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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 BEVERLY MILEHAM, an individual.

11 Plaintiff,

12 v.

13 WAL-MART STORES, INC., an  
14 Arkansas corporation; SHARAY  
15 FANIO, an individual; DOES 1  
through 100, inclusive,

16 Defendant.

Case No. ED CV19-02408-AB (SPx)

**Order GRANTING Plaintiff's Motion  
to Remand (Dkt. No. 9)**

17 Before the Court is Plaintiff's Motion to Remand ("Motion," Dkt. No. 9). Wal-  
18 Mart Stores, Inc. ("Defendant") filed an opposition and Plaintiff filed a reply. Having  
19 considered the materials submitted by the parties, and for the reasons indicated below,  
20 the Court **GRANTS** Plaintiff's Motion.

21 **I. FACTUAL AND PROCEDURAL BACKGROUND**

22 **A. Plaintiff's Complaint**

23 On September 10, 2019, Beverly Mileham ("Plaintiff") filed her Complaint  
24 against Defendant and defendant Sharay Fanio alleging that Plaintiff was injured  
25 while on Defendants' premises. *See generally* Complaint (Dkt. No. 1-4). Plaintiff  
26 alleges that she was walking in a cross walk on the premises and was struck by a car  
27 due to "dangerous conditions" such as the lack of proper traffic signs and other  
28

1 unobvious dangerous conditions.

2 Plaintiff alleges two cause of action: premises liability and general negligence.  
3 Plaintiff alleges that her injuries were caused by Defendants’ negligent control and  
4 maintenance of the premises, and that her injuries would not have occurred but for the  
5 negligence of Defendants.

6 On January 14, 2020, Defendants removed the action under 28 U.S.C. § 1332  
7 on the ground that the district court has diversity jurisdiction.

8 **B. Defendant’s Notice of Removal and Plaintiff’s Motion for**  
9 **Remand**

10 On December 16, 2019, defendant Wal-Mart Stores, Inc. (“Walmart”) removed  
11 the action to this Court. In the Notice of Removal (“NOR,” Dkt. No. 1), Walmart  
12 alleges that defendant Sharay Fanio is a “sham” defendant whose citizenship must be  
13 disregarded for the purposes of determining complete diversity. (NOR ¶ 3).

14 Plaintiff now moves to remand the action back to the San Bernardino Superior  
15 Court. Plaintiff contends that the Court lacks diversity jurisdiction because there is  
16 not complete diversity among the parties. Defendants oppose.

17 **II. LEGAL STANDARD**

18 **A. Removal**

19 Under 28 U.S.C. § 1441(a), a civil action may be removed to the district court  
20 where the action is pending if the district court has original jurisdiction over the  
21 action. Under 28 U.S.C. § 1332, a district court has original jurisdiction of a civil  
22 action where the matter in controversy exceeds the sum or value of \$75,000, exclusive  
23 of interest and costs, and the dispute is between “citizens of different states.” Section  
24 1332 requires complete diversity, *i.e.*, that “the citizenship of each plaintiff is diverse  
25 from the citizenship of each defendant.” *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 67–68  
26 (1996). Section 1441 limits removal to cases where no defendant “properly joined  
27 and served . . . is a citizen of the State in which such action is brought.” 28 U.S.C.  
28 § 1441(a)(b)(2). Removal statutes are “strictly construe[d] against removal.” *Gaus v.*

1 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Federal jurisdiction must be rejected if  
2 there is any doubt as to the right of removal in the first instance. *Id.* Accordingly, the  
3 removing party bears a heavy burden of establishing original jurisdiction in the district  
4 court. *Id.*

### 5 **B. Fraudulent Joinder**

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

16 The burden of proving fraudulent joinder is a heavy one. *Gaus*, 980 F.2d at 566.  
17 The removing party must prove there is “no possibility that plaintiff will be able to  
18 establish a cause of action in State court against the alleged sham defendant.” *Good v.*  
19 *Prudential Ins. Co. of America*, 5 F. Supp. 2d 804, 807 (N.D. Cal. 1998). In this  
20 regard, “[r]emand must be granted unless the defendant shows that the plaintiff  
21 ‘would not be afforded leave to amend his complaint to cure [the] purported  
22 deficiency.’” *Padilla v. AT & T Corp.*, 697 F.Supp.2d 1156, 1159 (C.D. Cal. 2009);  
23 *Macey v. Allstate Prop. & Cas. Ins. Co.*, 220 F.Supp.2d 1116, 1117 (N.D. Cal. 2002)  
24 (“If there is a non-fanciful possibility that plaintiff can state a claim under California  
25 law against the non-diverse defendants the court must remand.”). “Merely a ‘glimmer  
26 of hope’ that plaintiff can establish [a] claim is sufficient to preclude application of  
27 [the] fraudulent joinder doctrine.” *Gonzalez v. J.S. Paluch Co.*, 2013 WL 100210, at  
28 \*4 (C.D. Cal. Jan.7, 2013) (internal quotations omitted); *accord Ballesteros v.*

1 *American Standard Ins. Co. of Wisconsin*, 436 F.Supp.2d 1070, 1072 (D. Ariz. 2006)  
2 (same) (citing *Mayes v. Rapoport*, 198 F.3d 457, 463-64 (4th Cir. 1999)).

### 3 **III. DISCUSSION**

#### 4 **A. The Court Lacks Diversity Jurisdiction Over This Action**

5 There is no dispute that the \$75,000 amount in controversy requirement is met.  
6 In fact, in a discovery response, Plaintiff stated that the amount of damages she seeks  
7 exceeds \$75,000. (NOR Ex. 4, 4:3-15).

8 The issue here is whether there is complete diversity between the parties.  
9 Plaintiff is a citizen of California and Walmart is a citizen of Delaware and Arkansas,  
10 so they are diverse. (NOR at 3) The question is whether individual defendant Sharay  
11 Fanio destroys complete diversity. Plaintiff claims she is suing Sharay Fanio because  
12 Plaintiff conducted a LexisNexis People Search to identify the owner of the property  
13 and Sharay Fanio's name came up in conjunction with that search. See Opp'n (Dkt.  
14 No. 14) p. 3, Ex. A.

15 First, Walmart's position is that Sharay Fanio is a sham defendant whose  
16 citizenship should be disregarded. Walmart argues Sharay Fanio is not connected to  
17 Walmart, that Plaintiff did not provide evidence demonstrating Sharay Fanio is a  
18 California citizen, and that Sharay Fanio was not properly served. Therefore, she is  
19 not a proper defendant in this case. Regarding Sharay Fanio's connection to Walmart,  
20 Walmart argues she is not an employee of the Walmart store where the accident  
21 occurred, and provided a declaration of its store manager Graham Clark to that effect.  
22 *See generally* Clark Decl. (Opp'n Ex. 1 ). Walmart asserts they are unaware of any  
23 connection between Sharay Fanio and its store. Walmart argues that Plaintiff has  
24 failed to prove that Sharay Fanio is connected to Walmart's store because the address  
25 that Plaintiff found through a Lexis Nexis search showed that Sharay Fanio owned the  
26 property at 20251 US Highway 18 Apt. 18 Apple Valley, CA 92307 and the parking  
27 lot the accident occurred in is 20251 Hwy 18, Apple Valley CA, 92307. The address  
28 looks to be the same except, the address associated with Fanio mentions Apt. 18,

1 where Walmart's does not. Walmart argues that Sharay Fanio is not a citizen because  
2 Plaintiff has not shown any evidence that correlates with them being a citizen of  
3 California. Citing *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir.  
4 1983), Walmart argues even if Sharay Fanio lives in California, it does not mean she  
5 is domiciled in or a citizen of the state. Walmart argues Sharay Fanio was not properly  
6 served. With all this taken into consideration, Walmart argues Sharay Fanio is not a  
7 proper party to the lawsuit and is therefore a sham defendant whose citizenship should  
8 be disregarded.

9         However, Plaintiff argues Sharay Fanio is a valid defendant because of their  
10 research and Walmart has not done enough to refute this. Plaintiff found Sharay  
11 Fanio's name after conducting a LexisNexis People Search on the property where the  
12 accident occurred to identify the property owner. Plaintiff argues she did not allege  
13 that Sharay Fanio is employed by Walmart. She alleged that Sharay Fanio may have  
14 an ownership right in the property. Plaintiff argues that Walmart has not proven it is  
15 the sole owner of the property because it has not provided any evidence that defeats  
16 Plaintiff's LexisNexis search. As to the argument of whether Sharay Fanio is a  
17 California citizen, Plaintiff asserts she does not carry the burden of proving Sharay  
18 Fanio's citizenship, Walmart does. *See Lewis v. Verizon Commc'ns Inc.*, 627 F.3d  
19 395, 399 (9th Cir. 2010) (the removing party bears the burden of proving diversity of  
20 citizenship). In connection with Walmart's last point of whether Sharay Fanio was  
21 properly served, Plaintiff argues that Sharay Fanio was sub-served at the Walmart  
22 location. With all this taken into consideration Plaintiff argues that Sharay Fanio is a  
23 proper party to the litigation.

24         The Court concludes that Walmart has not proven that Sharay Fanio is a sham  
25 defendant. As outlined above, the burden for proving that a defendant is a sham is a  
26 heavy one. *Gaus*, 980 F.2d at 566. Walmart must show there is no plausible way for  
27 Plaintiff to pursue a cause of action against Sharay Fanio. *Good v. Prudential Ins. Co.*  
28 *of America*, 5 F.Supp.2d 804, 807 (N.D. Cal. 1998). Plaintiff needs only "a glimmer

1 of hope” that she can pursue an action against Sharay Fanio to prove that Sharay  
2 Fanio is not a sham defendant. *Id.* Plaintiff has filed competent evidence ostensibly  
3 linking Sharay Fanio to the property, raising at least the possibility that they could be  
4 liable for accidents that occur thereon. *See* Mot. Ex. A. By contrast, Walmart did not  
5 demonstrate that it is or was the sole owner of the property where the accident  
6 occurred at the time of the accident. In its opposition, Walmart provided a parcel  
7 number that is meant to be used to identify a lot using the San Bernardino County  
8 property tax public record page and a link to said page. *See* Opp’n at 5. However, the  
9 link provided does not bring up any information and the parcel number provided does  
10 not identify any property and seems to be missing a number. Furthermore, Walmart  
11 did not attempt to present this information as competent evidence, such as by  
12 submitting it with a declaration and asking the Court to take judicial notice of it.  
13 Therefore, Walmart has presented no evidence—competent or otherwise—that it is  
14 the sole owner of the property sufficient to rebut Plaintiff’s showing.

15 Furthermore, as Plaintiff points out, Walmart carries the burden of proving  
16 complete diversity and Walmart has not presented anything on Sharay Fanio’s  
17 citizenship to meet that burden.

18 Walmart has not met its heavy burden to show that there is no possibility  
19 Plaintiff could assert a claim against Sharay Fanio, so it has not shown that she is a  
20 sham defendant whose citizenship should be disregarded. *Chavez v. Amerigas*  
21 *Propane, Inc.*, 2013 WL 25882, at \*8 (C.D. Cal. Jan. 2, 2013) (citation omitted). Nor  
22 has Defendant shown that Sharay Fario is a citizen of a state other than California.  
23 Because it is possible Plaintiff may state a claim against Sharay Fanio, and because  
24 complete diversity of the parties has not been established, the Court lacks subject  
25 matter jurisdiction over this action. The Court need not address the parties’ alternative  
26 arguments.

1           **B. Attorneys' Fees**

2           The Court can award attorneys' fees when there is no objectively reasonable  
3 basis for removal. 28 USC §1447(c). The Court has the discretion to award fees when  
4 the party moving for remand can show that removal was frivolous. *Martin v. Franklin*  
5 *Capital Corp.*, 546 U.S. 132, 139 (2005).

6           Here, the Court does not find that Walmart's removal was frivolous. Although  
7 Walmart not establish that Sharay Fanio was a sham defendant or a California citizen,  
8 the removal was objectively reasonable. Therefore, the Court denies Plaintiff's  
9 request for attorneys' fees.

10           **IV. CONCLUSION**

11           The Court lacks jurisdiction over this case and therefore it must be remanded to  
12 state court. Accordingly, the Court **GRANTS** Plaintiff's Motion to Remand. (Dkt. No.  
13 9.) Plaintiff's request for attorneys' fees and costs is **DENIED**.

14           The Court hereby **REMANDS** this case to the Superior Court of California  
15 from which it was removed.

16           **IT IS SO ORDERED.**

17  
18 Dated: March 24, 2020



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HONORABLE ANDRÉ BIROTTE JR.  
UNITED STATES DISTRICT COURT JUDGE