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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BRADLEY MARCUS SAVALL,  
Plaintiff,  
v.  
FCA US LLC; FISHER CHRYSLER  
DODGE JEEP RAM,  
Defendants.

Case No.: 21cv195 JM (KSC)

**ORDER GRANTING PLAINTIFF’S  
MOTION TO REMAND**

Plaintiff Bradley Marcus Savall (“Plaintiff”) moves to remand the instant case to the Superior Court of California for the County of San Diego. (Doc. No. 10-2.) Defendant FCA US LLC (“FCA”) opposes. (Doc. No. 12.) The motion has been briefed and the court finds it suitable for submission without oral argument in accordance with Civil Local Rule 7.1(d)(1). For the below reasons, Plaintiff’s motion is **GRANTED**.

**I. BACKGROUND**

According to his Complaint, on October 31, 2014, Plaintiff purchased a 2015 Jeep Cherokee vehicle from Fisher Chrysler Dodge Jeep Ram (“the dealership”). The vehicle was manufactured and distributed by FCA. Thereafter, Plaintiff attempted to have Defendants repair the vehicle because of a variety of defects and malfunctions, but the repairs were unsuccessful.

1 On December 17, 2020, Plaintiff filed his Complaint against FCA and the dealership  
2 in San Diego Superior Court alleging violations of the Song-Beverly Consumer Warranty  
3 Act, CAL. CIV. CODE §§ 1790-1795.8, including breach of the implied warranty of  
4 merchantability and breach of express warranty. (Doc. No. 1-4.) Plaintiff also brought a  
5 claim for fraud by omission against FCA, and a claim for negligent repair against the  
6 dealership. On February 1, 2021, FCA filed a Notice of Removal based on diversity  
7 jurisdiction.

## 8 II. LEGAL STANDARDS

9 Civil cases not arising under federal law are removable to federal court only if each  
10 plaintiff's citizenship is different from each defendant's citizenship, and the amount in  
11 controversy exceeds \$75,000. 28 U.S.C. § 1332(a)(1). "Where it is not facially evident  
12 from the complaint that more than \$75,000 is in controversy, the removing party must  
13 prove, by a preponderance of the evidence, that the amount in controversy meets the  
14 jurisdictional threshold." *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090  
15 (9th Cir. 2003) (per curiam); *see also Urbino v. Orkin Servs. of Cal., Inc.*, 726 F.3d 1118,  
16 1121-22 (9th Cir. 2013). "The removal statute is strictly construed, and any doubt about  
17 the right of removal requires resolution in favor of remand." *Moore-Thomas v. Alaska*  
18 *Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (citing *Gaus v. Miles, Inc.*, 980 F.2d  
19 564, 566 (9th Cir. 1992)); *see also Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th  
20 Cir. 2009) ("[T]he court resolves all ambiguity in favor of remand to state court.").

## 21 III. DISCUSSION

22 In his Complaint, Plaintiff alleges "[t]he sales price of the subject vehicle is  
23 approximately \$38,752.90." (Doc. No. 1-4 ¶ 9.) He further alleges he "suffered damages  
24 in a sum to be proven at trial in an amount that is not less than \$25,001.00." (*Id.* ¶ 12.) He  
25 also alleges he is "entitled to a civil penalty of two times [his] actual damages" because  
26 Defendants' failure to comply with its various obligations under the Song-Beverly Act  
27 were "willful, in that Defendant and its representative were aware" of these obligations,  
28 yet failed to meet them. (*See, e.g., id.* ¶ 15.) In his prayer for relief, Plaintiff seeks "actual

1 damages in an amount according to proof,” as well as incidental, consequential, and  
2 punitive damages. (*Id.* at 12-13.) Plaintiff also seeks restitution and attorneys’ fees. (*Id.*)  
3 Because it is not facially evident from the Complaint that the amount in controversy  
4 exceeds \$75,000, it is FCA’s burden to prove, by a preponderance of the evidence, that the  
5 amount in controversy exceeds the \$75,000 jurisdictional threshold.

6 In its Notice of Removal, FCA states the amount in controversy exceeds \$75,000  
7 because (1) “Plaintiff alleges that the sales price of the subject vehicle was \$38,752.90”  
8 and (2) “[i]f Plaintiff was to prevail on his Song-Beverly claims, he could be awarded  
9 damages of \$75,000.00 or more if awarded statutory civil penalties and attorney’s fees.”  
10 (Doc. No. 1 ¶¶ 17, 20.) FCA states, “[u]sing the sales price at \$38,752.90 plus \$77,505.80  
11 as a 2x civil penalty pursuant to the Song-Beverly Act, totals \$111,258.70.” (*Id.* ¶ 20.)  
12 FCA further argues that because Plaintiff had driven the vehicle 12,511 miles when it was  
13 presented for the “Recall R27” issue, the mileage offset would make the resulting actual  
14 damages \$34,712.49, which, when combined with a civil penalty of \$69,424.98, would  
15 result in at least \$104,137.47 in controversy. (*Id.* ¶ 22.) For the below reasons, doubt exists  
16 as to whether the amount in controversy exceeds \$75,000.<sup>1</sup>

17 **A. Actual Damages**

18 Under the Song-Beverly Act, a plaintiff may recover “an amount equal to the actual  
19 price paid or payable by the buyer,” reduced by “that amount directly attributable to use by  
20 the buyer.” CAL. CIV. CODE § 1793.2(d)(2)(B)-(C). Here, the installment contract attached  
21 to FCA’s opposition shows that \$38,752.90 was to be paid with \$2,500 down and \$32,465  
22 “financed.” (Doc. No. 12-2 at 36.) FCA also acknowledges that Plaintiff agreed to pay  
23 4.57% interest with payments beginning on December 2, 2014, and continuing until  
24 September 2, 2019, but FCA does not argue that Plaintiff made all payments. (*See* Doc.  
25 No. 12 at 13.) Accordingly, it is unclear whether actual damages in the amount of  
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27 <sup>1</sup> Because the court finds doubt as to the amount in controversy, it is not necessary to reach  
28 Plaintiff’s arguments with respect to complete diversity.

1 \$38,752.90 or \$34,712.49 is in controversy. *See Echemendia v. Subaru of Am., Inc.*, Case  
2 No. 2:20-cv-09243-MCS-JEM, 2020 WL 7311348, at \*2 (C.D. Cal. Dec. 11, 2020)  
3 (faulting the defendant for citing the purchase price as the plaintiff’s actual damages  
4 “without accounting for finance charges, evidence concerning when repairs were made, or  
5 anything else that could allow the Court to reliably estimate actual damages”); *Jackson v.*  
6 *Mercedes-Benz USA, LLC*, Case No. 5:20-CV-01681-DOC-KK, 2020 WL 7090839, at \*2  
7 (C.D. Cal. Dec. 2, 2020) (noting that the installment contract indicated a down payment,  
8 but faulting defendant because there were no facts indicating how many payments had been  
9 made); *but see Gupta v. Mercedes-Benz USA, LLC*, No. CV 20-9295-GW-JEMX, 2020  
10 WL 7423111, at \*3 (C.D. Cal. Dec. 10, 2020) (including the full purchase price in the  
11 amount in controversy because “[t]he Court only considers what a plaintiff’s complaint  
12 puts in-controversy, not what a plaintiff is ultimately likely to recover or whether a  
13 defendant likely has a defense that will preclude some or all of that recovery”).

#### 14 **B. Civil Penalty**

15 As noted above, FCA argues that at least \$34,712.49 in actual damages are in  
16 controversy, which exposes FCA to at least \$69,424.98 as a civil penalty, and therefore,  
17 the total amount in controversy is at least \$104,137.47 exclusive of attorneys’ fees. (Doc.  
18 No. 1 ¶ 22.) FCA also points to Plaintiff’s allegation that FCA acted “willfully” in failing  
19 to meet its obligations under the Song-Beverly Act. (Doc. No. 12 at 11-12.) As pointed  
20 out by FCA, in Song-Beverly Act cases, many district courts have found that civil penalties,  
21 however speculative, should be included in the amount in controversy whenever they are  
22 sought in the plaintiff’s complaint. *See, e.g., Modiano v. BMW of N. Am. LLC*, Case No.:  
23 21-cv-00040-DMS-MDD, 2021 WL 973566, at \*4 (S.D. Cal. Mar. 16, 2021) (finding an  
24 allegation of actual damages of at least \$25,000 and a two times civil penalty sufficient to  
25 reach \$75,000 threshold); *Wickstrum v. FCA USA LLC*, Case No.: 3:20-cv-00336-L-JLB,  
26 2021 WL 532257, at \*3 (S.D. Cal. Feb. 12, 2021) (“[T]he test is what amount plaintiff put  
27 in controversy, not FCA’s potential liability.”); *Villaron v. Ford Motor Co.*, Case No.:  
28 2:20-CV-08580-AB-KS, 2021 WL 37679, at \*2 (C.D. Cal. Jan. 5, 2021) (listing cases);

1 *Lopez v. FCA US LLC*, Case No. EDCV 20-1825 JGB (SPx), 2020 WL 7405795, at \*2  
2 (C.D. Cal. Dec. 16, 2020); *Vazquez-Ceron v. Ford Motor Co.*, Case No.: 20-cv-01318 W  
3 (KSC), 2020 WL 5905184, at \*2 (S.D. Cal. Oct. 6, 2020) (seeking a “statutory repurchase”  
4 of the vehicle plus a two times penalty is sufficient); *Kalasho v. BMW of N. Am., LLC*,  
5 Case No. 20-CV-1423-CAB-AHG, 2020 WL 5652275, at \*2 (S.D. Cal. Sept. 23, 2020)  
6 (seeking damages of “not less than \$25,000” plus a two times civil penalty is sufficient to  
7 meet \$75,000 threshold); *Rashid v. BMW of N. Am., LLC*, Case No.: 20cv573-L-DEB, 2020  
8 WL 5640734, at \*2 (S.D. Cal. Sept. 22, 2020) (seeking the “entire purchase price” of  
9 vehicle plus civil damages is sufficient).

10       However, many other district courts, including this court, have found that civil  
11 penalties should not be included unless the removing defendant makes some showing  
12 regarding the possibility of civil damages. *See, e.g., Barrett v. FCA US LLC*, Case No. SA  
13 CV 21-00243-DOC-DFMx, 2021 WL 1263838, at \*3 (C.D. Cal. Apr. 5, 2021) (declining  
14 to include “speculative” civil penalties in the amount in controversy); *Esparza v. FCA US*  
15 *LLC*, Case No. 2:21-cv-01856-RGK-MRW, 2021 WL 949600, at \*1 (C.D. Cal. Mar. 12,  
16 2021) (declining to include speculative civil penalties because they are to be determined  
17 by the court based on the specific facts of the case); *Khachatryan*, 2021 WL 927266, at \*2  
18 (defendant must show a two times civil penalty is more likely than not to be awarded);  
19 *Estrada v. FC US LLC*, Case No. CV 20-10453 PA (JPRx), 2021 WL 223249, at \*3 (C.D.  
20 Cal. Jan. 21, 2021) (defendant must make some effort to justify the assumption of civil  
21 penalties); *Echemendia*, 2020 WL 7311348, at \*2 (faulting the defendant for failing to cite  
22 any “allegations suggesting the type of willfulness required to justify civil penalties, let  
23 alone . . . . how much those penalties might be”); *Ronquillo v. BMW of N. Am., LLC*, Case  
24 No.: 3:20-cv-1413-W-WVG, 2020 WL 6741317, at \*3 (S.D. Cal. Nov. 17, 2020)  
25 (“Defendant fails to identify the allegations in the Complaint it believes would justify such  
26 an award; nor does Defendant submit evidence regarding the size of civil penalties awarded  
27 in analogous cases.”); *Millan v. FCA US LLC*, Case No.: 20cv328 JM (MDD), 2020 WL  
28 3604132, at \*1 (S.D. Cal. July 2, 2020).

1 Here, FCA argues the full civil penalty should be included in the amount in  
2 controversy because a civil penalty is available under the statute and because Plaintiff  
3 alleged he was entitled to the full civil penalty. (*See* Doc. No. 12 at 5 (“This alone  
4 establishes that the amount in controversy exceeds the jurisdictional requirement.”).) Other  
5 than referring to Plaintiff’s allegation that FCA acted willfully, however, FCA provides no  
6 support for the likelihood that a civil penalty based on its willfulness would actually be  
7 awarded in this case, or that the full civil penalty would be awarded. Moreover, even  
8 Plaintiff’s lengthy Complaint alleges only that FCA’s obligations were willfully violated  
9 because, in effect, FCA, with knowledge it could not repair the vehicle, failed to promptly  
10 provide Plaintiff with satisfactory redress. (Doc. 1-4 ¶¶ 15, 16.) If such boilerplate  
11 allegations were sufficient to defeat remand, then virtually any Song-Beverly action  
12 involving a new vehicle purchase would remain in federal court. Accordingly, FCA has  
13 failed to meet its burden of showing that the full civil penalty available under the Song-  
14 Beverly Act should be included in the amount in controversy. *See Zeto v. BMW of N. Am.,*  
15 *LLC*, Case No.: 20-cv-1380-GPC-KSC, 2020 WL 6708061, at \*5 (S.D. Cal. Nov. 16, 2020)  
16 (including full civil penalty where the defendant submitted “a detailed breakdown of how  
17 the civil penalties were calculated, backed up by passages from the complaint and other  
18 evidentiary exhibits”).

### 19 C. Attorneys’ Fees

20 FCA argues that an unidentified amount of attorneys’ fees should be included in the  
21 amount in controversy based on *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004,  
22 1011 (N.D. Cal. 2002). (Doc. No. 12 at 11.) In *Brady*, the court relied on a declaration by  
23 the plaintiff’s counsel that his rate was \$300 per hour and had billed \$5,000 at the time of  
24 removal, as well as a declaration by the vehicle manufacturer detailing fee awards in similar  
25 cases, several of which were over \$60,000. 243 F. Supp. 2d at 1011. Here, FCA provides  
26 no estimate as to Plaintiff’s attorneys’ fees that have accrued or will accrue. Without  
27 making some effort to set forth the value of attorneys’ fees Plaintiff is expected to incur,  
28 or that Plaintiff has incurred, FCA has failed to meet its burden of showing that the amount


1 of attorneys' fees at issue satisfies the amount in controversy. Accordingly, there is doubt  
2 as to the amount of possible attorneys' fees that could be included in the amount in  
3 controversy. *See Barrett*, 2021 WL 1263838, at \*3 (declining to award "speculative"  
4 attorneys' fees); *Esparza*, 2021 WL 949600, at \*1 (noting that some courts have found that  
5 attorneys' fees are in the control of the client and counsel and may be avoided or accrue  
6 over years depending on legal strategy); *Khachatryan*, 2021 WL 927266, at \*2 (faulting  
7 defendant for failing to cite any examples of the attorneys' fees that plaintiffs sought in  
8 other analogous cases); *Estrada*, 2021 WL 223249, at \*3 (faulting defendant for making  
9 no effort to explain the amount of attorneys' fees might be sought or awarded).

10 **IV. CONCLUSION**

11 For the foregoing reasons, Plaintiff's Motion to Remand (Doc. 10-2) is **GRANTED**.  
12 The case is **REMANDED** to the Superior Court of California for the County of San Diego.  
13 The Clerk of the Court is directed to close the case.

14 IT IS SO ORDERED.

15 DATED: April 28, 2021

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18 JEFFREY T. MILLER  
19 United States District Judge  
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