

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Marx v. FCA US LLC

Marx · No. 24-cv-06870-BLF · Decided August 25, 2025

OPINION

Marx v. FCA US LLC

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 SAN JOSE DIVISION

7 8 JOSHUA P. MARX and ELIZABETH Case No. 24-cv-06870-BLF

MARX,

9 Plaintiffs, ORDER DENYING PLAINTIFFS’

10 MOTION TO REMAND

v. 11 [Re: ECF 20]

FCA US LLC,

12 Defendant. 13

14 15 16 Plaintiffs Joshua and Elizabeth Marx (“the Marxes”) filed this suit against Defendant
FCA 17 US LLC (“FCA”) in state court, asserting state law warranty and fraud claims arising
from the 18 purchase of an allegedly defective vehicle. See Skanes Decl. ISO Removal Ex. A
(Compl.), ECF 19 1-1. FCA removed the suit to federal district court based on diversity
jurisdiction. See Not. of 20 Removal ¶ 29, ECF 1. 21 The Marxes have filed a motion to remand
the action to state court, asserting that FCA has 22 not established that the amount in controversy
exceeds \$75,000 as required for diversity 23 jurisdiction. See Pls.’ Mot., ECF 20. FCA opposes
remand, arguing that the amount in 24 controversy exceeds \$75,000, and that the Marxes waived
the right to seek remand by litigating 25 for eight months before filing their motion. See Def.’s
Opp., ECF 22. The Marxes have filed a 26 reply. See Pls.’ Reply, ECF 23. 27 The Court
previously vacated the motion hearing that had been set for July 31, 2025. See

1 I. BACKGROUND

2 The Marxes filed this action against FCA in the Santa Clara County Superior Court on

3 August 26, 2024, asserting that FCA failed to meet its warranty and repair obligations with
respect

4 to a 2022 Chrysler Pacifica Hybrid that was manufactured by FCA and purchased by the
Marxes. 5 See Compl. ¶¶ 7-21. The Marxes allege that the vehicle has one or more defects that

may cause it to stall, shut off, and/or lose power. See *id.* ¶ 16. The complaint asserts four claims under California’s Song-Beverly Consumer Warranty Act (“Song-Beverly Act”), Cal. Civil Code § 1790.8 et seq., and a fraud claim under California common law. See *id.* ¶¶ 22-80. FCA answered the complaint while the case was in state court. See Skanes Decl. ISO Removal Ex. D (Answer), ECF 10-1. FCA removed the action to federal district court on September 30, 2024 based on diversity jurisdiction. See Not. of Removal ¶ 29, ECF 1. FCA alleges in its notice of removal that there is complete diversity of citizenship between the parties, because the Marxes are citizens of California while FCA is a limited liability company organized under Delaware law, with its principal place of business in Michigan, none of whose members are citizens of California. See *id.* ¶¶ 29-30. FCA alleges that the amount in controversy exceeds the jurisdictional minimum of \$75,000. See *id.* ¶¶ 21-23. The complaint does not specify what amount of money the Marxes are seeking, but rather alleges that they “suffered damages in a sum to be proven at trial in an amount that is not less than \$35,001.00.” Compl. ¶ 35. The complaint also alleges that the Marxes are entitled to a civil penalty in the amount of two times actual damages, attorneys’ fees and costs, and other relief. See Compl. Prayer. FCA asserts that because the complaint seeks at least \$35,000 in damages, plus a civil penalty of two times actual damages – which would be \$70,000 – it appears on the face of the complaint that the amount in controversy exceeds \$75,000, even without considering attorneys’ fees. See Not. of Removal ¶¶ 19-24. FCA also asserts that it has submitted evidence sufficient to meet its burden to show that the amount in controversy exceeds the jurisdictional minimum. FCA submits with its notice of removal and Sunnyvale Chrysler Dodge Jeep Ram of Sunnyvale, disclosing that the purchase price of the vehicle was \$72,225.58. See Not. of Removal ¶ 10 & Ex. F (RISC). The Marxes paid additional amounts in finance charges and for an optional service contract. See *id.* Taking those charges into account, and deducting a reasonable allowance for use in the amount of \$6,179.85, FCA calculates the total amount paid for the vehicle – that is, the amount the Marxes are seeking in actual damages – to be \$79,145.47. See Not. of Removal ¶¶ 20-22. Thus, the Marxes’ request for actual damages plus two times that amount as a civil penalty would put the amount in controversy at \$237,436.41. See *id.* FCA contends that the amount in controversy is well in excess of \$300,000 if the Marxes’ requests for punitive damages and attorneys’ fees are considered. See *id.* ¶¶ 22-23. Following removal, the Marxes litigated the case in federal district court for approximately eight months, serving requests for production of documents, interrogatories, and a notice of deposition of defendant with requests for production of documents. See Skanes Decl. ISO Opp. ¶ 5, ECF 22-1. The Marxes filed the present motion to remand on June 6, 2025.

II. LEGAL STANDARD

A defendant may remove a civil action from state court to federal district court if the district court would have had original jurisdiction over the action. See 28 U.S.C. § 1441(a). District courts have original jurisdiction over civil actions based on a federal question, see 28 U.S.C. §

1331, or diversity of citizenship, see 28 U.S.C. § 1332. Thus, “[a] defendant may 19 remove an action to federal court based on federal question jurisdiction or diversity jurisdiction.” 20 *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009). 21 A party who contests removal may file a motion to remand. See 28 U.S.C. § 1447(c). 22 “Removal statutes are strictly construed, and any doubt about the right of removal requires 23 resolution in favor of remand.” *Casola v. Dexcom, Inc.*, 98 F.4th 947, 954 (9th Cir. 2024) 24 (quotation marks and citation omitted). “The presumption against removal means that the 25 defendant always has the burden of establishing that removal is proper.” *Id.* (quotation marks and 26 citation omitted).

27 III. DISCUSSION

1 that the amount in controversy exceeds \$75,000. They do not challenge the existence of complete 2 diversity of citizenship between themselves and FCA. FCA asserts that it has met its burden to 3 show that the amount in controversy exceeds \$75,000, and that in any event the Marxes have 4 waived their right to seek remand by litigating this case for eight months following removal. The 5 Court addresses those issues in reverse order. 6 A. Waiver 7 FCA’s waiver argument is without merit. “Although procedural defects in the removal of 8 an action may be waived by the failure to make a timely objection before the case proceeds to the 9 merits, defects pertaining to the subject matter jurisdiction of the court cannot be waived and may 10 be raised at any time.” *Demarest v. HSBC Bank USA, N.A. as Tr. for registered holders of 11 Nomura Home Equity Loan, Inc., Asset-Backed Certificates, Series 2006-HE2*, 920 F.3d 1223, 12 1226 (9th Cir. 2019) (internal quotation marks, citation, and brackets omitted). The Marxes 13 challenge the existence of subject matter jurisdiction, specifically, diversity jurisdiction. That 14 challenge cannot be waived by a delay in seeking remand. See *Demarest*, 920 F.3d at 1226. 15 The case cited by FCA addressed waiver of a plaintiff’s right to seek remand based on the 16 forum defendant rule, which is procedural rather than jurisdictional. See *SWC Inc. v. Elite Promo 17 Inc.*, 234 F. Supp. 3d 1018, 1022-25 (N.D. Cal. 2017). That case does not apply here. 18 B. Amount in Controversy 19 The Marxes’ remand motion therefore turns on whether FCA has met its burden to show 20 that the amount in controversy exceeds the jurisdictional minimum of \$75,000. A district court 21 may exercise diversity jurisdiction over a civil action only “where the matter in controversy 22 exceeds the sum or value of \$75,000, exclusive of interest and costs[.]” 28 U.S.C. § 1332(a). 23 FCA argues that it appears on the face of the complaint that the amount in controversy exceeds 24 \$75,000, and that it has shown by a preponderance of the evidence that the amount in controversy 25 exceeds the jurisdictional minimum. 26 1. Face of Complaint 27 “[W]hen a complaint filed in state court alleges on its face an amount in controversy 1 unless it appears to a ‘legal certainty’ that the plaintiff cannot actually recover that amount.” 2 *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007). As noted above, the 3 complaint does not allege the amount of damages sought. Instead, complaint alleges that the 4 Marxes suffered “damages” of “not less than \$35,001.00.” Compl. ¶ 35. Pointing out that the 5 complaint also seeks a civil penalty of up to twice actual damages, FCA reasons that damages of at 6 least

\$35,000.00, plus a civil penalty of up to twice that amount - \$70,000 – meets the 7 jurisdictional threshold of \$75,000. 8 The Marxes argue that their allegation of at least \$35,001.00 in damages was intended to 9 refer to their total recovery, including damages, punitive damages, civil penalties, and attorneys’ 10 fees. Consequently, they argue, the face of the complaint does not disclose an amount in 11 controversy in excess of \$75,000. The Court does not find the Marxes’ argument persuasive given 12 that the complaint expressly states that the \$35,001.00 refers to the minimum amount of 13 “damages” sought, and “damages” are a different type of recovery than civil penalties and 14 attorneys’ fees. Moreover, the Court notes that the Marxes have declined to stipulate that they 15 seek a total recovery of less than \$75,000, instead stating that they “do not take any position here 16 on the total amount of damages recoverable in this case and do not waive any arguments 17 concerning the total amount of damages.” Pls.’ Mot. at 2 n.1. 18 However, the Marxes cite a number of district court cases in this circuit finding that 19 damages allegations such as those at issue here were not sufficient to meet the jurisdictional 20 minimum for diversity jurisdiction on the face of the complaint. See *Hernandez v. FCA US, LLC*, 21 No. 5:24-CV-02501-SB-SHK, 2025 WL 504366, at *1-2 (C.D. Cal. Feb. 13, 2025) (collecting 22 cases). This Court need not decide whether to follow or diverge from those authorities, because 23 FCA has submitted evidence showing that the amount in controversy exceeds \$75,000. That 24 evidence is discussed as follows. 25 2. Preponderance of the Evidence 26 “Where [] it is unclear from the face of the complaint whether the amount in controversy 27 exceeds \$75,000, the removing defendant bears the burden of establishing, by a preponderance of 1 JPMorgan Chase & Co., 888 F.3d 413, 416 (9th Cir. 2018) (quotation marks and citation 2 omitted). “The amount in controversy may include damages (compensatory, punitive, or 3 otherwise) and the cost of complying with an injunction, as well as attorneys’ fees awarded under 4 fee shifting statutes.” *Id.* (quotation marks and citation omitted). “In assessing the amount in 5 controversy, we may consider allegations in the complaint and in the notice of removal, as well as 6 summary-judgment-type evidence relevant to the amount in controversy.” *Id.* 7 The Marxes seek damages, a civil penalty of up to twice actual damages, punitive 8 damages, and attorneys’ fees and costs. 9 a. Actual Damages 10 Under the Song-Beverly Act, a plaintiff may recover “an amount equal to the actual price 11 paid or payable by the buyer,” offset by any decrease in the car’s value “directly attributable to use 12 by the buyer prior to the time the buyer first delivered the vehicle . . . for correction of the problem 13 that gave rise to the nonconformity.” Cal. Civ. Code § 1793.2(d)(2) (B)-(C). The decrease in 14 value is based on the number of miles the buyer drove the vehicle prior to the first attempted 15 repair. See *id.* § 1793.2(d)(2)(C). District courts within the Ninth Circuit disagree whether this 16 decrease in value, generally referred to as the “use offset” or the “mileage offset,” should be 17 considered when determining the amount in controversy for purposes of diversity jurisdiction. See 18 *Cabrera v. FCA US LLC*, No. 1:22-cv-00431-NODJ-BAM, 2023 WL 8477970, at *2 (E.D. Cal. 19 Dec. 7, 2023) (comparing cases).

20 This Court need not resolve the issue of whether the use offset should be applied when 21
determining the amount in controversy, because the evidence of actual damages submitted with 22
FCA's opposition brief accounts for the use offset. FCA submits with its notice of removal a copy
23 of the Retail Installment Sale Contract ("RISC") between Plaintiff Joshua Marx and Sunnyvale
24 Chrysler Dodge Jeep Ram of Sunnyvale, disclosing that the purchase price of the vehicle was
25 \$72,225.58. See Not. of Removal ¶ 10 & Ex. F (RISC). The Marxes paid additional amounts in
26 finance charges and for an optional service contract. See *id.* Taking those charges into account,
27 and deducting a reasonable allowance for use in the amount of \$6,179.85, FCA calculates the
total 1 \$79,145.47. See Not. of Removal ¶¶ 20-22. 2 The Marxes contend that FCA's submission
of the RISC and calculation of the mileage 3 offset does not provide an accurate damages figure.
The Marxes do not offer any competing 4 measure of damages, they merely argue that FCA's
calculations based on record evidence is 5 inadequate. However, courts in this district – including
this Court – have accepted such evidence 6 as sufficient to establish damages in similar Song-
Beverly Act cases. See, e.g., *Carrington 7 Stonemasons, Inc. v. Ford Motor Co.*, No. 24-CV-
00080-BLF, 2024 WL 1745038, at *3 (N.D. 8 Cal. Apr. 22, 2024). The Court accepts FCA's
assertion of actual damages in the amount of 9 \$79,145.47. 10 b. Civil Penalty 11 In addition to
actual damages, the Marxes seek a civil penalty of up to twice actual 12 damages. See Compl.,
Prayer. Under the Song-Beverly Act, "[i]f the buyer establishes that the 13 failure to comply was
willful, the judgment may include . . . a civil penalty which shall not exceed 14 two times the
amount of actual damages." Cal. Civ. Code § 1794(c). Using the above calculation 15 of actual
damages in the amount of \$79,145.47, then, the Marxes seek a civil penalty of up to 16
158,290.94 (\$79,145.47 x 2). Adding this requested penalty to the requested actual damages, the
17 Marxes seek a up to \$237,436.41, well in excess of the jurisdictional threshold of \$75,000. 18
The Marxes suggest that FCA must show not only that they seek monetary relief in excess 19 of
\$75,000, but that they are likely to recover in excess of \$75,000. That argument is foreclosed 20
by the Ninth Circuit's holding that "[t]he amount in controversy is not a prospective assessment of
21 [a] defendant's liability." *Chavez*, 888 F.3d at 417 (quotation marks and citation omitted, 22
alteration in original). For purposes of satisfying the amount in controversy requirement, the 23
relevant amount is not what the Marxes are likely to recover, but "[r]ather, it is the amount at stake
24 in the underlying litigation." *Id.* (quotation marks and citation omitted). 25 The Marxes argue
that many district courts in this circuit have declined to consider 26 requests for civil penalties in
the calculation of amount in controversy, string-citing a number of 27 1 such cases. This Court
declines to follow those cases, as they are directly contrary to the Ninth 2 Circuit's articulation of
the defendant's burden in *Chavez*. Applying the controlling Ninth Circuit 3 precedent, this Court
considers the Marxes' request in the complaint for actual damages plus a 4 civil penalty of up to
twice actual damages. This approach is consistent with that of numerous 5 district courts within
the Ninth Circuit. See, e.g., *Van Horn v. Gen. Motors, LLC*, No. 23-CV- 6 04320-PCP, 2024 WL
1335195, at *1 (N.D. Cal. Mar. 27, 2024) (finding jurisdictional threshold 7 met based on

consideration of vehicle purchase price and plaintiff's request for a civil penalty 8 under the Song-Beverly Act in an amount equal to twice her damages); *Solis v. Nissan N. Am. 9 Inc.*, No. CV 24-00728-MWF (EX), 2024 WL 1311275, at *4 (C.D. Cal. Mar. 27, 2024) ("Several 10 courts have found that the maximum recoverable civil penalty – two times Plaintiff's actual 11 damages – should be considered for purposes of determining the amount in controversy."); 12 *Cabrera*, 2023 WL 8477970, at *2 ("[T]he court will include the requested civil penalties in the 13 amount in controversy."). 14 c. Attorneys' Fees 15 The Marxes request reasonable attorneys' fees in an unspecified amount. See Compl., 16 Prayer. A buyer who prevails on an action under the Song-Beverly Act may recover attorneys' 17 fees "reasonably incurred by the buyer in connection with the commencement and prosecution of 18 such action." Cal. Civ. Code § 1794(d). "[A] court must include future attorneys' fees 19 recoverable by statute or contract when assessing whether the amount-in-controversy requirement 20 is met." *Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 794 (9th Cir. 2018) 21 FCA submits a declaration of counsel stating that attorneys' fees in Song-Beverly Act 22 cases commonly exceed \$25,000. See Skanes Decl. ISO Removal ¶ 12. FCA's counsel presents 23 evidence that the law firm representing the Marxes in this case sought attorneys' fees and costs in 24 excess of \$100,000 in a similar Song-Beverly Act case. See id. & Ex. G. The Marxes argue that 25 evidence of attorneys' fees their counsel sought in another action is irrelevant. The Court 26 disagrees, and finds that evidence that the same law firm sought in a similar case is relevant to 27 determining the amount in controversy for purposes of diversity jurisdiction. However, the Court 1 has established that the amount in controversy exceeds the jurisdictional minimum based on the 2 || damages and civil penalty sought. 3 d. Conclusion Re Amount in Controversy 4 Based on the foregoing, the Court finds that FCA has demonstrated by a preponderance of 5 the evidence that the amount in controversy exceeds the jurisdictional minimum of \$75,000. For 6 that reason, the Marxes' motion to remand is DENIED.

7 IV. ORDER

8 (1) The motion to remand is DENIED. 9 (2) This order terminates ECF 20. 10 11 Dated: August 25, 2025 a (12 han

BETH LABSON FREEMAN

13 United States District Judge © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28