

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 RUBEN S. RODRIGUEZ ANDRADE,
12 Plaintiff,
13 v.
14 FORD MOTOR COMPANY, et al.,
15 Defendants.
16
17
18
19

Case No.: 3:22-cv-00291-RBM-MSB
**ORDER GRANTING MOTION TO
REMAND TO STATE COURT**
[Doc. 12]

20 Before the Court is Plaintiff Ruben S. Rodriguez Andrade's ("Plaintiff") April 7,
21 2022 motion to remand to state court. (Doc. 12.) Defendant Ford Motor Company
22 ("Ford") filed an opposition to Plaintiff's motion on May 13, 2022 (Doc. 23), and Plaintiff
23 filed his reply on May 16, 2022. (Doc. 24.) The Court took the matter under submission
24 without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the reasons discussed
25 below, Plaintiff's motion to remand is **GRANTED**.

26 **I. BACKGROUND**

27 Ford removed this action from Superior Court of California, County of San Diego,
28 on March 4, 2022. (Doc. 1.) Plaintiff filed his state court action against Ford on January

1 31, 2022, asserting breach of warranty allegations against Ford. (*Id.* at 2.) In its notice of
2 removal, Ford asserted that complete diversity of citizenship existed between the parties,
3 as Plaintiff is a resident of California, and Ford is a corporation incorporated in and
4 organized under the laws of the State of Delaware with its principal place of business in
5 Michigan. (*Id.* at 5–6.) Ford also asserted that the amount in controversy exceeded
6 \$75,000 as required by 28 U.S.C. § 1332. (*Id.* at 3–5.)

7 On March 17, 2022, Plaintiff filed his first amended complaint (“FAC”), adding
8 Desert Auto Group V, LLC as a Defendant (“Desert Auto”). (Doc. 6.) Plaintiff alleged
9 that Desert Auto is a California corporation with its principal place of business in the state
10 of California. (*Id.* ¶ 4.) The FAC alleges Ford violated California’s Song-Beverly
11 Consumer Warranty Act, Cal. Civ. Code §§ 1790 *et seq.* by, among other things, selling a
12 defective vehicle to Plaintiff and failing to repair. (*See id.*) Plaintiff also alleges in the
13 FAC that Desert Auto, a motor vehicle repair shop in Chula Vista, negligently failed to
14 repair Plaintiff’s vehicle. (*See id.*)

15 On April 7, 2022, Plaintiff filed the instant motion to remand to state court. (Doc.
16 12.) In his motion, Plaintiff alleges that the proper joinder of Desert Auto as a Defendant
17 destroyed complete diversity between the parties, and the amount in controversy does not
18 exceed \$75,000. (*Id.* at 12–22.) Ford argues remand is not appropriate because the post-
19 removal joinder of Desert Auto is a sham in that joinder of this Defendant was only
20 undertaken to destroy diversity jurisdiction, and the amount in controversy easily exceeds
21 \$75,000.¹ (Doc. 23 at 9–27.)

22
23
24 ¹ Plaintiff’s initial complaint in state court alleged Ford is a “corporation organized and in
25 existence under the laws of the State of Delaware and registered with the California
26 Department of Corporations to conduct business in the State of California.” (Doc. 1-3 at ¶
27 4.) It also states Ford was engaged in the “design, manufacture, construction, assembly,
28 marketing, sale, and distribution of automobiles, motor vehicles and other related
components and services in San Diego County.” (*Id.*) Ford’s notice of removal states it is
organized under the laws of the State of Delaware with its principal place of business in
Michigan. (Doc. 1 at ¶ 22.) The post-removal FAC no longer alleges Ford is organized in

1 **II. LEGAL STANDARD**

2 **A. Removal Jurisdiction**

3 Any civil action filed in state court may be removed to federal court if the federal
4 court would have original jurisdiction. *See* 28 U.S.C. § 1441(a). Removal is proper to
5 federal court when the case presents a federal question or where there is diversity of
6 citizenship between the parties and the amount in controversy exceeds \$75,000. *See* 28
7 U.S.C. § 1331, 1332(a). An action may be removed to federal court only where there is
8 complete diversity of citizenship. *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1043 (9th
9 Cir. 2009).

10 “If at any time before final judgment it appears that the district court lacks subject
11 matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). “The removal
12 statute is strictly construed against removal jurisdiction.” *Provincial Gov’t of Marinduque*
13 *v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009) (citation omitted). “[T]he
14 burden of establishing federal jurisdiction falls to the party invoking the statute.” *Cal. ex*
15 *rel Lockyer v. Dynegy Power Mktg., Inc.*, 375 F.3d 831, 838 (9th Cir. 2004) (citation
16 omitted). “Where doubt regarding the right to removal exists, a case should be remanded
17 to state court.” *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir.
18 2003) (citation omitted).

19 Ordinarily, a party may amend its complaint without leave of court if the party
20 amends within twenty-one days after service of a responsive pleading or service of a
21 motion under Rule 12(b), (e), or (f). *See* FED. R. CIV. P. 15(a)(1)(B). However, when an

22 _____
23
24 the State of Delaware; it now states Ford is “a corporation organized and in existence under
25 the laws of the State of California[.]” (Doc. 6 at ¶ 3.) Similarly, the FAC no longer alleges
26 Ford markets and sells vehicles in San Diego County; it now states Ford markets and sells
27 in Riverside County. (*Id.*) Ford has not had the opportunity to answer the FAC. The
28 parties’ briefing on the motion to remand is silent on the citizenship of Ford, and instead
focuses on whether Desert Auto’s citizenship destroys diversity jurisdiction. Based upon
the parties’ briefing, it appears there is no dispute that Plaintiff and Ford have diversity of
citizenship.

1 amendment to the complaint would deprive the court of subject matter jurisdiction, “a party
2 may not rely on Rule 15(a) to amend a pleading without leave of court; such an amendment
3 must instead be analyzed pursuant to [28 U.S.C.] § 1447(e).” *Vega v. Am. Ins. Co.*, No.
4 20-cv-10631-FMO-JPRx, 2021 WL 2665718, at *1 (C.D. Cal. June 29, 2021) (internal
5 quotation marks and citation omitted); *see also Forward-Rossi v. Jaguar Land Rover North*
6 *America, LLC*, No. 16-cv-00949-CAS-KSx, 2016 WL 3396925, at *2 (C.D. Cal. June 13,
7 2016) (stating “Rule 15 . . . does not apply when a plaintiff amends her complaint after
8 removal to add a diversity destroying defendant.”).²

9 Section 1447(e) provides “[i]f after removal the plaintiff seeks to join additional
10 defendants whose joinder would destroy subject matter jurisdiction, the court may deny
11 joinder, or permit joinder and remand the action to the State court.” *See* 28 U.S.C. §
12 1447(e). Section 1447(e) “is couched in permissive terms and it clearly gives the district
13 court discretion to deny joinder.” *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 691 (9th
14 Cir. 1998). The decision to deny or permit joinder of a non-diverse defendant is analyzed
15 using the following factors:

- 16 (1) whether the new defendants should be joined under [Federal
- 17 Rule of Civil Procedure] 19(a) as “needed for just adjudication”;
- 18 (2) whether the statute of limitations would preclude an original
- 19 action against the new defendants in state court; (3) whether there
- 20 has been unexplained delay in requesting joinder; (4) whether
- 21 joinder is intended 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.

22 ///

23
24 ² The Court joins “the majority of district courts in the Ninth Circuit in choosing to ‘analyze
25 joinder or amendment of claims to add a non-diverse defendant under [28 U.S.C.] § 1447(e)
26 as opposed to Rule 15(a)(1)’s amendment as-of-right standard.” *Reyes v. FCA US LLC*,
27 No. 20-cv-00833-DAD-SKO, 2020 WL 7224286, at *3 n.1 (E.D. Cal. Dec. 8, 2020) (citing
28 *Martinez v. FCA US LLC*, No. 19-cv-08097-SVW-E, 2020 WL 223608, at *2 (C.D. Cal.
Jan. 15, 2020); *see also McDaniel v. Ford Motor Co.*, No. 22-cv-00517-DMS-KSC, 2022
WL 3585581, at *2 (S.D. Cal. Aug. 20, 2022) (citing *Reyes*, 2020 WL 7224286, at *3 n.1).

1 *Palestini v. Gen. Dynamics Corp.*, 193 F.R.D. 654, 658 (S.D. Cal. 2000). “Any of the
2 factors might prove decisive, and none is an absolutely necessary condition for joinder.”
3 *Vega*, 2021 WL 2665718, at *1 (internal quotation marks and citation omitted).

4 When the parties present arguments regarding the fraudulent joinder³ of a non-
5 diverse defendant, the analysis of fraudulent joinder is “subsumed in the consideration in
6 a section 1447(e) analysis of whether plaintiff can state a valid claim against the party
7 sought to be joined.” *Taylor v. Honeywell Corp.*, No. C 09-4947-SBA, 2010 WL 1881459,
8 at *2 n.1 (N.D. Cal. May 10, 2010). Accordingly, the Court may consider a party’s
9 fraudulent joinder argument under the Section 1447(e) framework. *Id.*

10 III. DISCUSSION

11 While the parties dispute the amount in controversy requirement, the joinder of
12 Desert Auto, a non-diverse defendant, must be analyzed first. Therefore, the Court will
13 analyze the Section 1447(e) factors to determine whether joinder of Desert Auto is
14 permitted.

15 A. Need for Joinder

16 Federal Rule of Civil Procedure 19 requires joinder of a party if its absence would
17

18
19 ³ An exception to the complete diversity requirement exists when a non-diverse defendant
20 has been fraudulently joined. *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th
21 Cir. 2001). If the court finds fraudulent joinder has occurred, the non-diverse defendant’s
22 citizenship is ignored for purposes of determining diversity. *Id.* To resolve a claim of
23 fraudulent joinder, the court may consider evidence outside the pleadings such as affidavits
24 and deposition testimony. *Id.* at 1067-1068. Fraudulent joinder can be found if a plaintiff
25 “fails to state a cause of action against a resident defendant, and the failure is obvious
26 according to the settled rules of the state[.]” *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336,
27 1339 (9th Cir. 1987). The burden on a defendant opposing remand based on an alleged
28 fraudulent transfer is a “heavy one.” *Armstrong v. FCA US LLC*, No. 19-cv-01275-DAD-
SAB, 2020 WL 6559232, at *3 (E.D. Cal. Nov. 9, 2020) (citing *Lee v. Ford Motor Corp.*,
No. 19-cv-10170-AB-FFM, 2020 WL 2835748, at *2 (C.D. Cal. May 29, 2020)).
“Fraudulent joinder must be proven by clear and convincing evidence, and district courts
must resolve all disputed questions of fact in favor of the plaintiff.” *Id.* (citing *Hamilton
Materials, Inc. v. Dow Chem. Corp.*, 494 F.3d 1203, 1206 (9th Cir. 2007)).

1 preclude the court from granting complete relief amongst existing parties, impede a party's
2 ability to protect its interests, or leave an existing party subject to a substantial risk of
3 incurring inconsistent outcomes. FED. R. CIV. P. 19(a). While courts consider Rule 19 in
4 determining whether to permit joinder under Section 1447(e), "amendment under Section
5 1447(e) is a less restrictive standard and is met when failure to join will lead to separate
6 and redundant actions." *McDaniel*, 2022 WL 3585581, at *2 (internal quotation marks and
7 citations omitted).

8 Courts have found claims against a repairing entity to be "directly related" to a Song-
9 Beverly action. *Id.* (citing *Forward-Rossi*, 2016 WL 3396925, at *3). As in *McDaniel*,
10 Plaintiff's claims against Desert Auto and Ford involve the same vehicle, the same alleged
11 defects, and the same unsuccessful attempts to repair. *Id.* Resolution of the negligent
12 repair claim will likely involve many of the same witnesses and evidence as the Song-
13 Beverly claims against Ford. *See McDaniel*, 2022 WL 3585581, at *2; *Forward-Rossi*,
14 2016 WL 3396925, at *3. Considering the foregoing, the Court finds Desert Auto is
15 necessary for the just adjudication of Plaintiff's claims.

16 **B. Statute of Limitations**

17 The parties agree that the statute of limitations would not preclude an original action
18 against Desert Auto in state court. (*See* Doc. 12-1 at 14-15; Doc. 23 at 18-19.) Since
19 Plaintiff's action against Desert Auto is not time-barred in state court, this factor weighs
20 against joinder. *See McDaniel*, 2022 WL 3585581, at *3.

21 **C. Timeliness of Joinder**

22 "When determining whether to allow amendment to add a non-diverse party, courts
23 consider whether the amendment was attempted in a timely fashion." *Avellanet v. FC US*
24 *LLC*, No. CV-19-7621-JFW-KSx, 2019 WL 5448199, at *3 (C.D. Cal. Oct. 24, 2019)
25 (internal quotation marks and citation omitted).

26 After Ford removed the case to this Court, Plaintiff brought his vehicle to Desert
27
28

1 Auto on March 8, 2022.⁴ (See Doc. 23-1, Decl. of Amy Maclaer ISO Opp. to Mot. for
2 Remand, ¶ 5, Ex. C); see also *Morris*, 236 F.3d at 1067–1068 (court may consider evidence
3 outside the pleadings such as affidavits and deposition testimony when analyzing
4 fraudulent joinder). Plaintiff filed the amended complaint on March 17, 2022. (Doc. 6.)
5 Given the minimal amount of time between the repair attempt at Desert Auto and the filing
6 of Plaintiff’s amended complaint, this factor weighs in favor of joinder.

7 **D. Motive for Joinder**

8 Ford contends Plaintiff added Desert Auto as a defendant for the sole purpose of
9 defeating federal jurisdiction. (Doc. 23 at 17–18.) Plaintiff went to Desert Auto four days
10 after Ford removed the case on March 4, 2022 and he filed his amended complaint two
11 days after he retrieved the vehicle from Desert Auto. (*Id.*) Ford also alleges “[t]here is
12 simply no meaningful monetary motivation to sue a party based on a single interaction
13 consisting of an auto inspection.” (*Id.* at 18.) Plaintiff responds that presenting a vehicle
14 for repairs during litigation is common in lemon law cases, and in any event, Ford cannot
15 meet its heavy burden in proving fraudulent joinder. (Doc. 24 at 4–5.)

16 “[T]he question of whether joinder is solely intended to defeat jurisdiction is
17 intertwined with the question of whether the claims against the new defendant appear
18 valid.” *Sabag v. FCA US, LLC*, No. 16-cv-06639-CAS-RAOx, 2016 WL 6581154, at *6
19 (C.D. Cal. Nov. 7, 2016) (internal quotation marks and citation omitted). As outlined
20 below, the Court finds Plaintiff’s claim against Desert Auto is facially viable. *Infra*, pp.
21 8–10. Although the claim is facially viable, the Court agrees that defeating jurisdiction
22 appears to be Plaintiff’s primary motive in adding Desert Auto as a defendant. See
23 *McDaniel*, 2022 WL 3585581, at **3–4 (finding plaintiff’s primary motive in adding
24 “thinly argued” negligent repair claim against new defendant Desert Auto was to destroy
25 diversity jurisdiction); *Viveros v. Ford Motor Co.*, No. 21-cv-527-TWR-BGS, 2021 WL
26

27
28 ⁴ Ford argues this post-removal repair attempt shows Plaintiff’s improper motive in naming
Desert Auto. The Court will consider this argument in subsection (d) addressing motive.

1 5989365, at *6 (S.D. Cal. July 27, 2021) (finding plaintiff’s primary motive to amend
2 complaint adding negligent repair claim against new defendant was to defeat diversity
3 jurisdiction given amended complaint’s threadbare factual allegations against new
4 defendant). Other than the FAC’s allegations as to Desert Auto’s California citizenship
5 and its minimal allegations within the sixth cause of action for negligent repair, the FAC
6 lacks detailed factual allegations about when Plaintiff presented the vehicle to Desert Auto,
7 the type of work Desert Auto performed, or any explanation as to how Desert Auto
8 performed such work negligently. (Doc. 6 at ¶¶ 4, 42–47.) According to Ford, Plaintiff
9 presented the vehicle once to Desert Auto only *after* Ford filed its notice of removal. (Doc.
10 23 at 11, 17–18); *but see Lara v. Bandit Industs., Inc.*, No. 12-cv-02459-MCE-AC, 2013
11 WL 1155523, at *5 (E.D. Cal. Mar 19, 2013) (declining to find improper motive for post-
12 removal addition of non-diverse defendant reasoning “the Court does not construe
13 Plaintiffs’ preference for state court any more negatively than Defendants’ preference for
14 federal court.”) Ford alleges Desert Auto only performed a road test and multi-point
15 inspection of the vehicle, and Plaintiff paid nothing out-of-pocket for this inspection. (*Id.*)
16 Given that Plaintiff’s addition of Desert Auto appears to be primarily motivated to defeat
17 jurisdiction, this factor weighs against joinder. *McDaniel*, 2022 WL 3585581, at **3–4;
18 *Viveros*, 2021 WL 5989365, at *6.

19 **E. Validity of Claims Against New Defendant**

20 Ford contends Plaintiff’s negligent repair claim against Desert Auto is not properly
21 pleaded, and even assuming it is, the claim is barred because Plaintiff’s damages claim
22 consists solely of economic losses. (Doc. 23 at 15–17.) Plaintiff responds that Desert
23 Auto’s repair work consisted of a contract for services, therefore, an exception to the
24 economic loss rule applies. (Doc. 24 at 5–6.) Plaintiff also argues, to the extent there are
25 any deficiencies in its complaint, the Court may consider whether an amendment can cure
26 the deficiency. (*Id.* at 7–8.)

27 In assessing the validity of a plaintiff’s claims, “the court need only determine
28 whether the claim seems valid” which is not the standard for evaluating either a motion to

1 dismiss or a motion for summary judgment. *Sabag*, 2016 WL 6581154, at *6 (internal
2 quotation marks and citation omitted). “For the purposes of joinder under § 1447(e), a
3 plaintiff’s claim need only be facially viable—the claim need not be plausible nor stated
4 with particularity.” *Reyes*, 2020 WL 7224286, at *8 (citation omitted).

5 To state a claim for negligent repair, the plaintiff must establish the elements of a
6 standard negligence claim: duty, breach, causation, and damages. *Malijen v. Ford Motor*
7 *Co.*, No. EDCV 20-1217-JGB-KKx, 2020 WL 5934298, at *4 (C.D. Cal. Aug. 20, 2020)
8 (citation omitted). The FAC alleges Plaintiff delivered his vehicle to Desert Auto for
9 repair, Desert Auto owed a duty of care in the “storage, preparation, diagnosis, and/or repair
10 of the Vehicle,” and it breached this duty. (Doc. 6 at ¶¶ 43–45.) It alleges Desert Auto
11 proximately caused Plaintiff’s damages due to its “failure to properly store, prepare,
12 diagnose, and/or repair” the vehicle in accordance with industry standards. (*Id.* ¶¶ 46–47.)
13 Consistent with the many courts that have found facially valid negligent repair claims
14 despite a complaint’s threadbare allegations, this Court finds Plaintiff’s allegations set forth
15 a facially viable claim against Desert Auto. *McDaniel*, 2022 WL 3585581, at *4; *Viveros*,
16 2021 WL 5989365, at **8–9 (collecting cases).

17 Under California’s economic loss rule, the plaintiff may generally only recover
18 economic losses through contract rather than through tort. *See Robinson Helicopter Co.,*
19 *Inc. v. Dana Corp.*, 34 Cal. 4th 979, 988 (2004). Economic loss consists of “damages for
20 inadequate value, costs of repair and replacement of the defective product or consequent
21 loss of profits—without any claim for personal injury or damages to other property.” *Id.*
22 (internal quotation marks and citation omitted). California courts recognize an exception
23 to the economic loss rule when the contract involves services rather than goods, where a
24 negligent failure to perform services under a contract may be both a breach of contract and
25 a tort. *N. Am. Chem. Co. v. Superior Court*, 59 Cal. App. 4th 764, 774 (Cal. Ct. App. 1997).
26 District courts in California “have been virtually unanimous in rejecting the argument that
27 a dealership that serviced the subject vehicle is fraudulently joined because the economic
28 loss rule bars a negligent repair claim.” *Reyes*, 2020 WL 7224286, at *9 (internal quotation

1 marks and citation omitted). The Court finds no basis to depart from other district court’s
2 interpretation of this very issue and finds Plaintiff has stated a facially viable claim. *See*
3 *McDaniel*, 2022 WL 3585581, at *4. Accordingly, this factor weighs in favor of joinder.

4 **F. Prejudice to Plaintiff**

5 Plaintiff argues he will be prejudiced if he is forced to pursue separate litigation
6 against Desert Auto in state court, as it is indisputable that all of the claims involve the
7 same vehicle and the same unsuccessful attempt to repair the vehicle. (Doc. 12-1 at 16.)
8 Ford responds that it would be prejudiced by having to defend the claims against it in state
9 court, especially given the circumstances of Plaintiff’s post-removal joinder of Desert
10 Auto. (Doc. 23 at 20.)

11 “Where claims against parties sought to be joined in an action arise out of the same
12 factual circumstances, it is in the economic benefit of all parties and the judicial system to
13 have the entire controversy adjudicated only once[.]” *Avellanet*, 2019 WL 5448199, at *4
14 (internal quotation marks and citation omitted). Neither party disputes that Plaintiff’s
15 claims against Desert Auto involve the same vehicle and its failure to be repaired. If the
16 Court denies joinder of Desert Auto, Plaintiff would be prejudiced by having to litigate
17 claims involving similar factual allegations in state and federal court. *Armstrong*, 2020
18 WL 6559232, at **9–10. Therefore, the Court finds this factor weighs in favor of joinder.

19 Weighing all of the Section 1447(e) factors, the Court permits Plaintiff’s joinder of
20 Desert Auto. Given that Plaintiff and Desert Auto are citizens of California, the Court
21 lacks diversity jurisdiction based upon complete diversity of citizenship.⁵ Accordingly,
22 the Court **GRANTS** Plaintiff’s motion to remand.

23 **IV. CONCLUSION**


24 For the foregoing reasons, the Court **GRANTS** Plaintiff’s motion to remand. The
25

26
27 ⁵ Given that there is no complete diversity of citizenship between Plaintiff and
28 Defendants Ford and Desert Auto, the Court need not address the parties’ arguments
regarding whether Plaintiff has satisfied the amount in controversy requirement.

1 Court orders this action **REMANDED** to San Diego County Superior Court, where it was
2 originally filed.

3 **IT IS SO ORDERED.**

4 DATE: March 20, 2023

5 
6 HON. RUTH BERMUDEZ MONTENEGRO
7 UNITED STATES DISTRICT JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28