

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

11 FRANCISCO VELASCO,

12 Plaintiff,

13 v.

14 FORD MOTOR COMPANY, et al.,

15 Defendants.

Case No. 22-cv-366-MMA (DEB)

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

[Doc. No. 11]

16
17 On February 2, 2022, Plaintiff Francisco Velasco ("Plaintiff") filed a complaint
18 against Defendant Ford Motor Company ("Defendant FMC") in the Superior Court of
19 California, County of San Diego. Doc. No. 1-3 at 3.¹ On, March 18, 2022, Defendant
20 FMC removed the action to this Court. Doc. No. 1. Plaintiff amended his complaint to
21 add Defendant RP Automotive, Inc. ("Defendant RP"). Doc. No. 8 ("FAC"). Plaintiff
22 now moves to remand the case back to state court. Doc. No. 11. Defendant FMC filed
23 an opposition, to which Plaintiff replied. Doc. Nos. 17, 18. The Court found the matter
24 suitable for determination on the papers and without oral argument pursuant to Civil
25 Local Rule 7.1.d.1. Doc. No. 19. For the reasons set forth below, the Court **GRANTS**
26 Plaintiff's motion to remand.
27

28 ¹ Citations to electronically filed documents refer to the pagination assigned by the CM/ECF system.

1 **I. BACKGROUND**

2 Plaintiff alleges six causes of action. FAC ¶ 19–47. Plaintiff alleges five claims
3 against Defendant FMC for violations of California’s Song-Beverly Consumer Warranty
4 Act and one claim against Defendant RP for negligent repair. *Id.* Plaintiff alleges that he
5 is “a resident of the County of San Diego, State of California” and that Defendant RP “is
6 a corporation organized and in existence under the laws of the State of California . . .
7 [that] does business in the city of La Mesa, County of San Diego, California.” *Id.* ¶ 2, 4.

8 Plaintiff alleges he “purchased a 2015 Ford F-150 (“Vehicle”) manufactured
9 and/or distributed by Defendant FMC” on or about December 26, 2019. *Id.* ¶ 6. Plaintiff
10 further alleges Defendant FMC was provided sufficient opportunity to service or repair
11 the Vehicle’s defects and was unable to or failed to do so within a reasonable number of
12 attempts. *Id.* ¶ 14–15. Additionally, Plaintiff alleges the Vehicle was delivered to
13 Defendant RP who “fail[ed] to properly store, prepare, diagnose, and/or repair the
14 Vehicle in accordance with industry standards.” *Id.* ¶ 43–44.

15 **II. LEGAL STANDARD**

16 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins.*
17 *Co. of Am.*, 511 U.S. 375, 377 (1994). “They possess only that power authorized by
18 Constitution and statute.” *Id.* “A federal court is presumed to lack jurisdiction in a
19 particular case unless the contrary affirmatively appears.” *Stock W., Inc. v. Confederated*
20 *Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citing *California ex rel. Younger v. Andrus*,
21 608 F.2d 1247, 1249 (9th Cir. 1979)). The party seeking federal jurisdiction bears the
22 burden of establishing jurisdiction. *Kokkonen*, 511 U.S. at 377 (citing *McNutt v. Gen.*
23 *Motors Acceptance Corp.*, 298 U.S. 178, 182–83 (1936)).

24 **A. Removal Jurisdiction**

25 28 U.S.C. § 1441(a) provides for removal of a civil action from state to federal
26 court if the case could have originated in federal court. The removal statute is construed
27 strictly against removal, and “[f]ederal jurisdiction must be rejected if there is any doubt
28 as to the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566

1 (9th Cir. 1992) (citing *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir.
2 1979)). If, after proper removal, subject matter jurisdiction is destroyed, a plaintiff may
3 file a motion to remand or the court may raise the jurisdictional issue sua sponte. *See*
4 *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93–94 (1998); *Indus. Tectonics, Inc.*
5 *v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990); *Sabag v. FCA US, LLC*, No.
6 216CV06639CASRAOX, 2016 WL 6581154, at *7 (C.D. Cal. Nov. 7, 2016).

7 **B. Post-Removal Joinder of a Non-Diverse Defendant**

8 Under Rule 15, a party may amend a pleading once within twenty-one days after
9 service of a responsive pleading without leave of the court. Fed. R. Civ. P. 15(a)(1)(B).
10 The majority of district courts in the Ninth Circuit “have scrutinized the plaintiff’s
11 purposes for amendment under section 1447(e).” *McGrath v. Home Depot USA, Inc.*,
12 298 F.R.D. 601, 606 (S.D. Cal. 2014); *see, e.g.*, 16 Moore’s Federal Practice - Civil §
13 107.151 (2022) (collecting cases); *Boon v. Allstate Ins. Co.*, 229 F. Supp. 2d 1016, 1020
14 n.2 (C.D. Cal. 2002); *Martinez v. FCA US LLC*, No. 2:19-cv-08097-SVW-E, 2020 U.S.
15 Dist. LEXIS 7131, at *4 (C.D. Cal. Jan. 15, 2020); *Dooley v. Grancare, LLC*, No. C 15-
16 3038 SBA, 2015 WL 6746447, at *2 (N.D. Cal. Nov. 5, 2015); *Viveros v. Ford Motor*
17 *Co.*, No. 21-CV-527 TWR (BGS), 2021 WL 5989365, at *3 (S.D. Cal. July 28, 2021).
18 The Court “construe[s] the motion to remand as a request for leave to join an additional
19 defendant whose joinder would destroy subject matter jurisdiction, and to remand the
20 action to the State court under 28 U.S.C. § 1447(e).” *Viveros*, 2021 WL 5989365, at *3
21 (quoting *Doyle v. Gen. Motors LLC*, No. CV 19-10781-CJC, 2020 WL 915887, at *1
22 (C.D. Cal. Feb. 25, 2020) (additional citation omitted)). *But see McGrath*, 298 F.R.D. at
23 606 (discussing the minority approach, which assesses diversity-destroying amendments
24 under the more liberal standard afforded under Federal Rule of Civil Procedure 15);
25 *Edmond v. Kindred Healthcare Operating Inc.*, No. CV 16-6746 PSG (AFMx), 2016
26 U.S. Dist. LEXIS 170896, at *5 (C.D. Cal. Dec. 8, 2016) (discussing the same).

27 “The language of 1447(e) is couched in permissive terms and clearly grants the
28 court discretion to deny joinder.” *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 691 (9th

1 Cir. 1998). Courts generally consider the following factors when ruling on a motion
2 under § 1447(e):

3 (1) whether the party sought to be joined is needed for just
4 adjudication and would be joined under Federal Rule of Civil
5 Procedure 19(a); (2) whether the statute of limitations would
6 preclude an original action against the new defendants in state
7 court; (3) whether there has been unexplained delay in requesting
8 joinder; (4) whether joinder is intended solely to defeat federal
9 jurisdiction; (5) whether the claims against the new defendant
appear valid; and (6) whether denial of joinder will prejudice the
plaintiff.

10 *See IBC Aviation Servs., Inc. v. Compania Mexicana de Aviacion, S.A. de C.V.*, 125 F.
11 Supp. 2d 1008, 1011 (N.D. Cal. 2000) (citations omitted). “Any of these factors might
12 prove decisive, and none is an absolutely necessary condition for joinder.” *Reyes v. FCA*
13 *US LLC*, No. 120CV00833DADSKO, 2020 WL 7224286, at *4 (E.D. Cal. Dec. 8, 2020)
14 (quoting *Cruz v. Bank of N.Y. Mellon*, No. 5:12-cv-00846-LHK, 2012 WL 2838957, at *4
15 (N.D. Cal. July 10, 2012)).

16 **III. DISCUSSION**

17 The Court considers whether to permit joinder of Defendant RP by assessing each
18 of the factors noted above.

19 **A. Whether Defendant RP Is a Necessary Party**

20 Pursuant to 1447(e), a party is necessary for just adjudication “‘when failure to join
21 will lead to separate and redundant actions,’ but not when the non-diverse defendants ‘are
22 only tangentially related to the cause of action or would not prevent complete relief.’”
23 *Reyes*, 2020 WL 7224286, at *4 (quoting *IBC Aviation Servs.*, 125 F. Supp. 2d at 1011–
24 12). Notably, “[a]lthough courts consider the standard set forth in Rule 19 in determining
25 whether to permit joinder under Section 1447(e), ‘amendment under [Section] 1447(e) is
26 a less restrictive standard than for joinder under Rule 19.’” *Id.* (citing *Avellanet v. FCA*
27 *US LLC*, No. 19-cv-7621-JFW-KSX, 2019 WL 5448199, at *2 (C.D. Cal. Oct. 24,
28 2019)).

1 Plaintiff's claim against Defendant RP involves the same Vehicle, the same alleged
2 defects in the Vehicle, and at least some of the same unsuccessful attempts to repair the
3 Vehicle. *See* FAC ¶ 42–47. Where a negligent repair claim involves the same Vehicle,
4 defects, and repair attempts as the warranty claims against the manufacturer, district
5 courts have held that joinder is appropriate. *Viveros*, 2021 WL 5989365, at *4 (collecting
6 cases). Accordingly, this factor weighs in favor of joinder.

7 **B. Whether a Separate Action Against Defendant RP Would Be Time-Barred**

8 “Under California law, the statute of limitations for a negligent repair claim is
9 three years.” *McAdams v. Ford Motor Co.*, No. 18-CV-07485-LHK, 2019 WL 2378397,
10 at *5 (N.D. Cal. June 5, 2019). Plaintiff first presented the Vehicle to Defendant RP on
11 March, 29, 2022. Doc. No. 18 at 4. Thus, a new action would not be time-barred in state
12 court. This factor therefore weighs against joinder.

13 **C. Whether There Has Been Unexplained Delay**

14 “When determining whether to allow amendment to add a non-diverse party,
15 ‘courts consider whether the amendment was attempted in a timely fashion.’” *Avellanet*,
16 2019 WL 5448199, at *3 (quoting *Sandhu v. Volvo Cars of N. Am., LLC*, No. 16-CV-
17 04987-BLF, 2017 WL 403495, at *3 (N.D. Cal. Jan. 31, 2017)). “In particular, courts
18 consider the length of time that passed between plaintiff filing the original complaint and
19 the amended complaint, and whether dispositive motions have been filed.” *Reyes*, 2020
20 WL 7224286, at *5 (collecting cases). Courts also consider the length of time that passed
21 between the date of removal and the amended complaint. *See, e.g., Boon*, 229 F. Supp.
22 2d at 1023. Further, courts consider the plaintiff's reason for not joining the non-diverse
23 party initially. *Keledjian v. Jabil Cir., Inc.*, No. 17CV0332-MMA (JLB), 2017 WL
24 3437652, at *4–5 (S.D. Cal. Aug. 10, 2017) (citing *Wolff-Bolton v. Manor Care-Tice*
25 *Valley CA, LLC*, No. 17-CV-02405-JSC, 2017 WL 2887857, at *5 (N.D. Cal. July 7,
26 2017)).

27 Plaintiff filed the Amended Complaint forty-nine days after the initial Complaint
28 and twelve days after Defendant FMC removed the action. Additionally, no dispositive

1 motions had been filed when Plaintiff filed the Amended Complaint. District courts have
2 consistently found amendment timely in similar timeframes and even in cases where six
3 months had elapsed between removal and motion for leave to amend. *Viveros*, 2021 WL
4 5989365, at *5 (collecting cases).

5 Plaintiff states the Vehicle was first presented to Defendant RP on March 29, 2022,
6 forty-eight days after the original Complaint was filed in state court. *See* Doc. No. 18 at
7 4. Therefore, Plaintiff could not have made a claim against Defendant RP at the time of
8 the original Complaint. *See id.* Accordingly, this factor weighs in favor of joinder.

9 **D. Whether Plaintiff Solely Intends to Defeat Federal Jurisdiction**

10 “The Ninth Circuit has instructed that, because ‘motive in seeking joinder’ is a
11 relevant factor in determining whether amendment is appropriate, ‘a trial court should
12 look with particular care at such motive in removal cases, when the presence of a new
13 defendant will defeat the court’s diversity jurisdiction.’” *San Jose Neurospine v. Cigna*
14 *Health & Life Ins. Co.*, No. 16-CV-05061-LHK, 2016 WL 7242139, at *10 (N.D. Cal.
15 Dec. 15, 2016) (quoting *Desert Empire Bank v. Ins. Co. of N. Am.*, 623 F.2d 1371, 1376
16 (9th Cir. 1980)). “[C]ourts have inferred an improper motive where the plaintiff’s
17 proposed amended complaint contains only minor or insignificant changes to the original
18 complaint.” *Adams v. BMW of N. Am., LLC*, No. 17CV0068-MMA (KSC), 2017 WL
19 3822014, at *5 (S.D. Cal. Sept. 1, 2017) (quoting *San Jose Neurospine*, 2016 WL
20 7242139, at *10) (citation omitted)). However, “[s]uspicion of diversity destroying
21 amendments is not as important now that § 1447(e) gives courts more flexibility in
22 dealing with the addition of such defendants.” *IBC Aviation Servs., Inc.*, 125 F. Supp. 2d
23 at 1012.

24 Defendant FMC argues “but for the threadbare negligence claims against
25 [Defendant] RP, the [Amended Complaint] is virtually identical to the original
26 Complaint.” Doc. No. 17 at 6. Defendant further argues the lack of factual information
27 regarding Defendant RP’s conduct demonstrates Plaintiff’s intent to defeat federal
28 jurisdiction. *Id.* at 7. The minor alterations to the original complaint and lack of factual

1 allegations regarding Defendant RP’s conduct do appear to suggest an intent to defeat
2 federal jurisdiction. *See Viveros*, 2021 WL 5989365, at *6. Further, the Court notes
3 Plaintiff alleges the Vehicle was delivered to Defendant RP on March 29, 2022, one day
4 before the Amended Complaint was filed. While timely, this also appears indicative of
5 Plaintiff’s intent to divest this Court of jurisdiction. Accordingly, the Court concludes
6 this factor weighs against joinder.

7 **E. Whether Plaintiff’s Negligence Claim Appears Valid**

8 In considering this factor, courts “‘need only determine whether the claim seems
9 valid,’ which is not the same as the standard in either a motion to dismiss or a motion for
10 summary judgment.” *See Meggs v. NBC Universal Media, LLC*, No.
11 217CV03769ODWRAOX, 2017 WL 2974916, at *8 (C.D. Cal. July 12, 2017) (quoting
12 *Freeman v. Cardinal Health Pharm. Servs., LLC*, No. 14-cv-01994-JAM, 2015 WL
13 2006183, at *3 (E.D. Cal. May 1, 2015)). “Courts have permitted joinder even where the
14 plaintiff appears to be primarily motivated by a desire to defeat diversity jurisdiction, as
15 long as the plaintiff has alleged a valid claim against the non-diverse defendant.”
16 *Viveros*, 2021 WL 5989365, at *6 (quoting *Reyes*, 2020 WL 7224286, at *6).

17 First, Defendant FMC argues Plaintiff’s negligent repair claim against Defendant
18 RP is barred by California’s economic loss rule. Doc. No. 17 at 7–8. Under the
19 economic loss rule, a plaintiff may not recover purely economic damages for tort claims.
20 *Jimenez v. Superior Court*, 58 P.3d 450, 455–56 (Cal. 2002). However, the component
21 exception recognizes that “the economic loss rule does not necessarily bar recovery in
22 tort for damage that a defective product (e.g., a window) causes to other portions of a
23 larger product (e.g., a house) into which the former has been incorporated.” *Id.* at 457.
24 Multiple district courts, including this Court, have recognized the potential applicability
25 of the component exception in cases involving negligent repair claims against parties
26 sought to be joined in breach of warranty cases against manufacturers. *See Diullo v.*
27 *FCA US LLC*, No. 20-CV-382-MMA (BLM), 2020 WL 1921927, at *3 (S.D. Cal. Apr.
28 21, 2020) (collecting cases); *Viveros*, 2021 WL 5989365, at *8.

1 Plaintiff alleges defects in the Vehicle’s engine and electrical system. FAC ¶ 12.
2 Plaintiff further asserts those “defects have substantially impaired the safety, use, and/or
3 value of the Vehicle.” *Id.* ¶ 16. Given these allegations, the Court finds the component
4 exception facially applicable in this matter. Defendant FMC provides no reason why the
5 component exception should not apply here. As such, the Court finds Defendant FMC
6 has not sufficiently shown the economic loss rule bars Plaintiff’s negligent repair claim.

7 Second, Defendant FMC argues Plaintiff failed to state a claim for negligent repair
8 against Defendant RP. Doc. No. 17 at 8–9. However, “[u]nder the § 1447(e) analysis,
9 courts consider whether the claims against the new party sought to be added seem
10 meritorious, and so long as the claims are at least potentially valid, the factor weighs in
11 favor of joinder.” *Avellanet*, 2019 WL 5448199, at *3 (quoting *Jackson v. Dollar Tree*
12 *Distribution, Inc.*, 2018 WL 2355983, at *5 (C.D. Cal. May 23, 2018)). Whether a claim
13 seems valid “is not the same as the standard in either a motion to dismiss or a motion for
14 summary judgment.” *Sabag*, 2016 WL 6581154, at *6 (citing *Freeman*, 2015 WL
15 2006183, at *3). “To state a claim for negligent repair, a plaintiff need only establish the
16 elements of a standard negligence claim: duty, breach, causation, and damages.”
17 *Dordoni v. FCA US LLC*, No. EDCV201475JGBSHKX, 2020 WL 6082132, at *5 (C.D.
18 Cal. Oct. 15, 2020) (citation omitted) (holding a plaintiff’s recitation of the elements of
19 negligence was sufficient for the purposes of 1447(e) analysis). Here, Plaintiff alleged
20 each of the above elements and has, therefore, stated a potentially valid claim. Thus, this
21 factor weighs in favor of joinder.

22 **F. Potential Prejudice**

23 A plaintiff suffers prejudice by denial of joinder when the “plaintiff would be
24 required to pursue two substantially similar lawsuits in two different forums or abandon a
25 viable claim against the proposed joined defendant.” *Malijen v. Ford Motor Co.*, No.
26 EDCV201217JGBKKX, 2020 WL 5934298, at *5 (C.D. Cal. Aug. 20, 2020) (citing
27 *Sabag*, 2016 WL 6581154, at *6; *Lara v. Bandit Indus., Inc.*, No. 2:12–cv–02459–MCE–
28 AC, 2013 WL 1155523, at *5 (E.D. Cal. Mar. 19, 2013)). District courts recognize

1 potential prejudice arising from denial of joinder where plaintiffs in vehicle warranty
2 actions seek to join defendants for negligent repair. *See, e.g., Malijen*, 2020 WL
3 5934298, at *5; *Dordoni*, 2020 WL 6082132, at *5; *Viveros*, 2021 WL 5989365, at *9.
4 By contrast, joinder of a non-diverse party may result in prejudice to the defendant when
5 the parties have already participated in an Early Neutral Evaluation and a Case
6 Management Conference, submitted a joint discovery plan, and received a Scheduling
7 Order. *See Adams*, 2017 WL 3822014, at *6.

8 As described above, Plaintiff’s claim against Defendant RP involves the same
9 Vehicle, the same alleged defects in the Vehicle, and at least some of the same
10 unsuccessful attempts to repair the Vehicle. *See* FAC ¶ 42–47. As such, denial of
11 joinder would prejudice Plaintiff because he would be required to pursue substantially
12 similar lawsuits in separate forums or abandon a viable claim against Defendant RP.
13 Additionally, the potential for similar lawsuits in separate forums “violate[s] principles of
14 judicial economy” and “risk[s] inconsistent or conflicting verdicts.” *Viveros*, 2021 WL
15 5989365, at *9 (citations omitted). Moreover, the Court notes that the parties have not
16 participated in an Early Neutral Evaluation or a Case Management Conference, or
17 received a Scheduling Order. Thus, joinder will not sufficiently prejudice Defendant
18 FMC for this factor to weigh against joinder. Overall, this factor weighs in favor of
19 joinder.

20 **IV. CONCLUSION**

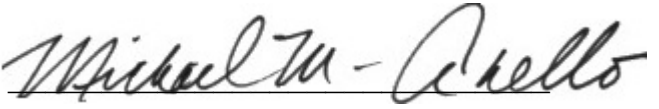
21 On balance, the Court concludes that the factors weigh in favor of permitting
22 joinder pursuant to § 1447(e). Because joinder of Defendant RP divests the Court of
23 diversity jurisdiction, the Court **GRANTS** Plaintiff’s motion and **REMANDS** this action
24 to the Superior Court of California, County of San Diego.² The Court **DIRECTS** the
25

26
27
28 ² Because Defendant FMC has failed to establish complete diversity, the Court need not address the amount-in-controversy requirement.

1 Clerk of Court to close the case and to terminate all pending motions, deadlines, and
2 hearings.

3 **IT IS SO ORDERED.**

4 Dated: June 24, 2022

5
6 

7 HON. MICHAEL M. ANELLO
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28