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**JS-6**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

CAMILLE MEGGS,

Plaintiff,

v.

NBCUNIVERSAL MEDIA, LLC; NBC  
SUBSIDIARY (KNBC-TV) LCC; NBC  
UNIVERSAL, LLC; COMCAST  
CORPORATION; ARUTYAN  
ADZHEMYAN; and DOES 4 through 10,

Defendants,

Case No.2:17-cv-03769-ODW (RAOx)

**ORDER GRANTING MOTION TO  
REMAND [16] AND DENYING AS  
MOOT MOTION TO DISMISS, [28]  
MOTION TO STRIKE, [34] AND  
MOTION FOR SUMMARY  
JUDGMENT [38]**

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## I. INTRODUCTION

Plaintiff Camille Meggs moves to remand this case to California Superior Court for the County of Los Angeles, arguing that there is not complete diversity among the parties. (*See generally* Mot., ECF No. 16.) Defendants NBCUniversal Media, LLC (“NBCUniversal Media”) and NBC Subsidiary (KNBC-TV) LLC (“KNBC”) (collectively, the “NBC Defendants”) oppose the motion to remand on the ground that there is no legitimate basis for the joinder of non-diverse individual defendant Arutyan Adzhemyan. (*See generally* Opp’n, ECF No. 22.)

For the reasons below, the Court **GRANTS** Meggs’s Motion to Remand.

## II. FACTUAL BACKGROUND

This case involves alleged sexual harassment and battery of Meggs, an NBC employee, by Adzhemyan, a security guard at her place of employment, on January 19, 2017. (First Amended Complaint (“FAC”) ¶ 118.) On March 22, 2017, before filing the original complaint, Meggs contacted the NBC Defendants to request the identity of all security guards on duty on January 19, 2017, including the one who allegedly attacked Meggs, and any video footage of the incident. (Smith Decl. Ex. 2, ECF No. 16-3.) More than three weeks later, Meggs’s counsel wrote an email to counsel for the NBC Defendants in which he recalled a recent phone conversation between both counsels. (*Id.* Ex. 2.) In the email, Meggs’s counsel claims that counsel for the NBC Defendants told him on the phone that the NBC Defendants “were not inclined” to provide the requested information. (*Id.*)

Meggs, a California citizen, commenced this action in Los Angeles Superior Court on April 18, 2017, against the NBC Defendants and Does 1–100. (Compl. Ex. 1, ECF No. 1-1) On or about April 24, 2017, Meggs’s counsel learned from his own

1 investigation that the security guard in question was possibly Adzhemyan but elected  
2 to wait until the initial round of discovery a week later to confirm. (Smith Decl. ¶ 5.)  
3 Around the same time, Meggs also independently learned his name by approaching  
4 Adzhemyan herself to see the name on his badge. (Chang Decl. ¶ 20, ECF No. 23.)

5 On or about May 1, 2017, the first day allowed by California law, Meggs served  
6 discovery requests upon the NBC Defendants that included a request for the identity  
7 of the security guard involved in the incident on January 19, 2017, as well as any  
8 video footage. (Mot. 3.)

9 On May 18, 2017, the NBC Defendants removed the action to this Court  
10 because there was uncontested complete diversity of citizenship between the parties  
11 and the jurisdictional minimum was met. (Mot. Ex. 6, ECF No. 16-3.) On or about  
12 May 23, 2017, the NBC Defendants advised Meggs that, pursuant to Fed. R. Civ. P.  
13 26(d), now that the action was in federal court, the parties could not seek discovery  
14 from any source until they met and conferred as required by Fed. R. Civ. P. 26(f).  
15 (Chang Decl. ¶ 9, Ex. 4.) The NBC Defendants informed Meggs that the parties were  
16 under no obligation to respond to discovery requests made prior to removal until the  
17 completion of a Rule 26(f) conference. (*Id.*)

18 Meggs filed her FAC on May 26, 2017, and added three defendants, including  
19 Adzhemyan, a California citizen. (*See generally* FAC, ECF No. 11.) At this point,  
20 Meggs had still not received confirmation of Adzhemyan's identity from the NBC  
21 Defendants. The NBC Defendants did not provide Meggs with any video footage of  
22 the alleged January 19, 2017, incident involving Meggs and Adzhemyan until June 7,  
23 2017. (Chang Decl. ¶ 22, Ex. 9.)

24 On June 7, 2017, Meggs's counsel wrote an email to NBC Defendants to inform  
25 them of the FAC filing and Meggs's position that remand was appropriate. (Chang  
26 Decl. ¶ 14, Ex. 6.) Meggs contends that this email satisfies the Local Rule 7-3  
27 requirement that parties meet and confer before the filing of any motion. (Reply 1,  
28

1 ECF No. 31.) On May 31, 2017, the NBC Defendants advised Meggs that  
2 Adzhemyan is not an employee of the NBC Defendants but of a third-party security  
3 guard provider, Securitas Security Services USA, Inc. (“Securitas”). (Chang Decl. ¶  
4 18.)

5 On June 5, 2017, Meggs filed the motion for remand, which is now before the  
6 Court for decision.<sup>1</sup>

### 7 III. LEGAL STANDARD

8 Federal courts have subject matter jurisdiction only as authorized by the  
9 Constitution and Congress. U.S. Const. art. III, § 2, cl. 1; *see also Kokkonen v.*  
10 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts have original  
11 jurisdiction where an action arises under federal law or where each plaintiff’s  
12 citizenship is diverse from each defendant’s citizenship and the amount in controversy  
13 exceeds \$75,000. 28 U.S.C. §§ 1331, 1332(a).

14 A suit filed in state court may be removed to federal court only if the federal  
15 court would have had original jurisdiction over the suit. *Id.* § 1441(a). The removal  
16 statute is strictly construed against removal, and “[f]ederal jurisdiction must be  
17 rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v.*  
18 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The party seeking removal bears the  
19 burden of establishing federal jurisdiction. *Durham v. Lockheed Martin Corp.*, 445  
20 F.3d 1247, 1252 (9th Cir. 2006). Removal based on a court’s diversity jurisdiction is  
21 proper despite the presence of a non-diverse defendant where that defendant is  
22 fraudulently joined or a sham defendant. *See Caterpillar, Inc. v. Lewis*, 519 U.S. 61,  
23 68 (1996).

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<sup>1</sup> Having carefully considered the papers filed in support of and in opposition to the instant Motion, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 Defendants urging fraudulent joinder must “prove that individuals joined in the  
2 action cannot be liable on any theory.” *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313,  
3 1318 (9th Cir. 1998). “If the plaintiff fails to state a cause of action against the [non-  
4 diverse] defendant, and the failure is obvious according to the settled rules of the  
5 state,” the joinder is considered fraudulent, and the party’s citizenship is disregarded  
6 for purposes of diversity jurisdiction. *Hamilton Materials, Inc. v. Dow Chem. Corp.*,  
7 494 F.3d 1203, 1206 (9th Cir. 2007) (quoting *McCabe v. Gen. Foods Corp.*, 811 F.2d  
8 1336, 1339 (9th Cir. 1987)). However, “[i]f there is a non-fanciful possibility that  
9 plaintiff can state a claim under [state] law against the non-diverse defendant[,] the  
10 court must remand.” *Hamilton Materials*, 494 F.3d at 1206; *see also Good v.*  
11 *Prudential Ins. Co. of Am.*, 5 F. Supp. 2d 804, 807 (N.D. Cal. 1998) (“The defendant  
12 must demonstrate that there is no possibility that the plaintiff will be able to establish  
13 a cause of action in State court against the alleged sham defendant”). Given this  
14 standard, “[t]here is a presumption against finding fraudulent joinder, and defendants  
15 who assert that plaintiff has fraudulently joined a party carry a heavy burden of  
16 persuasion.” *Plute v. Roadway Package Sys., Inc.*, 141 F. Supp. 2d 1005, 1008 (N.D.  
17 Cal. 2001).

18  
19 However, where a proposed amendment would add a non-diverse party after  
20 removal—thereby precluding existing diversity jurisdiction—there is greater  
21 discretion in determining whether to allow the amendment. 28 U.S.C. § 1447(e); *see*  
22 *also Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 691 (9th Cir.1998).<sup>2</sup> 28 U.S.C  
23 § 1447(e) provides: “[i]f after removal the plaintiff seeks to join additional defendants  
24 whose joinder would destroy subject matter jurisdiction, the court may deny joinder,  
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26 <sup>2</sup> This Order does not determine the merits of the claims against Adzhemyan. Rather, as discussed  
27 above, the purpose of this analysis is to determine whether the claims appear to be valid for  
28 jurisdictional purposes. Should Meggs bring an action in the Superior Court against Adzhemyan, its  
substantive validity and timeliness would remain issues as to which that court would make any final  
determination.

1 or permit joinder and remand the action to the State court.” Here, Meggs is not  
2 seeking leave to amend because she amended her complaint as a matter of right within  
3 the time proscribed by Federal Rule of Civil Procedure 15(a)(1). However, because  
4 Meggs added Adzhemyan as a non-diverse defendant in her FAC after removal, the  
5 Court will constructively use the “leave to amend” standard to assess whether the  
6 joinder was proper.

7 Courts generally consider the following *Palestini* factors when deciding  
8 whether to allow an amendment that adds non-diverse defendants under 28 U.S.C. §  
9 1447: (1) whether the new defendants should be joined under Fed. R. Civ. P. 19(a) as  
10 ‘needed for just adjudication’; (2) whether the statute of limitations would preclude an  
11 original action against the new defendants in state court; (3) whether there has been  
12 unexplained delay in requesting joinder; (4) whether joinder is intended solely to  
13 defeat federal jurisdiction; (5) whether the claims against the new defendant appear  
14 valid; and (6) whether denial of joinder will prejudice the plaintiff.” *Calderon v.*  
15 *Lowe’s Home Ctrs., LLC*, No. 2:15–CV–01140–ODW–AGR, 2015 WL 3889289, at  
16 \*3 (C.D. Cal. June 24, 2015) (citing *Palestini v. Gen. Dynamics Corp.*, 193 F.R.D.  
17 654, 658 (C.D. Cal. 2000)). “Any of these factors might prove decisive, and none is  
18 an absolutely necessary condition for joinder.” *Cruz v. Bank of N. Y. Mellon*, No. 12–  
19 CV–00846–LHK, 2012 WL 2838957, at \*4 (N.D. Cal. July 10, 2012) (internal  
20 quotation marks omitted).  
21

22 The consideration of the *Palestini* factors is only relevant for the purposes of  
23 determining whether joinder of a non-diverse defendant is proper. A denial of joinder  
24 under § 1447(e) does not constitute a final determination of the viability of a particular  
25 claim. Thus, it does not preclude a plaintiff from bringing a separate action against a  
26 non-diverse defendant in state court. *See Newcombe*, 157 F.3d at 691 (holding that  
27 the district court did not abuse its discretion by finding no prejudice to plaintiff  
28

1 because a parallel action against the non-diverse defendant could be brought in state  
2 court).

#### 3 IV. DISCUSSION

4 The NBC Defendants argue that this Court should deny Meggs’s motion on  
5 both procedural and substantive grounds; they contend she violated Local Rule 7-3  
6 and that the *Palestini* factors do not weigh in favor of remand. The Court finds both  
7 arguments unpersuasive and will address each in turn.

##### 8 A. Meggs’s Potential Violation of Local Rule 7-3 Was Minimal

9 Meggs and the NBC Defendants disagree procedurally and substantively about  
10 whether Meggs followed Central District Local Rule 7-3 and whether the *Palestini*  
11 factors favor remand. As a preliminary matter, the Court declines to decide this  
12 motion based on the NBC Defendants’ contention that Meggs violated Local Rule 7-3.  
13 (Opp’n 4.) Local Rule 7-3 provides that “counsel contemplating the filing of any  
14 motion shall first contact opposing counsel to discuss thoroughly, preferably in  
15 person, the substance of the contemplated motion and any potential resolution . . . at  
16 least seven (7) days prior to the filing of the motion.” L.R. 7-3. If the parties are  
17 unable to reach a resolution during the conference, counsel for the moving party may  
18 file the motion. *See id.*

19 Here, the NBC Defendants argue that the email exchange between the NBC  
20 Defendants’ and Meggs’s counsel on May 26, 2017, fails to satisfy Local Rule 7-3’s  
21 meet-and-confer requirement. (Opp’n 3.) The NBC Defendants imply that the Court  
22 should therefore deny Meggs’s motion on this ground. The Court disagrees. The  
23 NBC Defendants are mistaken in asserting that a meet-and-confer conference should,  
24 “at a minimum, occur via teleconference.” (*Id.*) A “substantial email exchange” can  
25 suffice. *Gibson Brands, Inc. v. John Hornby Skewes & Co., Ltd.*, No. CV 14–00609  
26 DDP (SS), 2015 WL 4651250, at \*2 (C.D. Cal. Aug. 4, 2015).

27 Counsel for both parties originally scheduled the meet-and-confer conference  
28 via phone for May 26, 2017. (Mot. Ex. 9.) Due to a death in the family of one

1 member of counsel for the NBC Defendants, another member contacted Meggs’s  
2 counsel one day before the conference to propose a new date of May 31, 2017. (Mot.  
3 Ex. 10.) However, Meggs’s counsel insisted on the original date, emphasizing the  
4 “limited window” within which to draft and file the motion, and asked that another  
5 member of the NBC Defendants’ counsel make themselves available. (*Id.* Ex. 11.)  
6 While the Court recognizes that Meggs’s counsel might find it prudent to file for  
7 remand as soon as possible after removal, there is no basis for the position that it  
8 would be impossible to reschedule the meet-and-confer conference. The procedure  
9 for remanding a case to state court is governed by 28 U.S.C. § 1447(c), which requires  
10 remand “if at any time before final judgment it appears that the district court lacks  
11 subject matter jurisdiction . . . .” Regardless of the reason that Meggs’s counsel  
12 rejected the rescheduling of the conference, there was no legal requirement to do so.

13         Nonetheless, it is undisputed that Meggs made a good faith initial attempt to  
14 conduct a proper conference on May 26, 2017, before the unexpected delay by the  
15 NBC Defendants. (Mot. Ex. 10). Courts have considered this good faith effort in  
16 deciding whether to consider a motion. *See Fox v. J.P. Morgan Chase Bank*, No. CV  
17 16–193 DMG (JEMx), 2016 WL 7444974, at \*1 n.1 (C.D. Cal. March 17, 2016)  
18 (considering the good faith effort of defendants to meet and confer with plaintiff’s  
19 counsel in deciding whether to grant a motion to remand).

20         Regarding Meggs’s compliance with the requirement of Local Rule 7-3 to  
21 discuss the substance of the contemplated motion *thoroughly*, the May 26, 2017 email  
22 clearly states that the addition of Adzhemyan destroys diversity jurisdiction and  
23 warrants remand. (Mot. Ex. 13, ECF No. 16-4.) Although the thoroughness of the  
24 email is debatable, the Court sees no need to probe further. Even when the intended  
25 meet-and-confer email fails to discuss the substance of the contemplated motion at all,  
26 courts have declined to let such a “minimal” violation prevent granting a motion to  
27 remand when the non-offending party is not prejudiced. *See Anyang Xinyi Electric*  
28



1 *Glass Co., Ltd. v. B & F Intl. (USA) Inc.*, No. CV 15–00862–BRO (AJWx), 2016 WL  
2 7435482, at \*6 n.6 (C.D. Cal. Aug. 4, 2016).

3 The NBC Defendants will not be prejudiced if the Court grants the motion to  
4 remand despite any procedural error. This is because the NBC Defendants would  
5 ultimately conduct a subsequent meet-and-confer, and, as Meggs has indicated no  
6 intention to set aside the motion to remand, Meggs would refile the instant motion,  
7 resulting in the same outcome: remand to state court. *See Reed v. Sandstone Props.,*  
8 *L.P.*, No. CV 12–05021 MMM (VBKx), 2013 WL 1344912, at \*6 (C.D. Cal. Apr. 2,  
9 2013) (electing to consider a motion on the merits notwithstanding an untimely pre-  
10 filing conference because the opposing party did not suffer any prejudice). Thus, to  
11 avoid undue delay, the Court declines to deny Meggs’s motion on this ground.

## 12 **B. *Palestini* Factors Weigh in Favor of Remand**

13 The Court concludes that the *Palestini* factors weigh in favor of Meggs’s  
14 motion to remand. Accordingly, each factor will be addressed in turn.

### 15 ***1. Adzhemyan is a Necessary Party Under Rule 19(a)***

16 A person must be joined if, in the person’s absence, “the court cannot accord  
17 complete relief among the parties” or if that person “claims an interest relating to the  
18 subject of the action” such that proceeding without the person would “impair the  
19 person’s ability to protect the interest” and leave that person susceptible to multiple or  
20 inconsistent obligations. Fed. R. Civ. P. 19(a). However, joinder is not required  
21 under Rule 19(a) if it would destroy subject matter jurisdiction. *Lopez v. Gen. Motors*  
22 *Corp.*, 697 F.2d 1328, 1332 (9th Cir. 1983). Additionally, joinder is not appropriate if  
23 the non-diverse defendant is only “tangentially related to the cause of action or would  
24 not prevent complete relief.” 28 U.S.C. § 1447(e); *Clinco v. Roberts*, 41 F. Supp. 2d  
25 1080, 1082 (C.D.Cal. 1999).

26 Because Meggs alleges that Adzhemyan is an employee of the NBC  
27 Defendants, the doctrine of *respondeat superior* is relevant in assessing whether  
28 Adzhemyan is a necessary party in this action. Under the doctrine of *respondeat*

1 *superior*, an employer is vicariously liable for his employee’s torts committed within  
2 the scope of the employment. *Id.* This doctrine is based on the policy that losses  
3 caused by the torts of employees, “which as a practical matter are sure to occur in the  
4 conduct of the employer’s enterprise, are placed upon that enterprise itself, as a  
5 required cost of doing business.” *Id.* Furthermore, a plaintiff seeking to hold an  
6 employer liable for injuries caused by employees acting within the scope of their  
7 employment is not required to join the employees as defendants. *Perez v. City of*  
8 *Huntington Park*, 7 Cal. App. 4th 817, 820 (1992).

9 Here, Meggs contends that joining Adzhemyan in this action is necessary.  
10 (Reply 7.) Meggs asserts that any liability of Defendants via *respondeat superior*  
11 creates joint and several liability with Adzhemyan in which he would still be directly  
12 liable for his actions. (*Id.*) However, regardless of whether Securitas is the true  
13 employer of Adzhemyan, “where vicarious liability is involved, there is no fault to  
14 apportion.” *Srithong v. Total Inv. Co.*, 23 Cal. App. 4th 721, 728 (1994) (explaining  
15 that, “unlike the doctrine of joint and several liability, vicarious liability is a matter of  
16 status or relationship, not fault”). Thus, an employer that is vicariously liable for an  
17 employee’s actions is also *fully* liable, making the joinder of the employee  
18 unnecessary for complete relief. *See id.*

19 Crucially, for the doctrine of *respondeat superior* to apply, the plaintiff must  
20 prove that the employee committed the tortious conduct within the scope of  
21 employment. *Ducey v. Argo Sales Co.*, 25 Cal. 3d 707, 721 (1979). The  
22 determination of whether an employee acted within the scope of employment is  
23 ordinarily a question of fact; it only becomes one of law when “the facts are  
24 undisputed and no conflicting inferences are possible.” *Perez v. Van Groningen &*  
25 *Sons, Inc.*, 41 Cal. 3d 962, 968 (1986).

26 Meggs’s FAC states that “Adzhemyan was acting as the NBC Defendants’  
27 agent and/or employee within the scope of his agency and/or employment at the time  
28 of the January 19, 2017 incident.” (FAC ¶¶ 160, 171, 185, 195.) However, Meggs

1 alleges in the FAC that Adzhemyan sexually harassed her on that date when he  
2 “brushed his arms and hands against her breasts without her consent.” (*Id.* ¶ 118.)  
3 The Supreme Court of California has held that harassment is “conduct outside the  
4 scope of necessary job performance . . . .” *Reno v. Baird*, 18 Cal. 4th 640, 646 (1998).  
5 This can include sexual harassment. *Farmers Ins. Grp. v. Cnty. of Santa Clara*, 11  
6 Cal. 4th 992, 1019 (1995).

7 Because there is a possibility that the acts that gave rise to some of Meggs’s  
8 claims were not performed within the scope of Adzhemyan’s employment, his  
9 potential liability is not subsumed by the doctrine of *respondeat superior*. See  
10 *Godinez v. Alta-Dena Certified Dairy LLC*, No. CV-14-02981-RSWL (SSx), 2014  
11 WL 2761172, at \*4 (C.D. Cal. June 17, 2014) (holding that an employee’s potential  
12 personal liability for harassment gives rise to the possibility of a viable state-law claim  
13 against the non-diverse employee). Since Meggs may have viable claims against  
14 Adzhemyan independent of his employer, he is a necessary party to this action  
15 because his absence would prevent Meggs from obtaining complete relief. See  
16 *Forrester v. Orkin Servs. of Cal., Inc.*, No. 12-cv-01975-JST, 2013 WL 2299545, at  
17 \*3 (N.D. Cal. May 24, 2013). Moreover, a separate action against Adzhemyan would  
18 be redundant and could lead to inconsistent outcomes. *Id.* Thus, this factor weighs in  
19 favor of joinder and remand.

## 20 ***2. A New Action Against Adzhemyan Would Not Be Time-Barred***

21 A two-year statute of limitations applies in California to suits for injury to an  
22 individual caused by the wrongful act or neglect of another. Cal. Civ. Proc. Code  
23 § 335.1. Thus, any of Meggs’s claims against Adzhemyan individually would not be  
24 time-barred because the incident involving Adzhemyan occurred on January 19, 2017,  
25 less than a year ago. Therefore, this factor weighs against joinder and remand.

## 26 ***3. There Has Been No Unexplained Delay in Seeking Joinder***

27 Courts also consider whether the delay between the filing of the initial  
28 complaint and the amended complaint was reasonable. The court considers the

1 amount of time between filings, as well as the reason for any delay. *See Bakshi v.*  
2 *Bayer Healthcare, LLC*, No. 06–36027, 2007 WL 1232019, at \*4 (N.D. Cal. March  
3 21, 2007).

4 Meggs filed her complaint in state court on April 18, 2017. The NBC  
5 Defendants removed the case to this Court on May 18, 2017. Meggs amended the  
6 complaint on May 26, 2017.

7 The NBC Defendants argue that there is no reason why Meggs “could not  
8 simply look at Adzhemyan’s identification badge” at any time between the January  
9 19, 2017, incident and the initial filing of the lawsuit nearly three months later.  
10 (Opp’n 14.) In so doing, the NBC Defendants implicitly ask this Court to affirm that  
11 it is not only reasonable but expected that a plaintiff must place herself within mere  
12 inches of someone she is suing for sexual harassment. This Court strongly disagrees.  
13 To hold otherwise would encourage potentially dangerous interactions between  
14 adverse parties that defy common sense and threaten the preeminence of the rule of  
15 law in maintaining social order.

16 This Court believes the NBC Defendants’ unreasonable demand of Meggs is a  
17 smokescreen to distract from the fact that they have no explanation for withholding  
18 Adzhemyan’s identity. In a letter dated March 22, 2017—nearly four weeks before  
19 filing her initial complaint—Meggs formally requested “the names and duty stations  
20 of all security guards on duty at the KNBC premises in Universal City on January 19,  
21 2017,” as well as security footage of the incident. (Mot. Ex. 1.) The NBC Defendants  
22 responded that they were “not inclined” to provide the requested information. (FAC ¶  
23 48.)

24 The NBC Defendants argue that once the action was removed to this Court on  
25 May 17, 2017, Fed. R. Civ. P. 26(d) prohibited the parties from seeking discovery  
26 from any source until they met and conferred as required by Rule 26(f). (Opp’n 3.)  
27 This would apply to Meggs’s prior request for the identity of the security guard.  
28 Meggs argues that continued discovery is proper under 28 U.S.C. § 1450, which

1 states, “Whenever any action is removed from a State court to a district court of the  
2 United States . . . All injunctions, orders, and other proceedings had in such action  
3 prior to its removal shall remain in full force and effect until dissolved or modified by  
4 this district court.”

5 The Court acknowledges that other courts have held that discovery requests  
6 filed in state court do not constitute “proceedings” within the meaning of 28 U.S.C.  
7 §1450. See *Kogok v. T-Mobile USA, Inc.*, No. 13cv838–BEN (BLM), 2013 WL  
8 1942211, at \*1 n.1 (S.D. Cal. May 9, 2013), citing *Sterling Savings Bank v. Fed. Ins.*  
9 *Co.*, No. CV–12–0368–LRS, 2012 WL 3143909, at \*2 (E.D. Wash. Aug.1, 2012)  
10 (holding that discovery requests filed in state court prior to removal are not binding in  
11 federal court because at the time of removal the Federal Rules of Civil Procedure  
12 control and discovery does not begin until the parties participate in a Rule 26(f)  
13 conference).

14 Even if this Court defers to those prior holdings, the Court notes that the NBC  
15 Defendants still withheld the identity of Adzhemyan for nearly two months without  
16 explanation, from Meggs’s initial formal request on March 22, 2017, until the removal  
17 to this Court on May 18, 2017. (Smith Decl. Ex. 1, Ex 6.) While the NBC  
18 Defendants argue that Meggs learned Adzhemyan’s name on or about April 24, 2017,  
19 from her own investigation, she maintains that she had “no intention of rushing to add  
20 Adzhemyan based on uncertain information . . . .” (Reply 6.) Meggs further justifies  
21 her reluctance to amend the complaint at that time due to her intent to file a discovery  
22 request for Adzhemyan’s identity a week later on May 1, 2017, the first day permitted  
23 under California law. (Mot. 3.) Further, Meggs had no reason to believe the NBC  
24 Defendants would remove the case to federal court and thus avoid their duty to  
25 respond to existing discovery requests as per Fed. R. Civ. P. 26(d).

26 Due to the combination of these contextual factors, the Court determines that  
27 Meggs was reasonable in waiting eight days after removal to amend the complaint.  
28 See *Boon v. Allstate Ins. Co.*, 229 F. Supp. 2d 1016, 1023 (C.D. Cal. 2002) (holding

1 that “[p]laintiffs did not unreasonably delay in filing their First Amended Complaint  
2 where it was filed less than a month after removal”). Underscoring this is the fact that  
3 Meggs filed her amended complaint during the period in which she was entitled to do  
4 so as of right. *See* Fed. R. Civ. P. 15(a)(1). Thus, the Court holds that there was no  
5 unexplained delay in joining Adzhemyan, and this factor weighs in favor of joinder  
6 and remand.

#### 7 ***4. Meggs Did Not Seek Joinder Solely to Defeat Federal Jurisdiction***

8 With regard to the fourth *Palestini* factor, “the motive of a plaintiff in seeking  
9 the joinder of an additional defendant is relevant to a trial court’s decision to grant the  
10 plaintiff leave to amend his original complaint.” *Desert Empire Bank v. Ins. Co. of N.*  
11 *Am.*, 623 F.2d 1371, 1376 (9th Cir. 1980). The Court therefore “should look with  
12 particular care at such motive in removal cases[] when the presence of a new  
13 defendant will defeat the court’s diversity jurisdiction and will require a remand to the  
14 state court.” *Id.*

15 This Court determined above that Adzhemyan may be personally liable  
16 independent of his employer. Thus, Meggs has a valid reason for including him as a  
17 defendant. Further, the Court has also determined that there is no unexplained delay  
18 in seeking joinder of Adzhemyan and that Meggs demonstrated his importance to the  
19 action before filing the initial complaint by requesting his identity from the NBC  
20 Defendants. (Mot. Ex. 1); *see also IBC v. Aviation Servs. v. Compania Mexicana de*  
21 *Aviacion, S.A. de C.V.*, 125 F. Supp. 2d 1008, 1012 (N.D. Cal. 2000) (declining to  
22 impute an improper motive for joinder where a plaintiff alleged that an additional  
23 defendant had a role in the underlying actions at issue in the case).

24 Moreover, after filing her initial complaint, which contained allegations of  
25 sexual harassment against the then-unnamed security guard, Meggs again requested  
26 his identity from the NBC Defendants in an email on May 24, 2017. (Mot. Ex. 9.)  
27 Meggs emphasized that the security guard’s identity was “particularly important” for  
28 her case and noted that she had sought it “for some time and through multiple

1 avenues, including pre-filing requests.” (*Id.*) These statements show Meggs’s intent  
2 from the outset to add Adzhemyan as a defendant once his identity was confirmed.  
3 Thus, both the procedural history and merits of this case weigh against a  
4 determination that Meggs sought to join Adzheymyan solely to defeat federal  
5 jurisdiction. Therefore, this factor weighs in favor of joinder and remand.

### 6 ***5. Meggs’s Claims Against Adzhemyan Are Valid***

7 In considering the fifth factor, “the [c]ourt need only determine whether the  
8 claim seems valid,” which is not the same as the standard in either a motion to dismiss  
9 or a motion for summary judgment. *See Freeman v. Cardinal Health Pharm. Servs.,*  
10 *LLC*, No. 2:14–cv–01994–JAM–KJN, 2015 WL 2006183, at \*3 (E.D. Cal. May 1,  
11 2015) (rejecting defendants’ assertion that “the Court should consider whether the  
12 amended complaint could be defeated by a motion to dismiss”) (internal quotation  
13 marks omitted); *Taylor v. Honeywell Corp.*, No. C 09–4947 SBA, 2010 WL 1881459,  
14 at \*3 (N.D. Cal. May 10, 2010) (holding that “[t]he existence of a facially legitimate  
15 claim against the putative defendant weighs in favor of permitting joinder under  
16 section 1447(e)”).

17 The NBC Defendants argue that the claims against Adzhemyan are meritless  
18 because any liability for his actions is imputed to his employer under the doctrine of  
19 *respondeat superior*. (Opp’n 15.) As discussed, however, the Court determined that  
20 Adzhemyan may be personally liable independent of his employer. The NBC  
21 Defendants also contend that the evidence, which includes footage from the January  
22 19, 2017, incident, “unequivocally establishes that there was no assault, battery, false  
23 imprisonment, or other unlawful conduct by Adzhemyan.” (*Id.*)

24 However, in making this argument, the NBC Defendants refer to two 30-second  
25 video clips, in which it has not been confirmed that the security guard shown is  
26 Adzhemyan. (Reply 9.) While this is ultimately an issue for the state court on  
27 remand, this Court agrees with Meggs that such brief clips cannot dispose of the  
28 allegations of intentional torts that may have taken place before or after the clips or

1 even off-camera. (*See id.*); *see also Mudra Intl., LLC, v. Kellwood Co., Inc.*, CV 08–  
2 03642 DDP (JCx), 2008 WL 11336465, at \*7 (C.D. Cal. Sept. 16, 2008) (holding that  
3 in weighing the *Palestini* factors, the court does not seek to address the strengths and  
4 weaknesses of a claim, but rather to ensure that it appears to have enough merit to  
5 proceed); *Negrete v. Meadowbrook Meat Co.*, No. ED CV 11–1861 DOC (DTBx),  
6 2012 WL 254039, at \*7–8 (C.D. Cal. Jan. 25, 2012) (holding that a claim was valid  
7 because the defendants had failed to show there was “no possibility” that the plaintiff  
8 could state a claim against the proposed defendant) (emphasis omitted). Thus, the  
9 claims against Adzhemyan are not invalid, and this factor weighs in favor of joinder  
10 and remand.

#### 11 ***6. Meggs Would Suffer Prejudice If Adzhemyan Were Not Joined***

12 For the sixth factor, any prejudice to a plaintiff “exists if the proposed  
13 defendant is crucial to the case” and “does not exist if complete relief can be afforded  
14 without that defendant.” *McCarty v. Johnson & Johnson*, No. 1:10–CV–00350  
15 OWW–DLB, 2010 WL 2629913, at \*9 (E.D. Cal. June 29, 2010) (internal quotation  
16 marks omitted). As discussed, Meggs cannot receive an adequate final judgment  
17 without participation from Adzhemyan as a party because he may be personally liable  
18 independent of his employer.

19 Moreover, the interests of judicial economy counsel against requiring Meggs to  
20 pursue her claims against Adzhemyan in state court. *See IBC*, 125 F. Supp. 2d at  
21 1013 (“[D]enying the amendment would require Plaintiff to choose between  
22 redundant litigation arising out of the same facts and involving the same legal issues  
23 or forgoing its potential claims against” the additional defendant). Therefore, this  
24 factor weighs in favor of joinder and remand.

#### 25 ***7. Balance of Factors Weighs in Favor of Joinder and Remand***

26 Based on the above analysis, the Court concludes that the equities weigh in  
27 favor of joinder and remand. Thus, because Adzhemyan is a California citizen, there  
28 is no longer complete diversity between the parties and this Court does not have



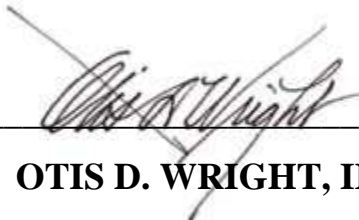
1 jurisdiction. Therefore, the Court remands this case to the Superior Court of  
2 California.

3 **V. CONCLUSION**

4 For the foregoing reasons, the Court determines that Meggs's joinder of  
5 Adzhemyan is proper. Because both Adzhemyan and Meggs are citizens of  
6 California, the Court lacks subject matter jurisdiction over this action. Thus, the  
7 Court **GRANTS** Meggs's Motion to Remand. (ECF No. 16.) Therefore, this action is  
8 hereby remanded to the Superior Court of California, County of Los Angeles, Case  
9 No. BC658407. Further, the pending motions to dismiss (ECF No. 28), to strike (ECF  
10 No. 34), and for summary judgment (ECF No. 38) are hereby **DENIED AS MOOT**,  
11 as the Court lacks jurisdiction to rule on them. The Clerk of the Court shall close the  
12 case.

13  
14  
15 **IT IS SO ORDERED.**

16 July 12, 2017

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18 

19  
20 **OTIS D. WRIGHT, II**  
21 **UNITED STATES DISTRICT JUDGE**