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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KIMBERLY GREEN and JASON
GREEN, individuals,

Plaintiffs,

v.

OMNI INSURANCE COMPANY,
dba The Hartford's Omni Auto
Plan, a corporation, and DOES
1 through 50, inclusive,

Defendant.

2:05-CV-1354-MCE-KJM

MEMORANDUM AND ORDER

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On April 29, 2005, Kimberly Green and Jason Green ("Plaintiffs") filed a Complaint in Sacramento County Superior Court against Omni Insurance Company, dba The Hartford's Omni Auto Plan ("Omni"), and Does 1 through 50. Plaintiffs alleged conversion of personal property; breach of insurance contract-failure to pay and perform, breach of covenants of good faith and fair dealing; intentional infliction of emotional distress; and negligent infliction of emotional distress.

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1 Presently before the Court is Plaintiffs' concurrent Motion
2 for Leave to Amend the Complaint to add a non-diverse party, and
3 if successful, Motion to Remand.¹ For the reasons stated below,
4 Plaintiffs' Motion to Amend is granted. Plaintiffs' Motion to
5 Remand is also granted.

6
7 **BACKGROUND**
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9 On or around July 19, 2004, Plaintiffs filed a vehicle
10 damage claim with Omni. Shortly thereafter, Omni took possession
11 of Plaintiffs' vehicle for inspection. On October 19, 2004, Omni
12 informed Plaintiffs their damage claim was denied. Rather than
13 returning Plaintiffs' vehicle, however, Omni surrendered the
14 vehicle to CoParts, Inc. ("CoParts"), a California based vehicle
15 storage company. Thereafter, CoParts sold Plaintiffs' vehicle to
16 a Mexican dismantling company.

17 Omni alleges that CoParts properly billed Plaintiffs for
18 vehicle storage and properly filed a lien-sale notice before
19 disposing of the vehicle. Plaintiffs dispute that allegation and
20 instead claim that CoParts fraudulently billed them for storage
21 costs and sold the vehicle without providing proper notice.

22 After an unsuccessful attempt to ascertain their claim
23 status or the whereabouts of their vehicle, Plaintiffs retained
24 counsel and filed the instant action.

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28 ¹Because oral argument will not be of material assistance,
the Court orders this matter submitted on the briefs. E.D. Cal.
Local Rule 78-230(h).

1 Omni, an Illinois corporate citizen having its principal place of
2 business in Georgia, responded to the Complaint by filing a
3 Notice of Removal asserting diversity of citizenship as its basis
4 for federal jurisdiction. See 28 U.S.C. §§ 1441, 1332.

5 Plaintiffs now move to amend their Complaint to add CoParts,
6 a non-diverse defendant, as Doe 1 to the Complaint. Plaintiffs
7 also wish to add new causes of action against Omni and CoParts.
8 Plaintiffs' proposed Amended Complaint alleges the following
9 against Omni and CoParts: conspiracy to convert Plaintiffs'
10 personal property; conspiracy to engage in deceptive business
11 practices in violation of California Business and Professions
12 Code § 17200; intentional infliction of emotional distress; and,
13 negligent infliction of emotional distress. Plaintiffs further
14 seek injunctive relief against both Omni and CoParts pursuant to
15 California Business and Professions Code § 17200. Plaintiffs
16 further claim against Omni alone breach of insurance contract-
17 failure to pay and perform and breach of covenants of good faith
18 and fair dealing. Lastly, Plaintiffs request an order against
19 CoParts for disgorgement of profits received in violation of
20 California Business and Professions Code §§ 17200 and 17204.

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1 **II. Motion to Remand**

2 A defendant may remove any civil action from state court to
3 federal district court if the district court has original
4 jurisdiction over the matter. 28 U.S.C. § 1441(a). Generally,
5 district courts have original jurisdiction over civil actions in
6 two instances: (1) where there is complete diversity between the
7 parties, or (2) where a federal question is presented in an
8 action arising under the Constitution, federal law, or treaty.
9 28 U.S.C. §§ 1331 and 1332.

10 The removing party bears the burden of establishing federal
11 jurisdiction. *Ethridge v. Harbor House Rest.*, 861 F.2d 1389,
12 1393 (9th Cir. 1988). Furthermore, courts construe the removal
13 statute strictly against removal. *Gaus v. Miles, Inc.*, 980 F.2d
14 564, 566 (9th Cir. 1992) (citations omitted). If there is any
15 doubt as to the right of removal in the first instance, remand
16 must be granted. *Id.* at 566. Therefore, if it appears before
17 final judgment that a district court lacks subject matter
18 jurisdiction, the case shall be remanded to state court. 28
19 U.S.C. § 1447(c).

20 When a district court's jurisdiction is based solely on
21 diversity, and that court, in exercising its discretion under 28
22 U.S.C. § 1447(e), grants amendment to join a non-diverse party
23 the court must remand the action to the state court. *Yniques v.*
24 *Cabral*, 985 F.2d 1031, 1035 (9th Cir. 1993).

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ANALYSIS

A. Motion for Leave to Amend Complaint

In moving for leave to amend, Plaintiffs argue that CoParts is more than tangentially related to the operative facts and forcing Plaintiffs to bring a separate action against CoParts will prejudice Plaintiffs and waste judicial resources. Defendant rebuts that amendment is improper because CoParts is not a necessary party and Plaintiffs' true motive for amendment is to destroy jurisdiction.

As noted above, in determining whether to grant Plaintiffs' Motion, the Court must consider the following: (1) necessity of joinder under FRCP 19(a); (2) any statute of limitations problems; (3) unexplained delay; (4) motive; (5) merit of claims against the non-diverse party; and (6) prejudice. See *Boon*, 229 F.Supp.2d at 1020; *IBC Aviation*, 125 F.Supp.2d at 1011. Each is considered in turn below.

1. Necessary Party

Although courts consider whether a party would meet Fed. R. Civ. P. 19's necessary-party standard, amendment under section 1447(e) is a less restrictive standard than joinder under Fed. R. Civ. P. 19. *IBC Aviation*, 125 F.Supp.2d at 1011-12.

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1 Generally, courts that have approved discretionary joinder look
2 at least for a high degree of involvement by the defendant in the
3 occurrences that gave rise to the plaintiff's cause of action.
4 *Boon*, 229 F.Supp.2d at 1022. However, courts disallow joinder of
5 non-diverse defendants where those defendants are only
6 tangentially related to the cause of action. *IBC Aviation*, 125
7 F.Supp.2d at 1012.

8 Here, Plaintiffs allege, *inter alia*, that Omni and CoParts
9 conspired to convert Plaintiffs' personal property and engaged in
10 deceptive business practices. As an initial matter, Omni
11 concedes that CoParts accepted and stored Plaintiffs' vehicle for
12 an approximate three month period. It is further undisputed that
13 CoParts sold Plaintiffs' vehicle to a third party dismantling
14 company. Plaintiffs aver that the foregoing actions were taken
15 without their knowledge or consent and in furtherance of an
16 illegal conspiracy between Omni and CoParts. On the contrary,
17 Omni contends there was no conspiracy and that CoParts strictly
18 adhered to California's lien-sale requirements prior to selling
19 Plaintiffs' vehicle.

20 While resolution of the foregoing dispute will be necessary
21 to adjudicate the merits of Plaintiffs' claims, such resolution
22 is not necessary to dispose of the present Motions before this
23 Court. CoParts' undisputed involvement in the storage and sale
24 of Plaintiffs' vehicle is far beyond merely tangential and is
25 more than sufficient to meet the less restrictive joinder
26 standard of 28 U.S.C. § 1447(e). Accordingly, the Court finds
27 this factor in favor of granting Plaintiffs' Motion to Amend.

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1 **2. Statute of Limitations**

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3 This factor considers first whether Plaintiffs would be
4 subject to a statutory bar in seeking redress in an alternative
5 proceeding.

6 In addition, however, this factor considers whether forcing
7 Plaintiffs to pursue CoParts in a separate proceeding would be a
8 waste of judicial resources and would risk inconsistent results.
9 *IBC Aviation*, 125 F.Supp.2d at 1012 (“[E]ven though a state court
10 action against [an individual defendant] might be possible,
11 requiring IBC to litigate essentially the same issues in two
12 forums would be a waste of judicial resources and risk
13 inconsistent results”).

14 Here, Plaintiffs concede that they would not face a
15 statutory bar were they forced to seek resolution of their claims
16 against CoParts in a separate proceeding. Nonetheless, the Court
17 finds that requiring them to do so would be a waste of judicial
18 resources as their claims against both CoParts and Omni involve
19 the same operative facts. Additionally, Plaintiffs’ conspiracy
20 allegations will require analysis of both Omni and CoParts’ joint
21 conduct. Requiring Plaintiffs to seek redress against Omni and
22 CoParts in separate proceedings could result in inconsistent
23 outcomes. Consequently, this factor favors granting Plaintiffs’
24 Motion.

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1 **3. Unexplained Delay**

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3 The third factor requires the Court to consider the
4 Plaintiffs' timeliness in filing the Motion to Amend. See
5 *Clinico v. Roberts*, 41 F.Supp.2d 1080, 1083 (C.D.Cal. 1999). In
6 *Clinico*, the court found that a six week delay in seeking to add
7 a non-diverse defendant was timely. *Id.* at 1083. Similarly, in
8 *Boon*, the Court found that "Plaintiffs' [sic] did not
9 unreasonably delay in filing their First Amended Complaint where
10 it was filed less than three months after they filed their
11 original complaint in Superior Court, and less than a month after
12 removal." 229 F.Supp.2d at 1023. Conversely, the 9th Circuit
13 concluded that six months post removal is too late for a
14 plaintiff to move to amend the complaint to add new parties.
15 *Lopez v. General Motors Corp.*, 697 F.2d 1328, 1332 (9th Cir.
16 1983).

17 In the case at bar, it is clear that Plaintiffs did not seek
18 leave to amend until nearly ten months after removal. Plaintiffs
19 contend that their delay was due to Omni's attempts to impede
20 their good faith investigation. Omni correctly notes, however,
21 that Plaintiff knew of CoParts involvement as early as one month
22 after removal. While the Court appreciates the need to
23 thoroughly investigate the facts underlying the Complaint, a ten
24 month delay is untimely and militates in favor of denying
25 Plaintiffs' Motion.

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1 **4. Motive of Plaintiff**

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3 This factor requires the Court to determine whether
4 Plaintiffs' request for leave to amend is improperly motivated.
5 Defendant asks the Court to impute an improper motive to
6 Plaintiffs' request to add CoParts simply on the basis that
7 CoParts is a non-diverse party. In fact, there is no evidence
8 before the Court compelling such a finding. The mere fact of
9 seeking to join a non-diverse defendant without more is
10 insufficient to establish an improper motive. *IBC Aviation*, 125
11 F.Supp.2d at 1012. Accordingly, this factor favors granting
12 Plaintiffs' Motion.

13
14 **5. Validity of claims against non-diverse party**

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16 This factor examines whether Plaintiffs' claims against the
17 non-diverse party appear meritorious. *Id.* While the facts are
18 heavily disputed, it is clear that Plaintiffs released possession
19 of their vehicle to Omni for inspection. Despite rejecting
20 Plaintiffs' claim, Omni nonetheless surrendered possession of
21 Plaintiffs' vehicle to CoParts as opposed to returning their
22 vehicle to them. CoParts then sold Plaintiffs' vehicle. It is
23 undisputed that both Omni and CoParts participated in the series
24 of events giving rise to this action. The allegations against
25 CoParts together with their level of participation in the facts
26 surrounding Plaintiffs' claims is sufficient to tip this factor
27 in favor of granting Plaintiffs' Motion.

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1 **6. Prejudice against the Plaintiffs**

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3 Finally, the Court must consider whether Plaintiffs will be
4 prejudiced should their motion be denied. In deciding the issue,
5 the Court may consider the extent to which duplicate litigation
6 will result from denial of the Motion. Here, the operative facts
7 against each defendant are largely the same and certainly
8 related. Denying Plaintiffs' Motion will force Plaintiffs to
9 bring a second action against CoParts alleging virtually the
10 identical facts and claims presented in the present action. The
11 Court finds that forcing Plaintiffs to seek redress in another
12 proceeding will unnecessarily duplicate litigation. Accordingly,
13 this factor favors granting Plaintiffs' Motion.

14 In sum, CoParts is inextricably intertwined with Omni and
15 the facts giving rise to Plaintiffs' claims. Further, amendment
16 would conserve judicial resources and reduce the risk of
17 inconsistent results. There is no evidence of an ulterior motive
18 and the claims against CoParts are at least arguable given
19 CoParts possession and sale of Plaintiffs' vehicle. Lastly,
20 disallowing amendment is likely to prejudice Plaintiffs by
21 creating duplicate litigation. Therefore, based on an
22 overwhelming majority of factors favoring amendment, the Court
23 grants Plaintiffs' Motion to Amend.

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1 **B. Motion to Remand**

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3 When an action is removed to a district court based solely
4 on diversity, the court shall remand the case if it grants leave
5 to amend the complaint to join a non-diverse party. *Yniques*, 985
6 F.2d at 1035. In this action, Plaintiffs are California citizens
7 and Omni is a corporate citizen of Illinois having its principal
8 place of business in Georgia. CoParts, on the other hand, is a
9 California corporation whose joinder as a defendant destroys
10 complete diversity and deprives this Court of subject matter
11 jurisdiction. Therefore, this action must be remanded.

12
13 **CONCLUSION**

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15 For the above stated reasons, Plaintiffs' Motion for Leave
16 to Amend is GRANTED, and this matter is hereby REMANDED.

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18 IT IS SO ORDERED.

19 DATED: July 5, 2006

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22 MORRISON C. ENGLAND, JR.
23 UNITED STATES DISTRICT JUDGE
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