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

10
11 ALEXANDRO GRACIA, an individual,

12 Plaintiff,

13 v.

14 LEMONADE INSURANCE COMPANY,
15 a New York corporation; METROMILE
16 OPERATING COMPANY, INC., a
17 Delaware corporation and DOES 1 through
18 100, inclusive,

19 Defendants.

Case No. 2:24-cv-01566 SPG (PVCx)

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND [ECF NO. 17]**

20 Before the Court is Plaintiff Alexandro Gracia's motion to remand to the Superior
21 Court of California for the County of Los Angeles. (ECF No. 17 ("Mot.")). Defendant
22 opposes. (ECF No. 19). Having considered the parties' submissions, the relevant law, and
23 the record in this case, the Court finds that the matter is suitable for resolution without oral
24 argument. Fed. R. Civ. P. 78(b); C.D. Cal. L. R. 7.15. For the reasons stated below, the
25 Court **DENIES** Plaintiff's Motion.

1 **I. BACKGROUND AND PARTIES**

2 Plaintiff Alexandro Gracia (“Plaintiff”) alleges that Defendants Lemonade
3 Insurance Company and Metromile Operating Company, Inc. (together “Defendants”)
4 violated California’s employment laws. (ECF No. 1-4 (“FAC”)).¹ Plaintiff alleges
5 discrimination, retaliation, failure to prevent discrimination, and disability discrimination
6 in violation of the Fair Employment and Housing Act (“FEHA”), wrongful termination in
7 violation of public policy, intentional and negligent infliction of emotional distress, and
8 failure to produce employment documents. (*Id.* at 1-2). Plaintiff’s initial complaint was
9 filed in state court on January 10, 2024. (ECF No. 1-1 at 1). Plaintiff filed his First
10 Amended Complaint on February 1, 2024. (FAC). On February 26, 2024, Defendant
11 Lemonade Insurance filed the Notice of Removal in this Court. (ECF No. 1). On March
12 25, 2024, Plaintiff filed the instant Motion. Defendants opposed on April 10, 2024. (ECF
13 No. 19 (“Opp.”)).

14 Plaintiff is, and at all relevant times was, a resident in the County of Los Angeles,
15 California. (ECF No. 17-1 at 6). Defendant Lemonade is a corporation organized and
16 existing under the laws of the State of New York, with its principal place of business in the
17 State of New York. (ECF No. 1 at 7). Defendant Metromile is a corporation organized
18 and existing under the laws of the State of New York, with its principal place of business
19 in the State of California. (*Id.*).

20 **II. LEGAL STANDARD**

21 To remove a case from a state court to a federal court, a defendant must file a notice
22 of removal “containing a short and plain statement of the grounds for removal.” 28 U.S.C.
23 § 1446(a). When removal is based on diversity of citizenship, the amount in controversy
24 must exceed \$75,000 and the parties must be diverse. 28 U.S.C. § 1332. The party
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26 ¹ In Plaintiff’s Motion and Plaintiff’s FAC, Plaintiff is identified as “Alexandro Garcia.”
27 Similarly, the official name on the Court’s ECF system is “Alexandro Garcia.” In
28 Plaintiff’s Opposition, Plaintiff identifies as “Alexandro Gracia” and notes that the
previous identification is erroneous.

1 invoking the removal statute bears the burden of establishing that federal subject-matter
2 jurisdiction exists. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988).
3 “The removal statute is strictly construed, and any doubt about the right of removal requires
4 resolution in favor of remand.” *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241,
5 1244 (9th Cir. 2009). Moreover, if it is “unclear or ambiguous from the face of a state-
6 court complaint whether the requisite amount in controversy is pled, the removing
7 defendant bears the burden of establishing, by a preponderance of the evidence, that the
8 amount in controversy exceeds the jurisdictional threshold.” *Urbino v. Orkin Servs. of*
9 *Cal., Inc.*, 726 F.3d 1118, 1121–22 (9th Cir. 2013) (internal citations and quotation marks
10 omitted).

11 A non-diverse party may be disregarded for purposes of determining whether
12 jurisdiction exists if the court determines that the party’s joinder was “fraudulent” or a
13 “sham.” *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001); *Ritchey v.*
14 *Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998); *McCabe v. Gen. Foods Corp.*, 811
15 F.2d 1336, 1339 (9th Cir. 1987). The term “fraudulent joinder” is a term of art and does
16 not connote any intent to deceive on the part of plaintiffs or their counsel. *Lewis v. Time*
17 *Inc.*, 83 F.R.D. 455, 460 (E.D. Cal. 1979), *aff’d*, 710 F.2d 549 (9th Cir. 1983). The relevant
18 inquiry is whether the plaintiff has failed to state a cause of action against the non-diverse
19 defendant, and the failure is obvious under settled state law. *Morris*, 236 F.3d at 1067;
20 *McCabe*, 811 F.2d at 1339.

21 The burden of proving fraudulent joinder is a heavy one. The removing party must
22 prove that there is “no possibility that plaintiff will be able to establish a cause of action in
23 State court against the alleged sham defendant.” *Good v. Prudential Ins. Co. of Am.*, 5 F.
24 Supp. 2d 804, 807 (N.D. Cal. 1998). In this regard, “[r]emand must be granted unless the
25 defendant shows that the plaintiff ‘would not be afforded leave to amend his complaint to
26 cure [the] purported deficiency.’” *Padilla v. AT & T Corp.*, 697 F. Supp. 2d 1156, 1159
27 (C.D. Cal. 2009); *Macey v. Allstate Prop. & Cas. Ins. Co.*, 220 F. Supp. 2d 1116, 1117
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1 (N.D. Cal. 2002) (“If there is a non-fanciful possibility that plaintiff can state a claim under
2 California law against the non-diverse defendants the court must remand.”).

3 **III. DISCUSSION**

4 Plaintiff argues Defendants have failed to establish that complete diversity exists in
5 this action. Defendants oppose, arguing that Plaintiff attempts to destroy complete
6 diversity using a sham defendant, namely, Defendant Metromile. The Court turns to these
7 arguments now.

8 **A. Amount in Controversy**

9 “A removing defendant’s notice of removal need not contain evidentiary
10 submissions but only plausible allegations of jurisdictional elements.” *Salter v. Quality*
11 *Carriers, Inc.*, 974 F.3d 959, 964 (9th Cir. 2020) (internal citation omitted). However, if
12 a plaintiff then contests the allegations in the notice of removal, both sides may “submit
13 proof and the court decides, by a preponderance of the evidence, whether the amount in
14 controversy requirement has been satisfied.” *Dart Cherokee Basin Operating Co., LLC v.*
15 *Owens*, 574 U.S. 81, 82 (2014).

16 Here, Defendants allege that this “case may be removed pursuant to the provisions
17 of 28 U.S.C. § 1441, in that it is a civil action wherein the amount in controversy for
18 Plaintiff’s claims exceeds the sum of seventy-five thousand dollars (\$75,000), exclusive of
19 interest and costs...” (ECF No. 1 at 5). Plaintiff does not contest that the amount in
20 controversy exceeds the jurisdictional floor. Thus, the Court finds that the amount in
21 controversy is met.

22 **B. Whether There Exists Complete Diversity**

23 Defendants assert that this district court has removal jurisdiction based on diversity
24 of citizenship. 28 U.S.C. § 1332(a)(1). Section 1332 requires complete diversity of
25 citizenship; each of the plaintiffs must be a citizen of a different state than each of the
26 defendants. *Caterpillar v. Lewis*, 519 U.S. 61, 68 (1996). Nevertheless, one exception to
27 the requirement of complete diversity is where a non-diverse defendant has been
28 “fraudulently joined.” *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir.

1 2001). Defendants argue that Defendant Metromile is “erroneously named in the FAC as
2 Plaintiff’s employer and may be disregarded for purposes of diversity as a sham
3 defendant.” (ECF No. 1 at 7). Under Ninth Circuit precedent, a Court may properly
4 disregard a non-diverse defendant if it determines that party’s joinder is a “sham,” such
5 that no possible cause of action can be established against that party. *Morris v. Princess*
6 *Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001). The defendant is entitled to present the
7 facts showing the joinder to be fraudulent. (*Id.*).

8 Plaintiff seeks to assert a series of FEHA claims, a wrongful termination claim, and
9 claims for negligent and intentional infliction of emotional distress against Defendant
10 Metromile. To support a claim that a nondiverse defendant has been fraudulently joined,
11 the removing party must show that the plaintiff has failed to state a valid cause of action
12 against that nondiverse defendant, and the “settled rules of the state” must make the failure
13 evident by clear and convincing evidence. *See Hamilton Materials, Inc. v. Dow Chem.*
14 *Corp.*, 494 F.3d 1203, 1206 (9th Cir. 2007) (internal quotation marks omitted). When
15 determining whether this burden has been met, courts may look to the face of the plaintiff’s
16 complaint, as well as to additional “summary judgment type evidence.” *Morris*, 236 F.3d
17 at 1068. The Court begins with Plaintiff’s FEHA claims.

18 FEHA establishes a civil right to be free from job discrimination based on certain
19 classifications, including race and sex. *Vernon v. State of California*, 116 Cal. App. 4th
20 114, 127 (2004). The FEHA predicates potential liability on the status of the defendant as
21 an “employer.” (*Id.*) (internal citations omitted). The FEHA defines an employer as “any
22 person regularly employing five or more persons, or any person acting as an agent of an
23 employer, directly or indirectly....” Cal. Gov’t Code § 12926. Defendants argue that
24 “Metromile is erroneously named in the FAC as Plaintiff’s employer....” (ECF No. 1 at
25 7). According to Defendants, “Plaintiff ceased to be employed by Metromile as of
26 December 31, 2022 after Lemonade, Inc. completed its acquisition of Metromile.” (*Id.* at
27 9). “Plaintiff became a Lemonade, Inc. employee on January 1, 2023 until his termination
28 on April 21, 2023.” (*Id.*). Since Metromile “did not have any employees” after December

1 31, 2022, and Plaintiff alleges that he first sustained injuries to his finger on or about March
2 18, 2023, the “causes of action in the FAC” all occurred “at a point when Plaintiff was no
3 longer employed by Metromile.” (*Id.* at 8-9). Because, Defendants argue, the events
4 giving rise to Plaintiff’s causes of action under FEHA all occurred when Plaintiff was an
5 employee of Defendant Lemonade, Defendant Metromile has been fraudulently joined.

6 Plaintiff contends, to the contrary, that “Defendants Lemonade and Metromile are
7 liable for the harms caused to Plaintiff because each Defendant jointly and separately
8 exercised direct and indirect control over Plaintiff’s employment conditions.” (Mot. at 7).
9 Plaintiff asserts – and Defendants do not deny – that “Metromile was the original employer
10 of Plaintiff.” (Mot. at 8). The chief disagreement between the Parties is, then, whether
11 Metromile ceased to be Plaintiff’s employer after December 31, 2022—that is, after its
12 acquisition by Lemonade. For the following reasons, the answer is Yes.

13 Defendants provide evidence, via a declaration by Julia Sigel, Senior Director of
14 People Ops for Lemonade Inc., that “[o]n January 1, 2023, all Metromile Operating
15 Company’s employees moved to the payroll of Lemonade, Inc. As such, on January 1,
16 2023, Gracia commenced employment with Lemonade, Inc. He was employed at
17 Lemonade, Inc. as a Sales Specialist.” (ECF No. 1-9 (“Sigel Decl.”) ¶ 5). “After
18 December 31, 2022, Metromile Operating Company ceased to have any employees, Gracia
19 ceased to be an employee of Metromile Operating Company, and Metromile Operating
20 Company had no control over the day-to-day activities, discipline, accommodation,
21 termination, or supervision of Lemonade, Inc.’s employees, such as Gracia.” (Sigel Decl.
22 ¶ 6).

23 In response, Plaintiff cites numerous authorities on the law of joint employment. *See*
24 (*Mot.* at 7-8). However, Plaintiff offers no evidence to suggest that Defendants were joint
25 employers of Plaintiff. Instead, Plaintiff simply states in conclusory fashion that “the facts
26 and allegations contained in the Complaint demonstrate that Defendants Lemonade and
27 Metromile were Plaintiffs’ joint employers and Defendants cannot demonstrate that there
28 is no possibility of stating a cause of action against them.” (Mot. at 8). Because this

1 conclusory assertion is not sufficient to rebut Defendants’ evidence and Plaintiff offers no
2 alternative set of facts that *could* be used to bring Metromile into the scope of his FEHA
3 claims, the Court holds Plaintiff has failed to bring a valid cause of action under FEHA
4 against this nondiverse defendant.

5 Because the remaining causes of action are all predicated on Defendant Metromile
6 having a role in the employment and discharge of Plaintiff, and the Court has held that
7 Defendant Metromile was not Plaintiff’s employer during the span of time in which the
8 causes of action were alleged to occur, Plaintiff has failed to state any causes of action
9 under the remaining claims, i.e., wrongful termination in violation of public policy,
10 intentional and negligent infliction of emotional distress, and failure to produce
11 employment documents.²

12 In light of the above, Defendant Metromile is a fraudulently joined defendant.
13 Because there is complete diversity between the remaining parties and the amount in
14 controversy for Plaintiff’s claims exceeds the sum of seventy-five thousand dollars, the
15 Court has diversity jurisdiction over this Action.

16 **C. Plaintiff’s Request for Attorney’s Fees**

17 28 U.S.C. Section 1447(c) provides, in relevant part, “An order remanding the case
18 may require payment of just costs and any actual expenses, including attorney fees,
19 incurred as a result of the removal.” Because Plaintiff’s Motion has been denied, the
20 request for attorney’s fees under § 1447 is also denied.

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27 ² Although Defendants address the remaining causes of action, *See* (Opp. at 13-14),
28 Plaintiff does not.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court **DENIES** Plaintiff's Motion to Remand.

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4 **IT IS SO ORDERED.**

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6 DATED: April 30, 2024



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8 **HON. SHERILYN PEACE GARNETT**
9 **UNITED STATES DISTRICT JUDGE**

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