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

KRYSTAL SANDOVAL, an individual,
Plaintiff,

v.

REPUBLIC SERVICES, INC., a Delaware
corporation; KELLY SERVICES, INC., a
Delaware corporation; Chris DOE, an
individual; and DOES 2 through 20,
inclusive,
Defendants.

Case No. 2:18-cv-01224-ODW(KSx)

**ORDER GRANTING PLAINTIFF’S
MOTION FOR REMAND [11]**

I. INTRODUCTION

Krystal Sandoval (“Plaintiff”) brought an action in the Los Angeles Superior Court against her employers, Republic Services, Inc. (“Republic”); Kelly Services, Inc. (“Kelly”); Consolidated Disposal Services, Inc. (“CDS”); and coworker Chris DOE (“Chris”) (collectively, “Defendants”) for various harassment and discrimination claims. (Compl. ¶¶ 22–75, ECF No. 1-1; Not. Removal 2, ECF No. 1.) Kelly removed the case to federal court based on diversity jurisdiction. (Not. Removal.) Plaintiff now seeks to remand the case because complete diversity does not exist. (Mot. Remand,

1 ECF No. 11.) For the following reasons, the Court **GRANTS** Plaintiff’s Motion to
2 Remand.

3 **II. FACTUAL BACKGROUND**

4 On or about July 17, 2017, Kelly, a Delaware corporation with its principal place
5 of business in Michigan, asked Plaintiff, a California resident, to interview for a
6 customer service position at Republic. (Compl. ¶¶ 4, 12.) She received an offer,
7 accepted it, and began training for her new job that same day. (*Id.*) However, Plaintiff
8 alleges that two days later, another employee in her department, Chris, began harassing
9 her. (*Id.* ¶ 13.) According to Plaintiff’s Complaint, Chris whistled at her, followed her
10 around the office, gave her gratuitous compliments, asked for her phone number,
11 attempted to get her alone, and openly commented on her “nice ass” and “nice boobs,”
12 despite Plaintiff’s repeated rejections. (*Id.* ¶¶ 13–15.) In reaction, Plaintiff filed a
13 formal oral complaint to her supervisor, Ruben, on July 31, 2017, in front of
14 approximately six other employees. (*Id.* ¶ 16.) Another female employee also
15 expressed similar problems with Chris. (*Id.*) Ruben acknowledged he was aware of
16 Chris’s behavior but refused to take any action to prevent the harassment or punish
17 Chris. (*Id.*)

18 After being harassed again the following day, Plaintiff approached Ruben’s
19 supervisor, Cory, to complain. (*Id.* ¶ 17.) Ultimately, however, Cory instructed
20 Plaintiff to return to work and ignore the harassment. (*Id.* ¶ 18.) Plaintiff alleges that
21 Chris continued to harass her. (*Id.*) Later that day, Plaintiff heard from a fellow
22 employee that another employee had been warned to stay out of the situation between
23 Plaintiff and Chris because it was “going to end badly” for Plaintiff. (*Id.* ¶ 19.) On the
24 way home after her shift, Plaintiff received a call from a Kelly employee terminating
25 Plaintiff. (*Id.* ¶ 20.) The only reason offered for the termination was that Republic “did
26 not want drama.” (*Id.* ¶ 20.)

27 On September 8, 2017, Plaintiff formally requested a copy of her personnel file
28 from Defendants Republic and Kelly. (Decl. of Tyler C. Vanderpool (“Vanderpool

1 Decl.”) ¶ 2, ECF No. 11-1; Tyler Decl. Exs. A–B, ECF Nos. 11-2, 11-3.) Republic, a
2 Delaware corporation with its principal place of business in Arizona, denied ever
3 employing Plaintiff and refusing to produce the file. (Tyler Decl. Ex. C, ECF No. 11-
4 4.; Compl. ¶ 3.) Subsequently, on November 16, 2017, Plaintiff filed an action against
5 Defendants Republic, Kelly, and Chris, alleging claims for (1) retaliation; (2) sex
6 discrimination; (3) hostile work environment; (4) failure to prevent harassment,
7 discrimination, and retaliation; (5) wrongful termination and discrimination; and (6)
8 failure to produce wage statements and personnel records. (Compl. ¶¶ 22–75; Not.
9 Removal 2.) Plaintiff filed against the harassing employee as “Chris DOE” because
10 Defendants refused to provide his last name. (Compl. ¶ 6; Vanderpool Decl. Ex. I, ECF
11 No. 11-10.) On December 29, 2017, Plaintiff amended the Complaint to add CDS, a
12 Delaware corporation with its principal place of business in Arizona, as a defendant.
13 (Vanderpool Decl. Ex. E, ECF No. 11-6; Mot. Remand 6.).

14 On February 14, 2018, Kelly removed this action to federal court based on
15 diversity jurisdiction. (Not. Removal.) On March 2, 2018, Plaintiff moved to remand
16 the case to state court for failing to satisfy the diversity jurisdiction requirements. (Mot.
17 Remand.) Kelly opposed the Motion to Remand on March 12, 2018. (Opp’n Remand,
18 ECF No. 14.) Plaintiff filed a Reply supporting remand on March 19, 2018. (Reply,
19 ECF No. 15.) Plaintiff’s Motion to Remand is now before the Court.¹

20 III. LEGAL STANDARD

21 Federal courts are courts of limited jurisdiction, which may only exercise
22 jurisdiction when authorized by the Constitution or a statute. *Kokkonen v. Guardian*
23 *Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). There is a presumption that the federal
24 court lacks jurisdiction. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3
25 (2006). A removing defendant bears the burden of establishing that removal is proper.
26 *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006) (per curiam). This

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28 ¹ After considering the papers filed in connection with the Motion, the Court deemed the matter
appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

1 requires a showing that the federal courts could have had original jurisdiction over the
2 controversy in question. 28 U.S.C. § 1441(a). This may be established by diversity
3 jurisdiction where the amount in controversy exceeds the sum or value of \$75,000 and
4 there is complete diversity among opposing parties. See 28 U.S.C. 1332(a)(1).
5 However, if there is any doubt regarding the existence of subject matter jurisdiction, the
6 court must resolve these doubts in favor of remanding the action to state court. *Gaus v.*
7 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

8 IV. DISCUSSION

9 Plaintiff moved to remand this case on the grounds that Kelly did not get the
10 consent of other Defendants prior to removal and failed to show complete diversity
11 among the parties as to Plaintiff’s harasser, Chris. (Mot. Remand 1.) However,
12 Defendants argue that Chris is a fictitiously named “DOE” defendant who is not
13 considered for purposes of determining diversity. (Opp’n Remand 2.) For the following
14 reasons, the Court finds that Defendants failed to establish complete diversity among
15 the parties and **GRANTS** Plaintiff’s motion to remand.

16 A. Consent of the Parties to Remove

17 As a preliminary matter, Plaintiff asserted that the failure of all named
18 Defendants to join in Kelly’s removal constituted a procedural defect. (See Mot.
19 Remand 5.) Under the judicially-established unanimity rule, all defendants must unite
20 in a petition for the removal to a federal court when a joint cause of action is alleged
21 against all defendants. See *Chicago, R.I. & P. Ry. Co. v. Martin*, 178 U.S. 245, 245
22 (1900). However, there is no particularly prescribed “manner in which codefendants’
23 joinder must be expressed.” *Proctor v. Vishay Intertechnology Inc.*, 584 F.3d 1208,
24 1225 (9th Cir. 2009). This Circuit has held that “filing a notice of removal can be
25 effective without individual consent documents on behalf of each defendant” as long as
26 it contains “an averment of the other defendants’ consent and [is] signed by a[n]
27 attorney of record.” *Id.* Plaintiff alleges in the Notice of Removal that CDS and
28 Republic consented to removal. (Not. Removal ¶ 24.) Moreover, the Notice of

1 Removal is signed by Kelly’s attorney of record. (*See id.* at 7.) Thus, the unanimity
2 requirement is satisfied as to these Defendants, and Kelly’s removal was procedurally
3 proper.²

4 **B. Diversity of Adverse Parties**

5 The Court next considers whether diversity subject matter jurisdiction exists in
6 this action. Diversity jurisdiction requires complete diversity as to all adverse parties.³
7 28 U.S.C. 1332(a)(1). Individuals are considered “at home” for purposes of diversity
8 jurisdiction in their place of domicile where they “reside with the intention to remain.”
9 *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). A corporation is
10 typically the citizen of two states for purposes of diversity jurisdiction: its state of
11 incorporation and the state in which its primary place of business is located. *Breitman*
12 *v. May Co. Calif.*, 37 F.3d 562, 564 (9th Cir. 1994).

13 Based upon this, diversity among Plaintiff and the corporate Defendants is easily
14 established. Plaintiff is domiciled in California, where she currently lives and where
15 she worked for Defendants. (*See* Compl. ¶ 2.) All three corporate Defendants are
16 incorporated in Delaware. (*See* Compl. ¶¶ 3–4; Mot. Remand 6.) Republic and CDS
17 have their principal places of business in Arizona. (Compl. ¶ 3; Mot. Remand 6.)
18 Kelly’s principal place of business is located in Michigan. (Compl. ¶ 4.) The parties
19 do not dispute that diversity exists between Plaintiff and corporate Defendants.

20 *1. Consideration of a Fictitious Defendant*

21 Plaintiff asserts that the citizenship of Defendant Chris—and Defendants’ failure
22 to address it—destroys complete diversity. (Mot. Remand 6.) As a general rule, “[i]n
23 determining whether a civil action is removable on the basis of the jurisdiction under
24 [28 U.S.C. § 1332(a)], the citizenship of defendants sued under fictitious names shall
25 be disregarded.” 28 U.S.C. § 1441(b)(1). “However, ‘when a plaintiff’s allegations
26 give a definite clue about the identity of the fictitious defendant by specifically referring

27 ² Kelly does not assert that Defendant Chris joined in the removal. (*See* Not. Removal.)

28 ³ It is also required that the amount in controversy exceed \$75,000; however, the Court declines to
examine this, as it is undisputed by the parties. *See* 28 U.S.C. 1332(a)(1).

1 to an individual who acted as the company’s agent, the court *should* consider the
2 citizenship of the fictitious defendant.” *Collins v. Garfield Beach CVS, LLC*, Case No.
3 CV 17-3375 FMO (GJSx), 2017 WL 2734708, at *2 (C.D. Cal. 2017) (quoting *Brown*
4 *v. TranSouth Fin. Corp.*, 897 F. Supp. 1398, 1401 (M.D. Ala. 1995)). This is
5 particularly true when a named defendant knew or should have known the fictitious
6 defendant’s identity because that defendant *employed* the fictitiously named defendant.
7 *Id.* As a matter of policy, it is “unfair to force plaintiffs from their state court forum
8 into federal court by allowing [a defendant] to plead ignorance about the defendant-
9 employee’s identity and citizenship when [a corporate defendant] is in a position to
10 know that information.” *Id.*; *see also Brown*, 896 F. Supp. at 1301–02 (following the
11 same reasoning).

12 Defendants construe the amended version of § 1441(b)(1) as entirely precluding
13 fictitious defendants from the diversity jurisdiction analysis. (Opp’n Remand 4.) In
14 situations offering no information regarding the identity of the fictitious defendant,
15 Defendants’ assertion is accurate. However, this Circuit has not conclusively addressed
16 the appropriate treatment of fictitiously named defendants described with sufficient
17 particularity to provide a clue as to their actual identity. *See Wong v. Rosenblatt*, No.
18 3:13-CV-02209-ST, 2014 WL 1419080, at *4 (D. Or. Apr. 11, 2014) (recognizing the
19 Ninth Circuit’s lack of resolution on this issue).

20 Numerous other courts—including one in this district—have permitted
21 consideration of a fictitious defendant who is specifically described. *See Collins*, 2017
22 WL 2734708, at *2 (considering the domicile of a well-described but fictitiously named
23 defendant”); *see also Musial v. PTC All. Corp.*, No. 5:08CV-45R, 2008 WL 2553900,
24 at *4 (W.D. Ky. June 25, 2008) (considering a particularly described defendant for
25 diversity jurisdiction); *Brown*, 897 F. Supp. 1401– 02 (same); *Tompkins v. Lowe’s*
26 *Home Ctr. Inc.*, 847 F. Supp. 462, 464 (E.D. La. 1994) (same); *cf. Guytan v. Swift*
27 *Transportation Co. of Ariz., LLC*, CV 17-00626-VAP (DTBx), 2017 WL 2380159, at
28 *2 (C.D. Cal. 2017) (finding a party who was unnamed because “[p]laintiff just [did]

1 not remember his name” was not a party for consideration in diversity jurisdiction). In
2 light of this, and because the Court has a policy interest in discouraging Defendants
3 from refusing to disclose information relating to a fictitious defendant for the purposes
4 of garnering the benefit of federal jurisdiction, the Court finds that the citizenship of
5 Chris should be considered, if he is sufficiently identified.

6 2. *Sufficiency of Identification*

7 For a fictitious defendant to be considered, the Complaint must provide a
8 “definite clue” as to the Defendant’s identity. *Collins*, 2017 WL 2734708, at *2. Other
9 courts have found this is satisfied where an individual was specifically identified as
10 performing a particular job function. *See, e.g., Musial*, 2008 WL 2559300, at *4
11 (finding the description of a Doe defendant as the person “who loaded the pipe” causing
12 Plaintiff’s injuries sufficient); *Marshall v. CSX Transp. Co.*, 916 F. Supp. 1150, 1151
13 (M.D. Ala. 1995) (finding the description of an “engineer, who was operating the train
14 at the time” sufficiently particular). A definite clue may also be shown by providing
15 specifics regarding location, dates, and particular events. *See Collins*, 2017 WL
16 2734708, at *2. Ultimately, the “plaintiff’s complaint [must] provide a description of a
17 fictitious defendant in such a way that his or her identity cannot reasonably be
18 questioned.” *See Marshall*, 916 F. Supp. at 1152.

19 While Defendant alleges that there is ambiguity surrounding the identity of Chris,
20 the Court finds that this is not the case. (*See Opp’n Remand 6.*) Plaintiff particularly
21 describes Chris as a fellow employee at Kelly and a member of her department at the
22 company’s office in California. (Compl. ¶ 13.) She describes the dates of her
23 employment and all the relevant events. (*Id.* ¶¶ 12–17.) She specifically references
24 complaints filed in relation to Chris and conversations she had with supervisors
25 regarding him, in addition to naming another employee who expressed similar issues
26 with his behavior. (*Id.*) Plaintiff also provides Chris’s proper first name. (Reply 4.)
27 Indeed, the Court reasons that this level of particularity far exceeds that which has been
28 deemed sufficient to destroy diversity in other cases.

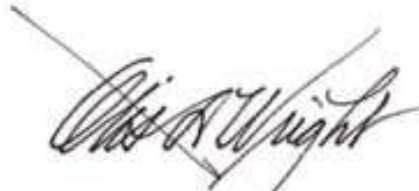
1 The Court finds that Chris must be considered for purposes of diversity
2 jurisdiction, and that Defendants have not established diversity as to him. Chris's
3 residency and status as a co-worker of Plaintiff at Defendants' California location
4 indicates his place of domicile is likely California, further confirming that diversity
5 jurisdiction does not exist in this instance. (*See generally* Compl.) Accordingly,
6 because there is not complete diversity between the parties, the Court lacks subject
7 matter jurisdiction and must **REMAND** this action to the state court.⁴

8 **V. CONCLUSION**

9 For the reasons discussed above, the Court **GRANTS** Plaintiff's Motion to
10 Remand. (ECF No. 11.) The Court **ORDERS** this case be remanded to the Los Angeles
11 Superior Court, Case No. BC683815. The Clerk of the Court shall close this case.

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13 **IT IS SO ORDERED.**

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15 April 24, 2018



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18 **OTIS D. WRIGHT, II**
19 **UNITED STATES DISTRICT JUDGE**

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28 ⁴ In Plaintiff's Motion for Remand, she also briefly address the issue of fraudulent joinder. (*See* Mot. Remand 10.) However, Defendants never assert this argument, (*see* Opp'n), and the Court therefore declines to address this issue.