



1 Reheem’s conduct caused Plaintiff to suffer “severe emotional distress.” Defendants timely  
2 removed on the basis of diversity jurisdiction. Plaintiff moves to remand.

3 A defendant may remove a civil action from state court if the action could have originally  
4 been filed in federal court. 28 U.S.C. § 1441(a). An action that meets the requirements of 28  
5 U.S.C. § 1332 could have originally been filed in federal court. “Section 1332 requires complete  
6 diversity of citizenship; each of the plaintiffs must be a citizen of a different state than each of the  
7 defendants.” *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001).

8 “[O]ne exception to the requirement of complete diversity is where a non-diverse  
9 defendant has been fraudulently joined.” *Id.* “Joinder of a non-diverse defendant is deemed  
10 fraudulent, and the defendant’s presence in the lawsuit is ignored for purposes of determining  
11 diversity, if the plaintiff fails to state a cause of action against a resident defendant, and the failure  
12 is obvious according to the settled rules of the state.” *Id.* “Demonstrating fraudulent  
13 joinder, however, requires more than merely showing that plaintiff has failed to state a claim for  
14 relief.” *Mireles v. Wells Fargo Bank, N.A.*, 845 F. Supp. 2d 1034, 1063 (C.D. Cal. 2012). “In the  
15 Ninth Circuit, a non-diverse defendant is deemed to be fraudulently joined if, after all disputed  
16 questions of fact and all ambiguities in the controlling state law are resolved in the plaintiff’s  
17 favor, the plaintiff *could not possibly recover* against the party whose joinder is questioned.” *Id.*  
18 (emphasis in original). “Defendants must show that the relevant state law is so well settled that  
19 plaintiff would not be afforded leave to amend his complaint to cure the purported deficiency.” *Id.*

20 The parties agree that Plaintiff is a California resident, Wells Fargo is a citizen of South  
21 Dakota, and the amount in controversy exceeds \$75,000. The question is whether Reheem, a  
22 California citizen, was fraudulently joined to defeat complete diversity. If he was fraudulently  
23 joined, this Court must exercise jurisdiction. If he was not, this Court must remand the case for  
24 lack of complete diversity.

25 Plaintiff sues Reheem for IIED. A claim for IIED requires: (1) outrageous conduct by the  
26 defendants; (2) the defendants’ reckless disregard of the probability of causing emotional distress;  
27 (3) the plaintiff’s suffering severe emotional distress; and (4) actual and proximate causation of the  
28 emotional distress. *Yau v. Santa Margarita Ford, Inc.*, 229 Cal. App. 4th 144, 160 (2014).

1 First, Defendants argue that Plaintiff cannot bring an IIED claim against Reheem because  
2 Reheem's conduct falls under "personnel management activity." It is settled under California law  
3 that personnel management activity cannot give rise to an IIED claim. In *Janken*, a California  
4 appeals court held that supervisory actions relating to transfers, demotions, and termination were  
5 personnel management activity not subject to an IIED claim. *Janken v. GM Hughes Elecs.*, 46  
6 Cal. App. 4th 55, 80 (1996). There, the supervisors did not engage in outrageous conduct even  
7 where they altered performance appraisals, failed to promote the plaintiffs, and fired the plaintiffs  
8 based on their age because such conduct fell within personnel management activity. *Id.* at 79-80.  
9 In *Bradshaw*, a federal district court provided a list of personnel management activities, including  
10 hiring and firing, job or project assignments, promotion or demotion, and the assignment of  
11 supervisory functions. *Bradshaw v. Glatfelter Ins. Grp.*, No. 1:08-CV-01898-OWW-SMS, 2009  
12 WL 1438265, at \*4 (E.D. Cal. May 20, 2009). The court concluded that the supervisors engaged  
13 in personnel management activity where they allegedly discharged the plaintiff in retaliation for  
14 complaints plaintiff made against them and transferred plaintiff to a less desirable position after  
15 she returned from medical leave. *Id.* The court granted leave to amend. *Id.* at \*5.

16 Here, it is not clear that Reheem's conduct similarly falls under the umbrella of personnel  
17 management activity. Resolving all facts in Plaintiff's favor, Reheem placed weekly pressure on  
18 Plaintiff to force employees to work overtime without pay, causing Plaintiff severe emotional  
19 distress. Unlike the plaintiffs in the cases above, here, Plaintiff's claim is not based on Reheem's  
20 decision to transfer, demote, discipline, or terminate plaintiff. Rather, Plaintiff's claim hinges on  
21 the severe emotional distress caused by Reheem pressuring Plaintiff to break state labor laws.  
22 Such conduct may exceed simple personnel management activity. Moreover, Plaintiff could  
23 amend his complaint to add additional facts supporting an IIED claim against Reheem. Therefore,  
24 it is not impossible that Plaintiff could prevail on his IIED claim.

25 Second, Defendants argue that Plaintiff cannot assert an IIED claim against Reheem  
26 because the claim is preempted by the Workers' Compensation Act ("WCA"). The WCA  
27 provides the "sole and exclusive remedy of the employee" for workplace injuries. Cal. Lab. Code  
28 § 3602(a). Where the defendants engage in conduct giving rise to an IIED claim "in the normal

1 course of the employer-employee relationship,” “workers’ compensation is plaintiffs’ exclusive  
2 remedy.” *Miklosy v. Regents of Univ. of Cal.*, 44 Cal. 4th 876, 902 (2008). However, the WCA  
3 does not preempt an IIED claim where the employer’s conduct “exceeds the risks inherent in the  
4 employment relationship.” *Livitsanos v. Sup. Ct.*, 2 Cal. 4th 744, 754 (1992). An employer’s  
5 conduct exceeds the risks inherent in an employment relationship where the conduct involves a  
6 “questionable” relationship to the employment or where the employer “step[s] out of [his] proper  
7 role[.]” *Cole v. Fair Oaks Fire Prot. Dist.*, 43 Cal. 3d 148, 161 (1987); *Livitsanos*, 2 Cal. 4th at  
8 750, 754 (holding IIED claim could be “outside the scope and normal risks of employment” where  
9 premised on defendants’ false claims that plaintiff embezzled money); *Onelum v. Best Buy Stores*  
10 *L.P.*, 948 F. Supp. 2d 1048, 1055 (C.D. Cal. 2013) (finding employer may have stepped out of his  
11 proper role where employer repeatedly threatened to fire plaintiff and disparaged his accent).

12 Here, Defendants do not show that Reheem’s conduct falls “within the normal risks” of the  
13 employment relationship. *Onelum*, 948 F. Supp. 2d at 1055. As discussed, Reheem pressured  
14 Plaintiff each week to limit the amount of overtime paid to employees and implied that Plaintiff  
15 should force employees to work overtime without compensation. Reheem may have stepped out  
16 of his proper role by pressuring Plaintiff to violate labor laws. Further, Plaintiff could be afforded  
17 leave to amend his complaint to add additional facts showing that Reheem’s conduct exceeded the  
18 risks inherent in employment. Therefore, the WCA may not preempt Plaintiff’s IIED claim.

19 In sum, Defendants do not show that Plaintiff’s IIED claim is “impossible as a matter of  
20 California law.” *Onelum*, 948 F. Supp. 2d at 1055. Therefore, Defendants do not meet their  
21 heavy burden of demonstrating that Reheem was fraudulently joined. Reheem’s citizenship  
22 destroys complete diversity, and the case is remanded to the Los Angeles Superior Court.

23 **IT IS HEREBY ORDERED** that Plaintiff’s Motion to Remand is GRANTED. (Dkt. No.  
24 8).

25 Dated: February 5, 2018.



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MANUEL L. REAL  
UNITED STATES DISTRICT JUDGE