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

**MONIKA STANDING, ET. AL.,****Plaintiff(s),****v.****WATSON PHARMACEUTICALS  
INC., ET. AL.,****Defendant(s).****Case No. CV09-0527 DOC(ANx)**Los Angeles County Superior Court Case No.:  
BC405990**ORDER GRANTING MOTION TO  
REMAND AND RENDERING  
MOTION TO QUASH SERVICE AND  
TO DISMISS MOOT**

Before the Court is Plaintiffs Monika Standing and Chris Bristol's Motion to Remand this case to the Superior Court of the State of California, County of Orange, pursuant to 28 U.S.C. § 1447(c) on the basis that the Court lacks subject matter jurisdiction (the "Motion"). After considering the moving, opposing, and replying papers, and for the reasons stated below, the Court hereby GRANTS the Motion. As a result, the Court renders Defendants' Motion to Quash Service and to Dismiss filed with the Court on March 11, 2009, MOOT.

**I. BACKGROUND**

This is an action for the wrongful death of decedent, Nicole Bristol, who died on February 9, 2008,

1 from using an allegedly defective 75 mcg/hour fentanyl patch. An autopsy revealed that the  
2 concentration of fentanyl in Nicole's blood was toxic, nearly nine times higher than it should have  
3 been if the patch was properly functioning. Plaintiffs are Nicole's parents. Plaintiff Monika  
4 Standing, Nicole's mother and a citizen of Colorado, brought suit against Watson Laboratories, Inc.,  
5 Watson Pharmaceuticals, Inc., and Watson Pharma, Inc. (collectively, the "Watson Defendants")  
6 on January 21, 2009, in California state court, alleging strict products liability, negligence in the  
7 design, manufacture, and marketing of the fentanyl patches, and breach of warranty. Plaintiff  
8 Standing alleges that the Watson Defendants designed, manufactured, and marketed the patches that  
9 were used by her daughter. (complaint, ¶¶ 6,7).

10 Watson Pharma, Inc., a citizen of Delaware and New Jersey, removed this action to federal  
11 court only one day later on January 22, 2009, prior to service of the complaint on any of the  
12 defendants. Watson Pharmaceuticals and Watson Laboratories are both citizens of Nevada and  
13 California. Watson Pharma and Watson Laboratories are both subsidiaries of the parent company  
14 Watson Pharmaceuticals. In its Notice of Removal, Watson Pharma states that removal is proper  
15 under 28 U.S.C. § 1441(b) despite the presence of forum defendants in the action because none of  
16 the forum defendants (i.e. Watson Pharmaceuticals and Watson Laboratories) had been served with  
17 the complaint prior to removal (Notice of Removal, ¶ 16).

18 On February 6, 2009, Plaintiff Monika Standing filed a First Amended Complaint ("FAC")  
19 adding decedent Nicole Bristol's father and California citizen, Christopher Bristol, as an additional  
20 plaintiff. On February 19, 2009, Plaintiffs claim to have effectuated service of the FAC on all three  
21 entities,<sup>1</sup> though Defendants contest such service, claiming that the FAC is not the controlling  
22 pleading in this action.<sup>2</sup> Plaintiffs brought the instant Motion to Remand on the same day. Plaintiffs

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24 <sup>1</sup>Due to the interrelationship between the defendants, the Court notes that service  
25 (if effective) on all three, forum and non-forum, occurs simultaneously because the agent  
26 for service of process of each corporation is the same woman, Margaret Wilson. See  
Docket Nos. 30, 31, and 32.

27 <sup>2</sup>Defendants brought a Motion to Quash Service and to Dismiss on March 11,  
28 2009.

1 argue that removal under Section 1441(b) was improper, and the forum defendant rule should still  
2 apply to prohibit removal. Even though no forum defendants were yet served, Plaintiffs contend  
3 that the Court should not adopt a literal interpretation of Section 1441(b) that allows removal in  
4 these circumstances where Plaintiffs have not yet served anyone. Further, Plaintiffs point out that  
5 due to the addition of Plaintiff Bristol, there is no longer complete diversity between the parties.  
6 Defendants counter that the Court should adopt a plain meaning interpretation of Section 1441(b)  
7 and allow removal even if Plaintiffs have not yet served any defendants. Defendants further argue  
8 that the forum defendants here were fraudulently joined to the action. Defendants also claim that  
9 Plaintiff Bristol was not properly joined to this litigation, and thus his citizenship should be  
10 disregarded.

## 11 **II. LEGAL STANDARD**

12 Remand may be ordered for lack of subject matter jurisdiction or any defect in the removal  
13 procedure. 28 U.S.C. § 1447(c). Removal of state actions is allowed only if the plaintiff could have  
14 originally filed the action in federal court. *See* 28 U.S.C. § 1441. “The burden of establishing  
15 federal jurisdiction is on the party seeking removal, and the removal statute is strictly construed  
16 against removal jurisdiction.” *Prize Frize, Inc. v. Matrix (U.S.), Inc.*, 167 F.3d 1261, 1265 (9th Cir.  
17 1999) (overruled on other grounds); *see Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

18 Further, a court does not consider the citizenship of a “fraudulently joined” defendant when  
19 determining whether complete diversity exists such that removal is proper pursuant to 28 U.S.C. §  
20 1441(b). *Morris v Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001); *Ritchey v. Upjohn*  
21 *Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998). A defendant is “fraudulently joined” when “the  
22 plaintiff fails to state a cause of action against a resident defendant, and the failure is obvious  
23 according to the settled rules of the state.” *Morris*, 236 F.3d at 1067 (quoting *McCabe v Gen. Foods*  
24 *Corp.*, 811 F.2d 1136, 1339 (9th Cir. 1987)). The removing defendant may submit facts showing that  
25 a resident defendant has no real connection with the action. *Ritchey*, 139 F.3d at 1319.

## 26 **III. DISCUSSION**

27 Though the parties dispute whether Christopher Bristol was properly joined in the action and  
28 thus destroyed complete diversity, the Court need not reach that issue. For the same reasons as

1 identified in this Court’s order remanding a related case, *Kazim Mohammed, et al. v. Watson*  
2 *Pharmaceuticals, Inc., et al.*, SACV 09-0079 DOC (Anx), the Court finds that removal was not  
3 proper in the first instance. The Court reiterates that reasoning here and accordingly remands.

4 **A. “[A]nd served” Requirement under section 1441(b).**

5 Neither party contests that this action (at the time of removal and prior to the addition of  
6 Plaintiff Bristol) could have originally been filed in federal court pursuant to 28 U.S.C. § 1332, as  
7 the amount in controversy exceeds \$75,000, and the action is between citizens of different states.  
8 However, even if such diversity jurisdiction is present, 28 U.S.C. § 1441(b) prohibits removal if one  
9 or more of the named defendants is a citizen of the forum state, California in the instant action. The  
10 statute states, in pertinent part, that a case can be removed based on diversity jurisdiction “only if  
11 none of the parties in interest properly joined *and served* as defendants is a citizen of the State in  
12 which such action is brought.” 28 U.S.C. § 1441(b) (emphasis added); *see also Lively v. Wild Oats*  
13 *Mkts.*, 456 F.3d 933, 939 (9th Cir. 2006). Known as the “forum defendant rule,” the parties dispute  
14 how it applies (or should apply) to the instant case.

15 Plaintiffs bring their motion, in part, based on the “and served” language in 28 U.S.C. §  
16 1441(b), claiming that the forum defendant rule should still apply to prohibit removal here. It is  
17 undisputed that Watson Pharma, the only non-forum defendant, removed the action prior to any  
18 defendant receiving service of process. Indeed, the complaint was filed on January 21, 2009.  
19 Defendant Watson Pharma removed the case to this Court only one day later on January 22, 2009.  
20 Plaintiffs allege that they effectuated service of process simultaneously on all defendants on  
21 February 19, 2009, though Defendants contest this service by arguing that the FAC is not the  
22 controlling pleading. On the same day, Plaintiffs brought their Motion to Remand.

23 As Plaintiffs point out, the Watson Defendants argue that the plain language of the “joined  
24 and served” provision allows for removal in these circumstances. However, Plaintiffs indicate that  
25 federal district courts are split on the proper interpretation of the “and served” language. While  
26 many courts adhere to the plain language argument as advanced by the Watson Defendants, others  
27 hold that a literal interpretation of the provision runs contrary to congressional intent and the  
28 purpose behind the forum defendant rule. The Ninth Circuit has yet to address the issue.

1 Recognizing the district court split and the lack of binding authority on this Court, the Court  
2 proceeds to depart from a literal interpretation of Section 1441(b), reasoning that such an  
3 interpretation in these circumstances thwarts the purpose of Section 1441(b) and merely promotes  
4 gamesmanship on the part of removing defendants. In so finding, the Court agrees with district  
5 courts that have found Section 1441(b) is not implicated where the non-forum defendant (or forum  
6 defendant) seeks to remove the action prior to the service of any defendant. *See e.g. Holmstrom v.*  
7 *Harad*, No. 05 C 2714, 2005 WL 1950672, at \*2 (N.D.Ill. Aug. 11, 2005) (finding that “the policy  
8 of the ‘joined and served’ requirement is not implicated in this situation....When no defendant has  
9 been served, however, the non-forum defendant stands on equal footing as the forum  
10 defendant....[T]he protection afforded by the ‘joined and served’ requirement is wholly unnecessary  
11 for an unserved non-forum defendant.”); *Recognition Commc’ns, Inc. v. Am. Auto. Ass’n, Inc.*, No.  
12 Civ. A. 3:97-CV-0945-P, 1998 WL 119528, at \*3, n.3 (N.D.Tex. March 5, 2008); *Sullivan v.*  
13 *Novartis Pharmaceuticals Corp.*, 575 F. Supp. 2d 640, 646 (D.N.J. 2008); *Oxendine v. Merck and*  
14 *Co., Inc.*, 236 F. Supp. 2d 517, 524-5 (D.Md. 2002); *Vivas v. Boeing Co.*, 486 F. Supp. 2d 726, 734-  
15 5 (N.D.Ill. 2007).

16 The purpose behind the forum defendant rule and its resulting limit on removal relates to the  
17 rationale for diversity jurisdiction. As the Ninth Circuit has stated, “Removal based on diversity  
18 jurisdiction is intended to protect out-of-state defendants from possible prejudices in state  
19 court....The need for such protection is absent, however, in cases where the defendant is a citizen  
20 of the state in which the case is brought. Within this contextual framework, the forum defendant  
21 rule allows the plaintiff to regain some control over forum selection by requesting that the case be  
22 remanded to state court.” *Lively*, 456 F.3d at 940. Thus, the overarching purpose of the forum  
23 defendant rule is to prevent certain cases properly brought in state court from ending up in federal  
24 court.

25 As the *Sullivan* Court noted, the “properly joined and served” language of the forum  
26 defendant rule was not originally part of the statutory text but was added through amendment in  
27 1948. *Sullivan*, 575 F. Supp. 2d at 644. Despite a thorough search of the legislative history, the  
28 *Sullivan* Court could not find any explicit discussion of the purpose for the added language. *Id.*

1 Despite the congressional silence, the *Sullivan* Court reasoned that “the purpose of the ‘properly  
2 joined and served’ requirement of section 1441(b) is abundantly clear in light of the historical  
3 development of the policy of the remand provisions, the practical application of the ‘joined and  
4 served’ provision by district courts in recent decades, and common sense.” *Id.* That apparent  
5 purpose, as identified by the *Sullivan* Court and many other district courts, is to prevent plaintiffs  
6 from improperly joining forum defendants that they do not actually intend to pursue in order to  
7 prevent removal from state court under Section 1441(b), a pervasive problem at the time of the  
8 amendment. *Id.* at 645; *see also Stan Winston Creatures, Inc. v. Toys R Us, Inc.*, 314 F. Supp. 2d  
9 177, 181 (S.D.N.Y. 2003) (“The purpose of the ‘joined and served’ requirement is to prevent a  
10 plaintiff from blocking removal by joining as a defendant a resident party against whom it does not  
11 intend to proceed, and whom it does not even serve.”); *Brown v. Organon USA Inc.*, No. Civ. A. 07-  
12 3092(HAA), Civ. A. 07-5253(HAA), Civ. A. 07-5916(HAA), 2008 WL 2625355, at \*7 (D.N.J. June  
13 27, 2008); *Allen v. GlaxoSmithKline PLC*, No. 07-5045, 2008 WL 2247067, at \*6 (E.D.Pa. May 30,  
14 2008); *DeAngelo-Shuayto v. Organon USA Inc.*, No. 07-2923, 2007 WL 4365311, at \* 1; *In re*  
15 *Aredia and Zometa Products Liability Litigation*, No. 3:06-MD-1760, 2007 WL 2905247, at \* 2  
16 (M.D.Tenn. Oct. 3, 2007); *Vivas v. Boeing Co.*, 486 F. Supp. 2d at 734. Thus, the “joined and  
17 served” language was meant to prevent plaintiffs from improperly exploiting the limits on removal  
18 as generally provided for under the forum defendant rule.

19 The Court agrees with Plaintiffs that if the purpose behind the statute is to prevent procedural  
20 gamesmanship by plaintiffs through improper joinder, a literal interpretation of the “joined and  
21 served” provision that promotes such gamesmanship by defendants through allowing removal before  
22 a plaintiff has a meaningful chance to serve any defendant both undermines the general purpose of  
23 the forum defendant rule (i.e. to keep certain cases in state court) and inappropriately prevents  
24 plaintiffs from litigating in the forum of their choice. *See Oxendine*, 236 F. Supp. 2d at 524  
25 (“removability can not rationally turn on the timing or sequence of service of process”); *Vivas*, 486  
26 F. Supp. 2d at 734 (“[T]o allow a resident defendant to remove a case before a plaintiff even has a  
27 chance to serve him would provide a vehicle for defendants to manipulate the operation of the  
28 removal statutes. Allowing either party to do that would be against what the courts have long

1 understood to be Congress’s intent.”); *Brown v. Organon Int’l. Inc., et al.*, Nos. 07-3092 (HAA),  
2 07-3456(HAA), 08-2021(HAA), 2008 WL 2833294, at \*4 (D.N.J. July 21, 2008) (holding that a  
3 literal interpretation of Section 1441(b) promotes defendant gamesmanship by “allow[ing]  
4 defendants to avoid the imposition of the forum defendant rule as long as they are monitoring state  
5 dockets and avoiding service”); *Sullivan*, 575 F. Supp. 2d at 647 (“[G]iven that the purpose of the  
6 ‘properly joined and served’ language is to prevent one form of gamesmanship - improper joinder -  
7 the court finds that allowing defendant to engage another type of gamesmanship - a hasty filing of  
8 a notice of removal - is demonstrably at odds with Congressional intent.”).

9 In such circumstances, the Court is allowed to depart from the plain meaning of the statute,  
10 as many district courts have done in interpreting the same statutory provision:

11 When the meaning has led to absurd or futile results, however, this  
12 Court has looked beyond the words to the purpose of the act.  
13 Frequently, even when the plain meaning did not produce absurd results  
14 but merely an unreasonable one ‘plainly at variance with the policy of  
15 the legislation as a whole’ this Court has followed that purpose, rather  
16 than the literal words.

17 *U.S. v. Am. Trucking Ass’ns*, 310 U.S. 534, 543, 60 S. Ct. 1059 (1940).

18 At a minimum, this Court finds that a plain meaning interpretation of the statute  
19 produces unreasonable results at variance with the policy of the legislation as a whole. The purpose  
20 of the statute is to prevent gamesmanship by plaintiffs and should not allow for a similar  
21 gamesmanship by defendants. Further, as stated above, “[t]he result of blindly applying the plain  
22 ‘properly joined and served’ language of section 1441(b) is to eviscerate the purpose of the forum  
23 defendant rule,” as defendants could effectively always prevent imposition of the forum defendant  
24 rule by monitoring state dockets and removing an action before a plaintiff can serve any party.  
25 *Sullivan*, 575 F. Supp. 2d at 646-7.

26 Further, to the extent Defendants suggest, through their reliance on *Gecht*, that if Congress  
27 had wanted to prevent removal in these circumstances, it could have so stated and thus the plain  
28 language interpretation should hold, this Court rejects such an argument for the same reasons

1 articulated by the *Sullivan* Court. In *Gecht*, a Northern District of California Court rejected any  
2 argument that the purpose of the statute should prevent removal by a defendant when the plaintiff  
3 has not had a meaningful opportunity to serve any defendant:

4 [I]f Congress had wanted to ensure that removal would not be  
5 appropriate until it was clear that Plaintiff was trying to prevent  
6 removal by speciously naming resident defendants, Congress could  
7 have provided that no removal petition could be filed until one or more  
8 nonresident defendant had been joined and served. The statute also  
9 could have been written to give a plaintiff, e.g. 30 or 60 days to effect  
10 service before permitting a defendant to remove.

11 *City of Ann Arbor Employees' Retirement System v. Gecht*, No. C-06-7453 EMC, 2007 WL 760568,  
12 at \*9 (N.D.Cal. March 9, 2007). However, as the *Sullivan* Court astutely points out, a Congress  
13 sitting in the 1940s could not have adequately had these concerns in mind:

14 Congress could not have anticipated the tremendous loophole that  
15 would one day manifest from technology enabling forum defendants to  
16 circumvent the forum defendant rule by, inter alia, electronically  
17 monitoring the state court dockets. Thus, Congress would have had no  
18 thought to wording the statute with this modern problem in mind.

19 *Sullivan*, 575 F. Supp. 2d at 645. Following this logic, the Court agrees that a literal interpretation  
20 of Section 1441(b) disrupts the policy behind the forum defendant rule.

21 Thus, in line with *Holstrom* and district courts following it, the Court finds that removal under  
22 Section 1441(b) by a non-forum defendant where no defendants have yet been served is improper  
23 because it promotes gamesmanship by defendants and likely deprives plaintiffs of a meaningful  
24 opportunity to effectuate service. As a result, the “joined and served” requirements of Section  
25 1441(b) are not implicated by the facts of the instant case where none of the Watson Defendants had  
26 been served prior to removal, and pursuant to *Holstrom*, removal was improper at this stage. The  
27 Court considers that its outcome here is also in line with Ninth Circuit precedent recognizing that  
28 statutory procedures for removal are to be strictly construed against removal and that there is a



1 strong presumption against removal. *Abrego Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 685  
2 (9th Cir. 2006); *Gaus*, 980 F.2d at 566.

### 3 **B. Fraudulent Joinder**

4 Defendants argue, in the alternative, that the forum defendants Watson Pharmaceuticals and  
5 Watson Laboratories are fraudulently joined parties, implicating the “properly joined” language of  
6 Section 1441(b). As a result, this Court should disregard their citizenship for diversity purposes and  
7 removal regardless of the “and served” language. However, for the following reasons, the Court  
8 rejects such an argument.

9 Plaintiffs first contend that the Watson Defendants waived the right to argue fraudulent  
10 joinder because Watson Pharma’s Notice of Removal did not explicitly identify fraudulent joinder  
11 as a basis for removal. Instead, Watson Pharma indicated that removal was proper under Section  
12 1441(b) because no forum defendant had yet been served with the complaint. Noting that removal  
13 must take place within 30 days of receipt of the complaint, 28 U.S.C. § 1446(b), Plaintiffs point out  
14 that any amendment to the Notice of Removal can be made after the 30-day clock has run only if  
15 the amendment corrects defective allegations of jurisdiction; amendments after 30 days cannot add  
16 a new substantive basis for removal. *ARCO Envtl. Remediation, L.L.C. v Dep’t of Health and Envtl.*  
17 *Quality*, 213 F.3d 1108, 1117 (9th Cir. 2000). A number of district courts have found that  
18 allegations of fraudulent joinder constitute a new substantive basis for removal and must be raised  
19 before the 30-day window expires. *See Tincher v. Ins. Co. of State of Penn.*, 268 F. Supp. 2d 666,  
20 667-8 (E.D.Va. 2003); *Dean Witter Reynolds, Inc. v. Swett & Crawford*, No. C-92-3841-JPV, 1992  
21 U.S. Dist. LEXIS 20093, at \*2-3 (N.D.Cal. Dec. 23, 1992); *Cohen v. GTE Gov’t Syss. Corp.*, No  
22 C-92-20783, 1993 U.S. Dist. LEXIS 7914, at \*4-5 (N.D.Cal. Apr. 6, 1993). Plaintiffs do not make  
23 it clear if they are suggesting that the 30-day time frame should run from the date Watson Pharma  
24 removed (January 22, 2009) or from the date Plaintiffs served all three Defendants (February 19,  
25 2009). Defendants raised their fraudulent joinder arguments on March 16, 2009. This date is 30  
26 days past the removal but not 30 days past the alleged service of process that the Defendants contest.  
27 Thus, the Court finds it unclear whether the 30 day clock has actually expired.

28 Yet, regardless of the waiver issue, the Court finds that the Watson Defendants have not met

1 their heavy burden of demonstrating that Watson Laboratories and Watson Pharmaceuticals were  
2 fraudulently joined. A party is only deemed to have been “joined ‘fraudulently’ if after all disputed  
3 questions of fact and all ambiguities in the controlling state law are resolved in the plaintiff’s favor,  
4 the plaintiff could not possibly recover against the party whose joinder is questioned.” *Kalawe v.*  
5 *KFC Nat. Mgmt. Co.*, Civ. No. 90-007799, 1991 WL 338566, at \*2 (D. Hawaii July 16, 1991)  
6 (citing *Kruso v. Int’l Tel. & Tel. Corp.*, 872 F.2d 1416, 1426 (9th Cir. 1989). Further, “‘district  
7 courts must not ‘pretry’ substantive factual issues in order to answer the discrete threshold question  
8 of whether the joinder of an in-state defendant is fraudulent. *Green v. Amerada Hess Corp.*, 707  
9 F.2d 201, 204 (5th Cir. 1983) (quoting *B., Inc. v. Miller Brewing Co.*, 663 F.2d 545, 546 (5th Cir.  
10 1981)). “The question is simply whether there is any possibility that plaintiff will be able to  
11 establish liability against the party in question.” *Briano v. Conseco Life Ins. Co.*, 126 F. Supp. 2d  
12 1293, 1296 (C.D. Cal. 2000). “There is a presumption against finding fraudulent joinder, and  
13 defendants who assert that plaintiff has fraudulently joined a party carry a heavy burden of  
14 persuasion.” *Plute v. Roadway Package System, Inc.*, 141 F. Supp. 2d 1005, 1008 (N.D.Cal. 2001)  
15 (citing *Nishimoto v. Federman-Bachrach & Assocs.*, 903 F.2d 709, 712 n.3 (9th Cir. 1990) and  
16 *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988).

17 Defendants contend that Plaintiffs have no viable claims against Watson Laboratories  
18 because the Watson Laboratories based out of Corona, California is not the Watson  
19 Pharmaceutical’s subsidiary that manufactured fentanyl patches. Instead, Defendants allege that the  
20 Watson Laboratories based out of Utah is the actual subsidiary that manufactures fentanyl patches.  
21 However, Plaintiffs present evidence suggesting that the Corona-based Watson Laboratories was  
22 in fact involved in the manufacturing of the fentanyl patches. Plaintiffs provide the Court with a  
23 copy of the “Full Prescribing Information” that accompanies every box of 100 mcg/hr fentanyl  
24 patches obtained from Watson Pharmaceuticals’ website that states the patches are “Manufactured  
25 by: Watson Laboratories, Inc., Corona, CA 92880 USA.” Dec. of James Craig Orr, Jr. in Sup. of  
26 Reply (“Orr Dec.”), ¶2, Exh. A. Plaintiffs also provide a snapshot from the Watson  
27 Pharmaceuticals’ website of the packaging of a 75 mcg/hr fentanyl patch that includes the text  
28 “Watson Laboratories, Inc. Corona, CA 92880 USA.” Id. at ¶3, Exh. B. This evidence at least

1 suggests that the Watson Laboratories based out of Corona, California and named as a defendant  
2 in the instant action participates in the manufacturing of fentanyl patches. Thus, Plaintiffs have the  
3 possibility of recovering against the forum defendant Watson Laboratories for strict products  
4 liability, negligence, and/or breach of warranty.

5 Defendants also argue that any alleged liability on behalf of Watson Pharma (the entity that  
6 they concede sells and distributes fentanyl patches) cannot be attributed to the parent company  
7 Watson Pharmaceuticals, citing the general rule that the existence of a parent-subsidary relationship  
8 alone is not enough to attribute the liability of the subsidiary to the parent. *Doe v. Unocal Corp.*,  
9 248 F.3d 915, 925-6 (9th Cir. 2001). Defendants contend that Watson Pharmaceuticals does not  
10 design, manufacture, market, or distribute fentanyl patches, but provide no evidence regarding the  
11 nature of its relationship with Watson Pharma. As Plaintiffs point out, the general rule identified  
12 by Defendants is subject to exceptions when the parent company asserts extensive control over its  
13 subsidiary, has a principal/agent relationship with its subsidiary, or when the subsidiary performs  
14 services sufficiently important to the parent such that the parent would perform them in the  
15 subsidiaries absence. *See Bowoto v. Chevron Texaco Corp.*, 312F. Supp. 2d 1229, 1235-6 (N.D.Cal.  
16 2004); *E. & J. Gallo Winery v. EnCana Energy Servs.*, No. CV F 03-5412 AWI LJO, 2008 WL  
17 2220396, at \*11(E.D.Cal. May 27, 2008); *Unocal Corp.*, 248 F.3d at 926, 928. With virtually no  
18 evidence presented by Defendants, Plaintiffs present evidence that suggests Watson Pharmaceuticals  
19 is in fact involved in the manufacture, marketing, and/or distribution of fentanyl patches or at least  
20 might have a closer relationship with its subsidiaries than it contends. For example, on its website,  
21 Watson Pharmaceuticals identifies itself as “a leading specialty pharmaceutical company that  
22 develops, manufactures, markets, sells and distributes brand and generic pharmaceutical products.”  
23 Orr Dec., ¶ 5, Exh. D. Further, fentanyl patches are listed in Watson Pharmaceuticals’ online  
24 “Product Database.” *Id.* at ¶6, Exh. E. Watson Pharmaceuticals also was the entity that recalled a  
25 number of defective fentanyl patches on August 8, 2008. *Id.* at ¶7, Exh. F. Thus, considering the  
26 strong presumption against finding fraudulent joinder, the Court cannot conclude that there is no  
27 possibility Plaintiffs could recover from forum defendant Watson Pharmaceuticals. As a result,  
28 fraudulent joinder cannot form a basis for this Court to deny remand.

1 **IV. DISPOSITION**

2 For the foregoing reasons, the Court hereby GRANTS the Motion to Remand. As a result,  
3 the Court renders MOOT Defendants' Motion to Quash Service of Summons and to Dismiss.  
4

5 IT IS SO ORDERED

6  
7 DATED: March 26, 2009



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DAVID O. CARTER  
United States District Judge