TENTATIVE ORDER: NOT TO BE FILED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANTHONY RIMICCI, Plaintiff, v. FCA US, LLC, Defendant.	Case No. 2:24-cv-01907-SB-MAR TENTATIVE ORDER[1] DENYING PLAINTIFF'S MOTION FOR REMAND [DKT. NO. 15]

Plaintiff Anthony Rimicci filed this lemon-law case in the Los Angeles County Superior Court after purchasing an allegedly defective 2021 Ram 3500 truck for $66,592.06. Defendant FCA US, LLC removed the case to federal court asserting diversity jurisdiction. Plaintiff does not dispute diversity of citizenship but moves to remand claiming that Defendant has failed to establish that the amount in controversy exceeds $75,000. Because Defendant has satisfied its burden, Plaintiff's motion to remand is denied.

I.

A defendant may remove a civil action from state to federal court when jurisdiction would originally lie in federal court. 28 U.S.C. § 1441(a). If removal is based on diversity jurisdiction, the removing defendant must show complete diversity of citizenship among the parties and that the amount in controversy exceeds $75,000, exclusive of interest and costs. *Id.* § 1332. The removing party bears the burden of proof. *Abrego Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 684 (9th Cir. 2006) (noting the "near-canonical rule that the burden on

[1] The purpose of the tentative ruling is to focus the discussion at the hearing. *No party shall submit any written response to the tentative ruling—or submit the tentative ruling as an exhibit in any filing—without prior leave of court*.

removal rests with the removing defendant"). There is a "strong presumption" against removal jurisdiction," and "[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Where the amount in controversy is uncertain on the face of the complaint, the removing defendant must show that the amount in controversy exceeds the jurisdictional threshold by a preponderance of the evidence. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007).

II.

Plaintiff alleges that Defendant breached the express and implied warranties of merchantability under California's Song-Beverly Act. *See generally* Dkt. No. 1-1. Based on the alleged breaches, Plaintiff requests replacement or restitution, civil penalties of up to two times the actual damages, incidental and consequential damages, attorneys' fees, and prejudgment interest. *Id*. at 14. Defendant removed the case asserting that the amount in controversy, as alleged, exceeds $75,000. The complaint does not request a specific amount of damages, stating only that the amount in controversy exceeds $35,000. Consequently, Defendant must prove that the amount in controversy exceeds the $75,000 threshold. *Guglielmino*, 506 F.3d at 699.

Under the Song-Beverly Act, the purchase price of the vehicle may be the appropriate measure of actual damages where the plaintiff seeks recovery of "the entire contract price." *Schneider v. Ford Motor Co.*, 441 F. Supp. 3d 909, 914 (N.D. Cal. 2020). Although Plaintiff stated in his motion that his recovery is "limited to the actual payment amount to the seller," Plaintiff's counsel clarified at the mandatory scheduling conference that the actual damages sought include the amounts paid and owing under the purchase contract (i.e., $66,592.06). Plaintiff asserts, however, that "this amount must be reduced to account for any use by plaintiff prior to the first repair of the vehicle." Dkt. No. 23 at 3. *See Jiagbogu v. Mercedes-Benz USA*, 118 Cal. App. 4th 1235, 1244 (2004) ("The predelivery offset creates an incentive for the buyer to deliver a car for repairs soon after a nonconformity is discovered."). Courts in this circuit have divided over the propriety of considering a potential predelivery offset in determining the amount in controversy. *See Selinger v. Ford Motor Co.*, No. 2:22-CV-08883-SPG, 2023 WL 2813510, at *7 (C.D. Cal. Apr. 5, 2023) (discussing the varied approaches taken). This Court need not weigh in on this debate because the only record evidence of the mileage on the truck at the time of the first repair—presented by Defendant without any response by Plaintiff—is insubstantial (namely, 348 miles), reducing the amount of actual damages by less than $200. *See* Cal. Civ. Code

§ 1793.2(d)(2)(C) (specifying that the offset "shall be determined by multiplying the actual price of the new motor vehicle paid or payable by the buyer . . . by a fraction having as its denominator 120,000 and having as its numerator the number of miles traveled by the new motor vehicle prior to the time the buyer first delivered the vehicle . . . for correction of the problem that gave rise to the nonconformity").[2]

Thus, the amount of actual damages at issue is approximately $66,000. Plaintiff also seeks civil penalties up to twice the amount of actual damages (or approximately $132,000) and attorneys' fees, both of which are authorized under the Song-Beverly Act. Dkt. No. 1-1 at 10 (prayer). Even with a conservative view of potentially available penalties and fees that might be added to actual damages, the amount-in-controversy threshold of $75,000.01 is satisfied here.

III.

The existence of diversity of citizenship between the parties is not disputed, and Defendant has established by a preponderance of the evidence that the amount in controversy exceeds $75,000. Plaintiff's motion to remand is therefore DENIED.

Date: April 25, 2024

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Stanley Blumenfeld, Jr.
United States District Judge

[2] While there is no need in this case to decide whether a mileage offset should be considered for jurisdictional purposes, the Court observes that the mileage offset is not automatic. *See Jiagbogu*, 118 Cal. App. 4th at 1243 (noting that the applicable statute "tells the manufacturer that it may, but need not, deduct the pre-delivery-use offset"). Consistent with this observation, Defendant acknowledges that the claim for a mileage offset is a defense. Dkt. No. 17 at 4 ("The amount in controversy is established by what a plaintiff demands by way of their complaint, not by any reductions that a defendant might achieve through its defenses."). Notably, Defendant has not asserted any such defense in its answer. Dkt. No. 1-2.