

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Ramos v. Subaru of America, Inc.

No. 1:22-cv-01516-AWI-SKO (E.D. Cal. Mar. 6, 2023) · No. 1:22-cv-01516-AWI-SKO · Decided March 6,
2023

OPINION

1 2 3 4 5 6 UNITED STATES DISTRICT COURT 7 EASTERN DISTRICT OF CALIFORNIA 8
9 NOLBERTO RIVERA RAMOS, Case No. 1:22-cv-01516-AWI-SKO 10 Plaintiff, ORDER
DENYING WITHOUT PREJUDICE MOTION FOR LEAVE TO 11 v. FILE FIRST AMENDED
COMPLAINT 12 (Doc. 7) SUBARU OF AMERICA, INC., et al., 13 Defendants. 14
_____/ 15 16 17 Plaintiff Nolberto Rivera Ramos filed
this action in Stanislaus County Superior Court against 18 Defendant Subaru of America, Inc. for
claims under the Song-Beverly Consumer Warranty Act; 19 breach of express and implied
warranties under state law; violation of the federal Magnuson-Moss 20 Warranty Act; and
violation of California Business and Professions Code § 17200.

(See Doc. 1.) 21 Defendant removed the action to this Court on November 21, 2022, on grounds
of diversity 22 jurisdiction under 28 U.S.C. § 1332 and federal question jurisdiction under 28
U.S.C. § 1331. (See 23 id.) 24 On February 17, 2023, Plaintiff filed a motion for leave to file a
first amended complaint 25 pursuant to Fed. R. Civ. P. 15(a). (See Doc. 7.)

Plaintiff seeks leave to join as a defendant U LVS, 26 LLC, doing business as “Livermore
Subaru”; to add a statement of facts and modify the wording of 27 the causes of action; and to
remove the cause of action for violation of the Magnuson-Moss Warranty 28 Act. (See id at 2.) 1
Plaintiff’s proposed first amended complaint is devoid of any allegations that this Court has 2
subject matter jurisdiction.

The burden of establishing subject matter jurisdiction “rests upon the 3 party asserting
jurisdiction.” Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994); 4 see also
Romero v. Securus Techs., Inc., 216 F. Supp. 3d 1078, 1085 (S.D. Cal. 2016) (“As the party 5
putting the claims before the court, Plaintiffs bear the burden of establishing jurisdiction.”).

The 6 Court may consider the issue of subject matter jurisdiction sua sponte at any time during the
7 proceeding, and if the Court finds it lacks subject matter jurisdiction, the court must dismiss (or
8 remand) the action. See Fed. R. Civ. P. 12(h)(3); Scholastic Ent., Inc. v. Fox Ent. Grp., Inc., 336
9 F.3d 982, 985 (9th Cir. 2003).

As described below, the proposed first amended complaint fails to 10 plead sufficiently federal jurisdiction. 11 First, 28 U.S.C. § 1331 grants federal courts jurisdiction “of all civil actions arising under 12 the Constitution, laws, or treaties of the United States.” The general rule, referred to as the “well- 13 pleaded complaint rule,” is that a civil action arises under federal law for purposes of § 1331 when 14 a federal question appears on the face of the complaint.

Caterpillar Inc. v. Williams, 482 U.S. 386, 15 392 (1987). “[F]ederal jurisdiction depends solely on the plaintiff’s claims for relief and not on 16 anticipated defenses to those claims.” *City of Oakland v. BP PLC*, 969 F.3d 895, 903 (9th Cir. 2020) 17 (internal quotations omitted).

Because Plaintiff’s proposed first amended complaint removes the 18 claim for relief under the federal Magnuson-Moss Warranty Act (see Doc. 7 at 2), and all remaining 19 claims arise under California law, it fails to plead jurisdiction under § 1331. 20 Second, 28 U.S.C. § 1332(a) provides jurisdiction over certain actions between citizens of 21 different states.

Complete diversity is a requirement of 28 U.S.C. § 1332. Thus, the “citizenship of 22 each plaintiff [must be] diverse from the citizenship of each defendant.” *Caterpillar Inc. v. Lewis*, 23 519 U.S. 61, 68 (1996). For diversity purposes, the citizenship of an individual is “determined by 24 [their] state of domicile, not [their] state of residence.” *Kanter v. Warner-Lamber Co.*, 265 F.3d 25 853, 857 (9th Cir.

2001). Corporations are citizens of their states of incorporation and their principal 26 places of business. 28 U.S.C. § 1332(c); *Harris v. Rand*, 682 F.3d 846, 850 (9th Cir. 2012). A 27 limited liability company (LLC) is the citizen of every state where its owners or members are 28 citizens, regardless of its state of formation or principal place of business; the citizenship of all of 1 its members must be alleged.

NewGen, LLC v. Safe Cig, LLC, 840 F.3d 606, 611-12 (9th Cir. 2016). 2 Plaintiff does not allege the citizenship of the members or owners of the to-be-joined 3 defendant U LVS, LLC. The proposed first amended complaint simply states that “Defendant U 4 LVS, LLC, is and was a California limited liability company, doing business as[] Livermore Subaru 5 (‘LIVERMORE SUBARU’”) [sic] is registered to do business in the State of California.” (Doc.

7 6 at 9.) “Absent unusual circumstances, a party seeking to invoke diversity jurisdiction should be able 7 to allege affirmatively the actual citizenship of the relevant parties.” *Kanter*, 265 F.3d at 857. 8 Because Plaintiff does not allege the citizenship of the LLC members or owners, the proposed 9 amended complaint fails to plead complete diversity to establish jurisdiction under § 1332.

See, 10 e.g., *Grayson Serv., Inc. v. Crimson Res. Mgmt. Corp.*, 2015 WL 6689261, at *3 (E.D. Cal. Oct. 28, 11 2015) (granting motion to dismiss where plaintiff’s second amendment complaint

was “devoid of 12 any mention of the citizenship of the owners of the LLC” because “failure to specify the state 13 citizenship of the parties is fatal to the assertion of diversity jurisdiction”).

14 Accordingly, Plaintiff’s motion for leave to file a first amended complaint (Doc. 7) is 15 DENIED WITHOUT PREJUDICE, subject to being renewed with a proposed amended complaint 16 that pleads the basis for this Court’s subject matter jurisdiction, addressing the issues identified in 17 this order.1 18 IT IS SO ORDERED. 19 20 Dated: March 6, 2023 /s/ Sheila K. Oberto.

UNITED STATES MAGISTRATE JUDGE 21 22 23 24 1 To the extent joinder of U LVS, LLC as a defendant would destroy diversity jurisdiction, any renewed motion to 25 amend seeking such relief shall be brought under 28 U.S.C. § 1447(e), not Fed. R. Civ. P. 15(a). See *Boon v. Allstate Ins. Co.*, 229 F. Supp. 2d 1016, 1019 n.2 (C.D. Cal. 2002) (“[T]he proper standard for deciding whether to allow post- 26 removal joinder of a diversity-destroying defendant is set forth in 28 U.S.C. 1447(e).”) (citations omitted); see also *Hardin v. Wal-Mart Stores, Inc.*, 813 F. Supp. 2d 1167, 1173 (E.D.

Cal. 2011) (“Plaintiffs may not circumvent 28 U.S.C. 27 § 1447(e) by relying on Fed. R. Civ. P. 15(a) to join non-diverse parties.”) (citing *Clinco v. Roberts*, 41 F. Supp. 2d 1080, 1086 (C.D. Cal. 1999) (holding that amendment under Fed. R. Civ. P. 15(a) should not be permitted where to do 28 so would destroy diversity after removal because it “would allow a plaintiff to improperly manipulate the forum of an