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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PRUDENCIANO FLORES,  
Plaintiff,  
v.

NISSAN NORTH AMERICA,  
INC.; DOWNEY IMPORT CARS,  
INC.; and DOES 1-10,  
Defendants.

CV 21-09411-RSWL-PDx

**ORDER re: Motion to Remand**  
[14]

Plaintiff Prudenciano Flores ("Plaintiff") brings this Action against Defendant Nissan North America, Inc. ("Nissan") for violation of the Song-Beverly Consumer Warranty Act and against Defendant Downey Import Cars, Inc. ("Downey") for negligent repair. Currently before the Court is Plaintiff's Motion to Remand to Los Angeles County Superior Court ("Motion") [14]. Having reviewed all papers submitted pertaining to this Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:** the Court **GRANTS** Plaintiff's Motion.

1 I. BACKGROUND

2 A. Factual Background

3 Plaintiff is a resident of Los Angeles, California.  
4 First Am. Compl. ("FAC") ¶ 2, ECF No. 11. Nissan is a  
5 corporation authorized to conduct business in  
6 California. Id. ¶ 3. Downey is a corporation organized  
7 under the laws of California and authorized to conduct  
8 business in California. Id. ¶ 4.

9 On May 24, 2020, Plaintiff purchased a 2020 Nissan  
10 Sentra ("Vehicle"), which was manufactured and  
11 distributed by Nissan. Id. ¶ 6. Plaintiff received an  
12 express written warranty in which Nissan undertook to  
13 preserve or maintain the utility and performance of the  
14 Vehicle and to provide compensation if there was a  
15 failure in the Vehicle's utility or performance for a  
16 specified period of time. Id. ¶ 10. The warranty  
17 provided that in the event a defect developed with the  
18 Vehicle during the warranty period, Plaintiff could  
19 deliver the Vehicle for repair services to a repair shop  
20 and the Vehicle would be repaired. Id.

21 During the warranty period, the Vehicle contained  
22 or developed defects that substantially impaired the  
23 use, safety, and value of the Vehicle. Id. ¶ 11.  
24 Plaintiff provided Nissan with sufficient opportunity to  
25 repair the Vehicle, but Nissan failed to repair the  
26 Vehicle within a reasonable number of attempts. Id.  
27 ¶¶ 14-15. Plaintiff also delivered the Vehicle to  
28 Downey for repair on numerous occasions, but Downey

1 breached its duty to properly store and repair the  
2 Vehicle in accordance with industry standards. Id.  
3 ¶¶ 43-45. Because of Nissan's breach of warranty and  
4 Downey's negligence in failing to repair the Vehicle,  
5 Plaintiff was financially damaged. Id. ¶¶ 18, 47.

6 **B. Procedural Background**

7 On October 29, 2021, Plaintiff filed her Complaint  
8 [1-2] against Nissan in the Superior Court of  
9 California, County of Los Angeles. On December 3, 2021,  
10 Nissan removed [1] the case to this Court. Nissan  
11 stated that this Court had diversity jurisdiction over  
12 the case because Plaintiff is domiciled in California,  
13 while Defendant is a Delaware corporation with a  
14 principal place of business in Tennessee. See Notice of  
15 Removal ¶¶ 13-14, ECF No. 1.

16 Plaintiff filed a First Amended Complaint ("FAC")  
17 [11] on December 22, 2021, which added a new cause of  
18 action for negligent repair against Downey. Plaintiff  
19 then filed the instant Motion to Remand [14] on January  
20 24, 2022, arguing that the case must be remanded because  
21 the addition of Downey destroys diversity. Defendant  
22 has not opposed the Motion.

23 **II. DISCUSSION**

24 **A. Legal Standard**

25 Civil actions may be removed from state court if  
26 the federal court has original jurisdiction. See  
27 Syngenta Crop Prot., Inc. v. Henson, 537 U.S. 28, 33  
28 (2002). Diversity jurisdiction exists in all civil

1 actions between citizens of different states where the  
2 amount in controversy exceeds \$75,000, exclusive of  
3 interest and costs. 28 U.S.C. § 1332. There must be  
4 complete diversity of citizenship, meaning "each of the  
5 plaintiffs must be a citizen of a different state than  
6 each of the defendants." Morris v. Princess Cruises,  
7 Inc., 236 F.3d 1061, 1067 (9th Cir. 2001) (citing  
8 Caterpillar Inc. v. Lewis, 519 U.S. 61, 68 (1996)).

9 "The burden of establishing jurisdiction falls on  
10 the party invoking the removal statute, which is  
11 strictly construed against removal." Sullivan v. First  
12 Affiliated Sec., Inc., 813 F.2d 1368, 1371 (9th Cir.  
13 1987) (internal citations omitted). Courts resolve all  
14 ambiguities "in favor of remand to state court." Hunter  
15 v. Philip Morris USA, 582 F.3d 1039, 1042 (9th Cir.  
16 2009) (citing Gaus v. Miles, Inc., 980 F.2d 564, 566  
17 (9th Cir. 1992)). A removed case must be remanded "[i]f  
18 at any time before final judgment it appears that the  
19 district court lacks subject matter jurisdiction." 28  
20 U.S.C. § 1447(c).

## 21 **B. Discussion**

22 The Court begins by noting that Defendants failed  
23 to oppose this Motion and offer no excuse for their  
24 failure to oppose. The Motion is therefore **GRANTED** for  
25 this reason. See C.D. Cal. L.R. 7-12 ("The failure to  
26 file any required document, or the failure to file it  
27 within the deadline, may be deemed consent to the  
28 granting or denial of the motion."); Flores v. FCA US

1 LLC, No. 2:20-cv-6278-ODW (KSx), 2020 WL 5549140 (C.D.  
2 Cal. Sept. 15, 2020). Nonetheless, the Court finds that  
3 remand is warranted on the merits as well.

4 In its Notice of Removal, Defendant asserts that  
5 this Court has diversity jurisdiction over this Action  
6 because Plaintiff is a citizen of California and  
7 Defendant is a citizen of both Delaware and Tennessee.  
8 See Notice of Removal ¶¶ 13-14. Plaintiff argues that  
9 remand is necessary because the addition of Downey to  
10 this Action destroys diversity. Pl.'s Mem. P. & A. in  
11 Supp. of Mot. to Remand 1:14-18, ECF No. 14-1. The  
12 Court agrees that the addition of Downey would destroy  
13 this Court's diversity jurisdiction. Downey does not  
14 appear to be diverse from Plaintiff because both are  
15 alleged to be California citizens, and neither Defendant  
16 has stated otherwise. See FAC ¶¶ 2, 4; see also  
17 Sullivan, 813 F.2d at 1371 (stating that the burden is  
18 on the removing defendant to establish that subject  
19 matter jurisdiction is proper). Therefore, the Court  
20 must analyze whether Downey was properly joined to this  
21 Action to determine whether the case must be remanded  
22 for lack of jurisdiction.

23 1. Joinder

24 Where a case has been removed from state court and  
25 the plaintiff attempts to amend its complaint to join  
26 nondiverse defendants that would destroy the federal  
27 court's subject matter jurisdiction, the amendment must  
28 be scrutinized under 28 U.S.C. § 1447(e). Clinco v.

1 Roberts, 41 F. Supp. 2d 1080, 1088 (C.D. Cal. 1999).  
2 Section 1447(e) affords courts discretion to either deny  
3 joinder of the nondiverse defendant or to permit joinder  
4 and remand the action to state court. 18 U.S.C.  
5 § 1447(e).

6 In deciding whether to permit joinder, "a court  
7 should consider: (1) whether the party sought to be  
8 joined is needed for just adjudication and would be  
9 joined under Federal Rule of Civil Procedure 19(a); (2)  
10 whether the statute of limitations would prevent the  
11 filing of a new action against the new defendant should  
12 the court deny joinder; (3) whether there has been  
13 unexplained delay in seeking the joinder; (4) whether  
14 the joinder is solely for the purpose of defeating  
15 federal jurisdiction; and (5) whether the claim against  
16 the new party seems valid." Clinco, 41 F. Supp. at  
17 1082. The Court will address each factor in turn.

18 a. Rule 19

19 "Federal Rule of Civil Procedure 19 requires  
20 joinder of persons whose absence would preclude the  
21 grant of complete relief, or whose absence would impede  
22 their ability to protect their interests or would  
23 subject any of the parties to the danger of inconsistent  
24 obligations." Clinco, 41 F. Supp. 2d at 1082; Fed. R.  
25 Civ. P. 19(a). Courts consider whether a non-diverse  
26 defendant is a necessary party under Rule 19 when  
27 determining whether to allow a diversity-destroying  
28 amendment, but amendment under § 1447(e) is less

1 restrictive than joinder under Rule 19. IBC Aviation  
2 Servs., Inc. v. Compiana Mexicana de Aviacion, S.A. de  
3 C.V., 125 F. Supp. 2d 1008, 1011-12 (N.D. Cal. 2000).  
4 Under § 1447(e), joinder is proper when “failure to join  
5 will lead to separate and redundant actions.” Id. at  
6 1012. Moreover, “a court may find that joinder [under  
7 § 1447(e)] is appropriate for the just adjudication of  
8 the controversy if there is a high degree of involvement  
9 by the defendant in the occurrences that gave rise to  
10 the plaintiff’s cause of action.” Yenokian v. BMW of N.  
11 Am., LLC, No. CV 18-4897JFW(RAOx), 2018 WL 6177230, at  
12 \*2 (C.D. Cal. Oct. 19, 2018) (quoting McGrath v. Home  
13 Depot USA, Inc., 298 F.R.D. 601, 608 (S.D. Cal. 2014)).

14 Here, Plaintiff’s claims against Nissan and Downey  
15 involve the same Vehicle, the same alleged defects in  
16 the Vehicle, and the same attempted repairs. See FAC  
17 ¶¶ 10-18, 43-47. Nissan’s warranty ensured that  
18 Plaintiff could deliver the Vehicle to a repair shop to  
19 be repaired, and Downey is the repair shop Plaintiff  
20 sought services from. Id. ¶¶ 10, 43. Thus, Downey had  
21 a high degree of involvement in the occurrences giving  
22 rise to Plaintiff’s breach of warranty claims against  
23 Nissan. See Harris v. Ford Motor Co., No. CV 17-04964  
24 SJO (MRWx), 2017 WL 10433673, at \*2 (C.D. Cal. Aug. 9,  
25 2017) (finding repair facility necessary for just  
26 adjudication of claims against defendant because it was  
27 “a direct participant in the events and transactions  
28 giving rise to the case”); Forward-Rossi v. Jaguar Land

1 Rover N. Am., LLC, No. 2:16-cv-00949-CAS(KSx), 2016 WL  
2 3396925, at \*3 (C.D. Cal. June 13, 2016) (same).

3 Moreover, resolution of Plaintiff's claims against  
4 Nissan and Downey will likely require review of many of  
5 the same documents and witnesses. See Yenokian, 2018 WL  
6 6177230, at \*2. Denying joinder of Downey here would  
7 lead to separate and redundant actions, and this factor  
8 therefore weighs in favor of joinder.

9 b. Statute of Limitations

10 If a plaintiff could file an action against the  
11 joined defendant in state court, then there is less  
12 reason to permit joinder under § 1447(e). See Clinco,  
13 41 F. Supp. 2d at 1083. Under California law, the  
14 statute of limitations for a negligent repair claim is  
15 three years. Cal. Civ. Proc. Code § 338(c)(1); Sabicer  
16 v. Ford Motor Co., 362 F. Supp. 3d 837, 841 (C.D. Cal.  
17 2019). Plaintiff does not specify the date on which the  
18 attempted repairs took place, but the statute of  
19 limitations could not have run because Plaintiff  
20 purchased the Vehicle on May 24, 2020. See FAC ¶ 6.  
21 Because Plaintiff would not be time-barred from filing a  
22 new action against Downey in state court, this factor  
23 weighs against joinder.

24 c. Unexplained Delay

25 "When determining whether to allow amendment to add  
26 a nondiverse party, courts consider whether the  
27 amendment was attempted in a timely fashion." Clinco,  
28 41 F. Supp. 2d at 1083. "District courts generally

1 measure delay from the date of removal to determine  
2 whether an unreasonable delay has occurred.” Yenokian,  
3 2018 WL 6177230, at \*3. Here, Plaintiff filed the FAC  
4 to include a claim against Downey less than three weeks  
5 after the case was removed to federal court.  
6 Plaintiff’s amendment was therefore timely. See Harris,  
7 2017 WL 10433673, at \*2 (finding amendment timely  
8 because it was sought less than three weeks after  
9 removal); Yenokian, 2018 WL 6177230, at \*3 (finding  
10 amendment timely when sought almost three months after  
11 removal). This factor therefore favors permitting  
12 joinder.

13 d. Motive for Joinder

14 A court must look with particular care at a  
15 plaintiff’s motive for joining a nondiverse defendant to  
16 a removed case “when the presence of a new defendant  
17 will defeat the court’s diversity jurisdiction and will  
18 require a remand to state court.” Clinco, 41 F. Supp.  
19 at 1083. The question of whether joinder is solely  
20 intended to defeat jurisdiction is intertwined with an  
21 assessment of the strength of the claims against the  
22 proposed new defendant. McGrath, 298 F.R.D. at 608.

23 While it is possible that Plaintiff is motivated to  
24 defeat jurisdiction and have the case remanded, it is  
25 unlikely that this is Plaintiff’s sole motivation. As  
26 explained below, the Court finds that Plaintiff’s  
27 negligent repair claim against Downey is at least  
28 facially valid. Moreover, the FAC is substantively

1 different from Plaintiff's original complaint because  
2 the negligent repair claim is distinct from Plaintiff's  
3 claims against Nissan. Compare Clinco, 41 F. Supp. at  
4 1083 n.2 (finding improper motive where the original and  
5 first amended complaints were "substantially similar"),  
6 with Forward-Rossi, 2016 WL 3396925, at \*4 (declining to  
7 impute an improper motive to plaintiff where she sought  
8 "to add two additional claims that, while relying on  
9 many of the same facts, [were] conceptually distinct  
10 from her two existing claims under the Song-Beverly  
11 Act"). Accordingly, the Court cannot say that  
12 Plaintiff's sole motivation in alleging a claim against  
13 Downey is to defeat diversity jurisdiction, particularly  
14 where Plaintiff is simply exercising the right to amend  
15 the complaint "once as a matter of course." See Sabag  
16 v. FCA US, LLC, No. 2:16-cv-06639-CAS (RAOx), 2016 WL  
17 6581154, at \*6 (C.D. Cal. Nov. 7, 2016); Fed. R. Civ. P.  
18 15(a)(1). Therefore, the Court finds this factor weighs  
19 slightly in favor of permitting joinder.

20 e. Validity of Claim against Downey

21 "The existence of a facially legitimate claim  
22 against the putative defendant weighs in favor of  
23 permitting joinder under § 1447(e)." Forward-Rossi,  
24 2016 WL 3396925, at \*4 (internal quotation marks and  
25 citation omitted). A claim is facially legitimate if it  
26 "seems valid," which is a lower standard than what is  
27 required to survive a motion to dismiss or motion for  
28 summary judgment. Sabag, 2016 WL 6581154, at \*6.

1 Plaintiff alleges that the Vehicle was delivered to  
2 Downey on numerous occasions and that Downey breached  
3 its duty to use ordinary skill and care in the storage,  
4 preparation, diagnosis, and repair of the Vehicle in  
5 accordance with industry standards. FAC ¶¶ 43-45.  
6 These allegations establish, at minimum, a facially  
7 legitimate claim for negligent repair. See Southwest  
8 Forest Indus., Inc. v. Westinghouse Elec. Corp., 422  
9 F.2d 1013, 1018 (9th Cir. 1970) (noting that, generally,  
10 “[o]ne who undertakes repairs has a duty arising in tort  
11 to do them without negligence”); see also Yenokian, 2018  
12 WL 6177230, at \*4; Forward-Rossi, 2016 WL 3396925, at  
13 \*4.

14 2. Remand

15 On balance, the Clinco factors weigh in favor of  
16 permitting joinder under § 1447(e). Because the  
17 addition of Downey destroys complete diversity between  
18 the parties, this Court no longer has subject matter  
19 jurisdiction over this Action. The Court therefore  
20 **GRANTS** Plaintiff’s Motion to Remand. See 28 U.S.C.  
21 § 1447(c) (“If at any time before final judgment it  
22 appears that the district court lacks subject matter  
23 jurisdiction, the case shall be remanded.”).

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**III. CONCLUSION**

Based on the foregoing, the Court **GRANTS** Plaintiff's Motion. This Action is hereby **REMANDED** to the Superior Court of California, County of Los Angeles.

**IT IS SO ORDERED.**

DATED: May 9, 2022

/s/ Ronald S.W. Lew  
**HONORABLE RONALD S.W. LEW**  
Senior U.S. District Judge