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

TIMOTHY JUNYOUNG PARK,

Plaintiff,

v.

JAGUAR LAND ROVER NORTH
AMERICA, LLC,

Defendant.

Case No. 20-cv-00242-BAS-MSB

**ORDER DENYING MOTION TO
REMAND (ECF No. 5)**

Presently before the Court is Plaintiff Timothy Junyoung Park’s Motion to Remand this action to state court. (ECF No. 5.) On February 7, 2020, Defendant Jaguar Land Rover North America, LLC (“JLRNA”) removed this matter to federal court based on diversity jurisdiction. (ECF No. 1.) Plaintiff contests removal arguing that this case fails to meet the minimum amount in controversy to satisfy diversity jurisdiction under 28 U.S.C. § 1332. (Mot. to Remand 1:26–28.)

The Court finds this Motion suitable for determination on the papers submitted and without oral argument. *See* Fed. R. Civ. P. 78(b); Civ. L. R. 7.1(d)(1). For the following reasons, the Court finds removal was appropriate and **DENIES** Plaintiff’s Motion to Remand.

1 **I. BACKGROUND**

2 On January 6, 2020, Plaintiff commenced this lawsuit in San Diego Superior Court
3 asserting claims under California’s Song-Beverly Consumer Warranty Act (“Song-Beverly
4 Act”), specifically California Civil Code sections 1793 and 1794. (Compl., Notice of
5 Removal Ex. A, ECF No. 1-3.) Plaintiff’s Complaint alleges he purchased a used Certified
6 Pre-Owned 2016 Jaguar F-Type (“Vehicle”) with a total purchase price of \$68,268.16 on
7 or about July 2, 2019. (*Id.* ¶ 4.) Plaintiff further alleges the Vehicle “contained or
8 developed various defects” constituting a breach of Defendant’s implied warranty
9 accompanying the Vehicle. (*Id.* ¶ 6.) Additionally, Plaintiff alleges Defendant willfully
10 failed to comply with its obligations under the Vehicle’s express warranty. (*Id.* ¶ 21.) In
11 his Complaint, Plaintiff did not include a specific dollar amount for damages, but alleges
12 he is seeking restitution, civil penalties, consequential and incidental damages, reasonable
13 attorney’s fees, and prejudgment interest. (*Id.* at 6–7.) Plaintiff is domiciled in California,
14 and JLRNA is a limited liability company that “is a wholly owned subsidiary of Jaguar
15 Land Rover Holdings Limited.” (Notice of Removal ¶¶ 11, 13, ECF No. 1.) “Jaguar Land
16 Rover Holdings Limited is a citizen of England with its principal place of business located
17 in Coventry, England.” (*Id.* ¶ 14.)

18 On February 7, 2020, JLRNA filed its Notice of Removal pursuant to 28 U.S.C. §§
19 1332, 1441(a), and 1446. (*Id.* at 1.) On March 23, 2020, Plaintiff filed a motion to remand
20 the action to state court. (Mot. to Remand 1.)

21 **II. LEGAL STANDARD**

22 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins.*
23 *Co. of Am.*, 511 U.S. 375, 377 (1994). “They possess only that power authorized by
24 Constitution and statute, which is not to be expanded by judicial decree.” *Id.* (citations
25 omitted). “[A]ny civil action brought in a State court of which the district courts of the
26 United States have original jurisdiction, may be removed by the defendant or the
27 defendants, to the district court of the United States.” 28 U.S.C. § 1441(a).

1 In order to invoke a district court’s diversity jurisdiction, a party must demonstrate
2 there is complete diversity of citizenship between the parties and that the amount in
3 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. *See* 28
4 U.S.C. § 1332; *see also Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996). “The burden of
5 establishing federal jurisdiction is on the party invoking federal jurisdiction.” *United States*
6 *v. Marks*, 530 F.3d 799, 810 (9th Cir. 2008); *see also Geographic Expeditions, Inc. v.*
7 *Estate of Lhotka*, 599 F.3d 1102, 1106–07 (9th Cir. 2010) (“[I]n a case that has been
8 removed from state court to federal court . . . on the basis of diversity jurisdiction, the
9 proponent of federal jurisdiction—typically the defendant in the substantive dispute—has
10 the burden to prove, by a preponderance of the evidence, that removal is proper.”).

11 **III. ANALYSIS**

12 The requirement at issue here is the amount in controversy, as JLRNA has
13 adequately alleged complete diversity. (Notice of Removal ¶¶ 11–14.) *See also* 28 U.S.C.
14 § 1332(a); *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006).

15 To assert the amount in controversy in the removal notice, a “short and plain”
16 statement need not contain evidentiary submissions and must include only “a plausible
17 allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*
18 *Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 84, 89 (2014). If the plaintiff
19 challenges the defendant’s asserted amount in controversy, both sides submit proof and the
20 court must find by a preponderance of the evidence that the amount in controversy exceeds
21 the jurisdictional threshold. *Id.* at 88 (quoting 28 U.S.C. § 1446(c)(2)(b)); *see also*
22 *Schneider v. Ford Motor Co.*, 756 F. App’x 699, 700–01 (9th Cir. 2018) (“The
23 preponderance of the evidence standard applies only after ‘the plaintiff contests, or the
24 court questions, the defendant’s allegation’ and ‘both sides submit proof.’”); *Guglielmino*
25 *v. McKee Foods Corp.*, 506 F.3d 696, 701 (9th Cir. 2007) (holding that when a complaint
26 “is unclear and does not specify ‘a total amount in controversy,’ the proper burden of proof
27 . . . is proof by a preponderance of the evidence”).

1 Further, if the existence of diversity jurisdiction depends on the amount in
2 controversy, “[t]he district court may consider whether it is ‘facially apparent’ from the
3 complaint that the jurisdictional amount is in controversy.” *Singer v. State Farm Mut.*
4 *Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997) (citing *Allen v. R & H Oil & Gas Co.*, 63
5 F.3d 1326, 1335–36 (5th Cir. 1995)). If not, a court may consider facts in the removal
6 notice, and it may “require parties to submit summary-judgment-type evidence relevant to
7 the amount in controversy at the time of removal.” *Id.*

8 The amount in controversy is “not a prospective assessment of [a] defendant’s
9 liability.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010). Rather, it
10 is the “amount at stake in the underlying litigation.” *Theis Research, Inc. v. Brown & Bain*,
11 400 F.3d 659, 662 (9th Cir. 2005). In assessing the amount in controversy, a court must
12 “assume that the allegations of the complaint are true and assume that a jury will return a
13 verdict for the plaintiff on all claims made in the complaint.” *Campbell v. Vitran Exp.,*
14 *Inc.*, 471 F. App’x 646, 648 (9th Cir. 2012) (quoting *Kenneth Rothschild Tr. v. Morgan*
15 *Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002)). “In that sense, the
16 amount in controversy reflects the maximum recovery the plaintiff could reasonably
17 recover.” *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 927 (9th Cir. 2019) (citing
18 *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018)).

19 As stated above, Plaintiff is seeking restitution, consequential and incidental
20 damages, civil penalties, and attorney’s fees. (Compl. 6–7.) Restitution and incidental
21 damages under the Song-Beverly Act include official fees associated with the sale of the
22 vehicle (e.g. sales tax, license fees, and registration fees) and reasonable expenses incident
23 to the vehicle problem (e.g. reasonable repair, towing, and rental car costs). Cal. Civ. Code
24 § 1793.2(d)(2)(B). Plaintiff does not allege the amount sought with respect to these
25 damages and notes, more generally, that his Complaint is silent as to the amount in
26 controversy. (Mot. to Remand 2:15.) Therefore, in accordance with *Dart Cherokee*, the
27 Court must find by a preponderance of the evidence that the amount in controversy asserted
28 by Defendant exceeds the jurisdictional threshold. *See* 574 U.S. at 88.

1 **A. Amount in Controversy Assessment**

2 Defendant alleges that Plaintiff is seeking more than \$204,804.48 in monetary
3 damages and civil penalties, not including compensatory damages or attorney’s fees.
4 (Notice of Removal ¶ 17.) Defendant further alleges that since the Song-Beverly Act
5 authorizes an award of attorney’s fees, such fees may be included in the amount in
6 controversy. (*Id.*) Plaintiff’s Motion to Remand argues that this case fails to meet the
7 amount in controversy requirement because attorney’s fees and civil penalties should not
8 be included in the jurisdictional amount. (Mot. to Remand 6–10.)

9 When actual and punitive damages are recoverable under a complaint’s allegations,
10 each must be considered in determining the amount in controversy. *Bell v. Preferred Life*
11 *Assurance Soc’y of Montgomery*, 320 U.S. 238, 240 (1943). Courts include civil penalties
12 under the Song-Beverly Act in the amount in controversy, acknowledging that these
13 penalties are sufficiently akin to punitive damages. *E.g., Brady v. Mercedes-Benz USA,*
14 *Inc.*, 243 F. Supp. 2d 1004, 1009 (N.D. Cal. 2002) (finding that civil penalties under §
15 1794(c) are similar to punitive damages such that they “are properly included in the amount
16 in controversy” (citing *Suman v. Superior Court*, 39 Cal. App. 4th 1309, 1317 (1995)));
17 *see also Chabner v. United Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n.3 (9th Cir. 2000)
18 (noting that treble damages authorized by state statute could have been taken into account
19 when determining the amount in controversy); *cf. Romo v. FFG Ins. Co.*, 397 F. Supp. 2d
20 1237, 1240 (C.D. Cal. 2005) (holding civil penalties available under the Song-Beverly Act
21 could be considered in determining whether consumer satisfied amount in controversy
22 requirement under Magnuson-Moss Warranty Act for federal question jurisdiction).
23 Therefore, the Court considers Plaintiff’s claim for civil penalties when assessing whether
24 the amount in controversy is met in this case.

25 Here, Plaintiff alleges Defendant willfully failed to comply with its obligations under
26 the Vehicle’s express warranty. (Compl. ¶ 21.) Thus, Plaintiff seeks civil penalties under
27 California Civil Code section 1794, which states that if the buyer establishes that the failure
28 to comply was willful, the judgment may include a civil penalty of up to two times the

1 amount of actual damages. Plaintiff’s alleged actual damages include restitution for the
2 entire purchase price of the Vehicle pursuant to California Civil Code section 1794(b)(1).
3 (*Id.* ¶ 10.) Plaintiff allegedly purchased a used Certified Pre-Owned 2016 Jaguar F-Type
4 with a total purchase price of \$68,268.16. (*Id.* ¶ 4.) It follows then that should Plaintiff
5 prevail, exclusive of incidental damages and restitution, a civil penalty of up to
6 \$136,536.32—two times his actual damages of \$68,268.16—may be included in the
7 judgment. *See* Cal. Civ. Code § 1794(e)(1). The civil penalty claim for twice the actual
8 damages alone implicates well over the difference of \$6,731.84 between the claim for
9 restitution based on the cost of the Vehicle—\$68,268.16—and the jurisdictional
10 threshold—\$75,000. Taking together Plaintiff’s claim for at least \$68,268.16 in actual
11 damages and \$136,536.32 in civil penalties, the Court accepts Defendant’s calculation that
12 Plaintiff is seeking actual damages and penalties in excess of \$204,804.48, therefore
13 exceeding the threshold jurisdictional amount.¹

14 Further, Plaintiff alleges that he is entitled to the full “civil penalty of two times
15 Plaintiff’s actual damages,” and not up to that amount. (Compl. ¶ 21.) Therefore,
16 Plaintiff’s own allegations support the conclusion that the maximum amount of civil
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19 ¹ Moreover, Plaintiff’s potential damages are even higher than \$68,268.16. As mentioned,
20 Plaintiff’s actual damages may include not only restitution based on the Vehicle’s price, but also incidental
21 damages. *See* Cal. Civ. Code § 1793.2(d)(2)(B). In addition, Plaintiff states in his Complaint that he
22 believes that, “at the present time, the Vehicle’s value is *de minimis*.” (Compl. ¶ 10.) Hence, Plaintiff
23 alternatively seeks the remedies set forth in California Civil Code section 1794(b)(2), including the
24 diminution in value of the Vehicle resulting from its defects. (*Id.*) This section provides that “[w]here
25 the buyer has accepted the goods, Sections 2714 and 2715 of the Commercial Code shall apply, and the
26 measure of damages shall include the cost of repairs necessary to make the goods conform.” Cal. Civ.
27 Code § 1794(b)(2).

28 “[A]s the conjunctive language in Civil Code section 1794 indicates, the statute itself provides an
additional measure of damages beyond replacement or reimbursement and permits, at the option of the
buyer, the Commercial Code measure of damages which includes ‘the cost of repairs necessary to make
the goods conform.’” *Krotin v. Porsche Cars N. Am., Inc.*, 38 Cal. App. 4th 294, 302 (1995) (citations
omitted); *see also* Cal. Com. Code § 2714 (“The measure of damages for breach of warranty is the
difference at the time and place of acceptance between the value of the goods accepted and the value they
would have had if they had been as warranted.”). Therefore, given that Plaintiff alleges the Vehicle he
purchased for \$68,268.16 is almost worthless, his actual damages would also be substantial under this
alternative measure of damages.

1 penalties is properly included in the amount in controversy determination. More broadly,
2 the Court also is persuaded by comparable decisions that consider the maximum amount
3 of civil penalties because that is what has been placed into controversy. *E.g., Verastegui*
4 *v. Ford Motor Co.*, No. 19-cv-04806-BLF, 2020 WL 598516, at *3 (N.D. Cal. Feb. 7,
5 2020); *see also Theis Research, Inc.*, 400 F.3d at 662; *cf. Saulic v. Symantec Corp.*, No.
6 SA CV 07-610 AHS (PLAx), 2007 WL 5074883, at *4 (C.D. Cal. Dec. 26, 2007) (“Courts
7 as a matter of law, calculate the amount in controversy based upon the maximum amount
8 of civil penalties available to [the] plaintiff.”).

9 Overall, the Court is convinced by a preponderance of the evidence that Plaintiff’s
10 claim for damages, attorney’s fees, and civil penalties meets the jurisdictional threshold.²

11 **B. Plaintiff’s Contentions**

12 Although Plaintiff’s allegations indicate that the amount in controversy exceeds
13 \$75,000, he offers several more nuanced arguments for why the jurisdictional threshold
14 has not been met and remand is otherwise appropriate. To avoid any doubt, the Court will
15 address these arguments below.

16 **1. Restitution Offset**

17 Plaintiff contends that JLRNA failed to consider the potential offset in the amount
18 of restitution for the Vehicle’s purchase price. (Mot. to Remand 6:1–3.) The restitution

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20 ² The Court is unpersuaded by Plaintiff’s argument that attorney’s fees should not be considered
21 part of the amount in controversy in a lemon law case. (Mot. to Remand 8:22–23 (citing *Suber v. Chrysler*
22 *Corp.*, 104 F.3d 578, 588 n.12 (3rd Cir. 1997)).) The Ninth Circuit and many California district courts
23 have indicated that the amount in controversy may include attorney’s fees in Song-Beverly Act cases. *See*
24 *Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644, 648–49 (9th Cir. 2016); *Schneider*, 756 F.
25 App’x at 701 n.4; *see also, e.g., Garcia v. FCA U.S. LLC*, No. 1:16-cv-00730-DAD-BAM, 2016 WL
26 4445337, at *4 (E.D. Cal. Aug. 23, 2016) (“An award of attorney’s fees may be considered in tabulating
27 the amount in controversy.” (citing *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155–56 (9th Cir.
28 1998))).

25 Plaintiff further contends that future attorney’s fees should not be counted toward the amount in
26 controversy. (Mot. to Remand 9:13–14.) But the Ninth Circuit has held that “a court must include future
27 attorneys’ fees recoverable by statute or contract when assessing whether the amount-in-controversy
28 requirement is met.” *Fritsch v. Swift Transp. Co. of Ariz.*, 899 F.3d 785, 793 (9th Cir. 2018). Here,
nothing in the record estimates the total amount of attorney’s fees at issue. (*See* Swanson Decl. ¶ 3, ECF
No. 5.) The Court need not estimate the fees, however, because the Court’s analysis above already
demonstrates that the amount in controversy exceeds \$75,000.

1 awardable under California Civil Code section 1793.2(d)(2)(B) must be reduced by the
2 amount directly attributable to Plaintiff's use of the vehicle prior to the first repair or
3 attempted repair. *See* Cal. Civ. Code § 1793.2(d)(2)(C). This reduction is determined
4 based on the number of miles traveled by the Vehicle before Plaintiff first returned it for
5 repair. *See id.* Plaintiff is correct that this use offset may reduce the amount in controversy.
6 *See Schneider*, 756 F. App'x at 701 n.3 (noting that the district court appropriately
7 considered the use offset to determine the amount in controversy).

8 Here, however, Plaintiff alleges that he purchased the Vehicle on or about July 2,
9 2019; meaning, Plaintiff's use of the vehicle was for less than a year. (Compl. ¶ 4.) And
10 because the restitution offset is based on the number of miles traveled by the Vehicle prior
11 to the first attempted repair, it is reasonable to assume that any offset here would not be
12 large enough to lower the cumulative amount of damages and penalties to at or under
13 \$75,000. *See* Cal. Civ. Code § 1793.2(a)(2)(C); *cf. D'Amico v. Ford Motor Co.*, No. CV
14 20-2985-CJC (JCx), 2020 WL 2614610, at *2 (C.D. Cal. May 21, 2020) (noting that
15 plaintiff drove her vehicle for three years, making it possible that she drove the car for
16 many miles before she took it in for repair). Moreover, Plaintiff's restitution offset
17 argument does not address the alternative measure of damages he invokes under California
18 Civil Code section 1794(b)(2). *See Krotin*, 38 Cal. App. 4th at 302 (“[T]he statute itself
19 provides an additional measure of damages beyond replacement or reimbursement[.]”); *see*
20 *also supra* note 1. Hence, the Court is unmoved by Plaintiff's argument that JLRNA's
21 failure to consider the restitution offset means the amount in controversy requirement is
22 not met.

23 2. Burden to Show Alleged Civil Penalties

24 Even if civil penalties may be included in the amount in controversy, Plaintiff argues
25 JLRNA does not meet its burden to demonstrate that penalties should be included in this
26 case. (*See* Mot. to Remand 2:15–22.) Plaintiff further urges the Court to follow *Eberle*, a
27 case filed against JLRNA by Plaintiff's counsel. *Eberle v. Jaguar Land Rover N. Am.,*
28 *LLC*, No. 2:18-cv-06650VAP-PLA, 2018 WL 4674598, at *2 (C.D. Cal. Sept. 26, 2018).

1 The *Eberle* court and several courts in this district have noted in Song-Beverly Act cases
2 that the removing party must make some effort to justify the assumption that civil penalties
3 will be awarded in order for the penalties to be included in the amount in controversy. *Id.*;
4 *see also Zawaideh v. BMW of N. Am., LLC*, No. 17-cv-2151-W-KSC, 2018 WL 1805103,
5 at *2–3 (S.D. Cal. Apr. 17, 2018) (evaluating two district court decisions to conclude there
6 was an inadequate showing that penalties would be awarded when assessing the amount in
7 controversy where actual damages at issue were \$14,470). These cases indicate that
8 removing parties should justify the assumption of civil penalties by pointing to allegations
9 in the complaint and providing judgments from similar cases regarding the likely amount
10 of penalties. *See Herko v. FCA U.S. LLC*, No. 19-cv-2057-JLS-WVG, 2019 WL 5587140,
11 at *2 (S.D. Cal. Oct. 30, 2019) (citing *Zawaideh* to find defendant failed to show some
12 justification that civil penalties would be appropriate and where the total sale price of the
13 vehicle was \$54,393.84); *Castillo v. FCA U.S. LLC*, No. 19-cv-151-CAB-MDD, 2019 WL
14 6607006, at *2 (S.D. Cal. Dec. 5, 2019) (citing *Herko* and *Zawaideh* to find similarly where
15 actual damages contended by defendant were \$26,131.31).³

16 The Ninth Circuit, however, has held that a “defendant’s showing on the amount in
17 controversy may rely on reasonable assumptions.” *Arias*, 936 F.3d at 922; *Ibarra v.*
18 *Manheim Invs., Inc.*, 775 F.3d 1193, 1197–99 (9th Cir. 2015) (“[E]vidence may be direct
19 or circumstantial. In either event, a damages assessment may require a chain of reasoning
20 that includes assumptions.”). Further, assumptions made part of the defendant’s chain of
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25 ³ Relatedly, other courts in this district have also concluded that civil penalties are more inherently
26 included in the amount in controversy. *See Ferrer v. FCA U.S. LLC*, No. 17-cv-0530-AJB-BGS, 2017
27 WL 2875692, at *3 (S.D. Cal. July 6, 2017) (including civil penalties under the Song-Beverly Act in
28 calculating the amount in controversy where actual damages at issue were \$27,810.29); *see also Locher*
v. Thor Motor Coach, Inc., No. 3:17-cv-01804-GPC-MDD, 2017 WL 6016114, at *4 (S.D. Cal. Dec. 5,
2017) (noting that courts calculate the amount in controversy based upon the maximum amount of civil
penalties available to the plaintiff where the value of the rescission claim was \$65,363.29).

1 reasoning do not need to be proven; they instead must only have “some reasonable ground
2 underlying them.” *Arias*, 936 F.3d at 927 (quoting *Ibarra*, 775 F.3d at 1199).⁴

3 Here, Defendant’s assumption that the amount in controversy includes the maximum
4 amount of civil penalties is reasonable. Initially, this assumption is founded on the
5 allegations of the Complaint. *See id.* at 925 (“An assumption may be reasonable if it is
6 founded on the allegations of the complaint.”). As stated above, JLRNA points to
7 Plaintiff’s allegation that he “is entitled to a civil penalty of two times Plaintiff’s actual
8 damages” under California Civil Code section 1794. (Compl. ¶¶ 5, 21.) Plaintiff also
9 alleges he notified Defendant of the Vehicle’s defects; “[h]owever, the representative failed
10 to repair the Vehicle, breaching the terms of the written warranty” (*Id.* ¶ 18.) Thus,
11 Plaintiff alleges JLRNA’s failure to comply with the warranty was willful because
12 “Defendant and its representatives were aware of their obligation to repair the Vehicle
13 under the express warranty, but they intentionally declined to fulfill that obligation.” (*Id.*
14 ¶ 21.) *See also Jensen v. BMW of N. Am., Inc.*, 35 Cal. App. 4th 112, 136 (1995) (noting
15 that in determining willfulness, the jury can consider factors including whether the
16 manufacturer knew the vehicle had not been repaired and whether the manufacturer had a
17 written policy on Song-Beverly’s requirement to repair or replace a vehicle).

18 In addition, JLRNA points to cases, such as *Brady*, 243 F. Supp. 2d 1004, as an
19 example where civil penalties under the Song-Beverly Act were contemplated in the
20 amount in controversy. (Opp’n 3, ECF No. 7.) Further, nothing in the record—including
21 Plaintiff’s Motion to Remand—contradicts Plaintiff’s allegations and indicates that the
22 maximum amount of civil penalties should not be part of “the maximum recovery” Plaintiff
23 “could reasonably recover.” *See Arias*, 936 F.3d at 927. Finally, *Eberle* and other
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⁴ *See Lewis*, 627 F.3d at 400 (“To establish the jurisdictional amount . . . Defendant here need only “bear the burden to show that its estimated amount in controversy relie[s] on reasonable assumptions.”); *see also, e.g., Cortez Martinez v. Ford Motor Co.*, No. 18-cv-01607-LJO-JLT, 2019 WL 1988398, at *2 (E.D. Cal. May 6, 2019); *cf. Tremper v. FCA U.S. LLC*, No. 20-cv-00828-HSG, 2020 WL 2991585, at *2 (N.D. Cal. June 4, 2020) (finding defendant’s assumption unreasonable in a Class Action Fairness Act case).

1 decisions Plaintiff cites are distinguishable because they involved vehicles purchased for
2 prices significantly less than the Vehicle here, which cost \$68,268.16. *See, e.g.*, 2018 WL
3 4674598, at *2 (noting the vehicle was purchased for \$48,284.39). By comparison, this
4 case is not a close call because the possibility that Plaintiff may recover even a relatively
5 small civil penalty pushes the amount in controversy over the jurisdictional threshold. *See*
6 *supra* Part III.A.

7 Accordingly, the Court rejects Plaintiff’s argument that JLRNA fails to demonstrate
8 that the maximum potential civil penalties may be included in the amount in controversy
9 calculation. Because JLRNA has adequately shown that these penalties are part of the “the
10 amount at stake” in the litigation, they are properly considered as part of the “the amount
11 in controversy for purposes of diversity jurisdiction.” *See Theis Research, Inc.*, 400 F.3d
12 at 662; *see also Arias*, 936 F.3d at 927.

13 **3. Comity**

14 Lastly, Plaintiff contends that comity principles weigh in favor of remand. (Mot. to
15 Remand 10:21.) The constitutionality of removal is well-settled law. *Tennessee v. Davis*,
16 100 U.S. 257, 258 (1879). When the defendant seeks to remove on the basis of diversity
17 or a federal question, the removal will stand if either ground is well taken. *Great N. Ry.*
18 *Co. v. Galbreath Cattle Co.*, 271 U.S. 99, 101 (1926). Therefore, the Court rejects
19 Plaintiff’s argument that comity principles weigh in favor of remand. *See BNSF Ry. Co.*
20 *v. O’Dea*, 572 F.3d 785, 793 n.2 (9th Cir. 2009) (Fisher, J., concurring) (“[T]he diversity
21 statute, unlike the supplemental jurisdiction statute, does not afford district courts the
22 discretion to decline jurisdiction over state law claims. District courts sitting in diversity
23 therefore lack the option of refusing state law claims out of consideration for ‘judicial
24 economy, convenience, fairness, and comity.’” (citation omitted) (quoting *City of Chicago*
25 *v. Int’l Coll. of Surgeons*, 522 U.S. 156 (1997))).


26 **IV. CONCLUSION**

27 For the foregoing reasons, JLRNA has shown by a preponderance of the evidence
28 that the jurisdictional amount in controversy here has been met, therefore satisfying the

1 contested requirement for diversity jurisdiction under 28 U.S.C. § 1332. Thus, Defendant
2 has properly removed this action to this Court pursuant to 28 U.S.C. § 1441(a). The Court
3 consequently **DENIES** Plaintiff's Motion to Remand (ECF No. 5).

4 **IT IS SO ORDERED.**

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6 **DATED: July 1, 2020**


7 **Hon. Cynthia Bashant**
8 **United States District Judge**

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