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8 **United States District Court**
9 **Central District of California**
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11 SHAUNDA MCDANIEL; TAMMI
12 ROBINSON,

13 Plaintiffs,

14 v.

15 L BRANDS, INC; VICTORIA'S SECRET
16 STORES LLC; MARIA LNU (LAST
17 NAME UNKNOWN); and DOES 1
18 through 100,
19 Defendants.

CASE NO.2:16-cv-04289-ODW-RAO

**ORDER DENYING MOTION TO
REMAND AND DENYING
REQUESTS FOR MONETARY
SANCTIONS [19]**

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21 **I. INTRODUCTION**

22 Plaintiffs Shaunda McDaniel and Tammi Robinson move to remand this action
23 to the Los Angeles Superior Court for lack of subject matter jurisdiction. (Motion to
24 Remand ("Mot.") 1–2, ECF No. 19.) Plaintiffs argue that Defendants' Notice of
25 Removal ("Not.") is defective because it does not join all defendants, it does not prove
26 an amount in controversy, and because complete diversity does not exist. (Not. 9,
27 ECF No. 1.) For the reasons discussed below, the Court finds that Defendants have
28 successfully shown that the case meets the requirements for diversity jurisdiction and

1 that the Notice of Removal is not defective. As such, the Court hereby **DENIES**
2 Plaintiffs' Motion to Remand, **DENIES** both parties' requests for monetary sanctions,
3 and **LIFTS** the temporary stay of this case.

4 **II. FACTUAL BACKGROUND**

5 Plaintiffs McDaniel and Robinson both identify as African American. (Compl.
6 ¶ 1, ECF No. 1-1.) On or about June 16, 2015, Plaintiffs were shopping at the
7 Victoria's Secret store at the Beverly Center in Beverly Hills, California, where they
8 were involved in a confrontation with another customer "who appeared to be white."
9 (Compl. ¶ 7.) Plaintiffs allege that the customer hit and pushed Plaintiffs yet refused
10 to apologize. (*Id.*) A manager responded and inquired about the situation. (*Id.* ¶ 8.)
11 While all three women were being detained, another manager arrived. (*Id.* ¶ 9.) With
12 little or no investigation, the store manager immediately told Plaintiffs to leave the
13 store yet allowed the other customer to continue shopping. (*Id.*)

14 Plaintiffs filed this suit in Los Angeles Superior Court on June 15, 2016,
15 claiming racial bias against various defendants, including Victoria's Secret Stores,
16 LLC ("Victoria's Secret"). (Compl. ¶ 5.) Plaintiffs' complaint alleges seven causes
17 of action: (1) violation of California Civil Code Section 51; (2) negligence, negligent
18 supervision and management; (3) slander; (4) intentional infliction of emotional
19 distress; (5) false arrest, imprisonment; (6) violation of California Business &
20 Professions Code section 17200; and (7) violation of the Consumer Legal Remedies
21 Act. (*Id.*) In recompense, Plaintiffs seek: (1) special and general damages in an
22 amount not to exceed two million dollars per Plaintiff; (2) punitive and exemplary
23 damages not to exceed two million dollars per Plaintiff; (3) a permanent injunction
24 against discrimination; (4) actual damages up to a maximum of three times the amount
25 of actual damage but no less than four thousand dollars per Plaintiff; (5) attorneys'
26 fees and costs in an amount not to exceed two million dollars per Plaintiff; and (6)
27 other relief as the Court deems proper in an amount not to exceed two million dollars
28 per Plaintiff. (*Id.* ¶ 81.)

1 On June 15, 2016, Defendants Victoria's Secret and L Brands, Inc. filed a
2 Notice of Removal to this Court pursuant to 28 U.S.C. §1332(a), which gives federal
3 courts jurisdiction over a civil action if the amount in controversy exceeds \$75,000
4 and all Defendants' citizenships are diverse from all Plaintiffs' citizenships. (Not. 1.)
5 The removal notice stated that both the amount in controversy requirement and the
6 diversity of citizenship requirement are satisfied. (Not. 3-4.) On July 15, 2016,
7 Plaintiffs moved to remand the case to state court, asserting that the removal notice
8 was "defective" because Defendants did "not proffer any evidence as to the amount in
9 controversy." (Mot. 4.) In opposition, Defendants offered three press reports about
10 the Plaintiffs' lawsuit indicating that Plaintiffs' Complaint is seeking damages in
11 excess of \$75,000. (Opp'n, ECF No. 25.) The Motion to Remand is now before the
12 Court for consideration.¹

13 III. LEGAL STANDARD

14 A defendant may remove a case from a state court to a federal court pursuant to
15 28 U.S.C. § 1441 on the basis of federal question or diversity jurisdiction. To exercise
16 diversity jurisdiction, a federal court must find complete diversity of citizenship
17 among the adverse parties, and the amount in controversy must exceed \$75,000,
18 exclusive of interest and costs. *Id.* § 1332(a).

19 When a defendant's amount-in-controversy allegation is not contested by the
20 plaintiff or questioned by the court, the removing defendant's amount-in-controversy
21 allegation should be accepted. *Id.* at 550. However, when, as here, the plaintiff
22 contests the defendant's allegation, § 1446(c)(2)(B) instructs: "[R]emoval ... is proper
23 on the basis of an amount in controversy asserted" by the defendant "if the district
24 court finds, by the preponderance of the evidence, that the amount in controversy
25 exceeds" the jurisdictional threshold. *Id.*

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28 ¹ After carefully considering the papers filed in support of and in opposition to the Motion, the Court
deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

IV. DISCUSSION

As a preliminary matter, Plaintiffs' argument that the Notice of Removal was defective because it did not join all defendants is without merit. Because service had not been properly effected upon Maria LNU (aka Maria Burton) at the time of removal, her joinder was not required for the removal to be effective.² *See Destfino v. Reiswig*, 630 F.3d 952, 957 (9th Cir. 2011) (holding that where defendants were not properly served, their joinder in the petition for removal was not required). Further, Maria Burton effectively consented to removal through her concurrently-submitted declaration. (*See* Burton Decl.)

A. Complete Diversity of the Parties Exists

Plaintiffs' Complaint states plainly that they are both residents of California. (Compl. ¶ 13.) Corporate Defendants L Brands Inc. and Victoria's Secret each submitted Corporate Disclosure Statements pursuant to Federal Rule of Civil Procedure 7.1, which establish: L Brands Inc. is incorporated under the laws of Delaware and is publicly traded on the New York Stock Exchange, and Victoria's Secret is incorporated under the laws of Delaware and has its principal place of business in Ohio. (Def. L Brands Inc. Corporate Disclosure Statement, ECF No. 5; Def. Victoria's Secret Stores LLC Corporate Disclosure Statement, ECF No. 4.) Providing further proof of Victoria's Secret's citizenship, the Declaration of Robert Stalter, counsel for both corporate Defendants, states that Victoria's Secret is a wholly-owned subsidiary of Retail Store Operations, Inc., which is a Delaware Corporation with its principal place of business in Ohio. (Stalter Decl. ¶ 4.) These

² Cal. Code of Civ. P. 415.20(b) requires that for "substitute service" to be effective, copies of the summons and complaint must be left a defendant's usual place of business or abode, and additional copies must be mailed to the place where the summons and complaint were left. Here, the summons and copies were left at the Victoria's Secret Store at which the incident in controversy took place (Declaration of Suzanne Rand-Lewis ("Rand-Lewis Decl.") ¶ 4). This was not the usual place of business or abode of Maria LNU at the time of attempted service. (Declaration of Maria Burton ("Burton Decl.") ¶ 7.) In addition, Maria Burton (aka Maria LNU) did not receive copies of the summons or complaint in the mail. (*Id.* ¶¶ 11—12.) As such, Plaintiffs did not properly effect substituted service upon Maria Burton by the time of the Notice of Removal.

1 pieces of evidence demonstrate that none of the corporate Defendants are citizens of
2 California. Finally, Maria Burton’s Declaration clearly states that her domicile is
3 Denver, Colorado, and that it is her intention to remain a resident of Colorado.
4 (Burton Decl. ¶ 7.) This satisfies the requirement that for an individual to be a citizen
5 of a state, she must have established a residence there and intend to remain
6 permanently or indefinitely. *See Lew v. Moss*, 797 F.2d 747, 749—50 (9th Cir. 2001).

7 For the above reasons, the Court finds there is complete diversity in this case.
8 All defendants are diverse from all plaintiffs, and removal is proper on that ground.

9 **B. Amount in Controversy**

10 Plaintiffs’ Complaint states that Plaintiffs seek “special and general damages,
11 compensatory damages for emotional distress and other economic and non-economic
12 losses as to each Plaintiff in an amount not to exceed two million dollars per
13 Plaintiff;” a permanent injunction, “actual damages . . . up to a maximum of three
14 times the amount of actual damages but no less than four thousand dollars . . . per
15 Plaintiff . . . in an amount not to exceed two million dollars per Plaintiff;” and for
16 other damages and costs. (Compl. ¶ 81.) However, Plaintiffs’ argument in attempting
17 to remand this case is that the Complaint does not state an amount in controversy.
18 (Mot. 4—5.) Plaintiffs argue that at a minimum, their Complaint prays for \$8,000 in
19 damages each, which is far below the jurisdictional minimum, rather than
20 acknowledging the possible maximum damages amount of \$2,000,000 per plaintiff.
21 (*Id.* 5.) Plaintiffs cannot have it both ways. The Complaint makes clear that Plaintiffs
22 seek general, exemplary, special, and treble damages, all of which are calculated in
23 determining the amount in controversy. *See Conrad Associates v. Hartford Acc &*
24 *Indemn. Co.*, 994 F.Supp. 1196 (N.D. Cal. 1998).

25 Even though the Complaint describes the amount in controversy as a cap, “not
26 to exceed two million dollars per Plaintiff,” this suffices as a statement of the amount
27 in controversy upon which Defendants can rely in properly removing the action to
28 federal court. *Morey v. Louis Vuitton North America, Inc.* is a case where the amount

1 in controversy could be *up to* a certain amount for each alleged violation in the
2 Complaint. 461 Fed.Appx. 642, 643 (9th Cir. 2011). The statute at issue provided for
3 civil penalties “not to exceed” \$250 for first violations and \$1,000 for subsequent
4 violations. *Id.* Based on the high number of alleged violations, in the aggregate those
5 “not to exceed” penalty amounts could result in an amount in controversy higher than
6 the jurisdictional limit, and the court found that the amount in controversy exceeded
7 the minimum for purposes of removal. *Id.* The Court held that as long as the amount
8 claimed in the Complaint’s prayer for relief was apparently made in good faith, that
9 amount controls. *Id.*

10 Here, Plaintiffs’ Complaint clearly alleges that damages in this case may reach
11 the two million dollar cap per plaintiff. (*See* Compl. ¶ 81.) This number obviously far
12 exceeds the \$75,000 jurisdictional minimum, and there is nothing suggesting that
13 Plaintiffs did not claim this amount in good faith. With this in mind, the Court finds
14 that the amount in controversy exceeds the jurisdictional minimum for purposes of
15 removal.

16 **C. Sanctions**

17 As a final matter, both Plaintiffs and Defendants request an award of fees and
18 costs. The removal statute provides in relevant part that “[a]n order remanding the
19 case may require payment of just costs and any actual expenses, including attorney’s
20 fees, incurred as a result of the removal.” 28 U.S.C § 1447(c). Absent unusual
21 circumstances, courts may award attorney’s fees under § 1447(c) only where the
22 removing party lacked an objectively reasonable basis for seeking removal. *Martin v.*
23 *Franklin Capital Corp.*, 546 U.S. 132, 141, 126 S.Ct. 704, 163 L.Ed. 2d 547 (2005).
24 Conversely, when an objectively reasonable basis exists, fees should be denied. *Id.*

25 Removal may still be reasonable even if the removing party’s arguments lack
26 merit and the removal is ultimately unsuccessful. *Lussier v. Dollar Tree Stores, Inc.*,
27 518 F. 3d 1062, 1065 (9th Cir. 2008). Rather, the court should assess “whether the
28 relevant case law clearly foreclosed the defendant’s basis of removal” by examining

1 the “clarity of the law at the time of removal.” *Id.* at 1066. By way of analogy, the
2 same can be said for a party’s arguments in attempting to remand.

3 Here, the Court does not find either party’s arguments in support of removal or
4 in support of remand so objectively unreasonable that they warrant an award of
5 attorneys’ fees. *See Lussier*, 518 F. 3d at 1065 (noting that while “[t]here is no
6 question that [the defendant’s] arguments were losers[,] ... removal is not objectively
7 unreasonable solely because the removing party’s arguments lack merit, or else
8 attorney’s fees would always be awarded whenever remand is granted”). Given the
9 understandable ambiguity in stating possible damages as a cap (“not to exceed” two
10 million dollars per plaintiff), the dispute over whether the matter should be remanded
11 was not unreasonable. Therefore, Plaintiffs’ and Defendants’ requests for costs and
12 fees are both **DENIED**.

13 **V. CONCLUSION**

14 For the foregoing reasons, the Court **DENIES** Plaintiff’s Motion to Remand
15 and **DENIES** Plaintiffs’ request for costs as moot. Defendants’ request for monetary
16 sanctions is **DENIED**. The temporary stay of this case is **LIFTED**.

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18 **IT IS SO ORDERED.**

19
20 October 20, 2016

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24 **OTIS D. WRIGHT, II**
25 **UNITED STATES DISTRICT JUDGE**
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