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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JACQUELINE WEIST, et al.,	)	CASE NO. CV 15-6047-R
	)	
Plaintiffs,	)	ORDER GRANTING PLAINTIFFS’
	)	MOTION FOR REMAND
v.	)	
	)	
C.R. BARD, INC., et al.,	)	
	)	
Defendants.	)	
	)	

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Before the Court is Plaintiffs' Motion for Remand, which was filed on August 19, 2015. Having been thoroughly briefed by both parties, this Court took the matter under submission on October 27, 2015.

“The burden of establishing federal subject matter jurisdiction falls on the party invoking removal.” *Marin Gen. Hosp. v. Modesto & Empire Traction Co.*, 581 F.3d 941, 944 (9th Cir. 2009) (citing *Toumajian v. Frailey*, 135 F.3d 648, 652 (9th Cir. 1998)). There is a “strong presumption against removal jurisdiction,” and courts must reject it “if there is any doubt as to the right of removal in the first instances.” *Geographic Expeditions, Inc., v. Estate of Lhotka ex rel. Lhotka*, 599 F.3d 1102, 1107 (9th Cir. 2010).

Diversity jurisdiction under Title 28 U.S.C. § 1332 requires complete diversity: every

1 plaintiff must be diverse from every defendant. *See Lincoln Property Co. v. Roche*, 546 U.S. 81,  
2 89 (2005). Plaintiffs contend that complete diversity is lacking on the face of the Complaint. The  
3 Complaint is brought on behalf of 20 Plaintiffs, including one Plaintiff from New Jersey.  
4 Defendant Bard is a corporation organized under the laws of New Jersey with its principal place of  
5 business in New Jersey. For purposes of diversity jurisdiction, Defendant is a “citizen” of New  
6 Jersey. 28 U.S.C. § 1332(c)(1). Because Defendant Bard and one Plaintiff are citizens of New  
7 Jersey, diversity is lacking on the face of the Complaint.

8 Defendant argues that “Plaintiffs have pled no facts which give rise to specific personal  
9 jurisdiction for the non-California Plaintiffs,” and therefore, the non-California Plaintiffs should  
10 be dismissed, creating complete diversity. Defendant misconstrues this jurisdictional test. When  
11 analyzing general or specific personal jurisdiction, a court is not concerned with whether it can  
12 properly assert jurisdiction over a plaintiff, but instead whether it can haul an out-of-state  
13 defendant into its court. While Defendant’s argument is unusual, it is not the first to raise it.

14 In *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), a New York resident sued  
15 Hustler magazine in New Hampshire for libel. The plaintiff had no contacts with New Hampshire,  
16 but it was the only remaining state where the statute of limitations had not run. Clearly, the  
17 plaintiff had engaged in blatant forum-shopping and the defendant challenged personal jurisdiction  
18 based in part on the plaintiff's complete lack of contacts with New Hampshire and the state's  
19 attenuated interest in the litigation. The Court rejected this argument, stating that it had never  
20 required plaintiffs to have minimum contacts with a forum state before permitting assertion of  
21 personal jurisdiction over a nonresident defendant. *Id.* at 779. In essence, the Court simply  
22 announced that there was no such thing as a plaintiff's minimum contacts requirement. While the  
23 Court suggested that a “plaintiff's residence is not, of course, completely irrelevant to the  
24 jurisdictional inquiry,” it reaffirmed that a “plaintiff's residence in the forum State is not a separate  
25 requirement, and lack of residence will not defeat jurisdiction established on the basis of  
26 defendant's contacts.” *Id.* at 780. Although Defendant argues that California has no jurisdiction  
27 over the non-California Plaintiffs, California acquired such jurisdiction as soon as the Plaintiffs  
28 filed the instant case.

1 Defendant also argues that the New Jersey Plaintiff has been fraudulently joined to defeat  
2 complete diversity. The Ninth Circuit has recognized an exception to the complete diversity  
3 requirement in the doctrine of fraudulent joinder, although there is a “general presumption”  
4 against it. *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1046 (9th Cir. 2009). “Joinder of a non-  
5 diverse defendant is deemed fraudulent, and the defendant’s presence in the lawsuit is ignored for  
6 purposes of determining diversity, ‘if the plaintiff fails to state a cause of action against a resident  
7 defendant, and the failure is obvious according to the settled rules of the state.’” *Morris v.*  
8 *Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001) (quoting *McCabe v. Gen. Foods*  
9 *Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987)). Fraudulent joinder of a resident defendant to defeat  
10 diversity jurisdiction must be proven by clear and convincing evidence. *Hamilton Materials, Inc.*  
11 *v. Dow Chemical Corp.*, 494 F.3d 1203, 1206 (9th Cir. 2007).

12 Defendant asserts that it cannot be liable to the non-California Plaintiffs on any theory in a  
13 California court because there is no personal jurisdiction over Sodfradim, or any other named  
14 Defendants, with respect to the non-California Plaintiffs’ claims, including claims brought by the  
15 New Jersey Plaintiff. This Court disagrees. As the Court held in *Keeton*, while plaintiff’s residence  
16 is not completely irrelevant to the jurisdictional inquiry, it is not a separate requirement, and more  
17 importantly, lack of residence will not defeat jurisdiction established on the basis of defendant’s  
18 contacts. 465 U.S. at 780. Sodfradim, Bard and Tissue Science Laboratories are all companies that  
19 have availed themselves to the protections and privileges of California’s laws. The Defendants  
20 collectively conduct substantial business in California, which include both sales and marketing of  
21 their transvaginal mesh. These products were marketed to and sold to two Plaintiffs in California.  
22 Just as in *Keeton*, where a non-resident of New Hampshire was allowed to pursue her claims in the  
23 forum state despite a clear lack of contacts, so too can the non-California Plaintiffs.

24 Defendant has not met its burden of establishing that the Court has diversity jurisdiction  
25 over this case. Defendant fails to demonstrate that the New Jersey Plaintiff was joined merely in  
26 order to defeat diversity jurisdiction. Because complete diversity is destroyed by the presence of  
27 the New Jersey Plaintiff, this Court, once again, lacks jurisdiction over this case.

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**IT IS HEREBY ORDERED** that Plaintiffs' Motion for Remand is GRANTED. (Dkt. No. 19)

**IT IS FUTHER HEREBY ORDERED** that Defendant's Motion to Dismiss is DENIED as this Court no longer retains jurisdiction over the matter. (Dkt. No. 15)

Dated: November 9, 2015.



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MANUEL L. REAL  
UNITED STATES DISTRICT JUDGE