

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 NIDIA FERRER,

12 Plaintiff,

13 v.

14 FCA US LLC, A Delaware Limited
15 Liability Company; DOES 1 through 10,
16 Inclusive,

17 Defendant.
18

Case No.: 17-CV-0530-AJB-BGS

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

(Doc. No. 10)

19 Presently before the Court is Plaintiff Nidia Ferrer's ("Ferrer") motion to remand.
20 (Doc. No. 10.) Defendant FCA US LLC ("FCA") opposes the motion. (Doc. No. 14.)
21 Having reviewed the parties' moving papers and controlling legal authority, and pursuant
22 to Local Civil Rule 7.1.d.1, the Court finds the matter suitable for decision on the papers
23 and without oral argument. For the reasons set forth below, the Court **DENIES** Ferrer's
24 motion.

25 **BACKGROUND**

26 This dispute arises from FCA's alleged breach of warranty obligations owed to
27 Ferrer for a new 2011 Jeep Wrangler ("Jeep") she purchased from FCA. Ferrer asserts FCA
28 concealed a known defect from her, specifically, a defect with the totally integrated power

1 module (“TIPM”), which is responsible for controlling and distributing electrical power to
2 the entire vehicle. (Doc. No. 1-3 ¶¶ 10, 13, 15.) Based on this concealment, Ferrer instituted
3 this action in San Diego Superior Court on November 22, 2016, bringing causes of action
4 for breaches of express and implied warranties in violation of California’s Song-Beverly
5 Consumer Warranty Act (“Song-Beverly Act” or “Act”), as well as a cause of action for
6 fraudulent inducement/concealment under California state common law. (Doc. No. 1 ¶ 1.)

7 FCA removed the action to this Court on March 16, 2017, asserting the Court has
8 diversity jurisdiction. (Doc. No. 1 at 1.) On April 18, 2017, Ferrer filed the instant motion
9 to remand, arguing FCA has failed to carry its burden of establishing that the amount in
10 controversy exceeds \$75,000 and that the parties are completely diverse. (Doc. No. 10.)
11 FCA filed an opposition, (Doc. No. 14), and Ferrer replied, (Doc. No. 17). On June 22,
12 2017, the Court ordered FCA to provide a warranty claim report reflecting the vehicle’s
13 mileage as of May 22, 2015, for purposes of calculating the amount in controversy. (Doc.
14 No. 21.) FCA provided this information on June 23, 2017, (Doc. No. 22), and Ferrer did
15 not respond, (*see* Doc. No. 23). This order follows.

16 LEGAL STANDARD

17 The right to remove a case to federal court is entirely a creature of statute. *See*
18 *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979). The removal
19 statute, 28 U.S.C. § 1441, allows defendants to remove an action when a case originally
20 filed in state court presents a federal question, or is between citizens of different states and
21 involves an amount in controversy that exceeds \$75,000. *See* 28 U.S.C. §§ 1441(a), (b); 28
22 U.S.C. §§ 1331, 1332(a). Only state court actions that could originally have been filed in
23 federal court can be removed. 28 U.S.C. § 1441(a); *see also Caterpillar Inc. v. Williams*,
24 482 U.S. 386, 392 (1987); *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1393 (9th Cir.
25 1988).

26 “[J]urisdiction founded on [diversity] requires that parties be in complete diversity
27 and the amount in controversy exceed \$75,000.” *Matheson v. Progressive Specialty Ins.*
28 *Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (per curiam); *see* 28 U.S.C. § 1332(a)(1).

1 Complete diversity requires that the plaintiff’s citizenship is diverse from that of each
2 named defendant. 28 U.S.C. §§ 1332(a)(1), 1332(c)(1); *Caterpillar Inc. v. Lewis*, 519 U.S.
3 61, 68 n.3 (1996). Whether or not complete diversity is present is determined at the time
4 of removal. *See Am. Dental Indus., Inc. v. EAX Worldwide, Inc.*, 228 F. Supp. 2d 1155,
5 1157 (D. Or. 2002) (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283,
6 (1938)).

7 The Ninth Circuit “strictly construe[s] the removal statute against removal
8 jurisdiction,” and “[f]ederal jurisdiction must be rejected if there is any doubt as to the right
9 of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (per
10 curiam) (citations omitted). “The ‘strong presumption’ against removal jurisdiction means
11 that the defendant always has the burden of establishing that removal is proper.” *Id.*; *see*
12 *also McNutt v. Gen. Motors Acceptance Corp., Inc.*, 298 U.S. 178, 189 (1936) (finding that
13 the removing party must prove its allegations by a preponderance of the evidence). The
14 Court takes this proof from the notice of removal and may, if it chooses, construe the
15 opposition to the motion to remand as an amendment to the notice of removal. *See Cohn v.*
16 *Petsmart Inc.*, 281 F.3d 837, 840 n.1 (9th Cir. 2002).

17 DISCUSSION

18 Ferrer argues three points that she contends require remand of this action to
19 California state court: (1) FCA’s amount-in-controversy calculation ignores California
20 state law; (2) FCA, as a limited liability company (“LLC”), has not established the
21 citizenship of its foreign member, nor has it established Ferrer’s citizenship; and (3) comity
22 dictates that this case be remanded to state court. (Doc. Nos. 10, 17.) The Court will
23 consider each argument in turn.

24 ***I. Amount in Controversy***

25 In her complaint, Ferrer seeks, *inter alia*, “reimbursement of the price paid for the
26 [Jeep] less that amount directly attributable to use by the Plaintiff prior to discovery of the
27 nonconformities” and “a civil penalty of up to two times the amount of actual damages in
28 that FCA [] has willfully failed to comply with its responsibilities under the [Song-Beverly]

1 Act.” (Doc. No. 1-3 ¶¶ 151, 154.) Ferrer asserts that FCA has not proven the amount in
2 controversy exceeds \$75,000. (Doc. No. 10-1 at 7–10; Doc. No. 17 at 6–8.)

3 Ferrer contends FCA’s notice of removal improperly relies on an approximation of
4 the cash price, but offers no explanation as to why this number is the proper figure to base
5 the amount-in-controversy calculation on. (Doc. No. 10-1 at 8–9.) In response, FCA points
6 to the retail installment sale contract (“RISC”), attached to the complaint, as well as FCA
7 warranty claim reports, documents upon which it bases its calculation that the actual
8 damages at issue are at least \$37,150.66. (Doc. No. 14 at 16–17.)

9 California Civil Code section 1793.2(d)(2)(B) defines “restitution” in relevant part
10 as “an amount equal to the actual price paid or payable by the buyer, . . . including any
11 collateral charges such as sales or use tax, license fees, registration fees, and other official
12 fees[.]” Section 1793.2(d)(2)(C) goes on to permit the defendant to reduce the amount
13 payable to the buyer “by that amount directly attributable to use by the buyer prior to the
14 time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized
15 service and repair facility for correction of the problem that gave rise to the
16 nonconformity.” Cal. Civ. Code § 1793.2(d)(2)(C).

17 The complaint does not allege the total amount sought with respect to these damages.
18 However, as noted, the RISC is attached to the complaint. (Doc. No. 1-3 at 35–36.) The
19 RISC lists the cash price of the vehicle as \$25,282.00, finance charge as \$10,918.08,
20 document preparation fee as \$55, sales tax as \$2391.91, and DMV electronic filing fee as
21 \$29. (*Id.* at 35.) FCA predicates its actual damages analysis on these figures combined.
22 (Doc. No. 14 at 17; *see* Doc. No. 1 ¶ 20.)¹ Given that the statute permits Ferrer to recover
23 these costs, the Court finds FCA’s use of the cash price, finance charge, and various taxes
24 and fees appropriately estimates “the actual price paid or payable by” Ferrer.

25
26
27 ¹ In the notice of removal, FCA asserted the purchase price of the Jeep, not including
28 finance charges, exceeded \$28,000. (Doc. No. 1 ¶ 20.) This assertion is supported by the
RISC, which lists the total cash price as \$28,279.41. (Doc. No. 1-3 at 35.)

1 As noted above, however, this figure does not end the inquiry. Rather, the restitution
2 awardable under section 1793.2(d)(2)(B) must be reduced by the amount directly
3 attributable to Ferrer’s use of the Jeep prior to the first repair or attempted repair. This set-
4 off amount is determined by multiplying the “actual price of the new motor vehicle paid or
5 payable by the buyer . . . by a fraction having as its denominator 120,000 and having as its
6 numerator the number of miles traveled by the new motor vehicle prior to the time the
7 buyer delivered the vehicle” for correction of the problem. Cal. Civ. Code §
8 1793.2(d)(2)(C).

9 The complaint does not include the Jeep’s mileage when Ferrer took it to the
10 dealership for the first relevant repair. Rather, the complaint lists May 22, 2015, as the date
11 she “delivered the [Jeep] to an authorized FCA [] repair facility for repair.” (Doc. No. 1-3
12 ¶ 96.) FCA asserts that at the time of the first warrantable claim, the Jeep had 7535 miles
13 on it. (Doc. No. 14 at 18.) Reviewing the warranty claim report, however, the Jeep had
14 7535 miles as of June 27, 2012. (Doc. No. 14-9 at 2.) FCA later provided information on
15 the Jeep’s mileage as of May 22, 2015, which shows the Jeep had 33,715 on that date.
16 (Doc. No. 22-1 at 1.) When Ferrer purchased the Jeep, it had 2 miles on its odometer. (Doc.
17 No. 14-9 at 2; *see* Doc. No. 1-3 at 35.) Accordingly, the Court finds FCA has presented
18 sufficient evidence to establish it is more likely than not that the mileage attributable to
19 Ferrer’s use, for purposes of the instant motion, is 33,713. Utilizing the formula provided
20 by section 1793.2(d)(2)(C), this results in a mileage offset of \$10,865.70, which reduces
21 the actual damages at issue to \$27,810.29.

22 This does not end the inquiry either. In the complaint, Ferrer also seeks civil
23 penalties. (Doc. No. 1-3 ¶ 154.) California Civil Code section 1794(c) and (e) permits a
24 buyer to recover a civil penalty not to exceed two times the amount of actual damages
25 where the buyer establishes the defendant’s failure to comply with the Song-Beverly Act
26 is willful. “Courts[,] as a matter of law, calculate the amount in controversy based upon the
27 maximum amount of civil penalties available to plaintiff.” *Garcia v. FCA US, LLC*, No.
28 1:16-cv-00730-DAD-BAM, 2016 WL 4445337, at *4 (E.D. Cal. Aug. 24, 2016) (quoting

1 *Saulic v. Symantec Corp.*, No. SA 07-cv-00610-AHS-PLAx, 2007 WL 5074883, at *4
2 (C.D. Cal. Dec. 26, 2007)); *see also Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d
3 1042, 1046 n.3 (9th Cir. 2000) (noting district courts can consider treble damages where
4 authorized by statute). Here, the Act permits recovery of up to two times actual damages.
5 Because Ferrer “is seeking recovery from a pot that [FCA] has shown could exceed
6 [\$75,000] and [Ferrer] has neither acknowledged nor sought to establish that the [] recovery
7 is potentially any less,” the Court finds inclusion of a full civil penalty award is appropriate.
8 *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 401 (9th Cir. 2010); *see also id.* at 401
9 (“Once the proponent of federal jurisdiction has explained plausibly how the stakes exceed
10 [the amount in controversy], . . . then the case belongs in federal court unless it is legally
11 impossible for the plaintiff to recover that much.” (quoting *Spivey v. Vertrue, Inc.*, 528 F.3d
12 982, 986 (7th Cir. 2008))).

13 As determined above, the actual damages figure at issue is \$27,810.29. When
14 trebled, the amount in controversy, exclusive of incidental and consequential damages, and
15 attorney’s fees and costs, is \$83,430.87. Because this figure exceeds the jurisdictional
16 threshold, the Court finds FCA has carried its burden as to the amount in controversy.
17 *Garcia*, 2016 WL 4445337, at *4.

18 **II. Diversity of Citizenship**

19 Ferrer next argues that FCA, as an LLC, has failed to establish the citizenship of its
20 foreign member. (Doc. No. 10-1 at 10–12; Doc. No. 17 at 4–6.) Ferrer also asserts FCA
21 has failed to establish Ferrer’s citizenship. (Doc. No. 17 at 3–4.) In opposition, FCA asks
22 the Court to consider Book 2 of the Dutch Civil Code, Article 2:64-1, which states that
23 “[a]n Open Corporation (*‘naamloze vennootschap’*) is a legal person” (Doc. No. 14 at
24 10–14.) FCA argues that its ultimate owner is a naamloze vennotschap (“N.V.”);
25 accordingly, FCA is a citizen of the Netherlands and thus diverse from Ferrer. (*Id.*)

26 Removal based on diversity requires that the citizenship of each plaintiff be diverse
27 from the citizenship of each defendant (*e.g.*, complete diversity). *Caterpillar Inc.*, 519 U.S.
28 at 68. For purposes of diversity, an LLC is a citizen of every state in which its

1 “owners/members” are citizens. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d
2 894, 899 (9th Cir. 2006) (explaining that courts are to treat LLCs like partnerships, which
3 have the citizenships of all of their members). “Section 1332(a)(2) applies to foreign legal
4 entities of all kinds, so long as the entity is considered a juridical person under the law that
5 created it.” *Cohn v. Rosenfeld*, 733 F.2d 625, 629 (9th Cir. 1984). A “juridical person” is
6 an “entity, such as a corporation, created by law and given certain legal rights and duties
7 of a human being[.]” Black’s Law Dictionary 979, 1324–25 (10th ed. 2014). Factors
8 relevant to whether an entity is a juridical person include the entity’s ability to sue and be
9 sued in its own name, whether any recovery in such litigation becomes an asset of the
10 entity, and whether the laws of the foreign country recognize the entity as a legally
11 independent organized enterprise. *Cohn*, 733 F.2d at 629.

12 In the notice of removal and accompanying declaration, FCA explained it is an LLC
13 organized under the laws of the State of Delaware. (Doc. No. 1 ¶ 12; Doc. No. 1-2 ¶ 2.) Its
14 sole member is FCA North American Holding LLC, also a limited liability company
15 organized under the laws of the State of Delaware. (Doc. No. 1 ¶ 12; Doc. No. 1-2 ¶ 3.) In
16 turn, FCA North American Holding LLC’s sole member is Fiat Chrysler Automobiles,
17 N.V. (“Fiat N.V.”), which is a publicly traded company incorporated under the laws of the
18 Netherlands with its principal place of business in London, England. (Doc. No. 1 ¶ 12;
19 Doc. No. 1-2 ¶ 4.)

20 It is Fiat N.V.’s citizenship that Ferrer contends FCA has failed to establish by a
21 preponderance of evidence. Specifically, Ferrer asserts Kris Krueger’s declaration fails to
22 establish that Fiat N.V. is a juridical person under the laws of the Netherlands because the
23 Krueger declaration is conclusory, contains improper legal conclusions, lacks foundation,
24 and lacks any documentary evidence. (Doc. No. 10-1 at 11–12.)

25 The Court overrules Ferrer’s objections. Federal Rule of Civil Procedure 44.1
26 provides, “In determining foreign law, the court may consider any relevant material or
27 source, including testimony, whether or not submitted by a party or admissible under the
28 Federal Rules of Evidence.” As such, FCA’s evidence need not pass muster under the

1 Federal Rules of Evidence to be considered on the instant motion.² Having considered
2 Krueger’s declaration, along with Scott Shepardson’s declaration and the accompanying
3 translation of the Dutch Civil Code provided, the Court is satisfied that FCA has proven it
4 is more likely than not a citizen of the Netherlands.³ The Dutch Civil Code provides that
5 an N.V. is a “legal person” that can, *inter alia*, be held jointly and severally liable for its
6 directors’ juridical acts. (Doc. No. 14-2 at 2, 5.) The Court’s conclusion is in keeping with
7 those of other courts, finding N.V.s to be foreign entities. *See Garcia*, 2016 WL 4445337,
8 at *3 (finding FCA “adequately asserted and established that [Fiat N.V.] is a juridical
9 person under the laws of Netherlands and that [FCA] is not a citizen of California”);
10 *Ibrahim v. Titan Corp.*, 391 F. Supp. 2d 10, 20 (D.D.C. 2005) (dismissing foreign
11 plaintiffs’ claims against defendant N.V. because 28 U.S.C. § 1332 “does not confer
12 jurisdiction over suits by a group consisting of only foreign persons against another foreign
13 person”).

14 Ferrer further asserts that remand is appropriate because FCA has failed to establish
15 that Ferrer is a citizen of California. (Doc. No. 17 at 3–4.) In the notice of removal, FCA
16 stated Ferrer is a citizen and resident of California. (Doc. No. 1 ¶ 11.) That statement
17 references the complaint, which simply states that Ferrer “is an individual residing in the
18 City of Vista, County of San Diego, and State of California.” (Doc. No. 1-3 ¶ 2.) Ferrer
19 argues that because the complaint does not allege that he is a citizen of California, and
20 because the notice of removal relies on the complaint, FCA has failed to prove Ferrer’s
21 citizenship for purposes of removal. (Doc. No. 17 at 3–4.)

22
23
24
25 ² For this reason, the Court **DENIES** Ferrer’s request for jurisdictional discovery. (Doc.
26 No. 10-1 at 12.)

27 ³ Ferrer also raises evidentiary objections to the Shepardson declaration. (Doc. No. 17-4.)
28 First, Ferrer’s filing violates the undersigned’s Civil Case Procedures, which require that
objections relating to the motion be set forth in the party’s opposition or reply. Second, the
Court **OVERRULES** the objections based on Federal Rule of Civil Procedure 44.1.

1 If the record contained only the information Ferrer asserts it does, the Court would
2 agree. “The natural person’s state citizenship is [] determined by her state of domicile, not
3 her state of residence. A person’s domicile is her permanent home, where she resides with
4 the intention to remain or to which she intends to return. A person residing in a given state
5 is not necessarily domiciled there, and thus is not necessarily a citizen of that state.” *Kanter*
6 *v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (citations omitted). However,
7 while Ferrer stated in the complaint that he is a resident of California, the civil cover sheet
8 clarifies that Ferrer is also a California citizen. (Doc. No. 1-1 at 1.) In Item III, Ferrer
9 indicated she is a citizen of this (*e.g.*, California) state. (*Id.*) In the absence of any evidence
10 or argument to the contrary, the record supports finding it is more likely than not that Ferrer
11 is a citizen of California. *See Lastra v. PHH Mortg. Corp.*, No. 10cv2573–LAB (BLM),
12 2011 WL 768135, at *1 n.2 (S.D. Cal. Feb. 28, 2011) (noting that defendant intended to
13 allege plaintiff is a citizen of California given that the civil cover sheet identifies plaintiff
14 as such). In sum, the Court finds FCA has carried its burden of establishing diversity
15 jurisdiction.

16 **III. Comity**

17 Ferrer lastly asserts that the Court should decline jurisdiction on comity principles
18 because this case involves “consideration of numerous state-specific issues on sensitive,
19 uniquely state-law issues of regulation and statutory interpretation.” (Doc. No. 10-1 at 3–
20 5.) As a federal district court located within the State of California, this is not the Court’s
21 first case dealing with claims predicated on the Song-Beverly Act or similar California
22 state consumer protection laws. As such, the Court is confident in its ability to faithfully
23 interpret and apply California state law to the issues of this case. While the Court is
24 cognizant that Ferrer has litigated this case for several months in state court, Ferrer should
25 rest assured that this district seeks to move cases quickly in keeping with the spirit of
26 Federal Rule of Civil Procedure 16. The Court therefore declines to remand this case based
27 upon principles of comity.


28 //

1 CONCLUSION

2 Based on the foregoing, Ferrer’s motion to remand is **DENIED**. (Doc. No. 10.)
3 Because the Court denies his motion, Ferrer’s request for attorney’s fees and costs is also
4 **DENIED**. (Doc. No. 10-1 at 12–13.) The parties’ requests for jurisdictional discovery are
5 **DENIED**. (*Id.* at 12; Doc. No. 14 at 21–22.)

6
7 **IT IS SO ORDERED.**

8 Dated: July 6, 2017

9 
10 Hon. Anthony J. Battaglia
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28