

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

KIMBERLY D. SCHNEIDER,  
Plaintiff,  
v.  
FORD MOTOR COMPANY, et al.,  
Defendants.

Case No. [5:19-cv-05545-EJD](#)

**ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND**

Re: Dkt. No. 17

Plaintiff filed a state-court action asserting various state-law causes of actions against Defendants Ford Motor Company and Chino Hills Ford ("Chino Hills"). Defendants removed the action to federal court on diversity grounds. Plaintiff argues that this Court should remand the action because the amount in controversy is less than \$75,000. The Court agrees. Accordingly, Plaintiff's motion for remand is **GRANTED** and the Clerk is **DIRECTED** to **REMAND** this case to Santa Clara County Superior Court and close the file.<sup>1</sup>

**I. BACKGROUND**

**A. Factual Background**

On or about June 2, 2013, Plaintiff purchased a 2013 Ford Escape vehicle ("the Vehicle") from Defendant Chino Hills. Complaint for Violations of Statutory Obligations ("Compl.") ¶ 8, Dkt. 1-2, Ex. B. Plaintiffs received an express written warranty with this purchase. *Id.* ¶ 9. During the warranty period, the Vehicle contained or developed defects, which substantially impaired the use, value, or safety of the Vehicle. *Id.* ¶ 10. After Defendants were unable to

<sup>1</sup> The Court finds this motion suitable for consideration without oral argument. *See* N.D. Cal. Civ. L.R. 7-1(b).

1 service or repair the Vehicle, Plaintiff filed this action. Plaintiff claims Defendant Ford Motor Co.  
2 breached express and implied warranties related to the Song-Beverly Consumer Warranty Act.  
3 *See id.* ¶¶ 12–34. Plaintiff asserts that Defendant Chino Hills breached the implied warranty of  
4 merchantability. *Id.* ¶¶ 30–34.

5 The Complaint alleges that Plaintiff suffered damages in a sum “not less than \$25,001.00.”  
6 *Id.* ¶ 11. Plaintiff also alleges that she is entitled to a civil penalty of two times her actual damages  
7 pursuant to California Civil Code Section 1794. *Id.* ¶¶ 15–16, 22, 25, 29, and Prayer. Plaintiff  
8 seeks actual, consequential, punitive and incidental damages, prejudgment interest, and attorneys’  
9 fees and costs. *Id.* at Prayer.

10 **B. Procedural History**

11 Plaintiff filed her Complaint in the Santa Clara County Superior Court on January 10,  
12 2019. Compl. at 10. Defendants removed the action to this Court on September 3, 2019, pursuant  
13 to 28 U.S.C. § 1332. Dkt. 1. On December 17, 2019, Plaintiffs filed a motion to remand. Motion  
14 to Remand (“Mot.”), Dkt. 17. Defendant filed an opposition on December 31, 2019.  
15 Opposition/Response re Motion to Remand (“Opp.”), Dkt. 19. On January 7, 2020, Plaintiffs  
16 submitted a reply. Reply re Motion to Remand (“Reply”), Dkt. 20.

17 **II. LEGAL STANDARD**

18 The party seeking removal bears the burden of establishing jurisdiction. *Gaus v. Miles,*  
19 *Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). A defendant sued in state court may remove the action to  
20 federal court only if the action could have been brought in federal court in the first instance. 28  
21 U.S.C. § 1441(a). “If at any time before final judgment it appears that the district court lacks  
22 subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

23 The Court strictly construes the removal statute against removal jurisdiction. *Id.* Federal  
24 jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.  
25 *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979). Federal courts are  
26 “particularly skeptical of cases removed from state court.” *Warner v. Select Portfolio Servicing,*  
27 193 F. Supp. 3d 1132, 1134 (C.D. Cal. 2016) (citing *Gaus*, 980 F.2d at 566).

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**III. DISCUSSION**

Pursuant to 28 U.S.C. § 1332, district courts have original jurisdiction over civil actions with diverse parties and where the amount in controversy exceeds \$75,000.

**A. Diversity of Citizenship**

Plaintiff concedes that the Parties are diverse. *See* Mot. at 6; Opp. at 8. Plaintiff is a California resident, see Compl. ¶ 2, while Defendant Chino Hills is domiciled in Nevada, see Notice of Removal ¶ 20, and Defendant Ford Motor Co. is domiciled in Michigan and Delaware, see *id.* ¶ 19. Accordingly, the Court is satisfied that Plaintiff and Defendants are completely diverse as required by 28 U.S.C. § 1332.

**B. Amount in Controversy**

Plaintiff argues that Defendants have not satisfied their amount-in-controversy burden. *See* Mot. at 2. If a defendant removes a case from state court to federal court, the defendant bears the burden of proving that the amount in controversy is satisfied. *See Chajon v. Ford Motor Co.*, 2019 WL 994019, at \*1 (C.D. Cal. Jan. 8, 2019). The allegations in the complaint dictate the defendant’s burden. For instance, when a complaint filed in state court alleges on its face an amount in controversy sufficient to meet the federal jurisdictional threshold, the amount-in-controversy requirement is presumptively satisfied unless it appears to a “legal certainty” that the plaintiff cannot actually recover that amount. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 402 (9th Cir. 1996); *see also Garza v. Bettcher Indus., Inc.*, 752 F. Supp. 753, 755–56 (E.D. Mich. 1990) (noting that when a complaint is originally filed in state court, it is highly unlikely that the plaintiff inflated her damages solely to obtain federal jurisdiction). If, however, the plaintiff’s state-court complaint does not specify a particular amount of damages, the removing defendant bears the burden of establishing by a “preponderance of the evidence” that it is “more likely than not” that the amount in controversy exceeds \$75,000. *See Sanchez*, 102 F.3d at 404; *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007).

**1. Legal Certainty Test**

Defendants argue the Complaint “clearly” shows that more than \$75,000 is in controversy

1 and that the “legal certainty” standard applies. Opp. at 3, 5. Defendants contend that because the  
2 Complaint alleges damages of at least \$25,001 and a penalty of twice the amount of damages, *i.e.*  
3 \$50,002, the damages plainly amount to \$75,003. *Id.* As support, Defendants cite *Bernstein v.*  
4 *BMW of N. Am., LLC*, 2018 WL 2210683 (N.D. Cal. May 15, 2018) and *McDonald v. BMW of N.*  
5 *Am., LLC*, 2017 WL 5843385 (S.D. Cal. Nov. 28, 2017). Neither case, however, supports  
6 Defendants’ position that more than \$75,000 is “clearly” in issue. *Bernstein*, for instance,  
7 involved a complaint that alleged “[t]he amount in controversy *exceeds* twenty-five thousand  
8 dollars (\$25,000), *exclusive* of interest and costs . . . . [and] Plaintiff seeks damages . . . for  
9 incidental, consequential, exemplary, and actual damages.” 2018 WL 2210683 at \*2 (first  
10 emphasis added). Likewise, in *McDonald*, the complaint stated that the plaintiff’s damages  
11 “exceed[ed] \$25,000” and prayed for “actual damages, statutory penalties of two times actual  
12 damages, attorney’s fees and punitive damages.” 2017 WL 5843385 at \*1.

13 Here, however, the Complaint alleges that Plaintiff suffered damages “in a sum to be  
14 proven at trial in an amount that is *not less than* \$25,001.00.” Compl. ¶ 11 (emphasis added).  
15 Hence, while Plaintiff seeks restitution for the value of the car, civil penalties, and attorneys’ fees  
16 and costs, it is unclear whether *all* these damages are subsumed within the request for \$25,001.  
17 *Compare id.* (stating that Plaintiff suffered “damages”), *with Bernstein*, 2018 WL 2210683 at \*2  
18 (plaintiff claimed the amount in controversy exceeded \$25,000 and sought actual, incidental, and  
19 exemplary damages “in addition” to the \$25,000). Thus, unlike the *Bernstein* and *McDonald*  
20 courts, this Court cannot readily determine *what* is included in Plaintiff’s claimed damages.  
21 Accordingly, the amount in controversy is unclear from the face of Plaintiff’s Complaint and the  
22 Court must determine if Defendants have shown by a preponderance of the evidence that the  
23 amount in controversy exceeds \$75,000. *See Guglielmino*, 506 F.3d at 699; *see also Gaus*, 980  
24 F.2d at 566 (noting that removal jurisdiction must be strictly construed against removal).

## 25 2. Preponderance of the Evidence Test

26 Defendants argue that “it is more likely than not” that the damages and penalties pled in  
27 Plaintiff’s complaint exceed \$75,000. The Court disagrees.

1 Defendants' rely on the same argument analyzed above. They argue that the \$25,001  
2 refers to actual damages and, after doubling that amount for civil penalties, the amount in  
3 controversy exceeds \$75,000. But, as held above, it is too speculative to say that the "\$25,001"  
4 amounts to actual damages. Plaintiff's Complaint does not offer, and Defendant fails to produce,  
5 any facts that would allow the Court to determine that the \$25,001 refers only to actual damages.  
6 *See supra* III.B.1. Indeed, the Court could just as easily infer that the \$25,001 refers to Plaintiff's  
7 total damages. This lack of clarity forecloses Defendants' argument that the \$25,001 "more likely  
8 than not" satisfies the federal-jurisdictional amount. Moreover, it ignores the fact that removal  
9 jurisdiction is strictly construed against removal. *See Edwards v. Ford Motor Co.*, 2016 WL  
10 6583585, at \*4 (C.D. Cal. Nov. 4, 2016). Accordingly, because the Court cannot rest its  
11 jurisdictional findings on speculation, Defendant's first argument is rejected.

12 Defendants next support their removal with Plaintiff's request for attorneys' fees and costs.  
13 Courts must include future attorneys' fees recoverable by statute or contract when assessing  
14 whether the amount-in-controversy requirement is met. *Fritsch v. Swift Transp. Co. of Az., LLC*,  
15 899 F.3d 785, 794 (9th Cir. 2018). The "mere futurity" of attorneys' fees and costs does not  
16 preclude them from being part of the amount in controversy. *Id.* (quoting *Chavez v. JP Morgan*  
17 *Chase & Co.*, 888 F.3d 413, 418 (9th Cir. 2018)); *but see Chajon*, 2019 WL 994019 at \*2 (holding  
18 that prospective attorneys' fees were too speculative to be included in the amount in controversy).  
19 Thus, if the law entitles the plaintiff to future attorneys' fees, then the removing defendant may  
20 attempt to prove that such fees satisfy the amount-in-controversy requirement. *Fritsch*, 899 F.3d  
21 at 794. The removing defendant, however, must use "summary-judgment-type evidence" to show  
22 that it is "more likely than not" that the amount in controversy (including attorneys' fees) exceeds  
23 \$75,000. *Id.* at 795–96.

24 There is no dispute that attorneys' fees are at issue. *See* Compl. at Prayer (seeking "costs  
25 of the suit and Plaintiff's reasonable attorneys' fees pursuant to Civil Code section 1794,  
26 subdivision (d)"). Defendants argue that these fees exceed \$75,000. Opp. at 6–7. As support,  
27 Defendants filed a declaration showing that (1) claims for attorneys' fees in these cases regularly

1 approach or exceed \$50,000 and (2) a recent fee demand by Plaintiff’s counsel exceeded \$300,000  
2 for a Song-Beverly case involving Ford. *Id.* at 7. Plaintiff argues this is not “competent  
3 evidence.” Reply at 4. The Court agrees with Plaintiff—none of the evidence supports  
4 Defendants’ theory that *in this case* the attorneys’ fees amount to more than \$50,000. Defendants  
5 provide nothing more than mere conjecture. Indeed, all that underlies their conclusion that  
6 “claims for attorneys’ fees in these cases regularly approaches or exceeds \$50,000” is a  
7 declaration, executed by Defendants’ counsel, that speculates “it is not uncommon, and in fact  
8 quite regular, for attorneys’ fees and cost awards . . . to exceed \$50,000.” Declaration of Counsel  
9 in Support of Defendants Opposition (“Harlow Decl.”) ¶ 5, Dkt. 19-1. Courts in this district  
10 routinely hold that such evidence insufficient. *See, e.g., Makol v. Jaguar Land Rover N. Am.,*  
11 *LLC*, 2018 WL 3194424, at \*3 (N.D. Cal. June 28, 2018).

12 In the alternative, Defendants point to the \$300,000 fee recently claimed by Plaintiff’s  
13 counsel in another Ford Motor case. Yet, Defendants fail to explain how that case accords with  
14 this case. All that Defendants claim is that the same counsel appears in each case and that the  
15 subject-matter of the cases are the same. Harlow Decl. ¶ 7. They do not, however, compare or  
16 contrast the litigation strategies or the litigation timelines of the two cases. *Compare* Harlow  
17 Decl. Ex. 3 (discussing attorney fees for case that went to trial), *with Makol*, 2018 WL 3194424 at  
18 \*3 (“Jaguar[does not] attempt to estimate anticipated fees in the more likely event this case does  
19 not go to trial.”). Accordingly, because Defendants fail to provide the Court with specific  
20 evidence showing that the attorneys’ fees *in this case* are “more likely than not” to exceed  
21 \$75,000, attorneys’ fees cannot be used to satisfy the amount-in-controversy requirement.

22 Finally, Defendants argue that the total sales price of the vehicle plus civil penalties  
23 exceeds the amount in controversy. In her Complaint, Plaintiff asserts that she “seeks the  
24 remedies provided in California Civil Code section 1794(b)(1), including the entire contract  
25 price.” Compl. ¶ 21. The total sales price of the vehicle was \$37,030.20. Harlow Decl., Ex. 1.  
26 Plaintiff thus could recover \$37,030.20 in actual damages and “two times” that amount in civil  
27 penalties. Hence, once the possible civil penalties are added, the total amount in controversy

1 potentially amounts to \$111,090.6 ( $\$37,030.2 \times 3$ ), which far exceeds \$75,000. *See Korn v. Polo*  
2 *Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. Feb. 27, 2008) (noting that it is  
3 irrelevant if plaintiff *could* receive less than the maximum statutory penalty because the relevant  
4 inquiry is what is the amount *in controversy* in the litigation); *Saulic v. Symantec Corp.*, 2007 WL  
5 5074883, at \*4 (C.D. Cal. Dec. 26, 2007) (“Courts as a matter of law, calculate the amount in  
6 controversy based upon the maximum amount of civil penalties available to plaintiff.”); *see also*  
7 *Edwards*, 2016 WL 6583585 at \*4 (holding the defendant failed to show it was “more likely than  
8 not” that jurisdictional amount satisfied because complaint did “not offer, and Defendant [did not]  
9 produce, any facts that would allow the Court to determine the amount of actual damages Plaintiff  
10 seeks to recover”).

11 In response, Plaintiff argues that the “mileage offset” might reduce Plaintiff’s actual  
12 damages and thus impact the amount in controversy. Reply at 3. The set-off amount is  
13 determined by multiplying the “actual price of the new motor vehicle paid or payable by the  
14 buyer . . . by a fraction having its denominator 120,000 and having as its numerator the number of  
15 miles traveled by the new motor vehicle prior to the time the buyer delivered the vehicle” for  
16 correction of the problem. *Maciel v. BMW of N. Am., LLC*, 2017 WL 8185859, at \*2 (C.D. Cal.  
17 Aug. 7, 2017) (quoting Cal. Civ. Code § 1793.2(d)(2)(C)) (alteration in original). Plaintiff’s  
18 Complaint and exhibits do not indicate what the appropriate offset should be in this case.  
19 Defendants, however, attached an exhibit that reflects that the most recent repairs to Plaintiff’s  
20 vehicle occurred at 75,943 miles on October 5, 2017. Harlow Decl., Ex. #3; *see also Hall v. FCA*  
21 *US, LLC*, 2016 WL 4445335, at \*3 (E.D. Cal. Aug. 24, 2016) (using most recent repair as “first  
22 relevant repair”). Using that repair as the “first relevant repair” generates the largest possible  
23 mileage offset of \$23,434.87 ( $37,030.2 \times 75,943/120,000$ ). With this offset, Plaintiff could  
24 recover only \$13,595.33 in actual damages and \$40,785.99 in total damages. This does not satisfy  
25 the \$75,000 requirement and so the Court holds that Defendants failed to prove by a  
26 preponderance of the evidence that the amount in controversy exceeds \$75,000.

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28 Case No.: [5:19-cv-05545-EJD](#)  
ORDER GRANTING PLAINTIFF’S MOTION TO REMAND

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**IV. CONCLUSION**

Because the amount in controversy does not exceed \$75,000, this Court lacks subject-matter jurisdiction and must remand the action pursuant to 28 U.S.C. § 1447(c). Accordingly, this Court **GRANTS** Plaintiffs’ motion to remand. The Clerk is **DIRECTED** to **REMAND** this case to the Santa Clara County Superior Court and close the file.

**IT IS SO ORDERED.**

Dated: March 2, 2020

  
EDWARD J. DAVILA  
United States District Judge