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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 REBECCA CASEY, individually,  
12 and on behalf of a class of similarly  
13 situated individuals,

Plaintiff,

14 v.

15 GENERAL MOTORS, LLC; and  
16 DOES 1-10, inclusive

17 Defendants.

Case No.: 20-cv-299-WQH-MSD

**ORDER**

18 HAYES, Judge:

19 The matter before the Court is the Motion for Leave to File Second Amended  
20 Complaint filed by Plaintiff Rebecca Casey. (ECF No. 32).

21 **I. BACKGROUND**

22 On September 15, 2020, Plaintiff Rebecca Casey filed a First Amended Class Action  
23 Complaint against Defendants General Motors, LLC (“GM”) and Does 1 through 10. (ECF  
24 No. 14). On September 29, 2020, Defendant GM filed a Motion to Dismiss. (ECF No. 16).  
25 On April 13, 2021, the Court issued an Order granting the Motion to Dismiss and  
26 dismissing the First Amended Class Action Complaint without prejudice and with leave to  
27 file a motion for leave to amend. (ECF No. 26).  
28

1 On May 20, 2021, Plaintiff filed a Motion for Leave to File Second Amended  
2 Complaint. (ECF No. 32). Plaintiff seeks to amend the Complaint to eliminate the claims  
3 for fraud and for violation of the Consumer Legal Remedies Act (“CLRA”). Plaintiff seeks  
4 to assert new factual allegations and new causes of action for violations of the Song-  
5 Beverly Consumer Warranty Act, Cal. Civ. Code § 1791 (“Song-Beverly Act”), and  
6 California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”).  
7 Plaintiff contends that the proposed amendments resolve the issues identified by the Court  
8 in the Order granting the Motion to Dismiss. Plaintiff contends that GM would not be  
9 prejudiced by amendment because the new claims arise from the same facts pled in the  
10 First Amended Class Action Complaint.

11 On June 7, 2021, GM filed an Opposition to the Motion for Leave to File Second  
12 Amended Complaint. (ECF No. 35). GM contends that amendment would be futile because  
13 the new claims are subject to dismissal. GM contends that the new claims are not based on  
14 newly discovered facts, and the proposed amendments fail to address the deficiencies  
15 identified by the Court in the Order granting the Motion to Dismiss.

16 On June 14, 2021, Plaintiff filed a Reply. (ECF No. 35). Plaintiff contends that  
17 amendment is not futile and that GM’s assertion that the proposed amended complaint fails  
18 to state a claim is premature.

## 19 II. LEGAL STANDARD

20 Rule 15 of the Federal Rules of Civil Procedure mandates that leave to amend “be  
21 freely given when justice so requires.” Fed. R. Civ. P. 15(a). “This policy is to be applied  
22 with extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th  
23 Cir. 2003) (per curiam) (quoting *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708,  
24 712 (9th Cir. 2001)). The Supreme Court has identified several factors district courts should  
25 consider when deciding whether to grant leave to amend: “undue delay, bad faith or  
26 dilatory motive on the part of the movant, repeated failure to cure deficiencies by  
27 amendments previously allowed, undue prejudice to the opposing party by virtue of  
28 allowance of the amendment, [and] futility of amendment.” *Foman v. Davis*, 371 U.S. 178,

1 182 (1962); *see also Smith v. Pac. Props. Dev. Corp.*, 358 F.3d 1097, 1101 (9th Cir. 2004).  
2 “Not all of the [*Foman*] factors merit equal weight. As this circuit and others have held, it  
3 is the consideration of prejudice to the opposing party that carries the greatest weight.”  
4 *Eminence Capital*, 316 F.3d at 1052. “The party opposing amendment bears the burden of  
5 showing prejudice.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).  
6 “Absent prejudice, or a strong showing of any of the remaining *Foman* factors, there exists  
7 a *presumption* under Rule 15(a) in favor of granting leave to amend.” *Eminence Capital*,  
8 316 F.3d at 1052.

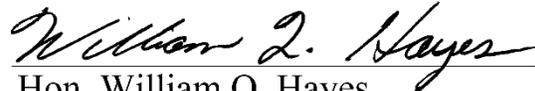
### 9 III. RULING OF THE COURT

10 In the proposed amended complaint, Plaintiff deletes the claims for fraud and for  
11 violation of the CLRA. Plaintiff adds new factual allegations and new claims for violations  
12 of the Song-Beverly Act and the UCL, arising from the alleged Fuse Block Defect in GM  
13 Class Vehicles. “[T]he sufficiency of an amended pleading ordinarily will not be  
14 considered on a motion for leave to amend.” *Breier v. N. Cal. Bowling Proprietors’ Ass’n*,  
15 316 F.2d 787, 790 (9th Cir. 1963); *see Netbula v. Distinct Corp.*, 212 F.R.D. 534, 539  
16 (N.D. Cal. 2003) (“Denial of leave to amend on [futility] ground[s] is rare.”). “If the  
17 underlying facts or circumstances relied upon by a plaintiff may be a proper subject of  
18 relief, he ought to be afforded an opportunity to test his claim on the merits.” *Foman*, 371  
19 U.S. at 182. The Court will defer consideration of the challenges to the merits of the  
20 proposed amended complaint until after the amended pleading is filed. *See Netbula*, 212  
21 F.R.D. at 539 (“Ordinarily, courts will defer consideration of challenges to the merits of a  
22 proposed amended pleading until after leave to amend is granted and the amended pleading  
23 is filed.”); *Hynix Semiconductor, Inc. v. Toshiba Corp.*, No. C-04-4708 VRW, 2006 U.S.  
24 Dist. LEXIS 82148, at \*6 (N.D. Cal. Oct. 31, 2006) (Defendant’s challenges to the merits  
25 of a proposed amended pleading “should be addressed in a motion to dismiss or for  
26 summary judgment, not in an opposition to the present motion for leave to amend.”). GM  
27 has not made “a strong showing” that it would be prejudiced by the addition of the new  
28 claims or that the remaining *Foman* factors warrant deviating from the “presumption under

1 Rule 15(a) in favor of granting leave to amend.” *Eminence Capital*, 316 F.3d at 1052  
2 (emphasis omitted).

3 IT IS HEREBY ORDERED that the Motion for Leave to File Second Amended  
4 Complaint (ECF No. 32) is granted. Plaintiff shall file the proposed amended complaint  
5 attached to the Motion (ECF No. 32-1) within five (5) days of the date of this Order.

6 Dated: July 19, 2021



Hon. William Q. Hayes  
United States District Court

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