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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 ERIC P. MCDANIEL,
11 Plaintiff,
12 v.
13 FORD MOTOR COMPANY et al.,
14 Defendants.
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Case No.: 3:22-CV-00517-DMS-KSC

**ORDER GRANTING MOTION FOR
LEAVE TO FILE A SECOND
AMENDED COMPLAINT AND
GRANTING MOTION TO REMAND**

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17 Before the Court is Plaintiff Eric P. McDaniel’s combined motion for leave to file a
18 second amended complaint and motion to remand. The matter is fully briefed and ripe for
19 adjudication. For the reasons set out below, the Court grants the combined motion.

20 **I.**

21 **BACKGROUND**

22 This case arises under California’s Lemon Law, the Song-Beverly Consumer
23 Warranty Act. Cal. Civ. Code §§ 1790 et seq. Plaintiff Eric P. McDaniel (“Plaintiff”)
24 purchased a 2021 Ford F150 in December 2021 and received an express written warranty
25 from Defendant Ford Motor Company (“Defendant”). (ECF No. 11-1 at 7.) Plaintiff
26 alleges the vehicle contained or developed defects related to its lighting and electrical
27 systems, and engine. (*Id.* at 7–8.) He states Defendant failed to service, repair, or replace
28 the vehicle or make restitution to Plaintiff. (*Id.* at 8.) Plaintiff filed his complaint in

1 Superior Court on March 8, 2022. (*Id.*) Defendant answered on April 12, 2022, and filed
2 a notice of removal on April 14, 2022. (*Id.*) Plaintiff filed a federal first amended
3 complaint on April 28, 2022, mistakenly adding as a defendant the dealership (Penske
4 Ford) which sold Plaintiff the Ford vehicle, rather than the entity that attempted to repair
5 the Ford vehicle. (ECF No. 7.) That seller defendant was soon voluntarily dismissed.
6 (ECF No. 9.)

7 Plaintiff now seeks leave to amend to add the proper dealership, Desert Auto Group
8 LLC (“Desert Auto”), as a defendant for a negligent repair claim. (ECF No. 11-1.) Adding
9 Desert Auto would destroy complete diversity, thus requiring remand. Plaintiff alleges
10 Desert Auto, which attempted repairs on the Ford vehicle, owed a duty of ordinary care to
11 Plaintiff, which it breached by failing to properly store, prepare, diagnose, and repair the
12 Ford vehicle. (ECF No. 11-8 at 10.) Defendant argues this is a sham defendant, added
13 solely for the purposes of destroying diversity and thus allowing Plaintiff to seek remand
14 to state court. (ECF No. 18.) Plaintiff filed the instant motion on May 17, 2022 (ECF No.
15 11), Defendant responded on June 10, 2022 (ECF No. 18), and Plaintiff replied on June 17,
16 2022. (ECF No. 19.) The Court vacated the hearing on this matter, finding it suitable for
17 decision on the papers pursuant to Civil Local Rule 7.1(d)(1). (ECF No. 20.)

18 II.

19 LEGAL STANDARD

20 “Federal courts are courts of limited jurisdiction,” possessing “only that power
21 authorized by Constitution and statute.” *Gunn v. Minton*, 568 U.S. 251, 256 (2013)
22 (quotations omitted). A suit filed in state court may be removed to federal court if the
23 federal court would have had original jurisdiction over the suit, based on a federal question
24 or diversity of citizenship of the parties and an amount in controversy that exceeds \$75,000.
25 *See* 28 U.S.C. §§ 1441(a), 1331, 1332(a). An action may be removed based on diversity
26 only where there is complete diversity between the parties. *See Hunter v. Phillip Morris*
27 *USA*, 582 F.3d 1039, 1043 (9th Cir. 2009). “If at any time before final judgment it appears
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1 that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28
2 U.S.C. § 1447(c).

3 This court joins “the majority of district courts in the Ninth Circuit in choosing to
4 analyze joinder or amendment of claims to add a non-diverse defendant under [28 U.S.C.]
5 § 1447(e) as opposed to Rule 15(a)(1)’s amendment as-of-right standard.” *Reyes v. FCA*
6 *US LLC*, No. 20-CV-833-DAD, 2020 WL 7224286, at *3 n.1 (E.D. Cal. Dec. 8, 2020)
7 (quotation omitted); *see also Vega v. Am. Ins. Co.*, No. 20-CV-10631-FMO, 2021 WL
8 2665718, at *1 (C.D. Cal. June 29, 2021) (“[F]ederal courts have concluded that when an
9 amendment would deprive the court of subject matter jurisdiction, a party may not rely on
10 Rule 15(a) to amend a pleading without leave of court; such an amendment must instead
11 be analyzed pursuant to § 1447(e).”) (quotation omitted) (collecting cases).

12 Section 1447(e) provides that, “if after removal the plaintiff seeks to join additional
13 defendants whose joinder would destroy subject matter jurisdiction, the court may deny
14 joinder, or permit joinder and remand the action to the State court.” 28 U.S.C. § 1447(e).
15 “The language of § 1447(e) is couched in permissive terms[,]” and “the decision regarding
16 joinder of a diversity destroying-defendant is left to the discretion of the district court[.]”
17 *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 691 (9th Cir. 1998). Whether to deny or
18 permit joinder under § 1447(e) is assessed using the following factors:

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

25 *Palestini v. Gen. Dynamics Corp.*, 193 F.R.D. 654, 658 (S.D. Cal. 2000). “Any of the
26 factors might prove decisive, and none is an absolutely necessary condition for joinder.”
27 *Vega*, 2021 WL 2665718, at *1 (internal citation omitted). “A court’s decision under §
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1 1447(e) is reviewed for abuse of discretion.” *Forward-Rossi v. Jaguar Land Rover N. Am.,*
2 *LLC*, No. 2:16-cv-00949-CAS, 2016 WL 3396925, at *2 (C.D. Cal. June 13, 2016).

3 III.

4 DISCUSSION

5 A. Extent to which Desert Auto is Needed for Just Adjudication

6 Federal Rule of Civil Procedure 19 requires joinder of persons whose absence would
7 preclude the granting of complete relief, impede a party’s ability to protect its interests, or
8 risk inconsistent outcomes for different parties. Fed. R. Civ. P. 19(a). “Although courts
9 consider the standard set forth in Rule 19 in determining whether to permit joinder under
10 Section 1447(e), amendment under Section 1447(e) is a less restrictive standard” and “‘is
11 met when failure to join will lead to separate and redundant actions.’” *Reyes*, 2020 WL
12 7224286, at *4 (quoting *IBC Aviation Servs., Inc. v. Compania Mexicana de Aviacion, S.A.*
13 *de C.V.*, 125 F. Supp. 2d 1008, 1011 (N.D. Cal. 2000)).

14 Other courts have found claims against a repairing entity “directly related” to a Beverly-
15 Song action. *See Forward-Rossi*, 2016 WL 3396925, at *3. Here, Plaintiff’s claims against
16 Desert Auto and Ford involve the same vehicle, the same alleged defects, and the same
17 unsuccessful attempts to repair. The evidence and witnesses required to adjudicate the
18 claims will likely be the same and would thus result in a redundant separate action against
19 Desert Auto if it is not joined in the instant case. Indeed, “Where, as here, the breach of
20 warranty claims against the manufacturer and dealership arise from the same vehicle and
21 alleged defects, California district courts have held that the dealership is ‘necessary for just
22 adjudication’ of the claims and thus was properly joined.” *Torres v. Ford Motor Co.*, 2018
23 WL 4182487, at *2 (C.D. Cal. Aug. 30, 2018) (citations omitted). Thus, this factor weighs
24 in favor of amendment to join Desert Auto.

25 B. Statute of Limitations as to Desert Auto

26 “When a claim is timely filed in state court and then removed, a finding that the statute
27 of limitations would preclude the filing of a new, separate action against a party whose
28 joinder has been denied in the federal proceeding, may warrant remand.” *Dordoni v. FCA*

1 *US LLC*, No. 20-cv-1475-JGB, 2020 WL 6082132, at *4 (C.D. Cal. Oct. 15, 2020) (internal
2 citations omitted).

3 Plaintiff’s state law negligent repair claim is subject to a three-year statute of
4 limitations. *See Malijen v. Ford Motor Co.*, No. 20-cv-1217-JGB, 2020 WL 5934298, at
5 *3 (citing, inter alia, Cal. Code Civ. Proc. § 338(c)(1)). As Plaintiff “filed his [instant]
6 complaint well within a year of his last repair visit[,]” the statute of limitations would not
7 preclude a separate action against Desert Auto. (ECF No. 11-1 at 12.) As Plaintiff would
8 not be time-barred from filing an action against Desert Auto in state court, this factor
9 weighs against joinder. *See id.* (“[b]ecause Plaintiff would not be time-barred from filing
10 a new action in state court, the second factor does not support joinder.”).

11 **C. Timeliness of Joinder**

12 “When determining whether to allow amendment to add a nondiverse party, courts
13 consider whether the amendment was attempted in a timely fashion.” *Id.* (quoting *Clinco*
14 *v. Roberts*, 41 F. Supp. 2d 1080, 1083 (C.D. Cal. 1999)). Here, there has not been an
15 unexplained delay in requesting joinder, as Plaintiff filed his first amended complaint two
16 weeks after the notice of removal, and then quickly moved to replace the improper dealer
17 defendant with Desert Auto. (*See* ECF Nos. 7, 11.)

18 Defendant avers the request for joinder is not timely because “Plaintiff was aware of
19 Desert Auto’s potential liability in the matter and chose to join Desert Auto only after Ford
20 removed the matter.” (ECF No. 18 at 11.) “However, Plaintiff’s awareness is offset by
21 the short amount of the time at issue and the lack of any court proceedings or filings prior
22 to amendment.” *Viveros v. Ford Motor Co.*, No. 21-CV-527 TWR (BGS), 2021 WL
23 5989365, at *5 (S.D. Cal. July 28, 2021). Indeed, “this action is still in its nascent stages:
24 the parties have not propounded any discovery or appeared for any court proceedings.”
25 (ECF No. 11-1 at 12.) Other district courts in this Circuit have found amendments made
26 even later than in this case to be timely. *See, e.g., Reyes*, 2020 WL 7224286, at *6 (finding
27 amendment timely when “plaintiff filed this motion within three months of the filing of his
28 original complaint and one month after service of notice of removal”); *Malijen*, 2020 WL

1 5934298, at *3 (finding that amendment was timely when “Plaintiff filed the motion to
2 amend a mere four months after the filing of the initial Complaint and just one month after
3 removal”). Accordingly, the Court finds amendment is timely and that this factor weighs
4 in favor of joinder.

5 **D. Motive for Joinder**

6 While the § 1447(e) factors consider whether joinder is intended solely to defeat federal
7 jurisdiction, defendants bear the burden of proving fraudulent joinder. *Plute v. Roadway*
8 *Package Sys., Inc.*, 141 F. Supp. 2d 1005, 1008 (N.D. Cal. 2001). Further, “Suspicion of
9 diversity destroying amendments is not as important now that § 1447(e) gives courts more
10 flexibility in dealing with the addition of such defendants.” *IBC Aviation Services, Inc.*,
11 125 F.Supp.2d 1008, 1012 (N.D. Cal. 2000).

12 Defendant avers that Desert Auto has been added solely to destroy diversity. “An
13 examination of the Second Amended Complaint shows there are no substantive differences
14 between it and the original Complaint ... The complete lack of any factual information
15 regarding Desert Auto, or its alleged conduct, demonstrates Plaintiff’s clear motive: to
16 divest this Court of its proper jurisdiction.” (ECF No. 18 at 13.) As the second amended
17 complaint adds only the thinly argued negligence claim, the Court agrees that defeating
18 diversity appears to be Plaintiff’s primary motive. *Compare Viveros*, 2021 WL 5989365,
19 at *6 (“the circumstances suggest that Plaintiff’s primary motivation in amending the
20 Complaint was to defeat diversity jurisdiction. In particular, the FAC adds no new factual
21 allegations apart from the negligence claim, which is alleged in somewhat threadbare
22 fashion. Accordingly, this factor weighs against joinder.”). Thus, the Court finds this factor
23 weighs against joinder though it “is intertwined with the question of whether the claims
24 against the new defendant appear valid” as discussed below. *Reyes*, 2020 WL 7224286, at
25 *6.

26 **E. Validity of Claims Against Desert Auto**

27 “For the purposes of joinder under § 1447(e), a plaintiff’s claim need only be facially
28 viable—the claim need not be plausible nor stated with particularity.” *Reyes*, 2020 WL

1 7224286, at *8 (finding a negligent repair claim facially valid and ultimately granting
2 joinder and remand). Indeed, negligence claims against repairing dealerships have been
3 found valid by a majority of courts. *See, e.g., Viveros*, 2021 WL 5989365, at *8 (collecting
4 cases and finding a negligent repair claim facially valid, thus requiring remand). While
5 Defendant avers the claim is insufficiently pled (ECF No. 18 at 13), Plaintiff has provided
6 enough information to create a facially viable claim given the low standard for claims under
7 § 1447(e). “To state a claim for negligent repair, a plaintiff need only establish the elements
8 of a standard negligence claim: duty, breach, causation, and damages[,]” which Plaintiff
9 has done here. *Malijen*, 2020 WL 5934298, at *4.

10 Defendant further argues the claim is not facially valid due to the California economic
11 loss rule, which requires a plaintiff to recover in contract for purely economic loss. (ECF
12 No. 18 at 13.) “But California courts recognize an exception to the economic loss rule
13 where the contract at issue was for services, rather than goods. In such cases, a negligent
14 failure to perform contractual duties competently may be both a breach of contract and a
15 tort.” *Id.*, at *4 (internal quotations and citations omitted); *see also Reyes*, 2020 WL
16 7224286, at *9 (“California district courts have been virtually unanimous in rejecting the
17 argument that a dealership that serviced the subject vehicle is fraudulently joined because
18 the economic loss rule bars a negligent repair claim.”) (internal quotation and citation
19 omitted). As this Court finds Plaintiff’s claims against Desert Auto to be facially viable,
20 this factor weighs in favor of joinder. *See Malijen*, 2020 WL 5934298, at *4 (“Plaintiff thus
21 alleges a facially valid negligent repair claim; the fifth factor weighs in favor of joinder.”)

22 **F. Prejudice to Plaintiff**

23 Plaintiff would likely be prejudiced by having to bring litigation in two separate forums
24 if Desert Auto is not joined to this action. *See Forward-Rossi*, 2016 WL 3396925, at *5,
25 n.2. Thus, “[t]he final factor weighs in favor of joinder because if the Court were to deny
26 plaintiff’s motion for leave to amend, plaintiff would be required to pursue two
27 substantially similar lawsuits in two different forums—an action against Defendant before
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1 this Court and an action against [Desert Auto] in California state court.” *Malijen*, 2020
2 WL 5934298, at *5 (internal quotation and citation omitted).

3 **G. Weighing the Factors**

4 Plaintiff’s diversity-destroying motive for joinder and the fact that he is not time-barred
5 from bringing a separate state claim against Desert Auto weigh against joinder. However,
6 all other factors favor allowing the amendment to join Desert Auto in the instant action.
7 Accordingly, Plaintiff’s motion to amend his complaint and join Desert Auto is granted.
8 As Desert Auto destroys complete diversity, Plaintiff’s motion to remand to state court is
9 also granted.

10 **IV.**

11 **CONCLUSION & ORDER**

12 For the foregoing reasons, the Court grants Plaintiff’s motion for leave to file a
13 second amended complaint to join Desert Auto as a defendant. As joinder divests this
14 Court of diversity jurisdiction, the Court grants Plaintiff’s motion to remand. The Court
15 orders this action be remanded to San Diego County Superior Court, where it was originally
16 filed.

17 **IT IS SO ORDERED.**

18 Dated: August 20, 2022

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Hon. Dana M. Sabraw, Chief Judge
21 United States District Court