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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Elizabeth Quinones,

10 Plaintiff,

11 v.

12 MTC Financial Incorporated, et al.,

13 Defendants.  
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No. CV-17-00481-TUC-CKJ

**ORDER**

15 Plaintiff commenced this action against multiple Defendants, including MTC  
16 Financial and its agent Amanda Alcantara, in Arizona state court. See Doc. 1-1 (stating  
17 various counts related to an allegedly unlawful foreclosure). Defendants then filed to  
18 remove the case to this Court; claiming that the only non-diverse defendant — Amanda  
19 Alcantara — was “fraudulently joined,” therefore “complete diversity” exists for  
20 purposes of federal jurisdiction. See Doc. 1 at pg. 5; see also, Roth v Allstate, 17-CV-587  
21 (D. Ariz., Feb. 7, 2018) (“A federal court only possesses jurisdiction pursuant to 28  
22 U.S.C. § 1332 if ‘complete diversity’ exists.”).

23 Plaintiff has now filed a motion to remand asserting that the Complaint alleges a  
24 “possible” claim against Alcantara and that Defendants failed to properly remove the  
25 case. See Doc. 20 (claiming that Defendants have not overcome the “heavy burden” of  
26 demonstrating that Alcantara was “fraudulently” named in the Complaint). The Court has  
27 also received and considered Defendants’ motions in opposition, and Plaintiff’s replies  
28 thereto. See Docs. 25, 27, 29, and 30.

1 A person is fraudulently joined if the plaintiff “fails to state a cause of action  
2 against a resident defendant, and the failure is obvious according to the settled rules of  
3 the state.” See *IDS Prop. Cas. Ins. Co. v. Gambrell*, 913 F. Supp. 2d 748, 752 (D. Ariz.  
4 2012) (quoting *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336 (9th Cir. 1987)).

5 Courts resolve uncertainty in favor of remand, and can only retain jurisdiction if a  
6 plaintiff has no reasonable possibility of a claim against the non-diverse defendant. *Id.*  
7 (holding that “there is a presumption against removal [and] the defendant has the burden  
8 of establishing that removal is proper and thus that fraudulent joinder exists”).

9 Here, Defendants provide no extrinsic evidence that Plaintiff specifically named  
10 Alcantara as a defendant simply for the fraudulent purpose of defeating diversity  
11 jurisdiction. See generally, Docs. 25 & 27. Rather, Defendants argue that Plaintiff has  
12 failed to adequately allege a plausible claim for relief against Alcantara based on state  
13 law. *Id.* (relying on analysis that turns on the correct interpretation of state law).<sup>1</sup>

14 However, the standard for whether a defendant was “fraudulently joined” is less  
15 than the “plausibility” standard for adjudicating a motion to dismiss. See *Diaz v. Allstate*  
16 *Ins. Grp.*, 185 F.R.D. 581, 586 (C.D. Cal. 1998) (“merely showing that an action is likely  
17 to be dismissed against that defendant does not demonstrate fraudulent joinder”). And in  
18 Arizona, an agent can be independently liable for actions taken within the scope of their  
19 responsibilities. See *Griffith v. Faltz*, 162 Ariz. 599, 600–01 (Ct. App. 1990) (“It is well-  
20 established law that an agent will not be excused from responsibility for tortious conduct  
21 [when] acting for [a] principal.”); see also, *4801 E. Washington St. Holdings, LLC, acting*  
22 *ex rel. CW Capital Asset Mgmt. LLC v. Breakwater Equity Partners LLC*, 2015 WL  
23 1859057, at \*8 (D. Ariz. Apr. 23, 2015) (finding, under Arizona law, “whether an agent  
24 is acting on [their] own behalf or for another is immaterial to [personal] liability”)  
25 (quoting *Griffith*).

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27 <sup>1</sup> See further, *Boyer v. Snap-on Tools Corp.*, 913 F.2d 108, 111 (3d Cir. 1990) (explaining that,  
28 when adjudicating a motion to remand, a “district court must resolve all contested issues of  
substantive fact in favor of the plaintiff and must resolve any uncertainties as to the current state of  
controlling substantive law in favor of the plaintiff”).

