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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 ALEXANDRA JUNEAU and WILLIAM  
12 JUNEAU,

13 Plaintiffs,

14 v.

15 SUBARU OF AMERICA, INC., and  
16 DOE 1 through DOE 10, inclusive,

17 Defendants.

Case No.: 23-cv-614-DMS-KSC

**ORDER DENYING PLAINTIFFS’  
MOTION TO REMAND**

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19 This case comes before the Court on Plaintiffs Alexandra and William Juneau’s  
20 motion to remand this case to state court. Defendant Subaru of America, Inc. filed an  
21 opposition, and Plaintiffs filed a reply. For the reasons set out below, Plaintiffs’ motion is  
22 denied.

23 **I.**

24 **BACKGROUND**

25 The following facts are derived from Plaintiffs’ Complaint. (*See* Complaint  
26 (“*Compl.*”), ECF No 1 at 12-18.) This action concerns Plaintiffs’ purchase of a vehicle  
27 (“the vehicle”) manufactured by Defendant Subaru of America, Inc. (*Compl.* ¶¶ 5, 7.)  
28 Plaintiffs allege the vehicle had or developed numerous defects and continued to exhibit

1 such defects after Plaintiffs returned the vehicle to Defendant’s facility for repairs. (*Id.* ¶¶  
2 8-13.) Plaintiffs allege Subaru has continuously failed to make the vehicle conform to the  
3 applicable warranties. (*Id.*) Plaintiffs bring a claim under the Song-Beverly Consumer  
4 Warranty Act seeking restitution, damages, civil penalties, costs and expenses, and  
5 attorneys’ fees, (*id.* ¶¶ 14-17), and also bring a claim for breach of implied warranties of  
6 merchantability and fitness seeking rescission of the contract and attorneys’ fees, costs,  
7 and expenses. (*Id.* ¶¶ 21-29.) Plaintiffs filed suit in the Superior Court of California,  
8 County of San Diego, Subaru timely removed the action, and Plaintiffs thereafter filed this  
9 motion to remand. (ECF No. 6.)

10 **II.**  
11 **LEGAL STANDARD**

12 Federal courts are courts of limited jurisdiction, having subject matter jurisdiction  
13 only over matters authorized by the Constitution and Congress. *See Kokkonen v. Guardian*  
14 *Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A defendant may remove a civil action  
15 from state court to federal court only if the district court could have original jurisdiction  
16 over the matter. 28 U.S.C. § 1441(a). A removed action must be remanded to state court  
17 if the federal court lacks subject matter jurisdiction. *See* 28 U.S.C. § 1447(c); *Kelton Arms*  
18 *Condo. Owners Ass’n, Inc. v. Homestead Ins. Co.*, 346 F.3d 1190, 1192 (9th Cir. 2003)  
19 (“Subject matter jurisdiction may not be waived, and, . . . the district court must remand if  
20 it lacks jurisdiction.”). Federal courts “strictly construe the removal statute against removal  
21 jurisdiction,” so that any doubt as to the right of removal is resolved in favor of remanding  
22 the case to state court.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Thus, the  
23 removing party bears the burden to demonstrate that removal is proper. *Emrich v. Touche*  
24 *Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988).

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### III.

#### DISCUSSION

Plaintiffs challenge Subaru’s removal for three reasons: (1) the parties are not in complete diversity, (2) civil penalties cannot be included in the amount in controversy, and (3) attorneys’ fees cannot be included in the amount in controversy.

##### A. Diversity

Plaintiffs contend Subaru has not met its burden to show complete diversity of citizenship between the parties, arguing Subaru has failed to establish Plaintiffs’ citizenship. For diversity jurisdiction under 28 U.S.C. § 1332(a), the citizenship of each plaintiff must be diverse from the citizenship of each defendant. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996). “Courts determine diversity of citizenship by a person’s domicile, not his or her place of residence.” *Canesco v. Ford Motor Co.*, 570 F. Supp. 3d 872, 886 (S.D. Cal. 2021) (citing *Adams v. W. Marine Prod., Inc.*, 958 F.3d 1216, 1221 (9th Cir. 2020)). A person’s domicile is their “permanent home—that is, where (i) she resides, (ii) with the intention to remain or to which she intends to return.” *Adams*, 958 F.3d at 1221 (citations and quotations omitted). However, “[a]t a minimum, a person’s residence constitutes *some* evidence of domicile.” *Id.* See also *Lee v. BMW of N. Am., LLC*, No. SACV1901722JVSADSX, 2019 WL 6838911, at \*2 (C.D. Cal. Dec. 16, 2019) (stating, district courts have found “a person’s residence is prima facie evidence of domicile and citizenship.”)

In its opposition, Subaru provides sales documentation, repair orders, and a public background search, which all indicate Plaintiffs are residents of California. Plaintiffs do not dispute they are residents of California. Instead, Plaintiffs challenge Subaru’s use of extrinsic evidence. Plaintiffs contend that courts may only consider the “record of the state court [as] the sole source” from which to determine if a case is removable. *Peabody v. Schroll Trust*, 892 F.2d 772, 775 (9th Cir. 1989). But Plaintiffs fail to acknowledge that “parties may submit evidence outside the complaint, including affidavits or declarations, or other summary-judgment-type evidence relevant to the amount in controversy at the

1 time of removal.” *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1197 (9th Cir.  
2 2015).<sup>1</sup> “Courts in this District have found residency based on similar documents.” *See*  
3 *Ha Nguyen v. BMW of N. Am., LLC*, No. 20-cv-2432-JLS, 2021 WL 2411417, at \*3 (S.D.  
4 Cal. June 14, 2021) (citing cases).

5 The purchase agreement for the vehicle indicates Plaintiffs’ address is in California,  
6 (Villegas Declaration ISO Defendant Subaru’s Opposition, ECF No. 13 ¶ 3), the repair  
7 orders indicate Plaintiffs’ address has remained the same as the purchase agreement from  
8 October 2019 to March 2023, (*id.* ¶¶ 4-22), and the background search indicates Plaintiffs  
9 have lived in various addresses in San Diego County from 1993 and 1994, respectively,  
10 through the date Defendant filed its opposition. This evidence demonstrates Plaintiffs’  
11 residence is in California and is prima facie evidence of Plaintiffs’ domicile and citizenship  
12 in California. The Court finds Plaintiffs are citizens of California.

13 For purposes of diversity jurisdiction, a corporation is considered a citizen of the  
14 state in which it is incorporated and where it has its principal place of business. 28 U.S.C.  
15 § 1332(c)(1). Subaru contends its principal place of business is in New Jersey, and it is  
16 incorporated in New Jersey. (Villegas Decl. ¶ 26.) Plaintiffs do not challenge Subaru’s  
17 citizenship. The Court therefore finds Subaru is a citizen of New Jersey.

18 Because Subaru has met its burden to show diversity of citizenship exists, Plaintiffs  
19 must rebut that showing. *See Canesco*, 570 F. Supp. 3d at 885 (stating, “[i]f a defendant  
20 carries its burden of presenting evidence that diversity of citizenship exists, the burden of  
21 production shifts to the plaintiff to rebut the evidence of diversity of citizenship”); *see also*  
22 *Mondragon v. Capital One Auto Finance*, 736 F.3d 880, 885 (9th Cir. 2013) (holding the  
23 “party with the burden of proving citizenship may rely on the presumption of continuing  
24 domicile, which provides that, once established, a person’s state of domicile continues  
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27 <sup>1</sup> Plaintiffs cite to *Aletha Nelson v. Thor Motor Coach, Inc., et al.*, No. SA-CV-20-01266, (C.D. Cal. Sept.  
28 11, 2020) to support their argument that a court may only consider the state court record. (Declaration of  
Sharon Silver ISO Plaintiffs’ Motion to Remand, ECF No. 6-1 ¶ 7, Ex. E.) But *Aletha* specifically  
explains that courts may consider “summary-judgment type evidence.” (*Id.*)

1 unless rebutted with sufficient evidence of change”). Plaintiffs fail to do so. The Court  
2 therefore finds Subaru has met its burden to establish complete diversity of citizenship.

3 B. Amount in Controversy

4 When, as here, a plaintiff challenges a defendant’s assertion of the amount in  
5 controversy, “both sides submit proof and the court decides, by a preponderance of the  
6 evidence, whether the amount-in-controversy requirement has been satisfied.” *Dart*  
7 *Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 88 (2014). Although both  
8 sides may submit evidence on the issue, “the removing defendant bears the burden of  
9 establishing, by a preponderance of the evidence, that the amount in controversy exceeds  
10 [\$75,000].” *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).  
11 Under the preponderance of the evidence standard, “the defendant must provide evidence  
12 establishing that it is ‘more likely than not’ that the amount in controversy exceeds that  
13 amount.” *Id.*

14 i. *Civil Penalties*

15 “Damages recoverable under the Song-Beverly Act include restitution, incidental  
16 and consequential damages, attorneys’ fees and costs, and if there has been a ‘willful’  
17 violation of the Act, a civil penalty.” *Ortega v. Toyota Motor Sales, USA, Inc.*, 572  
18 F.Supp.2d 1218, 1221 (S.D. Cal. 2008). While there is disagreement among district courts  
19 whether civil penalties under the Song-Beverly Act are included in the amount in  
20 controversy calculation, *see Ha Nguyen*, 2021 WL 2411417, at \*4-5 (collecting cases), this  
21 Court has included Song-Beverly civil penalties in the amount in controversy calculation.  
22 *See Modiano v. BMW of N. Am., LLC*, No. 21-cv-40-DMS, 2021 WL 973566, at \*3-4 (S.D.  
23 Cal. Mar. 16, 2021) (including civil penalties in amount in controversy). And it will do so  
24 here. The Song-Beverly Act authorizes plaintiffs to recover “a civil penalty which shall  
25 not exceed two times the amount of actual damages.” Cal. Civ. Code § 1794(c). “Courts  
26 treat the Song-Beverly Act’s civil penalties akin to punitive damages.” *Carillo v. FCA*  
27 *USA, LLC*, 546 F.Supp.3d 995, 1003 (C.D. Cal. 2021). “It is well established that punitive  
28 damages are part of the amount in controversy in a civil action.” *Gibson v. Chrysler Corp.*,

1 261 F.3d 927, 945 (9th Cir. 2001). Because civil penalties under the Song-Beverly Act are  
2 akin to punitive damages, they are appropriately included in the amount in controversy  
3 calculation.

4 In their Complaint, Plaintiffs seek \$39,496.92 in damages—restitution in the amount  
5 of \$37,206.83 (down payment), and \$2,290.09 (monthly payments to date). (Compl. at 7,  
6 ¶¶ 1, 2.) Plaintiffs also seek “a civil penalty up to two times the amount of actual damages  
7 (est. \$78,993.84)[.]” (*Id.* at ¶ 2.) Thus, for the vehicle and civil penalties alone, the amount  
8 in controversy is \$118,490.76, which is facially apparent from the Complaint. The Court  
9 therefore finds Subaru has met its burden to establish the amount in controversy exceeds  
10 \$75,000.

11 ii. *Attorneys’ Fees*

12 Plaintiffs seek attorney fees incurred as a result of filing their motion to remand.  
13 When remanding a case, a court may in its discretion “require payment of just costs and  
14 actual expenses, including attorney fees, incurred as a result of the removal.” 28 U.S.C. §  
15 1447(c). Because Plaintiffs’ motion is denied, the Court denies Plaintiffs’ request for  
16 attorneys’ fees.

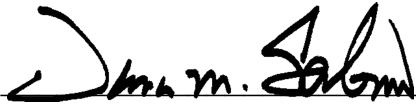
17 **IV.**

18 **CONCLUSION**

19 The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332.  
20 Accordingly, Plaintiffs’ motion to remand is denied.

21 **IT IS SO ORDERED.**

22 Dated: August 21, 2023

  
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23 Hon. Dana M. Sabraw, Chief Judge  
24 United States District Court