at the time the State Court Action was commenced, a citizen and  
19 resident of the State of California.” (Doc. No. 1 at 3.) Because there is no overlap in citizenship  
20 between plaintiff and defendant, the court finds that complete diversity is satisfied in this case.

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22 <sup>4</sup> Plaintiff objects to the declaration of Kris Krueger alleging it lacks foundation, contains legal  
23 conclusions, and is based upon hearsay and conjecture. (Doc. No. 5-1 at 10–11.) Specifically,  
24 plaintiff argues that Mr. Krueger, as an employee of FCA US, LLC, has provided no basis for his  
25 personal knowledge regarding the corporate and legal status of Fiat Chrysler Automobiles, N.V.  
26 (Id.) Plaintiff also requests the court to continue the hearing on this motion to allow him to  
27 conduct discovery and depose Mr. Krueger. (Id. at 11.) In his declaration Mr. Krueger avers he  
28 has “personal knowledge of the facts set forth in this Declaration.” (Doc. No. 1-9 at 1.) The  
court overrules plaintiff’s objections. See *Alvarado v. FCA US, LLC*, No. 5:17-cv-00505-JGB-  
DTB, 2017 WL 2495495, at \*5 n.6 (C.D. Cal. June 8, 2017) (rejecting the same objections to a  
declaration by Mr. Krueger “find[ing] no reason to question his knowledge of the corporate and  
legal status of entities that are related to his employer.”); *Kotulski v. FCA US, LLC*, No. 3:17-cv-  
00527-AJB-BGS, 2017 WL 2705429, at \*4 (S.D. Cal. June 23, 2017) (similar).

1 B. Amount in Controversy

2 Below, the court addresses each category of relief defendant contends should factor into  
3 the determination of the amount in controversy posed by this action.<sup>5</sup>

4 1. Actual Damages under the Song-Beverly Act

5 Plaintiff's complaint seeks damages under the Song-Beverly Act. (Doc. No. 1-1, at  
6 24–25.) California Civil Code § 1793.2(d)(2)(B) provides that the measure of damages in an  
7 action such as this one includes restitution “in an amount equal to the purchase price paid or  
8 payable by the buyer,” reduced by that amount “directly attributable to use by the buyer” prior to  
9 delivery of the vehicle back to the dealer for correction of the problem that gave rise to the  
10 nonconformity with the warranty. The actual price paid or payable by the buyer includes “any  
11 charges for transportation and manufacturer-installed options, but excluding nonmanufacturer  
12 items installed by a dealer or the buyer, and including any collateral charges such as sales or use  
13 tax, license fees, registration fees, and other official fees.” Cal. Civ. Code § 1793.2(d)(2)(B).  
14 The actual price paid or payable by the buyer also include any finance charges paid. See Mitchell  
15 v. Blue Bird Body Co., 80 Cal. App. 4th 32, 37 (2000). The set-off amount is determined by  
16 multiplying the “actual price of the new motor vehicle paid or payable by the buyer . . . by a  
17 fraction having its denominator 120,000 and having as its numerator the number of miles traveled  
18 by the new motor vehicle prior to the time the buyer delivered the vehicle” for correction of the  
19 problem. Civ. Code § 1793.2(d)(2)(C).

20 Absent from plaintiff's complaint is any allegation of the total amount sought with respect  
21 to damages. However, the relevant retail installment sale contract is attached as an exhibit to the  
22 complaint. This contract lists the amount financed of \$39,447.93, a down payment of \$2,000.00,  
23 and the finance charge of \$6,370.71, for a total purchase price of \$47,818.64. (Doc. No. 1-1 at

24 \_\_\_\_\_  
25 <sup>5</sup> It is well-established that “a defendant’s notice of removal need include only a plausible  
26 allegation that the amount in controversy exceeds the jurisdictional threshold. Evidence  
27 establishing the amount is required by § 1446(c)(2)(B) only when the plaintiff contests, or the  
28 court questions, the defendant’s allegation [that the amount in controversy exceeds the  
jurisdictional threshold].” Dart, 135 S. Ct. at 554; see also Cohn v. Petsmart, Inc., 281 F.3d 837,  
840 n. 1 (9th Cir. 2002) (the court may consider supplemental evidence later proffered by the  
removing defendant, which was not originally included in the removal notice).

1 30.) The total price of the vehicle in question, excluding the finance charge, is \$41,447.93. (Id.)  
2 Plaintiff contends that finance charges and interest on the amount financed should not be included  
3 in the amount-in-controversy calculation. However, the court need not resolve this issue in the  
4 instant case because, as explained below, the amount-in-controversy easily exceeds the \$75,000  
5 requirement for diversity jurisdiction without taking into account the disputed finance charge.

6 As noted above, the amount awardable under § 1793.2(d)(2)(B) must be reduced by the  
7 amount directly attributable to use (as measured by miles driven) by the consumer prior to the  
8 first repair (or attempted repair) of the problem as pro-rated against a base of 120,000 miles. Cal.  
9 Civ. Code § 1793.2(d)(2)(B). In the complaint and the exhibits attached thereto, plaintiff does not  
10 indicate what the appropriate mileage offset should be. However, in opposition to the pending  
11 motion for remand, defendant has produced FCA US's warranty claim summary report,<sup>6</sup> which  
12 shows that at the time of the first alleged repair in March 2013 the vehicle had driven 9,291 miles.  
13 (Doc. No. 9-9 at 3.) Utilizing that repair as the "first relevant repair" generates a mileage offset  
14 of \$3,200.11.

15 Based on defendant's submissions, the court finds it is reasonable to expect plaintiff to be  
16 able to recover, even without any finance charges included, \$38,247.82 in actual damages under  
17 the Song-Beverly Act if she prevails in this action.

## 18 2. Civil Penalties

19 Plaintiff also seeks a civil penalty "in the amount of two times Plaintiff's actual damages."  
20 (Doc. No. 1-1 at 28.) "Courts as a matter of law, calculate the amount in controversy based upon  
21 the maximum amount of civil penalties available to plaintiff." *Alvarado v. FCA US, LLC*, Case  
22 No. EDCV 17-505 JGB (DTBx), 2017 WL 2495495, at \*4 (C.D. Cal. June 8, 2017) (quoting  
23 *Saulic v. Symantec Corp.*, No. 8:07-cv-00610-AHS-PLA, 2007 WL 5074883, at \*4 (C.D. Cal.  
24 Dec. 26, 2007). The Song-Beverly Act provides that a civil penalty of twice the amount of the  
25 actual damages is available pursuant to California Civil Code §§1794(c) and (e). Thus, defendant

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26 <sup>6</sup> As an exhibit to its opposition, defendant has also submitted the declaration of attorney Scott  
27 Shepardson, along with a certificate of authenticity, establishing that the same warranty claim  
28 summary report is a business record of FCA US LLC and its admissibility pursuant to Federal  
Rules of Evidence 803(6) and 902(11). (Doc. Nos. 9-1 at 2-3 and 9-9 at 2-3.)

1 has established that a significant civil penalty award is likely should plaintiff succeed in proving  
2 the allegations of her complaint.

3 **3. Attorney's Fees**

4 An award of attorney's fees may be considered in tabulating the amount in controversy.  
5 See Galt G/S v. JSS Scandinavia, 142 F.3d 1150, 1155–56 (9th Cir. 1998). However, district  
6 courts within the Ninth Circuit are split on the question whether a calculation of attorney's fees is  
7 to include only those incurred up to the removal or those that will likely be incurred should the  
8 case proceed through trial. See Diaz v. Carmax Auto Superstores California, LLC, No. 1:15-cv-  
9 00523-AWI-SAB, 2015 WL 3756369, at \*6 (E.D. Cal. June 16, 2015) (summarizing current split  
10 amongst district courts). However, this is a fray the court need not join. Defendant has not  
11 provided an estimate of the reasonable hourly rates for attorneys in this region or of the expected  
12 billable hours to be incurred by plaintiff in litigating this case either before or after removal.  
13 Nevertheless, the court need not calculate or otherwise address the amount of attorney's fees  
14 potentially at issue in this case since an amount in controversy exceeding \$75,000 has already  
15 been established based upon the actual damages and civil penalty available under the  
16 Song-Beverly Act in this case should plaintiff prevail.

17 **III. Conclusion**

18 For the reasons set forth above, the court concludes that defendant has established  
19 complete diversity and an amount in controversy in this action exceeding \$75,000. Defendant has  
20 shown that, if successful on the merits, it is reasonable for plaintiff to recover at least \$38,247.82  
21 in actual damages under the Song-Beverly Act. In addition, the maximum amount of civil  
22 penalties available to plaintiff is twice the amount of actual damages under the Song-Beverly Act,  
23 i.e. \$76,495.64. Thus, defendant has shown that, if plaintiff is successful in the action, it is likely  
24 that plaintiff will recover in excess of \$75,000.

25 Accordingly, plaintiff's motion to remand (Doc. No. 5) is denied.

26 IT IS SO ORDERED.

27 Dated: August 4, 2017

28   
UNITED STATES DISTRICT JUDGE