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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
6 SAN JOSE DIVISION

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8 SANDRA LAKY,  
9 Plaintiff,

10 v.

11 FORD MOTOR COMPANY,  
12 Defendant.

Case No. [5:19-cv-05546-EJD](#)

**ORDER GRANTING MOTION TO  
REMAND**

Re: Dkt. No. 17

13 Before the Court is a motion to remand by Plaintiff Sandra Laky (“Laky”). Mot. to  
14 Remand, Dkt. No. 17. Laky alleges that Defendant Ford Motor Company’s (“Ford”) Notice of  
15 Removal failed to meet the “burden of establishing that the amount in controversy satisfied the  
16 jurisdictional threshold of \$50,000” under the Magnuson-Moss Warranty Act or prove fraudulent  
17 joinder of co-defendant Ford of Escondido (“Escondido”). *Id.* at 1. Ford did not file an opposition  
18 to Laky’s motion to remand. Pursuant to Civ. L.R. 7-1(b), the Court has determined that this  
19 motion is appropriate for decision without oral argument. For the reasons stated below, the Court  
20 GRANTS Plaintiff’s motion to remand.

21 **I. BACKGROUND**

22 Plaintiff Sandra Laky (“Laky”) is a resident of California. Complaint for Violation of  
23 Statutory Obligations (“Compl.”), Dkt. No. 1-2, Ex. B ¶ 2. In June 2015, Laky purchased a 2010  
24 Mercury Mariner vehicle (“Vehicle”), and received an express written warranty. *Id.* ¶¶ 8-9. Laky  
25 alleges the Vehicle contained or developed defects in its engine, transmission, axle seat, and clutch  
26 among other areas of the Vehicle. *Id.* ¶ 10. Plaintiff brought the Vehicle to defendant Ford of  
27 Escondido, for service and repair but they were unable to have the Vehicle repaired in accordance

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1 with industry standards. *See* ¶¶ 37-41.

2 On July 24, 2019, Laky filed suit in Santa Clara Superior Court against Defendants setting  
3 forth seven causes of action based on the California Song-Beverly Consumer Warranty Act  
4 (“Song-Beverly”), Cal. Civ. Code §§ 1790-1795; Magnuson-Moss Warranty Act (“MMWA”), 15  
5 U.S.C. § 2301 *et seq.*; and negligent repair. On September 3, 2019, Ford filed a notice of removal  
6 stating that this Court has federal question jurisdiction pursuant to the MMWA, supplemental  
7 jurisdiction over related state claims, and diversity jurisdiction due to the joinder. *See generally*  
8 *Not. of Removal*, Dkt. No. 1.

9 On October 14, 2020, the Court granted a joint stipulation agreed to by the parties which  
10 dismissed all of Laky’s Song-Beverly Consumer Warranty Act claims. *See* Dkt. Nos. 16, 18.  
11 Thus, after the stipulation, Laky asserts two causes of action: one against Ford for violation of the  
12 MMWA, and one against Escondido for negligent repair. *Compl.* ¶¶ 37-54. Plaintiff seeks the  
13 following monetary relief in her amended complaint: actual damages, restitution, consequential  
14 and incidental damages, any remedies pursuant to MMWA, prejudgment interest at the legal rate,  
15 and any other such relief the Court may deem proper. *Id.* at 10. In total, Laky alleges she suffered  
16 damages “in a sum to be proven at trial in an amount that is not less than \$25,001.00.” *Id.* ¶ 11.

17 On October 13, 2020, Laky filed a motion to remand alleging that Ford has failed to meet  
18 its burden in establishing that the MMWA amount in controversy of \$50,000 has been met or that  
19 co-defendant Escondido was fraudulently joined to defeat diversity of citizenship. *See Mot. to*  
20 *Remand* at 4.

21 **II. LEGAL STANDARD**

22 If a federal court has subject matter jurisdiction over a civil case filed in state court, the suit  
23 may be removed to federal court by the defendant. 28 U.S.C. § 1441(a). “A defendant may  
24 remove an action to federal court based on federal question jurisdiction or diversity jurisdiction.”  
25 *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009). “Federal jurisdiction exists  
26 only when a federal question is presented on the face of the plaintiff’s properly pleaded  
27 complaint.” *California ex rel. Sacramento Metro. Air Quality Mgmt. Dist. v. United States*, 215

1 F.3d 1005, 1014 (9th Cir. 2000). Diversity jurisdiction exists when the suit is between “citizens of  
2 different States” and “where the matter in controversy exceeds the sum or value of \$75,000,  
3 exclusive of interests or costs.” 28 U.S.C. § 1332. “If at any time before final judgment it appears  
4 that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. §  
5 1447(c).

6 The removal statute “is strictly construed against removal jurisdiction, and the burden of  
7 establishing federal jurisdiction falls to the party invoking the statute.” *Limon-Gonzalez v. Kia*  
8 *Motors Am., Inc.*, CV 20-4381 PA (JPRX), 2020 WL 3790838, at \*1 (C.D. Cal. July 7, 2020)  
9 (citing *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004)). “Federal  
10 jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.”  
11 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

12 For removals based on diversity jurisdiction, the defendant must prove by a preponderance  
13 of the evidence that the amount in controversy exceeds \$75,000. *See Chavez v. JPMorgan Chase*  
14 *& Co.*, 888 F.3d 413, 416 (9th Cir. 2018). The Court may look to the complaint, notice of  
15 removal, “as well as summary-judgment-type evidence relevant to the amount in controversy.” *Id.*  
16 Similarly, if the defendant seeks removal based on diversity where no complete diversity exists,  
17 the defendant must prove the fraudulent joinder exception to the requirement for complete  
18 diversity. *See Hunter*, 582 F.3d at 1043 (“one exception to the requirement for complete diversity  
19 is where a non-diverse defendant has been fraudulently joined.”) (internal quotations omitted).

20 Fraudulently joined defendants who destroy diversity of citizenship do not defeat removal.  
21 *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987). “There is a general  
22 presumption against fraudulent joinder and the defendant’s burden of demonstrating that a joinder  
23 is fraudulent is a heavy one.” *Beutel v. Wells Fargo Bank N.A.*, No. 18-CV-03686-LHK, 2018  
24 WL 3084660, at \*2 (N.D. Cal. June 22, 2018) (quoting *Hunter*, 582 F.3d at 1046) (internal  
25 quotations omitted). Federal courts must find the joinder proper and remand the case to the state  
26 court “if there is a possibility that a state court would find the complaint states a cause of action  
27 against any of the resident defendants.” *McAdams v. Ford Motor Co.*, No. 18-CV-07485-LHK,

1 2019 WL 2378397, at \*4 (N.D. Cal. June 5, 2019) (quoting *Grancare, LLC v. Thrower by and*  
2 *through Mills*, 889 F.3d 534, 548 (9th Cir. 2018)). Courts “may look beyond the pleadings to  
3 evidence proffered by the parties” to resolve fraudulent joinder claims. *Id.*; *see also Morris v.*  
4 *Princess Cruises, Inc.*, 236 F.3d 1061, 1068 (9th Cir. 2001) (considering “summary judgment-type  
5 evidence such as affidavits and deposition testimony”).

6 **III. DISCUSSION**

7 **A. Federal Question Jurisdiction 28 U.S.C. § 1331**

8 The MMWA allows “a consumer who is damaged by the failure of a supplier, warrantor,  
9 or service contract to comply with any obligation under this chapter, or under a written warranty,  
10 implied warranty, or service contract” to bring a “suit for damages and legal and equitable relief”  
11 in “any court of competent jurisdiction in any State.” 15 U.S.C. § 2310(d)(1). Claims may not be  
12 brought in federal court if the amount in controversy “of any individual claim is less than the sum  
13 or value of \$25; or . . . less than the sum or value of \$50,000 (exclusive of interests and costs)  
14 computed on the basis of all claims to be determined in this suit.” 15 U.S.C. § 2310(d)(3). It  
15 follows that federal courts will have subject matter jurisdiction over Laky’s claims if the total  
16 amount in controversy is greater than or equal to \$50,000. *See id.*; 28 U.S.C. § 1331; 28 U.S.C. §  
17 1367.

18 The MMWA does not “indicate that the amount in controversy for [the MMWA] is  
19 assessed any differently than the diversity jurisdiction requirement found in 28 U.S.C. § 1332.”  
20 *Limon-Gonzalez*, 2020 WL 3790838, at \*2. The amount in controversy includes actual and  
21 punitive damages. *See Bell v. Preferred Life Assurance Soc’y*, 320 U.S. 238, 240 (1943). In the  
22 Ninth Circuit, “a court must include future attorneys’ fees recoverable by statute or contract when  
23 assessing whether the amount-in-controversy requirement is met.” *Fritsch v. Swift Transportation*  
24 *Co. of Arizona, LLC*, 899 F.3d 785, 794 (9th Cir. 2018).

25 Ford has not demonstrated that the amount in controversy meets the \$50,000 required for  
26 federal question jurisdiction. As shown by Laky, her alleged damages of “a sum to be proven at  
27 trial in an amount that is not less than \$25,001.00” are an estimate only. Compl. ¶ 11. Several

1 district courts in this Circuit have found that a plaintiff does not satisfy the amount in controversy  
2 when alleging damages using speculative language. *See, e.g., Limon-Gonzalez*, 2020 WL  
3 3790838, at \*2 (granting motion to remand and finding plaintiff’s allegations of “damages in an  
4 amount that is not less than \$25,001.00” too speculative) (emphasis added); *Steeg v. Ford Motor*  
5 *Co.*, No. 19-CV-05833-LHK, 2020 WL 2121508, at \*3 (N.D. Cal. May 5, 2020) (granting motion  
6 to remand by reasoning that “Plaintiffs specif[ied] a monetary amount only once, when they  
7 allege[d] that ‘Plaintiffs suffered damages . . . in an amount not less than \$25,000.01.’”) (citation  
8 omitted) (emphasis added); *Edwards v. Ford Motor Co.*, No. CV 16-05852 BRO (PLAX), 2016  
9 WL 6583585, at \*4 (C.D. Cal. Nov. 4, 2016) (granting motion to remand where Plaintiff’s  
10 complaint states that “‘Plaintiff suffered damages in a sum to be proven at trial’ of at least  
11 \$25,000.”) (citation omitted) (emphasis added). Courts have also granted a motion to remand  
12 where “[i]n the absence of any contradictory allegations in the Complaint, the Court accepts  
13 Plaintiff’s explanation that the \$25,001.00 figure represents the combined total of actual damages  
14 and civil penalties.” *Feichtmann v. FCA US LLC*, No. 5:20-CV-01790-EJD, 2020 WL 3277479,  
15 at \*3 (N.D. Cal. June 18, 2020). This Court finds Laky’s alleged damages are speculative because  
16 the amended complaint references damages only once, uses ambiguous language, and only claims  
17 a total amount not less than \$ 25,001. *See* Compl. ¶ 11 (“Plaintiff suffered damages in a sum to be  
18 proven at trial in an amount that is *not less than* \$25,001.00”) (emphasis added).

19 Second, Laky no longer seeks civil penalties following the stipulated dismissal of her  
20 Song-Beverly Act claims. *See* Dkt. No. 18. This Court has found “where a plaintiff expressly  
21 alleges potential entitlement to the maximum civil penalty under the Song Beverly Act . . . the  
22 amount in controversy requirement likely will be satisfied.” *Pestarino v. Ford Motor Co.*, No. 19-  
23 cv-07890-BLF, 2020 WL 1904590, at \*3 (N.D. Cal. Apr. 17, 2020). In *Pestarino*, the Court found  
24 a higher \$75,000 amount in controversy requirement to be satisfied solely on alleging actual  
25 damages exceeding \$25,000, a two times civil penalty, and attorneys’ fees. *Id.* Laky’s case can be  
26 distinguished because Plaintiff no longer asserts a claim under the Song-Beverly Act. This raises  
27 additional doubt as to whether Laky alleges damages that would meet the \$50,000 jurisdictional

1 requirement.

2 Lastly, Ford does not challenge Laky’s amount in controversy. Ford did not file an  
3 opposition to the motion to remand. As a result, Ford does not address the amount in controversy  
4 after the stipulated dismissal of Laky’s Song-Beverly Act claims. Ford’s assertion that “the  
5 amount in controversy in fact exceeds \$50,000” and the “Complaint on its face seeks recovery of  
6 more than \$75,000” relies on Laky’s prior claims of civil penalties and attorneys’ fees. Not. of  
7 Removal ¶ 21. This Court finds Ford’s claim regarding the amount in controversy inadequate to  
8 satisfy the MMWA’s \$50,000 amount in controversy requirement.

9 **B. Diversity Jurisdiction 28 U.S.C. § 1332**

10 Since the Court could not conclusively establish that Laky’s claim satisfies the MMWA’s  
11 \$50,000 amount in controversy requirement, Defendants necessarily cannot prove by a  
12 preponderance of the evidence that the amount in controversy is over \$75,000 to satisfy the  
13 requirement for diversity jurisdiction. Accordingly, Ford’s assertion of diversity jurisdiction by  
14 fraudulent joinder does not need to be addressed.

15 **IV. CONCLUSION**

16 For the foregoing reasons, the Court GRANTS Plaintiff’s motion to remand. Accordingly,  
17 the Court REMANDS this case. The Clerk of the Court shall remand this action to the Superior  
18 Court of California for the County of Santa Clara and close the file.

19 **IT IS SO ORDERED.**

20 Dated: January 26, 2021



EDWARD J. DAVILA  
United States District Judge