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JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

| | | |
|-----------------------------|---|------------------------------|
| ELLEN RHEA PAJIMULA QUIZON, |) | 2:17-cv-07110-RSWL-JEM |
| an individual, |) | |
| |) | |
| Plaintiff, |) | ORDER re: Plaintiff's |
| |) | Motion to Remand [9] |
| v. |) | |
| |) | |
| TARGET, entity type |) | |
| unknown; and DOES 1 THROUGH |) | |
| 50, Inclusive |) | |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |

Currently before the Court is Plaintiff Ellen Rhea Pajimula Quizon's ("Plaintiff") Motion to Remand to State Court ("Motion") [9]. Having reviewed all papers submitted pertaining to this Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:** the Court **GRANTS** Plaintiff's Motion.

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1 I. BACKGROUND

2 A. Factual Background

3 Plaintiff is an individual residing in Los Angeles,
4 California. First Am. Compl. ("FAC") ¶ 1, ECF No. 1-2.
5 Defendant Target Corporation ("Target") is incorporated
6 under the laws of Minnesota, with its principal place
7 of business in Minnesota. Notice of Removal ¶ 7, ECF
8 No. 1. Plaintiff alleges that on June 26, 2015,
9 Plaintiff entered the Target store in Pasadena,
10 California (the "Premises"), slipped on a liquid
11 substance on the floor, and fell to the ground,
12 sustaining injuries. FAC ¶¶ 6, 10. Plaintiff alleges
13 that Target's negligence caused Plaintiff to suffer
14 mental and physical injuries, pain and suffering, and
15 emotional distress. Id. ¶ 14.

16 B. Procedural Background

17 Plaintiff filed her Complaint [1-1] in the Superior
18 Court of California for the County of Los Angeles on
19 June 14, 2017. Plaintiff filed her First Amended
20 Complaint ("FAC") on July 21, 2017, omitting the
21 "Failure to Warn" cause of action. See id.

22 Plaintiff claims that over a year before she filed
23 her Complaint, she lost the Guest Incident Report
24 related to her injury. Pl.'s Reply in Supp. of Mot. to
25 Remand ("Reply") 4:5-8, ECF No. 11. Plaintiff claims
26 that she was served with Target's discovery responses,
27 which included Target employee Janelle Glen's ("Glen")
28 name and position, on August 11, 2017. Id. at 4:9-11;

1 Decl. of Jesse E. French in Supp. of Reply ("French
2 Reply Decl.") ¶ 4, ECF No. 11-1. On September 18,
3 2017, Plaintiff sent Target her Statement of Damages
4 specifying \$1,022,205.06 in total alleged damages.
5 Notice of Removal ¶ 8. On September 19, 2017, the
6 parties' counsel met at an informal discovery
7 conference where Target's counsel proposed a
8 Stipulation to Cap Damages and Remain in State Court
9 ("Stipulation") in lieu of removing to federal court.
10 Id. On September 20, 2017, Plaintiff made a doe
11 amendment to her FAC, naming Glen, who is a resident of
12 California, as a Defendant. Id.; see also id., Ex. F.
13 On September 22, 2017, Plaintiff's counsel e-mailed
14 Target's counsel, stating that he was "[s]till looking
15 into [the Stipulation]. I'll hopefully follow up with
16 you Monday." Notice of Removal ¶ 8.

17 Target filed its Notice of Removal [1] under
18 diversity jurisdiction on September 26, 2017.
19 Plaintiff filed the instant Motion [9] on October 16,
20 2017. Target filed its Opposition [10] on October 25,
21 2017, which was one day late. Plaintiff timely filed
22 her Reply [11] on October 31, 2017.

23 II. DISCUSSION

24 A. Legal Standard

25 Title 28 U.S.C. § 1441 "authorizes the removal of
26 civil actions from state court to federal court when
27 the action . . . could have been brought, originally,
28 in a federal district court." Lincoln Prop. Co. v.

1 Roche, 546 U.S. 81, 83 (2005). An action may be
2 removed on the basis of diversity jurisdiction if there
3 is complete diversity, meaning "each of the plaintiffs
4 must be a citizen of a different state than each of the
5 defendants."¹ Morris v. Princess Cruises, Inc., 236
6 F.3d 1061, 1067 (9th Cir. 2001). A removed case must
7 be remanded "[i]f at any time before final judgment it
8 appears that the district court lacks subject matter
9 jurisdiction." 28 U.S.C. § 1447(c).

10 An exception to the complete diversity requirement
11 is where a non-diverse defendant has been "fraudulently
12 joined." Morris, 236 F.3d at 1067. Under the
13 fraudulent joinder doctrine, "joinder of a non-diverse
14 defendant is deemed fraudulent, and the defendant's
15 presence in the lawsuit is ignored for purposes of
16 determining diversity, 'if the plaintiff fails to state
17 a cause of action against a resident defendant, and the
18 failure is obvious according to the settled rules of
19 the state.'" Id. (quoting McCabe v. Gen. Foods Corp.,
20 811 F.2d 1336, 1339 (9th Cir. 1987)). Actual fraud is
21 sufficient, but not required, to show fraudulent
22 joinder, as most cases focus on "whether the plaintiff
23 can 'state a reasonable or colorable claim for relief
24 under the applicable substantive law against the party
25 whose presence in the action would destroy federal
26

27 ¹ The amount in controversy must also exceed \$75,000,
28 exclusive of interest and costs. 28 U.S.C. § 1332. This element
of diversity jurisdiction is not at issue in Plaintiff's Motion.

1 jurisdiction.'" Weeping Hollow Ave. Tr. v. Spencer,
2 831 F.3d 1110, 1113 (9th Cir. 2016)(internal citation
3 omitted).

4 The defendant seeking removal to the federal court
5 is entitled to present the facts showing the joinder is
6 fraudulent, McCabe, 811 F.2d at 1339, and courts may
7 consider facts beyond the pleadings when fraudulent
8 joinder is raised, Ritchey v. Upjohn Drug Co., 139 F.3d
9 1313, 1318 (9th Cir. 1998). There is, however, a
10 "general presumption against fraudulent joinder," so
11 the party invoking the doctrine of fraudulent joinder
12 bears a "heavy burden." Weeping Hallow Ave. Tr., 831
13 F.3d at 1113 (citing Hunter v. Philip Morris USA, 582
14 F.3d 1039, 1046 (9th Cir. 2009)).

15 A defendant must prove fraudulent joinder by "clear
16 and convincing evidence." Hamilton Materials, Inc. v.
17 Dow Chem. Co., 494 F.3d 1203, 1206 (9th Cir. 2007).
18 "[I]f there is any possibility that the state law might
19 impose liability on a resident defendant under the
20 circumstances alleged in the complaint, the federal
21 court cannot find that joinder of the resident
22 defendant was fraudulent, and remand is necessary."
23 Hunter, 582 F.3d at 1044 (internal citation omitted).

24 **B. Discussion**

25 As a preliminary matter, Target contends that the
26 Court did not grant Plaintiff leave to amend her FAC to
27 add Glen, thus violating Federal Rule of Civil
28 Procedure 15(a)(2), which governs amendments. Def.'s

1 Opp'n ("Opp'n") 4:20-26, ECF No. 10. However, federal
2 law does not apply to proceedings prior to removal.
3 "[O]nce a case has been removed to federal court, it is
4 settled that federal rather than state law governs the
5 *future* course of proceedings, notwithstanding state
6 court orders issued prior to removal." Granny Goose
7 Foods v. Bhd. of Teamsters & Auto Truck Drivers, 415
8 U.S. 423, 437 (1974)(emphasis added); see CTS Printex,
9 Inc. v. Am. Motorists Ins. Co., 639 F. Supp. 1272, 1275
10 (N.D. Cal. 1986)("Doe pleading is treated as a part of
11 California's substantive limitations rules and binding
12 on the federal courts under Erie R.R. v. Tompkins . . .
13 ."). Plaintiff joined Glen prior to removal,² and thus,
14 the amendment is not a "future proceeding" that would
15 require the Court to apply Rule 15(a)(2).³

16 1. Statute of Limitations

17 Target argues that Plaintiff failed to name Glen as
18 a defendant within the statute of limitations, and
19 thus, any claims against her are time-barred. Opp'n
20 5:4-9. The statute of limitations for a personal

21
22 ² Prior to removal, Plaintiff added Glen in Los Angeles
23 Superior Court using Form LACIV 105, see Reply, Ex. B, which
24 states that no order is required from the court to change a
fictitious doe name.

25 ³ Target also argues that the Court should analyze the
26 validity of Plaintiff's doe amendment under 28 U.S.C. § 1447(e)
27 and consider six equitable factors. Opp'n 7:8-23. Section
28 1447(e) states that "[i]f after removal the plaintiff seeks to
join additional defendants whose joinder would destroy subject
matter jurisdiction, the court may deny joinder, or permit
joinder and remand the action to the State court." This statute
is inapplicable here because Glen was added prior to removal.

1 injury action is two years from the date of injury.
2 Cal. Code Civ. Proc. § 335.1. One exception to the
3 two-year statute of limitations is California Code of
4 Civil Procedure section 474, where a plaintiff who
5 states she is ignorant of a defendant's name in her
6 complaint may amend the pleading accordingly when the
7 defendant's true name is discovered. "When the
8 complaint is amended to substitute the true name of the
9 defendant for the fictional name, the defendant is
10 regarded as a party from the commencement of the suit,
11 provided the complaint has not been amended to seek
12 relief on a different theory based on a general set of
13 facts other than those set out in the original
14 complaint." Munoz v. Purdy, 15 Cal. Rptr. 472, 474-75
15 (Ct. App. 1979). For the section 474 exception to
16 apply, ignorance of the true name of the defendant must
17 be "real and not feigned." Id. at 475. However, "a
18 plaintiff has no duty to 'exercise reasonable diligence
19 prior to filing the complaint to discover the
20 defendant's identity.'" Balon v. Drost, 25 Cal. Rptr.
21 2d 12, 15 (Ct. App. 1993)(quoting Snoke v. Bolen, 1
22 Cal. Rptr. 2d 492, 494 (Ct. App. 1991)); see also
23 Irving v. Carpentier, 11 P. 391, 392 (Cal.
24 1886)("Whether [the plaintiff's] ignorance is from
25 misfortune or negligence, he is alike ignorant, and
26 this is all the statute requires.").

27 Plaintiff's injury allegedly occurred on June 26,
28 2015, and Plaintiff filed her Complaint on June 14,

1 2017, within the two-year statute of limitations.
2 Plaintiff then filed her FAC on July 21, 2017.
3 Plaintiff did not file her doe amendment until
4 September 20, 2017, three months past the statutory
5 period. Ordinarily, the amendment would not relate
6 back to the original complaint unless Plaintiff was
7 ignorant of Glen's name at the time she filed her
8 Complaint. See Woo v. Superior Court, 89 Cal. Rptr. 2d
9 20, 25 (Ct. App. 1999)("[I]f the identity ignorance
10 requirement of section 474 is not met, a new defendant
11 may not be added after the statute of limitations has
12 expired even if the new defendant cannot establish
13 prejudice resulting from delay."). In this case,
14 however, when Plaintiff filed her Complaint, she did
15 not know Glen's name and did not have information
16 identifying Glen. Reply 4:4-6. According to
17 Plaintiff, while she received the Guest Incident Report
18 at the time of her alleged injury, she did not
19 carefully review the contents of the Guest Incident
20 Report and subsequently lost it over a year before
21 filing her Complaint. Id. at 4:4-8. Plaintiff had no
22 duty to discover Glen's identity prior to filing her
23 Complaint, and Target has not provided any evidence to
24 show that Plaintiff was guilty of anything more than
25 mere negligence. See Balon, 25 Cal. Rptr. 2d at 15-16
26 (finding that where defendant gave plaintiff a note
27 with defendant's name at the scene of the accident, and
28 plaintiff subsequently forgot defendant's name when

1 filing his complaint, the subsequent amended complaint
2 naming defendant related back to satisfy the statute of
3 limitations). Therefore, Plaintiff has satisfied the
4 identity ignorance requirement of section 474.

5 Ultimately, Plaintiff filed her Complaint, which
6 named doe defendants, within the statutory period. She
7 has not amended the FAC to seek relief against Glen on
8 a different theory based on a general set of facts
9 other than those set out in the original Complaint.
10 Therefore, the amendment relates back to the original
11 filing date, and the statute of limitations does not
12 bar the addition of Glen.

13 2. Fraudulent Joinder

14 Target argues that Plaintiff acted in bad faith and
15 fraudulently joined Glen for the sole purpose of
16 preventing federal jurisdiction. Notice of Removal
17 ¶ 8. Defendant bears the burden of establishing
18 fraudulent joinder, McCabe, 811 F.2d at 1339, and
19 doubts as to removability are resolved in favor of
20 remand, see Gaus v. Miles, 980 F.2d 564, 566 (9th Cir.
21 1992).

22 Here, Target has not shown by clear and convincing
23 evidence that Plaintiff cannot establish a cause of
24 action against Glen. Under applicable California
25 substantive law, the elements for premises liability
26 and negligence are the same: a legal duty of care,
27 breach of that duty, and proximate cause resulting in
28 injury. Kesner v. Superior Court, 384 P.3d 283, 301

1 (Cal. 2016)(citations omitted). Plaintiff pleaded a
2 duty of care by alleging that each Defendant, including
3 Does, operated, controlled, managed, or maintained the
4 Premises that Plaintiff lawfully entered into as an
5 invitee. FAC ¶¶ 7, 10. Plaintiff pleaded that each
6 Defendant breached that duty by failing to use
7 reasonable care to keep the Target store safe, and by
8 failing to repair, replace, or warn of unsafe
9 conditions of which it had constructive knowledge. Id.
10 ¶¶ 12-13. Finally, Plaintiff pleaded that such breach
11 was the proximate cause of Plaintiff's injuries. Id.
12 ¶¶ 13-15. Plaintiff need not plead Glen's particular
13 conduct because "negligence may be alleged in general
14 terms." Miller v. Pacific Constructors, Inc., 157 P.2d
15 57, 62 (Ct. App. 1945); see Vreeland v. Target Corp.,
16 No. C 09-5673 MEJ, 2010 U.S. Dist. LEXIS 19430, at *10
17 (N.D. Cal. Feb. 11, 2010)(declining to find fraudulent
18 joinder where there was not an obvious failure to state
19 a cause of action for negligence against individual
20 defendant). Therefore, Plaintiff has sufficiently
21 pleaded a negligence cause of action. See Rannard v.
22 Lockheed Aircraft Corp., 157 P.2d 1, 4 (Cal.
23 2007)("[I]t is sufficient to allege that an act was
24 negligently done by defendant, and that it caused
25 damage to plaintiff."); see also Ontiveros v. Michaels
26 Stores, Inc., No. CV 12-09437 MMM (FMOx), 2013 U.S.
27 Dist. LEXIS 31036, at *14 (C.D. Cal. Mar. 5,
28 2013)("[I]f a defendant simply argues that plaintiff

1 has not pled sufficient facts to state a claim, the
2 heavy burden of showing fraudulent joinder has not been
3 met.").

4 Additionally, Target argues that Plaintiff failed
5 to allege individual liability on the part of Glen and
6 that an "employee acting on behalf of the employer
7 cannot be acting in concert with the employer." Opp'n
8 10:1-3 (citing Fiol v. Doellstedt, 58 Cal. Rptr. 2d
9 308, 313 (Ct. App. 1996)).⁴ In the instant Action,
10 Plaintiff stated a claim against Glen for common law
11 negligence. "[I]f a tortious act has been committed by
12 an agent acting under authority of his principal, the
13 fact that the principal thus becomes liable does not of
14 course exonerate the agent from liability." Perkins v.
15 Blauth, 127 P. 50, 52 (Cal. 1912). Thus, the fact that
16 Glen is an employee of Target does not release her from
17 liability and does not mean Glen was fraudulently
18 joined. See Revay v. Home Depot U.S.A., Inc., No.
19 2:14-cv-03391-RSWL-AS, 2015 U.S. Dist. LEXIS 35246, at
20 *10 (C.D. Cal. Mar. 19, 2015)(concluding joinder was
21 not fraudulent and refusing to accept argument that
22 corporate store manager was immune from liability for
23 slip and fall because corporation may be held
24 vicariously liable for manager's negligence); Milligan
25 v. Wal-Mart Stores, Inc., 2:14-CV-1739 JCM (CWH), 2014

26
27 ⁴ This citation, however, is not applicable to this Action
28 because Fiol speaks to whether a supervisor is personally liable
under the Fair Employment and Housing Act. See 58 Cal. Rptr. 2d
at 313.

1 U.S. Dist. LEXIS 175728, at *7 (D. Nev. Dec. 17,
2 2014)(stating that while plaintiff may not ultimately
3 recover against the employee of the corporate
4 defendant, this does not mean that she was fraudulently
5 joined).

6 Finally, Target asserts that the doe amendment was
7 made in bad faith. However, bad faith is insufficient
8 to show fraudulent joinder because the intention of the
9 party adding a diversity-destroying defendant is
10 immaterial. See Tomback v. Unumprovident Corp., No. C
11 05-3157 CW, 2005 U.S. Dist. LEXIS 45688, at *4 (N.D.
12 Cal. Oct. 13, 2005)("The burden of the defendant is not
13 to show that the joinder of the non-diverse party was
14 for the purpose of preventing removal because 'it is
15 universally thought that the motive for joining such a
16 defendant is immaterial.'")(quoting Albi v. Street &
17 Smith Publ'ns, 140 F.2d 310, 312 (9th Cir. 1944)).

18 Target has failed to meet its heavy burden of
19 demonstrating that there is no possibility that
20 Plaintiff can establish a cause of action against Glen.
21 See Weeping Hollow Ave. Tr., 831 F.3d at 1113; see also
22 Albi, 140 F.2d at 312 ("It is only where the plaintiff
23 has not, in fact, a cause of action against the
24 resident defendant, and has no reasonable ground for
25 supposing he has, and yet joins him in order to evade
26 the jurisdiction of the federal court, that the joinder
27 can be said to be fraudulent."). Accordingly, because
28 the doe amendment relates back to the filing of the

1 Complaint and Glen was not fraudulently joined, the
2 addition of Glen destroys complete diversity of
3 citizenship, and this action must be remanded to state
4 court.

5 **III. CONCLUSION**

6 Based on the foregoing, the Court **GRANTS**
7 Plaintiff's Motion to Remand [9]. The matter shall be
8 remanded to the Superior Court of California for the
9 County of Los Angeles, Case No. BC664909.

10 **IT IS SO ORDERED.**

11
12 DATED: November 28, 2017

s/ RONALD S.W. LEW

13 **HONORABLE RONALD S.W. LEW**
14 Senior U.S. District Judge
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