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**United States District Court
Central District of California**

ANGELA KALDIS,

Plaintiff,

v.

WELLS FARGO BANK, N.A.; NAJLA
RABADI; SARA MAJIDIAN; RITA EL
HAGE; and DOES 1-100, inclusive,

Defendants.

Case No 2:16-cv-06407-ODW- GJS

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND [9] AND
DISMISSING INDIVIDUAL
DEFENDANTS**

I. INTRODUCTION

Plaintiff Angela Kaldis originally filed this action in Los Angeles Superior Court against Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) and individual Defendants Najla Rabadi, Sara Majidian, and Rita El Hage (collectively, “Individual Defendants”). (Compl., ECF No. 1, Ex. A.) Wells Fargo timely removed the case based on diversity jurisdiction, claiming that complete diversity existed because the Individual Defendants were fraudulently joined. (Notice of Removal (“NOR”), ECF No. 1.) Plaintiff subsequently filed the present Motion for an Order to Remand to State Court. (ECF No. 9.)

The Court finds that the Individual Defendants are fraudulently joined. The Court therefore has subject-matter jurisdiction over this action, pursuant to 28 U.S.C.

1 § 1332. Thus, Plaintiff’s Motion for Remand is **DENIED** and the Court dismisses
2 Defendants Rabadi, Majidian, and El Hage from this action with prejudice.¹ (ECF
3 No. 9.)

4 II. FACTUAL BACKGROUND

5 Wells Fargo employed Kaldis as a Personal Banker for two separate terms of
6 employment: the first from February 2013 until February 2014, and the second from
7 March 2014 until October 2015. (Compl. ¶¶ 11(a), 11(g), 11(h), 12(a).) During the
8 first period of employment, Rabadi was Kaldis’ branch manager and Majidian was the
9 branch’s Service Manager. (*Id.* ¶¶ 11(a), 11(c).) Kaldis alleges that Rabadi verbally
10 abused her regarding her weight and appearance, forced her to stay at work later than
11 male employees, screamed at her, turned off her internet while she was helping a
12 customer, and threatened to keep her from being promoted if Kaldis ever reported the
13 abuse to Human Resources. (*Id.* ¶¶ 11(a), 11(e).)

14 Kaldis was diagnosed with anxiety and depression in mid-2013. (*Id.* ¶ 11(b).)
15 Thereafter, Rabadi observed prescription medication on Kaldis’ desk and allegedly
16 made offense statements such as “Angela is taking Xanax at her desk” and “Angela is
17 on drugs.” (*Id.*) Around that time, Majidian allegedly told Kaldis that she was
18 slurring her words and asked her “What drugs are you on? Do you need help?” during
19 a meeting in which another employee was present. (*Id.* ¶ 11(c).)

20 Near the end of 2013, Kaldis twice requested a transfer to a different Wells
21 Fargo location, both of which she claims Rabadi blocked. (*Id.* ¶¶ 11(e), 11(f).) Kaldis
22 eventually quit in February 2014 due to the allegedly hostile work environment at the
23 branch. (*Id.* ¶ 11(g).) However, El Hage later recruited Kaldis back to Wells Fargo to
24 work under her at a different branch. (*Id.* ¶ 11(h).) Kaldis claims that she soon
25 experienced a hostile environment at the new branch as well, as Rabadi and El Hage

26
27 ¹ After carefully considering the papers filed in support of and in opposition to the Motion, the
28 Court deems the matters appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D.
Cal. L.R. 7-15.

1 became closer friends and El Hage began to single out Kaldis and question her work
2 performance. (*Id.* ¶ 11(i).) Further, El Hage allegedly told Kaldis that her new branch
3 manager would “always . . . promote the guys over you.” (*Id.*) Kaldis claims that her
4 lack of promotion after being sent to a licensing program—which resulted in the
5 promotion of all the male employees that attended—shows that she was discriminated
6 against for being a woman. (*Id.*)

7 Kaldis eventually took a medical leave of absence in April 2015 due to
8 depression she claims was related to her mistreatment at Wells Fargo. (*Id.* ¶ 12(a).)
9 She was terminated in October 2015. (*Id.*) On July 22, 2016, Kaldis filed a
10 Complaint in the Los Angeles Superior Court, in which she asserted sixteen causes of
11 action. (ECF No. 1, Ex. A.) However, Kaldis pleaded only three of those causes of
12 action against the Individual Defendants: disability harassment, harassment on the
13 basis of taking leave under the California Family Rights Act (“CFRA”), and
14 intentional infliction of emotional distress (“IIED”). (*Id.* ¶¶ 25–30, 61–66, 118–23.)
15 Wells Fargo timely removed the case to this Court, arguing that the Individual
16 Defendants were sham defendants who had been fraudulently joined and whose
17 citizenship should not be taken account in determining diversity jurisdiction. (ECF
18 No. 1.) Kaldis then filed the present Motion to Remand. (ECF No. 9.)

19 III. LEGAL STANDARD

20 A. Removal

21 A civil action may be removed from a state court to a federal district court
22 where the action is pending if the district court has original jurisdiction over the
23 action. 28 U.S.C. § 1441(a). A district court has original jurisdiction over a civil
24 action where the amount in controversy exceeds the sum or value of \$75,000,
25 exclusive of interest and costs, and the dispute is between “citizens of different
26 states.” 28 U.S.C. § 1332. Section 1332 requires complete diversity, i.e., that “the
27 citizenship of each plaintiff is diverse from the citizenship of each defendant.”
28 *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 67–68 (1996). Section 1441 further limits

1 removal to cases where no defendant “properly joined and served . . . is a citizen of
2 the State in which such action is brought.” 28 U.S.C. § 1441(a)(b)(2). Removal
3 statutes are “strictly construe[d] against removal.” *Gaus v. Miles, Inc.*, 980 F.2d 564,
4 566 (9th Cir. 1992). Federal jurisdiction must be rejected if there is any doubt as to
5 the right of removal in the first instance. *Id.* Accordingly, the removing party bears
6 the heavy burden of establishing original jurisdiction in the district court. *Id.*

7 **B. Fraudulent Joinder**

8 However, a non-diverse party may be disregarded for purposes of determining
9 whether diversity jurisdiction exists if the court determines that the party’s joinder was
10 “fraudulent” or a “sham.” *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th
11 Cir. 2001). The relevant inquiry is whether plaintiff has failed to state a cause of
12 action against the non-diverse defendant, and the failure is obvious under settled state
13 law. *Id.*

14 The burden of proving fraudulent joinder is a heavy one. The removing party
15 must prove that there is “no possibility that plaintiff will be able to establish a cause of
16 action in State court against the alleged sham defendant.” *Good v. Prudential Ins. Co.*
17 *of Am.*, 5 F. Supp. 2d 804, 807 (N.D. Cal. 1998). In this regard, “[r]emand must be
18 granted unless the defendant shows that the plaintiff ‘would not be afforded leave to
19 amend his complaint to cure [the] purported deficiency.’” *Padilla v. AT & T Corp.*,
20 697 F. Supp. 2d 1156, 1159 (C.D. Cal. 2009); *Macey v. Allstate Prop. & Cas. Ins.*
21 *Co.*, 220 F. Supp. 2d 1116, 1117 (N.D. Cal. 2002) (“If there is a non-fanciful
22 possibility that plaintiff can state a claim under California law against the non-diverse
23 defendants the court must remand”). “Merely a ‘glimmer of hope’ that plaintiff can
24 establish [a] claim is sufficient to preclude application of [the] fraudulent joinder
25 doctrine.” *Gonzalez v. J.S. Paluch Co.*, No. 12-08696-DDP (FMOx), 2013 WL
26 100210, at *4 (C.D. Cal. Jan. 7, 2013) (internal quotations omitted); *accord Ballestros*
27 *v. Am. Std. Ins. Co. of Wisc.*, 436 F. Supp. 2d 1070, 1072 (D. Ariz. 2006) (same)
28 (citing *Mayes v. Rapoport*, 198 F.3d 457, 463–64 (4th Cir. 1999)).

1 **IV. DISCUSSION**

2 The Court finds that Kaldis and Wells Fargo are diverse parties, and that the
3 Individual Defendants were fraudulently joined. Further, the Court finds that Wells
4 Fargo sufficiently pleaded that Kaldis’ claims clear the \$75,000 threshold of § 1332.
5 Therefore, the Court **DENIES** Kaldis’ Motion to Remand. (ECF No. 9.)

6 **A. Diversity Jurisdiction**

7 1. Kaldis’ Citizenship

8 Kaldis argues that Wells Fargo did not sufficiently establish her citizenship in
9 its Notice of Removal, as Wells Fargo based its determination of Kaldis’ California
10 citizenship solely on the assertion in her Complaint that she was a California
11 “resident” at the time of the alleged incidents. (Mot. at 6–7.)

12 For diversity purposes, an individual is a citizen of the state where he or she is
13 domiciled. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). A
14 person’s domicile is her permanent home, where she resides with the intention to
15 remain or to which she intends to return. *Id.* (citing *Lew v. Moss*, 797 F.2d 747, 749
16 (9th Cir. 1986)). A person’s residence can be prima facie evidence of domicile. *State*
17 *Farm Mut. Auto. Ins. Co v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994). However, mere
18 residence allegations are insufficient to establish citizenship on removal in light of the
19 strong presumption against subject matter jurisdiction in a case removed from state
20 court. *Kanter*, 265 F.3d at 857–58 (holding that defendant had not establish plaintiffs’
21 citizenship when defendant only referenced plaintiffs’ respective residences and never
22 actually asserted that plaintiffs were California citizens); *Wilson v. CitiMortgage*, No.
23 5:13-cv-02294-ODW (SPx), 2013 WL 6871822, at *1 (C.D. Cal. Dec. 17, 2013).

24 Generally, courts require a removing defendant to establish a plaintiff’s
25 citizenship using other facts in addition to residence, such as “voting registration and
26 voting practices, . . . location of brokerage and bank accounts, location of spouse and
27 family, membership in unions and other organizations, place of employment or
28 business, driver’s license and automobile registration, and payment of taxes.” *Lew*,

1 797 F.2d at 750. Yet some courts in this district have allowed defendants to establish
2 a plaintiff’s California citizenship using only the plaintiff’s admission of California
3 residence to argue that plaintiff was a California citizen. *See, e.g., Martinez v. Wells*
4 *Fargo Bank, N.A.*, No. CV 13-09547 SJO (JCGx), 2014 WL 997390, at *1 (C.D. Cal.
5 Jan. 8, 2014); *Avila v. Allegro Mfg., Inc.*, No. CV 11-07744 SJO (MRWx), 2011 WL
6 6010044, at *2 (C.D. Cal. Nov. 28, 2011) (“Absent any evidence to the contrary, the
7 Court finds Dunkel to be a citizen of California for purposes of diversity.”); *Merricks-*
8 *Barragan v. Maidenform, Inc.*, No. CV 11-07965 SJO (MRWx), 2011 WL 5173653,
9 at *2 (C.D. Cal. Oct. 31, 2011). In fact, the court in *Wexler v. Jensen*
10 *Pharmaceuticals, Inc.* recently dismissed—in a single footnote—a prior attempt by
11 Kaldis’ law firm to make the same argument that she makes here. *Wexler v. Jensen*
12 *Pharmaceuticals, Inc.*, No. CV 15-03518-AB (AJWx), 2015 WL 6159101, at *8 n. 1
13 (C.D. Cal. Oct. 20, 2015) (“Plaintiff also attempts to argue that Defendant failed to
14 establish Plaintiff’s California citizenship . . . The Court has reviewed the record and
15 summarily rejects [this] argument”).

16 Wells Fargo does more than necessary to establish Kaldis’ citizenship for
17 diversity purposes. Contrary to Kaldis’ claim that “Defendants do not provide any
18 basis, let alone any citation or reference” for their assertion that Kaldis is a California
19 citizen, Wells Fargo cites Plaintiff’s own statement in her Complaint that she resided
20 in California at all times mentioned in the Complaint. (Mot. 7; NOR ¶ 6 n. 2; Compl.
21 3.) Moreover, Wells Fargo also establishes that Kaldis was employed in California
22 during the alleged incidents at issue. (NOR ¶ 6); *see Lew*, 797 F.2d at 750. Thus,
23 Wells Fargo has cited multiple facts to establish Kaldis’ California citizenship.
24 Further, Kaldis never actually disputes that she is a California citizen; in fact, she
25 argues in the alternative that diversity does not exist precisely because both she and
26 the Individual Defendants are California citizens. (Mot. 7.) Therefore, the Court
27 rejects Kaldis’ argument that Defendants have not sufficiently established her
28 citizenship.

1 2. Wells Fargo’s Citizenship

2 Neither party contests Wells Fargo’s citizenship. Under 28 U.S.C. § 1348,
3 national banking associations are citizens of the state where their main office is
4 located. *See Am. Surety Co. v. Bank of Cal.*, 133 F.2d 160, 161–62 (9th Cir. 1943);
5 *Wachovia Bank v. Schmidt*, 546 U.S. 303, 318 (2006) (noting that “one would
6 sensibly ‘locate’ a national bank for . . . qualification for diversity jurisdiction, in the
7 State designated in its articles of association as its main office”). Wells Fargo has its
8 main office in Sioux Falls, South Dakota, and is therefore a citizen of South Dakota.
9 (NOR ¶ 7); *see also Rouse v. Wachovia Mortgage, FSB*, 747 F.3d 707, 711 (9th Cir.
10 2014) (holding that “Wells Fargo is a citizen only of South Dakota, where its main
11 office is located”). Thus, Kaldis and Wells Fargo are diverse parties.

12 **B. Fraudulent Joinder**

13 However, the main dispute over diversity jurisdiction arises when considering
14 the citizenship of the Individual Defendants. As Kaldis notes, the Individual
15 Defendants are all citizens of California, which would initially seem to destroy
16 diversity given Plaintiff’s California citizenship. But Wells Fargo argues that the
17 Individual Defendants’ citizenship should be disregarded because they are sham
18 defendants that have been fraudulently joined. (NOR ¶ 20; Opp’n 5, ECF No. 11.)
19 While Kaldis asserts that the Individual Defendants have not been fraudulently joined,
20 she does little if anything to actually counter the cogent arguments Defendants have
21 made. Instead, Kaldis essentially repeats the allegations of her initial Complaint
22 against the Individual Defendants. (*See* Mot. 9–12.) The Court analyzes each of Well
23 Fargo’s arguments regarding fraudulent joinder in turn.

24 1. FEHA Claims against Rabadi, Majidian, and El Hage

25 Kaldis makes two separate claims of harassment against the Individual
26 Defendants under California Government Code section 129409(j): claims for
27 disability harassment, and harassment on the basis of taking CFRA leave. (Compl.
28 ¶¶ 25–30, 61–66); Cal. Gov’t Code § 12940(j). Defendants respond that Kaldis failed

1 to exhaust her administrative remedies before bringing the suit, and thus is barred
2 from now bringing these claims. (NOR ¶ 11; Opp’n 5–7.)

3 Section 12960 requires that an employee “exhaust the administrative remedy
4 provided by the statute by filing a complaint with the Department of Fair Employment
5 and Housing (“DFEH”) and . . . obtain[ing] from the Department a notice of right to
6 sue in order to be entitled to file a civil action in court based on violations of the
7 FEHA.” *Romano v. Rockwell Int’l, Inc.*, 14 Cal. 4th 479, 492 (1996); Cal. Gov’t Code
8 § 12960(b). In order for a plaintiff “to bring a civil lawsuit under the FEHA, the
9 defendants must have been named in the caption or body of the DFEH charge.” *Cole*
10 *v. Antelope Valley Union High School Dist.*, 47 Cal. App. 4th 1505, 1515 (1996).
11 Kaldis filed her DFEH complaint on February 18, 2016, and named only Wells Fargo
12 as a respondent. (Req. for Judicial Notice 8, ECF No. 12.) The complaint form even
13 includes a space to name co-respondents, but Kaldis failed to include the Individual
14 Defendants. (*Id.* at 8–10.) Since Rabadi, Majidian, and El Hage were never named in
15 Kaldis’ FEHA complaint, Kaldis cannot now name them in her Complaint. *See Cole*,
16 47 Cal. App. 4th at 1515 (holding that the plaintiff could not bring an FEHA action
17 against two codefendants in the case since he had not named in his DFEH complaint).

18 2. IIED Claims Against Rabadi and Majidian

19 Similarly, Kaldis cannot state claims against Rabadi and Majidian for IIED.
20 IIED claims are subject to a two-year statute of limitations under California Code of
21 Civil Procedure section 335.1. This two year period begins to run “when the plaintiff
22 suffers severe emotional distress as a result of outrageous conduct by the defendant.”
23 *Soliman v. CVS RX Servs., Inc.*, 570 F. App’x 710, 711 (9th Cir. 2014). As mentioned
24 above, the last time Rabadi and Majidian could have inflicted emotion distress on
25 Kaldis was in February 2014, since Kaldis initially quit Wells Fargo at that time and
26 was never again at their branch or under their management. Kaldis filed this action
27 for IIED in state court on July 25, 2016—more than two years after the last
28 emotionally distressing statements were allegedly made by Rabadi or Majidian. (*See*

1 ECF No. 1, Ex. A.) Thus, Kaldis’ IIED claims against Rabadi and Majidian are
2 barred by the statute of limitations.

3 3. IIED Claim Against El Hage

4 While Kaldis’ IIED claim against El Hage is not barred by the two-year statute
5 of limitations (as El Hage allegedly inflicted emotional distress on Plaintiff through
6 2015), Wells Fargo correctly argues that the claim is barred by the Worker’s
7 Compensation Act. (Not. ¶ 17–18.); *see* Cal. Lab. Code § 3200, et seq. The
8 California Supreme Court has held that when the “alleged wrongful conduct . . .
9 occur[s] at the worksite, in the normal course of the employer-employee relationship
10 . . . workers’ compensation is a plaintiff[’s] exclusive remedy for any injury that may”
11 result. *Miklosy v. Regents of Univ. of Cal.*, 44 Cal. 4th 876, 902 (2008). Further,
12 “[w]here [the] alleged misconduct by an employer is a normal part of the employment
13 relationship, such as demotions, criticism, and negotiations of grievances, an
14 employee who suffers emotional distress cannot avoid the exclusivity rule by simply
15 characterizing the employer’s decisions as manifestly unfair, outrageous, harassment,
16 or intended to cause emotional disturbance resulting in disability.” *Langevin v. Fed.*
17 *Exp. Corp.*, No. CV 14-08105 MMM (FFMx), 2015 WL 1006367, at *12 (C.D. Cal.
18 Mar. 6, 2015) (holding that the individual defendants were fraudulently joined and
19 denying the plaintiffs’ motion for remand); *see also Yau v. Santa Margarita Ford Inc.*,
20 229 Cal. App. 4th 144, 162 (2014) (upholding the trial court’s ruling that the Worker’s
21 Compensation Act provided the sole remedy for the plaintiff’s IIED claims).

22 All of the IIED that Kaldis allegedly suffered at the hands of El Hage occurred
23 during the normal course of their employer-employee relationship. (Compl. ¶ 11(i).)
24 The claims are based solely on El Hage’s personnel management decisions. (*Id.*); *see*
25 *Janken v. GM Hughes Electronics*, 46 Cal. App. 4th 55, 80 (1996) (“[a] simple
26 pleading of personnel management activity is insufficient to support a claim of
27 intentional infliction of emotional distress, even if improper motivation is alleged”).

1 Thus, the Worker’s Compensation Act bars Kaldis from asserting her IIED claim
2 against El Hage in this Court.²

3 A defendant bears a heavy burden in establishing that other defendants have
4 been fraudulently joined to a cause of action. But Wells Fargo has satisfied that
5 burden here because Kaldis failed to exhaust her administrative remedies against
6 Defendants regarding her FEHA harassment claims and cannot establish her IIED
7 claims due to the statute of limitations and protection of managerial activities.

8 **C. Amount in Controversy**

9 Finally, Kaldis argues that Wells Fargo has not established that the amount in
10 controversy actually exceeds \$75,000. (Mot. 13–14.) When a plaintiff contests the
11 defendant's allegation that the amount in controversy exceeds \$75,000, “section
12 1446(c)(2)(B) instructs: ‘[R]emoval . . . is proper on the basis of an amount in
13 controversy asserted’ by the defendant ‘if the district court finds, by the
14 preponderance of the evidence, that the amount in controversy exceeds’ the
15 jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.
16 Ct. 547, 553–54 (2014); 28 U.S.C. § 1446. Discovery may then be taken, and “[i]n
17 case of a dispute, the district court must make findings of jurisdictional fact to which
18 the preponderance standard applies.” *Dart*, 135 S. Ct. at 554 (internal citations
19 omitted)).

20 Kaldis never actually claims that the amount in controversy does not exceed
21 \$75,000. Rather, she cites *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*,
22 199 F. Supp. 2d 993 (C.D. Cal. 2002), to argue that a “‘defendant must submit
23 summary-judgment type evidence to establish that the actual amount in controversy
24 exceeds \$75,000.’” (Mot. 14.) But the Supreme Court established in 2014 that “a
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26 ² In her Complaint, Kaldis seems to imply that Rabadi’s friendship with El Hage contributed in some
27 way to El Hage’s mistreatment of Kaldis. (See Compl. ¶ 11(i).) To the extent Kaldis is alleging
28 such a theory of liability, it is also barred by the Worker’s Compensation Act, for the action El Hage
ultimately took against Kaldis occurred in the normal course of their employer-employee
relationship.

1 defendant’s notice of removal need include only a plausible allegation that the amount
2 in controversy exceeds the jurisdictional threshold.” *Dart*, 135 S. Ct. at 554. Any
3 “evidence establishing the amount is required by § 1446(c)(2)(B) only when the
4 plaintiff contests, or the court questions, the defendant’s allegation.” *Id.*

5 Here, Wells Fargo did all that was required of it to establish that Kaldis’ claims
6 clear the \$75,000 threshold. First, Wells Fargo stated a plausible allegation that the
7 amount in controversy exceeded the jurisdictional threshold in its Notice of Removal,
8 analyzing Kaldis’ lost earnings due to her firing, potential emotional distress damages
9 she could recover in excess of \$75,000, potential attorneys’ fees that could total up to
10 \$90,000, and the massive punitive damages she could potentially recover. (NOR ¶¶
11 24–27.) Second, when Kaldis actually contested the amount in controversy in her
12 Motion to Remand, Wells Fargo responded with evidence that a victory for Kaldis in
13 the case would exceed the \$75,000 threshold by providing evidence of her hourly
14 wages and citing comparable cases in which lost wages, emotional distress damages,
15 punitive damages, and attorney’s fees under FEHA each individually exceeded or
16 came close to exceeding the threshold. (Opp’n 11–15; Campbell Decl. ¶ 7.) Thus, the
17 Court finds that Defendants have sufficiently established that the amount in
18 controversy exceeds \$75,000.

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V. CONCLUSION

Because the Court finds that Defendants Najla Rabadi, Sara Majidian, and Rita El Hage were fraudulently joined and the amount in controversy exceeds \$75,000, it has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. The Court therefore **DENIES** Kaldis' Motion to Remand. (ECF No. 9.) Furthermore, based on the foregoing analysis, the Court **DISMISSES** Rabadi, Majidian, and El Hage from this action with prejudice.

IT IS SO ORDERED.

October 28, 2016



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE