

The Honorable Richard A. Jones

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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 ERIC P. SOPTICH,

9 Plaintiff,

10 v.

11 STRYKER CORPORATION a Michigan
12 corporation, and HOWMEDICA
OSTEONICS CORPORATION, d/b/a
13 STRYKER SPINE, a New Jersey
corporation and wholly owned subsidiary
14 of STRYKER CORPORATION,

15 Defendants.

CASE NO. C19-00744 RAJ

**ORDER GRANTING
PLAINTIFF'S MOTION TO
AMEND**

16
17 This matter is before the Court on Plaintiff's Motion to Amend. Dkt. # 25. For
18 the following reasons, the Court GRANTS the Motion.

19 **I. BACKGROUND**

20 Plaintiff initially brought this action against Stryker Corporation ("Stryker") in
21 April 2019. Dkt. # 1-1. Stryker later removed this action to federal court on the basis of
22 diversity jurisdiction and moved to dismiss Plaintiff's Complaint. Dkt. ## 1, 8. On June
23 11, 2019, Plaintiff filed his First Amended Complaint, adding Howmedica Osteonics
Corporation ("Defendant" or "HOC") as a defendant.¹ Dkt. # 11. On July 5, 2019, HOC

¹ The parties later stipulated to dismiss Stryker from this action. Dkt. # 20.

1 moved to dismiss Plaintiff’s Amended Complaint for failure to state a claim. Dkt. # 19.
2 The Honorable Judge Brian A. Tsuchida issued a Report and Recommendation,
3 recommending HOC’s motion be granted in part and denied in part. Dkt. # 24. HOC
4 filed Objections to Judge Tsuchida’s Report and Recommendation which are currently
5 pending before the Court. Dkt. # 27.

6 Plaintiff now seeks permission to amend his complaint to join three additional
7 defendants, Dr. Jens Chapman, Dr. Fernando Alonso, and Swedish Health Services d/b/a
8 Swedish Medical Center (collectively, the “Additional Defendants”). Dkt. # 25. Because
9 joinder of the Additional Defendants will destroy the Court’s diversity jurisdiction,
10 Plaintiff also seeks an order remanding this action to state court.

11 **II. LEGAL STANDARD**

12 If after removal, a plaintiff seeks to join additional defendants whose joinder
13 would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder
14 and remand the action to state court. 28 U.S.C. § 1447(e). Under § 1447, whether to
15 permit joinder of a party that will destroy diversity jurisdiction remains in the sound
16 discretion of the court and will be reviewed under an abuse of discretion standard. *See*
17 *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 691 (9th Cir. 1998).

18 **III. DISCUSSION**

19 **A. Joinder Under 28 U.S.C. § 1447(e)**

20 Courts generally consider the following factors when deciding whether to allow
21 amendment to add non-diverse defendants: (1) whether the new defendants should be
22 joined under Rule 19(a) as “needed for just adjudication”; (2) whether the statute of
23 limitations would preclude an original action against the new defendants in state court;
(3) whether there has been unexplained delay in requesting joinder; (4) whether joinder is
sought solely to defeat federal jurisdiction; (5) whether the claims against the new
defendant appear valid; and (6) whether denial of joinder will prejudice the plaintiff. *See*
Palestini v. Gen. Dynamics Corp., 193 F.R.D. 654, 658 (S.D. Cal. 2000).

1 i. Just Adjudication and Rule 19(a)

2 Plaintiff contends that the Additional Defendants are necessary under Rule 19
3 because failure to join them would result in separate and redundant actions. Dkt. # 25 at
4 7. A necessary party is one “having an interest in the controversy, and who ought to be
5 made [a] part[y], in order that the court may act on that rule which requires it to decide
6 and finally determine the entire controversy... by adjusting all the rights involved in it.”
7 *CP Nat’l. Corp. v. Bonneville Power Admin.*, 928 F.2d 905, 912 (9th Cir. 1991).

8 HOC contends that the Additional Defendants are not necessary under the
9 Supreme Court’s decision in *Temple v. Synthes Corp., Ltd.*, 498 U.S. 5, 7 (1990). Dkt. #
10 29 at 7. In *Temple*, a medical device products liability suit, the Court determined that the
11 plaintiff’s physician and the hospital were not “necessary” parties under Rule 19(a).
12 *Temple*, at 5–6. However, because the standard under 28 U.S.C. § 1447(e) is less
13 restrictive than Rule 19’s standard, *Temple* does not preclude a finding that joinder of the
14 medical providers and Swedish is necessary for just adjudication consistent with the
15 purposes of section 1447(e). “Although courts consider whether a party would meet
16 [Rule] 19’s standard for a necessary party, amendment under § 1447(e) is a less
17 restrictive standard than for joinder under [Rule] 19.” *IBC Aviation Servs., Inc. v.*
18 *Compania Mexicana de Aviacion, S.A. de C.V.*, 125 F. Supp. 2d 1008, 1011–12 (N.D.
19 Cal. 2000).

20 Plaintiff also argues that he will be precluded from obtaining complete relief if
21 HOC ultimately decides to assign blame to the Additional Defendants. Dkt. # 25 at 7.
22 HOC claims that Plaintiff’s concerns are meritless and that it has “no basis for asserting
23 any wrongdoing” by Swedish or Drs. Chapman or Alonso. Dkt. # 29 at 5. The Court
appreciates that HOC, at this time, has no intent to pursue claims against the Additional
Defendants. However, this action is relatively new — discovery is not complete — and
the Court cannot assume that HOC’s position will not change. It would be manifestly
unfair to allow HOC to point to the physicians’ or the hospital’s negligence to reduce its
potential liability but prevent Plaintiff from asserting medical negligence claims in the

1 same action. *See Ramirez v. Our Lady of Lourdes Hosp. at Pasco*, No. 2:13-CV-01108-
2 RSM, 2013 WL 5373213, at *4 (W.D. Wash. Sept. 25, 2013). Accordingly, this factor
3 weighs in favor of granting the Motion.

4 ii. Statute of Limitations

5 At the time this Motion was filed, the statute of limitations for pursuing claims
6 against the Additional Defendants had not yet expired. *See* Dkt. # 25 at 7. Since then,
7 the statute of limitations has expired, but it appears that Plaintiff also brought a state court
8 action against the Additional Defendants. *See* Dkt. ## 34, 35. Because the statute of
9 limitations does not preclude Plaintiff from filing suit against the Additional Defendants
10 in state court, this factor favors denying joinder.

11 iii. Unexplained Delay

12 Courts also consider delay in seeking amendment when determining whether to
13 allow amendment to add a non-diverse party. HOC argues that Plaintiff has failed to
14 adequately justify his four-month delay in moving to amend the complaint to add the
15 Additional Defendants. Dkt. # 29 at 8–10. Plaintiff objects, noting that he brought this
16 Motion very shortly after an August 8, 2019 meet and confer conference when he learned
17 of HOC’s intent to potentially shift blame to the Additional Defendants, thereby
18 necessitating joinder.² Dkt. # 25 at 8–9. Based on the record before it, the Court finds no
19 basis to conclude that Plaintiff unreasonably delayed in seeking amendment. Thus, this
20 factor weighs in favor of granting the Motion.

21 iv. Plaintiff’s Motive

22 A court “should look with particular care” at the plaintiff’s intent in removal cases,
23 when a defendant’s joinder will destroy complete diversity “and will require a remand to
the state court.” *Desert Empire Bank v. Ins. Co. of N. Am.*, 623 F.2d 1371, 1376 (9th Cir.
1980). HOC argues that Plaintiff’s stated motives are disingenuous, and that Plaintiff
actually brought this Motion in an effort to destroy diversity jurisdiction. Dkt. # 29 at

² Plaintiff alleges that HOC identified the additional defendants as “potentially liable.”
Dkt. # 25 at 9. HOC vigorously disputes this allegation. Dkt. # 29 at 10.

1 10–11. But HOC has not produced any evidence of Plaintiff’s bad faith. To the contrary,
2 Plaintiff contends that he agreed to withdraw the motion to amend if HOC agreed to
3 stipulate to not assert liability against the medical providers or Swedish. Dkt. # 31 at 2.
4 Here, there is no evidence that Plaintiff is bringing this motion in bad faith and the Court
5 will not impute an improper motive simply because the requested joinder will destroy
6 diversity jurisdiction. *See IBC Aviation Services, Inc.*, 125 F. Supp. 2d at 1012. This
7 factor weighs in favor of granting Plaintiff’s Motion.

8 v. Apparent Validity of Plaintiff’s Claims

9 In the proposed amended complaint, Plaintiff alleges claims of negligence against
10 the doctors and Swedish and negligent failure to maintain against Swedish. *See* Dkt. #
11 25-1 at ¶¶ 42-45, 46-50. When evaluating this factor, courts “ ‘need only determine
12 whether the claim seems valid,’ which is not the same as the standard in either a motion
13 to dismiss or a motion for summary judgment.” *See Meggs v. NBC Universal Media,*
14 *LLC*, 2017 WL 2974916, at *8 (C.D. Cal. 2017); *Taylor v. Honeywell Corp.*, 2010 WL
15 1881459, at *3 (N.D. Cal. 2010) (stating that the “existence of a facially legitimate claim
16 against the putative defendant weighs in favor of permitting joinder under section
17 1447(e)”).

18 The Court agrees with HOC that Plaintiff’s negligent failure to maintain claim
19 under RCW § 7.72.040(1) is likely invalid. Swedish is likely not a “product seller” as
20 defined under the statute. However, Plaintiff also asserts negligent medical malpractice
21 claims against the Additional Defendants. *See* Dkt. # 25-1 at ¶¶ 46–50. Under
22 Washington law, a claim of medical malpractice is stated where the complaint alleges: (1)
23 the health care provider failed to exercise that degree of care, skill, and learning expected
of a reasonably prudent health care provider, and (2) the defendant’s violation of the
standard of care was the proximate cause of the plaintiff’s injury. *See* RCW § 7.70.040.
Plaintiff’s proposed amended malpractice claim contains all the requisite elements under
RCW § 7.70. Because Plaintiff has articulated a seemingly valid negligence claim
against the non-diverse defendants, this factor weighs in favor of granting the Motion.

1 *See Milton v. Xerox Corp.*, No. C15-5618 BHS, 2016 WL 641130, at *4 (W.D. Wash.
2 Feb. 18, 2016) (finding the existence of a valid claim against the defendant weighs in
3 favor of permitting joinder).

4 vi. Whether Denial of Joinder Will Prejudice Plaintiff

5 Finally, denying amendment would likely require Plaintiff to litigate two related
6 cases in two different courts. “Duplicative litigation in separate proceedings pending in
7 state and federal court would result in a waste of judicial and the [Plaintiff’s] resources,
8 as well as risk inconsistent results.” *Taylor v. Honeywell Corp.*, No. C 09–4947 SBA,
9 2010 WL 1881459, at *4 (N.D. Cal. May 10, 2010) (internal citation omitted). This
weighs in Plaintiff’s favor.

10 On the whole, the Court finds that the balance of factors weighs in favor of
11 granting Plaintiff’s Motion to Amend the complaint to join additional defendants.
12 Plaintiff argues that, if the Court grants leave to amend, the Court should remand the case
13 back to state court. Dkt. # 25 at 11. Because joinder of the additional defendants
14 destroys the diversity under 28 U.S.C. § 1332, the Court will remand this action to King
County Superior Court.

15 **IV. CONCLUSION**

16 For the foregoing reasons, Plaintiff’s Motion to Amend is **GRANTED**. The Clerk
17 is directed to **REMAND** this case to King County Superior Court. Because this action is
18 being remanded, HOC’s Objections (Dkt. # 27) to the Honorable Brian A. Tsuchida’s
19 Report and Recommendation (Dkt. # 24) are **terminated as moot**.

20 DATED this 12th day of December, 2019.

21 

22 The Honorable Richard A. Jones
23 United States District Judge