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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 RIADON JOHNSON; MARK
12 JOHNSON,

13 Plaintiffs,

14 v.

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

18 Defendant.

Case No.: 17-CV-0536-AJB-BGS

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

(Doc. No. 11)

19 Presently before the Court is Plaintiffs Riadon and Mark Johnson's ("Johnson")
20 motion to remand.¹ (Doc. No. 11.) Defendant FCA US LLC ("FCA") opposes the motion.
21 (Doc. No. 16.) Having reviewed the parties' moving papers and controlling legal authority,
22 and pursuant to Local Civil Rule 7.1.d.1, the Court finds the matter suitable for decision
23 on the papers and without oral argument. Accordingly, the hearing currently set for **July 6,**
24 **2017, at 2:00 p.m. in Courtroom 4A** is hereby **VACATED**. For the reasons set forth below,
25 the Court **DENIES** Johnson's motion.
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28 ¹ While there are two plaintiffs, the Court refers to them in the singular throughout this order.

1 **BACKGROUND**

2 This dispute arises from FCA’s alleged breach of warranty obligations owed to
3 Johnson for a new 2012 Dodge Durango (“Dodge”) he purchased from FCA. Johnson
4 asserts FCA concealed a known defect from him, specifically, a defect with the totally
5 integrated power module (“TIPM”), which is responsible for controlling and distributing
6 electrical power to the entire vehicle. (Doc. No. 1 at 11–12 ¶¶ 9, 12, 14.) Based on this
7 concealment, Johnson instituted this action in San Diego Superior Court on August 3, 2016,
8 bringing causes of action for breaches of express and implied warranties in violation of
9 California’s Song-Beverly Consumer Warranty Act (“Song-Beverly Act” or “Act”), as
10 well as a cause of action for fraudulent inducement/concealment under California state
11 common law. (Doc. No. 1 at 2 ¶ 1.)

12 FCA removed the action to this Court on March 17, 2017, asserting the Court has
13 diversity jurisdiction. (Doc. No. 1 at 1.) On April 18, 2017, Johnson filed the instant motion
14 to remand, arguing FCA has failed to carry its burden of establishing that the amount in
15 controversy exceeds \$75,000 and that the parties are completely diverse. (Doc. No. 11.)
16 FCA filed an opposition, (Doc. No. 16), and Johnson replied, (Doc. No. 20). This order
17 follows.

18 **LEGAL STANDARD**

19 The right to remove a case to federal court is entirely a creature of statute. *See*
20 *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979). The removal
21 statute, 28 U.S.C. § 1441, allows defendants to remove an action when a case originally
22 filed in state court presents a federal question, or is between citizens of different states and
23 involves an amount in controversy that exceeds \$75,000. *See* 28 U.S.C. §§ 1441(a), (b); 28
24 U.S.C. §§ 1331, 1332(a). Only state court actions that could originally have been filed in
25 federal court can be removed. 28 U.S.C. § 1441(a); *see also Caterpillar Inc. v. Williams*,
26 482 U.S. 386, 392 (1987); *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1393 (9th Cir.
27 1988).

1 “[J]urisdiction founded on [diversity] requires that parties be in complete diversity
2 and the amount in controversy exceed \$75,000.” *Matheson v. Progressive Specialty Ins.*
3 *Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (per curiam); *see* 28 U.S.C. § 1332(a)(1).
4 Complete diversity requires that the plaintiff’s citizenship is diverse from that of each
5 named defendant. 28 U.S.C. §§ 1332(a)(1), 1332(c)(1); *Caterpillar Inc. v. Lewis*, 519 U.S.
6 61, 68 n.3 (1996). Whether or not complete diversity is present is determined at the time
7 of removal. *See Am. Dental Indus., Inc. v. EAX Worldwide, Inc.*, 228 F. Supp. 2d 1155,
8 1157 (D. Or. 2002) (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283,
9 (1938)).

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

20 DISCUSSION

21 Johnson argues three points that he contends require remand of this action to
22 California state court: (1) FCA’s amount-in-controversy calculation ignores California
23 state law; (2) FCA, as a limited liability company (“LLC”), has not established the
24 citizenship of its foreign member, nor has it established Johnson’s citizenship; and (3)
25 comity dictates that this case be remanded to state court. (Doc. Nos. 11, 20.)

26 ***I. Amount in Controversy***

27 In his complaint, Johnson seeks, *inter alia*, “reimbursement of the price paid for the
28 [Dodge] less that amount directly attributable to use by the Plaintiff[] prior to discovery of

1 the nonconformities” and “a civil penalty of up to two times the amount of actual damages
2 in that FCA [] has willfully failed to comply with its responsibilities under the [Song-
3 Beverly] Act.” (Doc. No. 1 at 31–32 ¶¶ 142, 145.) Johnson asserts that FCA has not proven
4 the amount in controversy exceeds \$75,000. (Doc. No. 11-1 at 7–9; Doc. No. 20 at 7–8.)

5 Johnson contends FCA’s notice of removal improperly relies on the amount
6 financed, but offers no explanation as to why this number is the proper figure to base the
7 amount-in-controversy calculation on. (Doc. No. 11-1 at 8–9.) In response, FCA points to
8 the retail installment sale contract (“RISC”), attached to the complaint, as well as FCA
9 warranty claim reports, documents upon which it bases its calculation that the actual
10 damages at issue are at least \$36,368.18. (Doc. No. 16 at 16–17.)

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

19 The complaint does not allege the total amount sought with respect to these damages.
20 However, as noted, the RISC is attached to the complaint. (Doc. No. 1 at 38–40.) The RISC
21 lists the cash price of the vehicle as \$34,062.00 and finance charge as \$2306.18. (*Id.* at 38.)
22 FCA predicates its actual damages analysis on these figures combined. (Doc. No. 16 at 17;
23 *see* Doc. No. 1 at 4–5 ¶ 19.)² Given that the statute permits Johnson to also recover, among
24 other things, sales tax and official fees, which FCA did not use in its amount-in-controversy
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27 ² In the notice of removal, FCA predicated its analysis on the lower purchase price of the
28 vehicle, which it listed as \$35,118.82. (Doc. No. 1 at 4–5 ¶ 19.) That figure is also supported
by the RISC. (*Id.* at 38.)

1 calculation, the Court finds FCA’s use of the cash price and finance charge conservatively
2 estimates “the actual price paid or payable by” Johnson.³

3 As noted above, however, this figure does not end the inquiry. Rather, the restitution
4 awardable under section 1793.2(d)(2)(B) must be reduced by the amount directly
5 attributable to Johnson’s use of the Dodge prior to the first repair or attempted repair. This
6 set-off amount is determined by multiplying the “actual price of the new motor vehicle
7 paid or payable by the buyer . . . by a fraction having as its denominator 120,000 and having
8 as its numerator the number of miles traveled by the new motor vehicle prior to the time
9 the buyer delivered the vehicle” for correction of the problem. Cal. Civ. Code §
10 1793.2(d)(2)(C).

11 The complaint does not include the Dodge’s mileage when Johnson took it to the
12 dealership for the first relevant repair. Rather, the complaint lists December 23, 2013, as
13 the date he “delivered the [Dodge] to an authorized FCA [] repair facility for repair.” (Doc.
14 No. 1 at 24 ¶ 95.) On December 24, 2013, the Dodge had 18,797 miles on it. (Doc. No. 16-
15 10 at 3.) When Johnson purchased the Dodge, it had 25 miles on its odometer. (Doc. No.
16 1 at 38.) Accordingly, the Court finds FCA has presented sufficient evidence to establish
17 it is more likely than not that the mileage attributable to Johnson’s use, for purposes of the
18 instant motion, is 18,772. Utilizing the formula provided by section 1793.2(d)(2)(C), this
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21 ³ Johnson argues the inclusion of finance charges in the amount-in-controversy calculation
22 is improper under 28 U.S.C. § 1332(a)(1). (Doc. No. 20 at 7–8.) First, the Song-Beverly
23 Act makes finance charges recoverable; as such, their inclusion in the amount-in-
24 controversy calculation is appropriate. *See Alvarado v. FCA US, LLC*, No. EDCV 17-505
25 JGB (DTBx), 2017 WL 2495495, at *4 (C.D. Cal. June 8, 2017) (“Plaintiff argues that it
26 is improper to consider interest when considering the amount-in-controversy. [] Plaintiff,
27 however, seeks restitution, incidental, consequential, and general damages, costs and
28 expenses for alleged violations of the Song-Beverly Act claims. Under the Song-Beverly
Act, the actual price paid or payable by the buyer includes any paid finance charges.”).
Second, use of the vehicle’s cash price alone, when trebled, would exceed the jurisdictional
threshold.

1 results in a mileage offset of \$5689.20, which reduces the actual damages at issue to
2 \$30,678.98.

3 This does not end the inquiry either. In the complaint, Johnson also seeks civil
4 penalties. (Doc. No. 1 at 32 ¶ 145.) California Civil Code section 1794(c) and (e) permits
5 a buyer to recover a civil penalty not to exceed two times the amount of actual damages
6 where the buyer establishes the defendant’s failure to comply with the Song-Beverly Act
7 is willful. “Courts[,] as a matter of law, calculate the amount in controversy based upon the
8 maximum amount of civil penalties available to plaintiff.” *Garcia v. FCA US, LLC*, No.
9 1:16-cv-00730-DAD-BAM, 2016 WL 4445337, at *4 (E.D. Cal. Aug. 24, 2016) (quoting
10 *Saulic v. Symantec Corp.*, No. SA 07-cv-00610-AHS-PLAx, 2007 WL 5074883, at *4
11 (C.D. Cal. Dec. 26, 2007)); *see also Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d
12 1042, 1046 n.3 (9th Cir. 2000) (noting district courts can consider treble damages where
13 authorized by statute). Here, the Act permits recovery of up to two times actual damages.
14 Because Johnson “is seeking recovery from a pot that [FCA] has shown could exceed
15 [\$75,000] and [Johnson] has neither acknowledged nor sought to establish that the []
16 recovery is potentially any less,” the Court finds inclusion of a full civil penalty award is
17 appropriate. *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 401 (9th Cir. 2010); *see also*
18 *id.* at 401 (“Once the proponent of federal jurisdiction has explained plausibly how the
19 stakes exceed [the amount in controversy], . . . then the case belongs in federal court unless
20 it is legally impossible for the plaintiff to recover that much.” (quoting *Spivey v. Vertrue,*
21 *Inc.*, 528 F.3d 982, 986 (7th Cir. 2008))).

22 As determined above, the actual damages figure at issue is \$30,678.98. When
23 trebled, the amount in controversy, exclusive of incidental and consequential damages,
24 finance charges, and attorney’s fees and costs, is \$92,036.94. Because this figure exceeds
25 the jurisdictional threshold, the Court finds FCA has carried its burden as to the amount in
26 controversy. *Garcia*, 2016 WL 4445337, at *4.

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1 **II. Diversity of Citizenship**

2 Johnson next argues that FCA, as an LLC, has failed to establish the citizenship of
3 its foreign member. (Doc. No. 11-1 at 9–13; Doc. No. 20 at 4–6.) Johnson also asserts FCA
4 has failed to establish Johnson’s citizenship. (Doc. No. 20 at 3–4.) In opposition, FCA asks
5 the Court to consider Book 2 of the Dutch Civil Code, Article 2:64-1, which states that
6 “[a]n Open Corporation (*‘naamloze vennootschap’*) is a legal person” (Doc. No. 16 at
7 10–14.) FCA argues that its ultimate owner is a naamloze vennotschap (“N.V.”);
8 accordingly, FCA is a citizen of the Netherlands and thus diverse from Johnson. (*Id.*)

9 Removal based on diversity requires that the citizenship of each plaintiff be diverse
10 from the citizenship of each defendant (*e.g.*, complete diversity). *Caterpillar Inc.*, 519 U.S.
11 at 68. For purposes of diversity, an LLC is a citizen of every state in which its
12 “owners/members” are citizens. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d
13 894, 899 (9th Cir. 2006) (explaining that courts are to treat LLCs like partnerships, which
14 have the citizenships of all of their members). “Section 1332(a)(2) applies to foreign legal
15 entities of all kinds, so long as the entity is considered a juridical person under the law that
16 created it.” *Cohn v. Rosenfeld*, 733 F.2d 625, 629 (9th Cir. 1984). A “juridical person” is
17 an “entity, such as a corporation, created by law and given certain legal rights and duties
18 of a human being[.]” Black’s Law Dictionary 979, 1324–25 (10th ed. 2014). Factors
19 relevant to whether an entity is a juridical person include the entity’s ability to sue and be
20 sued in its own name, whether any recovery in such litigation becomes an asset of the
21 entity, and whether the laws of the foreign country recognize the entity as a legally
22 independent organized enterprise. *Cohn*, 733 F.2d at 629.

23 In the notice of removal and accompanying declaration, FCA explained it is an LLC
24 organized under the laws of the State of Delaware. (Doc. No. 1 at 3 ¶ 11; Doc. No. 1 at 58
25 ¶ 2.) Its sole member is FCA North American Holding LLC, also a limited liability
26 company organized under the laws of the State of Delaware. (Doc. No. 1 at 3 ¶ 11; Doc.
27 No. 1 at 58 ¶ 3.) In turn, FCA North American Holding LLC’s sole member is Fiat Chrysler
28 Automobiles, N.V. (“Fiat N.V.”), which is a publicly traded company incorporated under

1 the laws of the Netherlands with its principal place of business in London, England. (Doc.
2 No. 1 at 3 ¶ 11; Doc. No. 1 at 58 ¶ 4.)

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

8 The Court overrules Johnson’s objections. Federal Rule of Civil Procedure 44.1
9 provides, “In determining foreign law, the court may consider any relevant material or
10 source, including testimony, whether or not submitted by a party or admissible under the
11 Federal Rules of Evidence.” As such, FCA’s evidence need not pass muster under the
12 Federal Rules of Evidence to be considered on the instant motion.⁴ Having considered
13 Krueger’s declaration, along with Scott Shepardson’s declaration and the accompanying
14 translation of the Dutch Civil Code provided, the Court is satisfied that FCA has proven it
15 is more likely than not a citizen of the Netherlands.⁵ The Dutch Civil Code provides that
16 an N.V. is a “legal person” that can, *inter alia*, be held jointly and severally liable for its
17 directors’ juridical acts. (Doc. No. 16-2 at 2, 5.) The Court’s conclusion is in keeping with
18 those of other courts, finding N.V.s to be foreign entities. *See Garcia*, 2016 WL 4445337,
19 at *3 (finding FCA “adequately asserted and established that [Fiat N.V.] is a juridical
20 person under the laws of Netherlands and that [FCA] is not a citizen of California”);
21 *Ibrahim v. Titan Corp.*, 391 F. Supp. 2d 10, 20 (D.D.C. 2005) (dismissing foreign
22 plaintiffs’ claims against defendant N.V. because 28 U.S.C. § 1332 “does not confer
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25 ⁴ For this reason, the Court **DENIES** Johnson’s request for jurisdictional discovery. (Doc.
26 No. 11-1 at 11.)

27 ⁵ Johnson also raises evidentiary objections to the Shepardson declaration. (Doc. No. 20-
28 4.) First, Johnson’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 jurisdiction over suits by a group consisting of only foreign persons against another foreign
2 person”).

3 Johnson further asserts that remand is appropriate because FCA has failed to
4 establish that Johnson is a citizen of California. (Doc. No. 20 at 3–4.) In the notice of
5 removal, FCA stated Johnson is a citizen and resident of California. (Doc. No. 1 at 3 ¶ 10.)
6 That statement references the complaint, which simply states that Johnson is “an
7 individual[] residing in the City of San Diego, County of San Diego, and State of
8 California.” (Doc. No. 1 at 10 ¶ 1.) Johnson argues that because the complaint does not
9 allege that he is a citizen of California, and because the notice of removal relies on the
10 complaint, FCA has failed to prove Johnson’s citizenship for purposes of removal. (Doc.
11 No. 20 at 3–4.)

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

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1 **III. Comity**

2 Johnson lastly asserts that the Court should decline jurisdiction on comity principles
3 because this case involves “consideration of numerous state-specific issues on sensitive,
4 uniquely state-law issues of regulation and statutory interpretation.” (Doc. No. 11-1 at 3–
5 5.) As a federal district court located within the State of California, this is not the Court’s
6 first case dealing with claims predicated on the Song-Beverly Act or similar California
7 state consumer protection laws. As such, the Court is confident in its ability to faithfully
8 interpret and apply California state law to the issues of this case. While the Court is
9 cognizant that Johnson has litigated this case for several months in state court, Johnson
10 should rest assured that this district seeks to move cases quickly in keeping with the spirit
11 of Federal Rule of Civil Procedure 16. The Court therefore declines to remand this case
12 based upon principles of comity.

13 **CONCLUSION**

14 Based on the foregoing, Johnson’s motion to remand is **DENIED**. (Doc. No. 11.)
15 Because the Court denies his motion, Johnson’s request for attorney’s fees and costs is also
16 **DENIED**. (Doc. No. 11-1 at 11.) The parties’ requests for jurisdictional discovery are
17 **DENIED**. (*Id.*; Doc. No. 16 at 20–21.)

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19 **IT IS SO ORDERED.**

20 Dated: June 23, 2017

21 
22 Hon. Anthony J. Battaglia
23 United States District Judge
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