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SOUTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TERESITA L. SALANG and JUAN L. BALADAD,

Plaintiffs,

vs.

CARMAX AUTO SUPERSTORES CALIFORNIA, LLC and DOES 1 through 75, Inclusive,

Defendants.

CASE NO. 13-CV-870 BEN (WVG)
**ORDER REMANDING
ACTION TO STATE COURT**

On December 3, 2013, the Court issued an Order to Show Cause why this action should not be remanded for lack of subject matter jurisdiction. (Docket No. 11.) For the reasons stated below, this action is **REMANDED** to the Superior Court of California, County of San Diego.

BACKGROUND

This action arises from Plaintiffs Teresita L. Salang and Juan L. Baladad's purchase of an allegedly defective 2007 Chevrolet Impala LT from Defendant CarMax Auto Superstores California LLC. On March 4, 2013, Plaintiffs filed suit in California state court. The Complaint alleges: (1) violation of the Consumers Legal Remedies Act, California Civil Code § 1750; (2) violation of Business & Professions Code § 17200; and (3) fraud and deceit. The Complaint seeks general damages, rescission of the purchase contract, incidental and consequential damages, punitive damages,

1 equitable and injunctive relief, prejudgment interest, and reasonable attorneys' fees and
2 costs. In the Statement of Actual and Punitive Damages, Plaintiffs reserved the right
3 to seek \$54,000 in actual damages and \$20,000 in punitive damages.

4 On April 11, 2013, Defendant removed this action under diversity jurisdiction.
5 On December 3, 2013, the Court issued an Order to Show Cause why this action should
6 not be remanded for lack of subject matter jurisdiction. (Docket No. 11.) Both parties
7 have filed responsive briefs. (Docket Nos. 12, 13.)¹

8 DISCUSSION

9 Congress has authorized a defendant to remove a civil action from state court to
10 federal court. 28 U.S.C. § 1441. Because federal courts are courts of limited
11 jurisdiction, the removal statute is strictly construed against removal jurisdiction. *See*
12 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Gaus v. Miles,*
13 *Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). “The strong presumption against removal
14 jurisdiction means that the defendant always has the burden of establishing that
15 removal is proper.” *Gaus*, 980 F.2d at 566 (internal quotation marks omitted). The
16 district court must remand any action previously removed from a state court “if at any
17 time before final judgment it appears that the district court lacks subject matter
18 jurisdiction.” 28 U.S.C. § 1447(c).

19 Defendant removed this action on the basis of diversity jurisdiction.
20 “Jurisdiction founded on [diversity] requires that the parties be in complete diversity
21 and the amount in controversy exceed \$75,000.” *Matheson v. Progressive Specialty*
22 *Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (per curiam); *see also* 28 U.S.C.
23 § 1332(a).

24 The Court will address only the amount in controversy requirement, as this issue
25 is dispositive. Diversity jurisdiction exists only “where the matter in controversy
26 exceeds the sum of \$75,000, exclusive of interests and costs.” 28 U.S.C. § 1332(a).

27
28 ¹ Defendant’s request for judicial notice (Docket No. 13-6) is **GRANTED**. *See*
FED. R. EVID. 201.

1 This amount is determined by the amount of damages or the value of the property that
2 is the subject of the action. *Hunt v. Wash. State Apple Advertising Comm'n*, 423 U.S.
3 333, 347-48 (1977). “[U]nless the law gives a different rule, the sum claimed by the
4 plaintiff controls if the claim is apparently made in good faith.” *St. Paul Mercury*
5 *Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938). However, “[w]hile a federal
6 court must of course give due credit to the good faith claims of the plaintiff, a court
7 would be remiss in its obligations if it accepted every claim of damages at face value,
8 no matter how trivial the underlying injury.” *Diefenthal v. Civil Aeronautics Bd.*, 681
9 F.2d 1039, 1052 (5th Cir. 1982); *Christensen v. Nw. Airlines, Inc.*, 633 F.2d 529, 530-
10 31 (9th Cir. 1980) (upholding dismissal of action because “[i]t is clear to a legal
11 certainty that appellant’s unliquidated tort claim could not sustain a judgment of over
12 [the jurisdictional minimum]”).

13 When a state court complaint affirmatively alleges that the amount in
14 controversy is less than \$75,000, the party seeking removal must prove to a “legal
15 certainty” that the threshold is met. *Tele Munchen Fernseh GMBH & Co.*
16 *Produktionsgesellschaft v. Alliance Atlantis Int’l Distrib., LLC*, No. CV 13-5834, 2013
17 WL 6055328, at *2 (C.D. Cal. Nov. 15, 2013) (citing *Guglielmino v. McKee Foods*
18 *Corp.*, 506 F.3d 696, 699 (9th Cir. 2007)). When it is unclear or ambiguous from the
19 face of the complaint whether the jurisdictional threshold is met, however, a
20 “preponderance of the evidence” standard applies. *Id.*

21 Here, Plaintiff seeks a specific amount (\$74,000) in the Statement of Actual and
22 Punitive Damages. However, the Statement of Actual and Punitive Damages does not
23 include injunctive relief or attorneys’ fees, even though injunctive relief and attorneys’
24 fees are requested by the Complaint. Accordingly, the Complaint is ambiguous as to
25 the total amount in controversy, meaning that the preponderance of evidence standard
26 applies.

27 In the Statement of Actual and Punitive Damages, Plaintiffs reserved the right
28 to seek \$54,000 in actual damages and \$20,000 in punitive damages, for a total of

1 \$74,000. (Docket No. 1-1.) In regard to actual damages, however, it is not clear under
2 a preponderance of evidence standard that Plaintiffs may recover \$54,000. The total
3 amount of the sale was \$19,232.92. (Compl., Exh. 1.) In addition, Defendant concedes
4 that general and compensatory damages amount only to the amount of the total sale.
5 (Def. Response at 6.) Accordingly, the Court finds that only \$19,232.92 in actual
6 damages is at issue. This brings the amount of actual and punitive damages to
7 \$39,232.92.

8 In regard to attorneys' fees, if the plaintiff may recover attorneys' fees by either
9 statute or contract, the fee claim is included in the determination of the amount in
10 controversy, regardless of whether the fee award is mandatory or discretionary. *Galt*
11 *G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998). Attorneys' fees
12 incurred after the date of removal are not included in the amount in controversy. *See*
13 *Stelzer v. CarMax Auto Superstores Cal., LLC*, No. 13-CV-1788, 2013 WL 6795615,
14 at *6 (S.D. Cal. Dec. 20, 2013); *Wastier v. Schwan's Consumer Brands*, No. 07-CV-
15 1594, 2007 WL 4277552, at *3 (S.D. Cal. Dec. 5, 2007).

16 If Plaintiffs prevail, an award of attorneys' fees may be proper. CAL. CIV. CODE
17 § 1780(e). In determining the amount of an award of attorneys' fees, this Court will
18 consider only the attorneys' fees incurred up to the time the action was removed. Mark
19 E. Edwards, Defendant's expert, estimates that the "Case Intake and Claim Generation
20 Phase" of this action—which "includes an initial meeting with the client, review of
21 documents, and generation of a complaint and a CLRA/Song-Beverly Act demand
22 letter"—required four to seven hours of junior attorney work, resulting in \$1,200 in
23 attorneys' fees. (Edwards Decl. at 11.) This estimate, however, is likely inflated, as
24 the complaint Plaintiffs filed appears to be a form complaint used for cases of this kind.
25 *Cf. Murray v. CarMax Auto Superstores Cal., LLC*, Case No. 12-CV-2966 L (MDD),
26 Docket No. 1-1 (S.D. Cal.). Like Judge Larry Burns in *Stelzer*, the undersigned finds
27 it more likely that it took the junior associate one to three hours to complete this phase
28 of litigation, which would generate approximately \$600 in attorneys' fees. *Stelzer*,

1 Case No. 13-CV-1788 LAB (JMA), Docket No. 18, at 10. This brings the total amount
2 in controversy to \$39,832.92.

3 In regard to injunctive relief, Defendant estimates that it would cost CarMax
4 \$350,000 to comply with the requested injunction. Plaintiff does not address the cost
5 of the requested injunction. The Court finds that Defendant has greatly overestimated
6 the cost of complying with the requested injunction, and has failed to show that the
7 injunction is valued at more than \$35,167.08—the amount needed to pass the
8 jurisdictional threshold. *Cf. id.* (finding that CarMax’s estimate of \$350,000 “borders
9 on the preposterous”).


10 Accordingly, Defendant has failed to show that under a preponderance of
11 evidence standard, the amount in controversy exceeds \$75,000. Strictly construing the
12 removal statute against finding jurisdiction, as *Kokkonen* requires, this Court finds that
13 it lacks subject matter jurisdiction.

14 **CONCLUSION**

15 For the reasons stated above, this action is **REMANDED** to the Superior Court
16 of California, County of San Diego.

17 **IT IS SO ORDERED.**

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19 DATED: 1/28/14

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HON. ROGER T. BENITEZ
United States District Judge