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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PETER PETROPOLOUS, et al.,
Plaintiffs,
v.
FCA US, LLC,
Defendant.

Case No.: 17-CV-0398 W (KSC)

**ORDER DENYING PLAINTIFFS’
MOTION TO REMAND [DOC. 6]**

Defendant removed this action from the Superior Court of California on February 27, 2017. (*Notice of Removal* [Doc. 1].) Plaintiffs now move to remand. (*Pls.’ Mot.* [Doc. 6].) Defendant opposes. (*Def.’s Opp’n* [Doc. 8].) The Court decides the matters on the papers submitted and without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the reasons that follow, Plaintiffs’ motion will be denied.

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1 **I. BACKGROUND**

2 In March of 2011, Plaintiffs purchased a new 2011 Dodge Durango from
3 Defendant FCA US LLC. (*See Compl.* [Doc. 1-2, Exh. A] ¶¶ 4, 8.) The vehicle
4 experienced recurrent problems. (*See id.* [Doc. 1-2, Exh. A] ¶ 9.) The Complaint alleges
5 that between August of 2012 and July of 2015, Plaintiffs delivered it to an FCA US repair
6 facility on nine separate occasions due to issues with a part known as the “totally
7 integrated power module,” or TIPM. (*See id.* [Doc. 1-2, Exh. A] ¶¶ 10–13, 94–102.)
8 According to the Complaint, Defendant concealed the defect with the part, together with
9 safety risks resulting from the problem. (*See id.* [Doc. 1-2, Exh. A] ¶ 103.) Plaintiffs
10 joined as putative class members in Velasco, et al. v. Chrysler Group LLC, No. 13-CV-
11 8080 DDP (VBK) (C.D. Cal.), a class action dealing with substantially similar facts to
12 those alleged here. (*Id.* [Doc. 1-2, Exh. A] ¶¶ 117–133.) Plaintiffs opted out of the class
13 in order to pursue their individual claims. (*Id.* [Doc. 1-2, Exh. A] ¶ 131.)

14 Plaintiffs brought this action in the Superior Court of California against FCA US
15 LLC and Peck Jeep Eagle, Inc., on March 30, 2016, alleging: (1) breach of an express
16 warranty in violation of the Song-Beverly Act; (2) breach of an implied warranty in
17 violation of the Song-Beverly Act; (3) fraudulent inducement through concealment; and
18 (4) negligent repair. (*Compl.* [Doc. 1-2, Exh. A].) Parties engaged in discovery over the
19 next eleven months, and the matter was set for trial on March 17, 2017. (*Hamblin Decl.*
20 [Doc. 6-1] ¶¶ 7–8.)

21 Defendant Peck Jeep Eagle, a California corporation with its principal place of
22 business in California, filed for Bankruptcy in the United States District Court for the
23 Southern District of California on January 17, 2017. (*Def.’s Opp’n* [Doc. 8] 2:3–8;
24 *Compl.* [Doc. 1-2, Exh. A] ¶ 3.) It filed a Notice of Automatic Stay in the state-court
25 action. (*Def.’s Opp’n* [Doc. 8] 2:3–8; *Register of Actions* [Doc. 1-7, Exh. F] 2.)
26 Thereafter, on February 15, 2017, Plaintiffs dismissed Peck Jeep Eagle from the state-
27 court action with prejudice. (*See Notice of Removal* [Doc. 1] ¶¶ 5–7; *Register of Actions*
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1 [Doc. 1-7, Exh. F] 2.) On February 27, 2017, within two weeks of the dismissal of Peck
2 Jeep Eagle, Defendant FCA US LLC removed the action. (*Notice of Removal* [Doc. 1].)

3 Plaintiffs now move to remand, arguing: (1) that this case does not meet the
4 complete diversity and amount in controversy requirements of 28 U.S.C. § 1332; and (2)
5 that comity principles counsel against the exercise of original federal subject matter
6 jurisdiction in this case. (*See Pls.’ Mot.* [Doc. 6].)

7 8 **II. LEGAL STANDARD**

9 **A. Removal Jurisdiction—Diversity of Citizenship**

10 “The district courts shall have original jurisdiction of all civil actions where
11 the matter in controversy exceeds the sum or value of \$75,000, exclusive of
12 interest and costs, and is between . . . citizens of a State and citizens or subjects of
13 a foreign state” 28 U.S.C. § 1332(a)(2). “Federal courts are courts of limited
14 jurisdiction. They possess only that power authorized by Constitution and statute,
15 which is not to be expanded by judicial decree.” *In re Hunter*, 66 F.3d 1002, 1005
16 (9th Cir. 1995) (quoting *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377
17 (1994)).

18 The party seeking to invoke removal jurisdiction bears the burden of supporting its
19 jurisdictional allegations with competent proof. *See Gaus v. Miles, Inc.*, 980 F.2d 564,
20 566 (9th Cir. 1992) (per curiam); *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195
21 (9th Cir. 1988). “The propriety of removal . . . depends on whether the case originally
22 could have been filed in federal court.” *Chicago v. International College of Surgeons*,
23 522 U.S. 156, 163 (1997); 28 U.S.C. § 1441(a). Where the amount in controversy is
24 unclear from the face of the complaint, courts apply a preponderance of the evidence
25 standard. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 701 (9th Cir. 2007).

26 There is a “strong presumption” against removal jurisdiction, and the defendant
27 always bears the burden of establishing the propriety of removal. *See Gaus*, 980 F.2d at
28

1 566 (internal quotation omitted); Nishimoto v. Federman-Bachrach & Associates, 903
2 F.2d 709, 712 n.3 (9th Cir. 1990) (internal citation omitted).

3 4 **III. DISCUSSION**

5 **A. The Court Has Original Subject Matter Jurisdiction.**

6 **1. Diversity of Citizenship**

7 The existence of diversity jurisdiction requires that the citizenship of each plaintiff
8 be diverse from that of each defendant. See 28 U.S.C. § 1332; Caterpillar Inc. v. Lewis,
9 519 U.S. 61, 68 (1996). Put another way, no plaintiff may be a citizen of the same state
10 as any defendant. See Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 374 (1978)
11 (internal citation omitted).

12 A person’s citizenship “is . . . determined by her state of domicile, . . . her
13 permanent home, where she resides with the intention to remain or to which she intends
14 to return.” See Kanter v. Warner-Lambert, 265 F.3d 853, 857 (9th Cir. 2001) (internal
15 citation omitted).

16 **a) Plaintiffs’ Citizenship**

17 As to Plaintiffs’ citizenship, the Complaint alleges that Petropolous and Nelson are
18 “individuals residing in the City of San Diego, County of San Diego, and State of
19 California.” (*Compl.* [Doc. 1-2, Exh. A] ¶ 1.) The Notice of Removal alleges that
20 Plaintiffs are both “citizens and residents of the State of California.” (*Notice of Removal*
21 [Doc. 1] ¶ 9.) Plaintiffs do not argue otherwise in their motion. (*See Pls.’ Mot.* [Doc. 6]
22 10:15–12:23.) However, in their reply brief, they contend for the first time that
23 “Defendant has failed to [e]stablish Plaintiffs’ [c]itizenship.” (*Pls.’ Reply* [Doc. 12] 3:2–
24 19.) The Court “need not consider arguments raised for the first time in a reply brief.”
25 Zamani v. Carnes, 491 F.3d 990, 997 (9th Cir. 2007) (citing Koerner v. Grigas, 328 F.3d
26 1039, 1048 (9th Cir. 2003)). Plaintiffs produce no evidence to indicate that they are not
27 California citizens. In the absence of such evidence, it would be unfair to Defendant to
28 consider an empty factual challenge made for the first time in a reply brief. The Notice

1 of Removal adequately alleges that Plaintiffs are California citizens. There is no reason
2 to suspect that this allegation is incorrect.

3 **b) Defendant’s Citizenship**

4 As to Defendant’s citizenship, the Notice of Removal alleges that FCA US LLC is
5 a limited liability company, the sole member of which is Fiat Chrysler Automobiles,
6 N.V., “a [publicly] traded company incorporated under the laws of the Netherlands[.]”
7 (*Notice of Removal* [Doc. 1] ¶ 10.)

8 “[A]n LLC is a citizen of every state of which its owners/members are citizens.”
9 Johnson v. Columbia Properties Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006).

10 Because foreign entities are not domestic corporations, they are not subject to 28
11 U.S.C. § 1332(c), but rather to 28 U.S.C. § 1332(a)(2), which covers “citizens or subjects
12 of a foreign state.” See Cohn v. Rosenfeld, 733 F.2d 625, 630 (9th Cir. 1984). “Section
13 1332(a)(2) applies to foreign legal entities of all kinds, so long as the entity is considered
14 a juridical person under the law that created it.” Cohn, 733 F.2d at 629. A juridical
15 person is “[a]n entity, such as a corporation, created by law and given certain legal rights
16 and duties of a human being; a being, real or imaginary, who for the purpose of legal
17 reasoning is treated more or less as a human being.” PERSON, Black’s Law Dictionary
18 (10th ed. 2014). In making this determination, the Court may consider whether the entity
19 in question has certain traditional corporate characteristics, such as: (1) the protections of
20 limited liability; (2) the ability to sue and be sued in its own name; and (3) the capacity to
21 retain any recovery from a lawsuit as an asset of the entity. See Cohn, 733 F.2d at 629.

22 Plaintiffs offer several objections to Defendant’s evidence as to its citizenship.

23 First, Plaintiffs offer foundation and hearsay objections to a declaration Defendant
24 uses to establish its corporate structure. (*Pls.’ Mot.* [Doc. 6] 11:22–12:23.)

25 The declaration is that of Kris Krueger, who holds the position of Senior Staff
26 Counsel at FCA US LLC. (*See Krueger Decl.* [Doc. 1-8] ¶ 1.) Plaintiffs contend that
27 Krueger lacks foundation to testify as to the corporate structure of his employer’s parent
28 company because he works for FCA US LLC, not Fiat Chrysler Automobiles, N.V., its

1 sole member. (*Pls. ' Mot.* [Doc. 6] 11:26–12:1.) Plaintiffs also offer a hearsay objection
2 to the testimony. (*Id.* [Doc. 6] 12:3–4.)

3 **A witness may testify to a matter only if evidence is introduced sufficient to support**
4 **a finding that the witness has personal knowledge of the matter. Evidence to prove**
5 **personal knowledge may consist of the witness’s own testimony. This rule does not**
6 **apply to a witness’s expert testimony under Rule 703.**

7 F. R. Evid. 602. Hearsay is not admissible unless a federal statute, the Federal Rules of
8 Evidence, or other rules prescribed by the Supreme Court provide otherwise. F. R. Evid.
9 802. “ ‘Hearsay’ means a statement that: (1) the declarant does not make while testifying
10 at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the
11 matter asserted in the statement.” Fed. R. Evid. 801(c).

12 Plaintiffs’ objections are overruled. As to foundation, Mr. Krueger’s position as a
13 senior in-house attorney lends every reason to believe that he knows under which laws
14 his employer’s sole member was incorporated. (*See Krueger Decl.* [Doc. 1-8].) See F.
15 R. Evid. 602. And as to hearsay, Plaintiffs simply do not identify any hearsay statements
16 within Krueger’s declaration. See F. R. Evid. 801.

17 Second, Plaintiffs object to evidence Defendant uses to establish that a Dutch N.V.
18 is a juridicial person pursuant to the laws of the Netherlands. (*See Pls. ' Mot.* [Doc. 6]
19 11:22–12:23; *Pls. ' Reply* [Doc. 12] 5:17–23.)

20 “In determining foreign law, the court may consider any relevant material or
21 source, including testimony, whether or not submitted by a party or admissible under the
22 Federal Rules of Evidence.”¹ Fed. R. Civ. P. 44.1.

23 In connection with the Notice of Removal, Mr. Krueger, Senior Staff Counsel at
24 FCA US LLC, declares that “Fiat Chrysler Automobiles N.V. is an independent legal
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26 ¹ Plaintiffs cite this rule, but they conspicuously omit the phrase “whether or not submitted by a party or
27 admissible under the Federal Rules of Evidence.” (*See Pls. ' Reply* [Doc. 12] 5:15–17.) Fed. R. Civ. P.
28 44.1. In the sentences directly following the citation, they present a foundation objection implicitly
grounded in Federal Rule of Evidence 602. (*See id.* [Doc. 12] 5:17–23.)

1 entity, having separate patrimony and legal standing from any of its investors or legal
2 representatives under the laws of the Netherlands.” (*Krueger Decl.* [Doc. 1-8] ¶ 8.)
3 Krueger further declares that “Fiat Chrysler Automobiles N.V. may sue in its own name
4 in the courts of the Netherlands,” (*id.* [Doc. 1-8] ¶ 9), and that “[a]ny recovery obtained
5 in a lawsuit brought by . . . Fiat Chrysler Automobiles N.V. belongs to the business
6 entity, not its investors, under the laws of the Netherlands.” (*Id.* [Doc. 1-8] ¶ 10.)

7 Furthermore, in opposition to the motion to remand, Defendant attaches a
8 translated copy of a relevant portion of the Dutch Civil Code, which it downloaded from
9 the website www.dutchcivillaw.com. (*Dutch Civil Code* [Doc. 8-3]; *Shepardson Decl.*
10 [Doc. 8-1] ¶ 4.) The code states, “[a]n *Open Corporation* (*‘naamloze vennootschap’*) is
11 a legal person with an authorized capital divided in transferable shares. A shareholder is
12 not personally liable for what is performed in the name of the Corporation and he is not
13 obliged to contribute to the losses of the Corporation for more than what he has paid up
14 or still has to pay up on his shares.” (*Id.* [Doc. 8-3] 2:64-1 (emphasis added).) The
15 Dutch Civil Code repeatedly uses the phrase “juridical act” to refer to potential acts of
16 the N.V. legal entity. (*See id.* [Doc. 8-3] 2:69-2, 2:93-1, 2:93-4, 2:94-1.)

17 Plaintiffs object to both piece of evidence—Krueger’s declaration, and the
18 translated copy of the Dutch Civil Code. (*See Pls.’ Mot.* [Doc. 6] 11:22–12:23; *Pls.’*
19 *Reply* [Doc. 12] 5:17–23.) Notably, they do not contend that either Mr. Krueger’s
20 declaration or the translation is incorrect in any way. Nor do they offer an alternative
21 interpretation or translation of Dutch law. (*Pls.’ Reply* [Doc. 12] 5:5–26.)

22 Plaintiffs’ objections are overruled. Both these items of evidence as to foreign law
23 are relevant, and the Court considers them. See Fed. R. Civ. P. 44.1.

24 Plaintiffs offer one final objection, that Defendant did not give sufficient notice of
25 the intent to raise an issue about a foreign country’s law. (*See Pls.’ Reply* [Doc. 12]
26 5:13–15.) This is without merit.

27 “A party who intends to raise an issue about a foreign country’s law must give
28 notice by a pleading or other writing.” Fed. R. Civ. P. 44.1.

1 Plaintiffs themselves raised the issue of foreign law when they filed their motion to
2 remand. (*See Pls.’ Mot.* [Doc. 6] 10:15–12:23.) To the extent they argue that Defendant
3 raised the issue simply by removing the case, Plaintiffs offer no reasoning as to why the
4 Notice of Removal would not fall within Rule 44.1’s definition of “pleading or other
5 writing.”

6 Mr. Krueger’s declaration and the translation of the Dutch Civil Code adequately
7 demonstrate that a Dutch N.V. is a juridical person pursuant to the law that created it,
8 and that Defendant FCA US LLC’s sole member is Fiat Chrysler Automobiles, N.V., a
9 Dutch N.V. (*See Krueger Decl.* [Doc. 1-8]; *Dutch Civil Code* [Doc. 8-3]; *Shepardson*
10 *Decl.* [Doc. 8-1] ¶ 4.) *See Cohn*, 733 F.2d at 628–30. This conclusion is in accord with
11 overwhelming authority involving this same issue as to this same defendant. *See*
12 *Kotulski v. FCA US LLC*, No. 17-CV-0527 AJB (BGS), 2017 WL 2705429, at *4 (S.D.
13 Cal. June 23, 2017) (Battaglia, J.) (holding that FCA US LLC and its sole member, Fiat
14 Chrysler Automobiles, N.V., is “more likely than not a citizen of the Netherlands”);
15 *Johnson v. FCA US LLC*, No. 17-CV-0536 AJB (BGS), 2017 WL 2705430, at *4 (S.D.
16 Cal. June 23, 2017) (Battaglia, J.) (same); *Demaria v. FCA US LLC*, No. 17-CV-0539
17 AJB (BGS), 2017 WL 2705431, at *4 (S.D. Cal. June 23, 2017) (Battaglia, J.) (same);
18 *Garcia v. FCA US, LLC*, 2016 WL 4445337, at *3 (E.D. Cal. Aug. 24, 2016)
19 (“[D]efendant has adequately asserted and established that Fiat Chrysler Automobiles,
20 N.V.[,] is a juridical person under the laws of Netherlands”); *Patty v. FCA US, LLC*,
21 2017 WL 950491, at *4 (E.D. Cal. Mar. 10, 2017) (“Fiat Chrysler Automobiles is a
22 juridical person”).

23 As a Dutch N.V., Fiat Chrysler Automobiles, N.V., is a juridical person and a
24 citizen of the Netherlands for the purposes of a diversity jurisdiction analysis. *See* 28
25 U.S.C. § 1332(a); *Cohn*, 733 F.2d at 628–30. Because FCA US LLC’s sole member is
26 Fiat Chrysler Automobiles, N.V., it is also a citizen of the Netherlands. *See Johnson*, 437
27 F.3d at 899.

1 As Plaintiffs are both citizens of California and Defendant is a citizen of the
2 Netherlands, complete diversity of citizenship exists between the parties. See 28 U.S.C.
3 § 1332(a).

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5 **2. Amount in Controversy**

6 Plaintiffs challenge the amount in controversy calculation within the Notice of
7 Removal. (*See Pls. ' Mot.* [Doc. 6] 7:14–10:14.) They do not provide their own damages
8 figure—either in their motion or in the Complaint. (*See id.*; *Compl.* [Doc. 1-2, Exh. A].)
9 Moreover, according to Defendant, Plaintiffs provided a response to a special
10 interrogatory on the issue that was similarly lacking in a damage figure. (*See Def. 's*
11 *Opp'n* [Doc. 8] 12:16–25; *Interrogatory Response* [Doc. 8-10].)

12 The Beverly-Song Act provides for restitution “in an amount equal to the actual
13 price paid or payable by the buyer, . . . including any collateral charges such as sales or
14 use tax, license fees, registration fees, and other official fees[.]” See Cal. Civ. Code §
15 1793.2(d)(2)(B). The Act allows a defendant to reduce that amount “by that amount
16 directly attributable to use by the buyer prior to the time the buyer first delivered the
17 vehicle to the manufacturer or distributor, or its authorized service and repair facility for
18 correction of the problem that gave rise to the nonconformity.”² See Cal. Civ. Code §
19 1793.2(d)(2)(C). The Act further provides a civil penalty “up to two times the amount of
20 actual damages.” Cal. Civ. Code § 1794(c). Moreover, it provides for an award of
21 reasonable attorneys’ fees to a prevailing buyer.³ See Cal. Civ. Code § 1794(d).

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24 ² The statute specifies that the amount directly attributable to use by the buyer prior to the time the buyer
25 first delivered the vehicle for repair is to be calculated pursuant to the following equation:
26 $(X/120,000) \times \text{the price paid or payable for the vehicle}$, where X is the number of miles driven prior to the
time the vehicle was first delivered for repair. See Cal. Civ. Code § 1793.2(d)(2)(C).

27 ³ The Court includes attorneys’ fees as part of the amount in controversy. See Galt G/S v. JSS
28 Scandinavia, 142 F.3d 1150, 1156 (9th Cir. 1998).

1 Among other remedies, the Complaint seeks restitution, civil penalties of two times
2 actual damages, and attorneys' fees. (*See Compl.* [Doc. 1-2, Exh. A] 30.) Defendant
3 calculates the amount paid for the vehicle based on the cash price paid, \$35,678, a figure
4 provided in the sale contract attached to the Complaint. (*Def.'s Opp'n* [Doc. 8] 12:3–15;
5 *Sales Contract* [Doc. 1-2, Exh. 1].) Defendant also includes a \$4,000 estimate of
6 Plaintiffs' interest paid to date.⁴ (*See Def.'s Opp'n* [Doc. 8] 12:3–15; *Sales Contract*
7 [Doc. 1-2, Exh. 1].) Defendant then calculates a \$7,225.09 mileage offset per Cal. Civ.
8 Code § 1793.2(d)(2)(C), according to the mileage figure of 24,301 when the vehicle was
9 first brought in for repair.⁵ (*See Def.'s Opp'n* [Doc. 8] 13:1–14:9; *Repair Order* [Doc. 8-
10 11].) Plaintiffs do not appear to object to the offset calculation in the reply, nor do they
11 provide their own figures. (*Pls.' Reply* [Doc. 12] 6:1–8:3.) They instead choose to focus
12 almost entirely on ostensible deficiencies in the damage calculations within the Notice of
13 Removal—an issue not relevant to the issue of whether jurisdiction exists. (*See id.*)

14 Even without factoring any interest into the calculations, Plaintiffs' restitution
15 would be \$35,678 subtracted by a mileage offset of \$7,225.09, resulting in a figure of
16 \$28,452.91. (*See Def.'s Opp'n* [Doc. 8] 14:1–9.) See Cal. Civ. Code § 1793.2. Adding a
17 civil penalty of twice that amount, or \$56,905.82, yields a sum total \$85,358.73. (*See*
18 *Compl.* [Doc. 1-2, Exh. A] 30.) See Cal. Civ. Code § 1794. This is before factoring in
19 attorneys' fees, which are available to Plaintiffs per Cal. Civ. Code § 1794(d).

20 Defendant shows to a preponderance of the evidence that the amount in
21 controversy exceeds \$75,000. See 28 U.S.C. § 1332; Guglielmino, 506 F.3d at 701.
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25 ⁴ Plaintiffs object to the inclusion of interest in this figure. (*See Reply* [Doc. 12] 7:12–15.) The Court
26 need not rule on the objection, as even without including interest the amount in controversy is well in
27 excess of \$75,000. See 28 U.S.C. § 1332(a).

28 ⁵ Notably, Defendant does not use the \$4,000 interest estimate in its mileage offset calculation, which
would increase the offset to \$8035.13. (*See Def.'s Opp'n* [Doc. 8] 14:1–9.)

1 Complete diversity of citizenship exists between the parties, and the amount in
2 controversy exceeds \$75,000. Thus, the Court has original jurisdiction over the subject
3 matter of this case. See 28 U.S.C. § 1332.

4 5 **B. Comity**

6 Plaintiffs argue that the Court should decline to exercise subject matter jurisdiction
7 over the case on the grounds that: (1) the Court should exercise an ostensible authority to
8 “veto” the exercise of original subject matter jurisdiction, given the state-law questions
9 involved; and (2) removal was untimely. (*See Pls.’ Mot.* [Doc. 6] 4:1–6:10.) Neither
10 point has merit.

11 As to the first, federal courts generally do not have discretion to decline to exercise
12 original subject matter jurisdiction. They have a “virtually unflagging obligation . . . to
13 exercise the jurisdiction given them.” Colorado River Water Conservation Dist. v.
14 United States, 424 U.S. 800, 817 (1976); see also Snodgrass v. Provident Life & Acc. Ins.
15 Co., 147 F.3d 1163, 1167 (9th Cir. 1998); BNSF Ry. Co. v. O’Dea, 572 F.3d 785, 793
16 n.2 (9th Cir. 2009) (“[T]he diversity statute, unlike the supplemental jurisdiction statute,
17 does not afford district courts the discretion to decline jurisdiction over state law
18 claims.”).

19 The sole case Plaintiffs cite on this point, Grable & Sons Metal Products, Inc. v.
20 Darue Engineering & Mfg., 545 U.S. 308, 313 (2005), is not to the contrary. (*Pls.’ Mot.*
21 [Doc. 6] 3:21–6:10.) Grable stands for the proposition that in the limited circumstance in
22 which a federal question is embedded within a state-law claim, the exercise of federal
23 jurisdiction pursuant to 28 U.S.C. § 1331 is subject to a “possible veto . . . [f]or the
24 [embedded] federal issue will ultimately qualify for a federal forum only if federal
25 jurisdiction is consistent with congressional judgment about the sound division of labor
26 between state and federal courts governing the application of § 1331.” See 545 U.S. at
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1 313–14. Plaintiffs present no authority that has extended this rule to the exercise of
2 diversity jurisdiction pursuant to 28 U.S.C. § 1332.⁶

3 As to the second point, Defendant’s removal was timely per the applicable statute.

4 “Except as provided in subsection (c), if the case stated by the initial pleading is
5 not removable, a notice of removal may be filed within 30 days after receipt by the
6 defendant, through service or otherwise, of a copy of an amended pleading, motion, order
7 or other paper from which it may first be ascertained that the case is one which is or has
8 become removable.” 28 U.S.C. § 1446(b)(3). “A case may not be removed under
9 subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year
10 after commencement of the action, unless the district court finds that the plaintiff has
11 acted in bad faith in order to prevent a defendant from removing the action.” 28 U.S.C. §
12 1446(c).

13 The state-court action was filed on March 30, 2016. (*Compl.* [Doc. 1-2, Exh. A].)
14 The case first became removable on February 15, 2017, when Plaintiffs dismissed Peck
15 Jeep Eagle, a California corporation with its principal place of business in California.⁷
16 (*See id.* [Doc. 1-2, Exh. A] ¶ 3; *Notice of Removal* [Doc. 1] ¶¶ 5–7.) As Plaintiffs are
17 also California citizens and Defendant FCA US LLC is a citizen of the Netherlands, the
18 dismissal of Peck Jeep Eagle created complete diversity of citizenship between the parties
19 for the first time. (*See id.* [Doc. 1] ¶¶ 9, 10–16.) Defendant removed within 30 days of
20 that dismissal, on February 27, 2017. (*Id.*) See 28 U.S.C. § 1446(b)(3). This was within
21 one year of the filing of the case, on March 30, 2016. See 28 U.S.C. § 1446(c).

22 Plaintiffs urge the Court to remand the case based upon the nearly eleven-month
23 gap between filing and removal, and based on the proximity between removal and the
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25 ⁶ Plaintiffs’ citation to O’Connell & Stevenson, Cal. Practice Guide: Federal Civil Procedure Before
26 Trial (Rutter Group 2017), Ch. 2D-10(a)(3)(d), seems to contain an incorrect page number. Page 2D-10
27 does not contain any information relevant to the issue at hand.

28 ⁷ Accordingly, Peck Jeep Eagle was a California Citizen for the purpose of ascertaining the existence of
diversity jurisdiction. See 28 U.S.C. § 1332(c)(1).

1 original state-court trial date of March 17, 2017. (*Hamblin Decl.* [Doc. 6-1] ¶¶ 7–8.) To
2 do so would vitiate the statutory limitations periods on removal, with which Defendant
3 complied. There is no doubt that Defendant’s February 27 removal was within 30 days
4 from the date of receipt or service of Plaintiffs’ February 15 dismissal of Peck Jeep
5 Eagle, a “paper from which it may first be ascertained that the case is one which is or has
6 become removable.” See 28 U.S.C. § 1446(b)(3). There is no doubt that removal was
7 within one year of the case’s filing. See 28 U.S.C. § 1446(c).

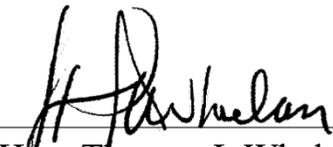
8 Plaintiffs’ comity arguments fail.

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10 **IV. CONCLUSION & ORDER**

11 In light of the foregoing, Plaintiffs’ motion to remand is **DENIED.** [Doc. 6.]
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13 **IT IS SO ORDERED.**

14 Dated: July 7, 2017

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17 Hon. Thomas J. Whelan
18 United States District Judge
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