

o

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

12	LATRICE THOMAS, an)	CV 18-03422-RSWL-SK
13	individual,)	
14	Plaintiff,)	ORDER re: Plaintiff's
15	v.)	Motion for Leave to File
16)	Second Amended Complaint
17	WalMart Stores, Inc., a)	and Order Remanding to
18	corporation; and DOES 1-25,)	State Court [7]
19	inclusive,)	
20	Defendants.)	

Currently before the Court is Plaintiff Latrice Thomas' ("Plaintiff") Motion for Leave to File Second Amended Complaint and Order Remanding to State Court ("Motion") [7].¹ Having reviewed all papers submitted

¹ The "First Amended Complaint" does not appear on the Court's Docket, and Defendant states that it was not served with the First Amended Complaint. Because removal was based on the Complaint, which Plaintiff does not challenge, the Court will treat the Complaint as the operative Complaint and this Motion as a motion for leave to file a first amended complaint.

1 pertaining to this Motion, the Court **NOW FINDS AND**
2 **RULES AS FOLLOWS:** the Court **GRANTS** Plaintiff's Motion.

3 **I. BACKGROUND**

4 **A. Factual Background**

5 Plaintiff is an individual residing in Los Angeles
6 County, California. Notice of Removal ¶ 12, ECF No. 1.
7 Defendant WalMart Stores, Inc. ("Walmart") is a
8 Delaware corporation with its headquarters in Arkansas.
9 Id. ¶ 13. Mayra Hinojos (the store manager) is an
10 individual residing in Los Angeles County, California.
11 Pl.'s Mot. for Leave to File Second Am. Compl. ("Mot.")
12 8:20-21, ECF No. 7. On December 3, 2015, Plaintiff
13 entered onto the premises of Walmart's store. Compl.
14 ¶ 5, ECF No. 1-2. After finishing breakfast at
15 Walmart's store, Plaintiff's foot got caught on a
16 raised mat on the stairs that was not properly
17 placed/secured, causing her to trip and fall.² Id.

18 Plaintiff asserts that because of this fall, she
19 sustained severe injuries and will in the future
20 continue to have great physical and emotional pain.
21 Id. ¶ 8.

22 **B. Procedural Background**

23 On May 11, 2017, Plaintiff filed her Complaint in
24 Los Angeles County Superior Court against Walmart

25
26 ² Plaintiff's proposed Amended Complaint alleges that
27 Plaintiff was injured when "she slipped and fell on a liquid
28 substance on the floor," Pl.'s Proposed Am. Compl. ¶ 8, ECF No.
7-2, which is not what was purported to have occurred in the
original Complaint. Because Walmart does not contest this, it is
not an issue before this Court.

1 alleging causes of action for (1) negligence and
2 (2) premises liability. Id. ¶¶ 5, 11.

3 Walmart filed its Notice of Removal [1] on April
4 24, 2018. In its Notice of Removal, Walmart argued
5 that diversity of citizenship exists because Plaintiff
6 and Walmart are completely diverse. Notice of Removal
7 ¶ 14. In response to Walmart's Notice of Removal,
8 Plaintiff filed the instant Motion [7] on May 7, 2018.
9 While the proposed Amended Complaint contains the same
10 two causes of action against Walmart, it seeks to add
11 Ms. Hinojos in place of DOE 1 Defendant. See Pl.'s
12 Proposed Am. Compl. ¶ 2.

13 Walmart filed its Opposition [10] to Plaintiff's
14 Motion on May 15, 2018. Plaintiff filed her Reply [11]
15 on May 16, 2018.

16 II. DISCUSSION

17 A. Legal Standard

18 "If after removal the plaintiff seeks to join
19 additional defendants whose joinder would destroy
20 subject matter jurisdiction, the court may deny
21 joinder, or permit joinder and remand the action to the
22 State court." 28 U.S.C. § 1447(e). When deciding to
23 permit joinder under § 1447(e), courts consider the
24 following six factors:

- 25 (1) whether the party sought to be joined is
26 needed for just adjudication and would be joined
27 under Federal Rule of Civil Procedure 19(a);
28 (2) whether the statute of limitations would
prevent the filing of a new action against the
new defendant in state court; (3) whether there
has been an unexplained delay in seeking to join

1 the new defendant; (4) whether plaintiff seeks
2 to join the new party solely to defeat federal
3 jurisdiction; (5) whether denial of the joinder
4 would prejudice the plaintiff; [and] (6) the
5 strength of the claims against the new
6 defendant.

7 Boon v. Allstate Ins. Co., 229 F. Supp. 2d 1016, 1020
8 (C.D. Cal. 2002).

9 **B. Discussion**

10 1. Whether Federal Rule of Civil Procedure 19(a)
11 Would Require Ms. Hinojos' Joinder

12 "Federal Rule of Civil Procedure 19 requires
13 joinder of persons whose absence would preclude the
14 grant of complete relief, or whose absence would impede
15 their ability to protect their interests or would
16 subject any of the parties to the danger of
17 inconsistent obligations." Clinco v. Roberts, 41 F.
18 Supp. 2d 1080, 1082 (C.D. Cal. 1999). Although the
19 normal standard for Rule 19 is met "when failure to
20 join will lead to separate and redundant actions,"
21 there is a less restrictive standard under § 1447(e).
22 IBC Aviation Serv., Inc. v. Compania Mexicana de
23 Aviacion, S.A., 125 F. Supp. 2d 1008, 1011-12 (N.D.
24 Cal. 2000). In applying this less restrictive
25 standard, "[c]ourts disallow joinder of non-diverse
26 defendants where those defendants are only tangentially
27 related to the cause of action or would not prevent
28 complete relief." Id. at 1012.

Plaintiff contends that because Ms. Hinojos was
manager of the store, responsible for training and

1 education of the store's employees, and verified that
2 the store was "maintained according to industry
3 standards," Ms. Hinojos is a required party in this
4 Action. Pl.'s Reply in Supp. of Mot. ("Reply") 6:3-7,
5 ECF No. 11. Although Plaintiff states Ms. Hinojos had
6 "a high degree of involvement" in the occurrence that
7 gave rise to this Action, id. at 6:8-10, Plaintiff
8 fails to allege the details of Ms. Hinojos'
9 involvement. These allegations show that Ms. Hinojos
10 is more than tangentially related to the facts of this
11 Action, and therefore, the Court can allow joinder
12 under § 1447. However, "it is not necessary for all
13 joint tortfeasors to be named as defendants in a single
14 lawsuit." Ward v. Apple Inc., 791 F.3d 1041, 1048 (9th
15 Cir. 2015) (quoting Temple v. Synthes Corp., 498 U.S.
16 5, 7 (1990) (per curiam)); see Evans v. Wal Mart
17 Stores, Inc., No. CV 18-1792-DMG (PJWx), 2018 U.S.
18 Dist. LEXIS 69017, at *3 (C.D. Cal. Apr. 24, 2018)
19 (finding first factor did not weigh in favor of
20 amendment under nearly identical facts to the instant
21 Action). Because the facts cut both ways, this factor
22 is neutral.

23 2. Statute of Limitations

24 Pursuant to California Civil Procedure Code section
25 335.1, a two-year statute of limitations governs
26 personal injury claims. Here, Plaintiff's injury
27 allegedly occurred on or about December 3, 2015, Compl.
28 ¶ 5, and with a two-year statute of limitations,

1 Plaintiff would have had to file a claim against Ms.
2 Hinojos by December 3, 2017. Both parties do not
3 dispute that the statute of limitations has already
4 expired and Plaintiff would be foreclosed from pursuing
5 an action against Ms. Hinojos if the Court does not
6 grant this Motion.³ Accordingly, this factor weighs in
7 favor of granting leave to amend. See Trujillo v.
8 Target Corp., No. 17-cv-06429 VAP (GJSx), 2017 U.S.
9 Dist. LEXIS 178684, at *8 (C.D. Cal. Oct. 26, 2017).

10 3. Timeliness

11 "When determining whether to allow amendment to add
12 a nondiverse party, courts consider whether the
13 amendment was attempted in a timely fashion." Clinco,
14 41 F. Supp. 2d at 1083. Here, Plaintiff states that
15 she has been attempting to discover the name of the
16 store manager but was only able to do so after
17 Plaintiff received Walmart's written discovery
18 responses on March 28, 2018. Reply 2:12-16. Walmart
19 filed its Notice of Removal on April 24, 2018.
20 Plaintiff filed her Motion seeking to add Ms. Hinojos
21 on May 7, 2018, a little over a month after receiving
22 the discovery responses and just weeks after Walmart
23 removed this Action. See Clinco, 41 F. Supp. 2d at
24 1083 (finding timeliness under § 1447(e) when the
25 plaintiff sought to amend less than six weeks after

26
27 ³ If the Court allows Plaintiff to join Ms. Hinojos,
28 Plaintiff's claims against Ms. Hinojos would relate back to the
date of the filing of her original Complaint, i.e., May 11, 2017.

1 removal). Accordingly, this factor weighs in favor of
2 allowing the amendment.

3 4. Whether Joinder Is Intended Solely to Defeat
4 Federal Jurisdiction

5 When looking at the motive for joinder, the court
6 considers "whether joinder is intended solely to defeat
7 federal jurisdiction." IBC Aviation, 125 F. Supp. 2d
8 at 1011. Although "[m]otive is particularly important
9 in removal jurisdiction cases where the consequences of
10 joining a new defendant may defeat the court's
11 jurisdiction," Boon, 229 F. Supp. 2d at 1023 (citing
12 Clinco, 41 F. Supp. 2d at 1083), "[s]uspicion of
13 diversity destroying amendments is not as important now
14 that § 1447(e) gives courts more flexibility in dealing
15 with the addition of such defendants," IBC Aviation,
16 125 F. Supp. 2d at 1012.

17 The timing of this Motion, just two weeks after
18 removal, does give rise to an inference that Plaintiff
19 is attempting to add Ms. Hinojos to destroy diversity.
20 However, it does not rise to the level of "clear and
21 convincing evidence" needed to prove the fraudulent
22 joinder theory on which Walmart relies. Hamilton
23 Materials, Inc. v. Dow Chem. Corp., 494 F.3d 1203, 1206
24 (9th Cir. 2007). Although Plaintiff does not discuss
25 her attempts at obtaining Ms. Hinojos' identity before
26 learning it through discovery, Plaintiff stated that
27 she only recently discovered Ms. Hinojos' identity and
28 is adding her to permit adjudication against all

1 possible culpable parties. It is not Plaintiff's
2 burden to disprove fraudulent joinder, see McCabe v.
3 Gen. Foods Corp., 811 F.2d 1336, 1339 (9th Cir. 1987),
4 and as the Court has noted above, suspicion of these
5 diversity-destroying amendments is not as relevant due
6 to the flexibility of § 1447(e).

7 Walmart has failed to satisfy the high burden of
8 proof necessary to rebut the general presumption
9 against fraudulent joinder. Accordingly, this factor
10 favors granting leave to amend.

11 5. Prejudice to Plaintiff

12 Under this factor, the Court looks to whether
13 Plaintiff will "suffer undue prejudice if the Court
14 chooses not to exercise its discretion to allow
15 joinder." Boon, 229 F. Supp. 2d at 1025. Such
16 prejudice may occur "where claims against proposed non-
17 diverse defendants are so intimately connected to those
18 against an original defendant that denial of joinder
19 would force a plaintiff to choose whether to pursue
20 redundant litigation in another forum at the risk of
21 inconsistent results, or forego valid claims against
22 the non-diverse defendants." Yang v. Swissport USA,
23 Inc., No. C 09-03823 SI, 2010 WL 2680800, at *5 (N.D.
24 Cal. July 6, 2010).

25 Plaintiff correctly states that requiring
26 duplicative federal and state lawsuits could be an
27 unnecessary expenditure of judicial resources. In the
28 instant Action, this does not apply because the statute

1 of limitations has already run, thus preventing the
2 possibility of any duplicative suits.

3 However, the fact that Plaintiff will be unable to
4 pursue her claims against Ms. Hinojos in a separate
5 action does show prejudice to Plaintiff. See Evans,
6 2018 WL 1960545, at *3, *5 (finding prejudice where the
7 plaintiff was unable to pursue her claims against a
8 Walmart store manager in a separate state court action
9 because the statute of limitations had run).

10 Therefore, this factor weighs in favor of allowing the
11 amendment.

12 6. The Validity of the Claims Against the New
13 Defendant

14 Under this last factor, the court considers
15 “whether a new claim sought to be added seems to have
16 merit.” Clinco, 41 F. Supp. 2d at 1083. Further,
17 “[i]f the plaintiff fails to state a cause of action
18 against a resident defendant, and the failure is
19 obvious according to the settled rules of the state,
20 the joinder of the resident defendant is fraudulent.”
21 McCabe, 811 F.2d at 1339 (citation omitted).

22 Walmart’s argument for this factor rests upon three
23 points: (1) California Labor Code section 2802
24 precludes individual employee liability, (2) there is
25 no colorable claim against Ms. Hinojos based upon the
26 holding in McCabe, and (3) Plaintiff fails to state a
27 cause of action against Ms. Hinojos pursuant to Federal
28 Rule of Civil Procedure 20.

1 First, although Walmart correctly states that it
2 may be responsible to indemnify Ms. Hinojos under
3 California Labor Code section 2802, Walmart confuses
4 indemnification with liability. Section 2802 requires
5 an employer to indemnify an employee for liability
6 incurred by the employee in the scope of the employee's
7 employment; it does not render the employee immune from
8 liability altogether. See Evans, 2018 U.S. Dist. LEXIS
9 69017, at *4. Therefore, Ms. Hinojos can still be held
10 liable for Plaintiff's claims.

11 Second, Walmart cites McCabe to show that an
12 employee in the course and scope of her employment is
13 privileged and not subject to individual liability.
14 Opp'n 1:11-13. "[T]he privilege discussed in McCabe
15 applies only to advice that a manager provides to his
16 or her employer." Evans, 2018 U.S. Dist. LEXIS 69017,
17 at *4. There is no evidence that Plaintiff's claims
18 arise out of advice Ms. Hinojos gave to Walmart, and
19 therefore, her conduct cannot be privileged.

20 Third, Walmart states the joinder is fraudulent
21 because Plaintiff fails to state a cause of action
22 against Ms. Hinojos. Def.'s Opp'n to Pl.'s Mot. 7:26-
23 28, ECF No. 10. Plaintiff has alleged claims of
24 negligence and premises liability against both Walmart
25 and Ms. Hinojos. See Kesner v. Superior Court of
26 Alameda Cty., 384 P.3d 283, 301 (Cal. 2016) ("The
27 elements of a negligence claim and a premises liability
28 claim are the same: a legal duty of care, breach of

1 that duty, and proximate cause resulting in injury.").
2 Plaintiff alleges that Ms. Hinojos "had sole and
3 exclusive custody and control of the . . . premises and
4 activities occurring at said premises, and owed a duty
5 to this plaintiff and others." Pl.'s Proposed Am.
6 Compl. ¶ 8. Further, Plaintiff alleges that Ms.
7 Hinojos breached her duty to keep the premises in a
8 good and safe condition, which resulted in Plaintiff's
9 injuries. Pl.'s Proposed Am. Compl. ¶¶ 10, 14. Thus,
10 Plaintiff has stated claims of negligence and premises
11 liability against Ms. Hinojos.

12 Courts have specifically allowed a plaintiff to
13 bring negligence and premises liability claims against
14 store managers in situations similar to the instant
15 Action. See, e.g., Trujillo, 2017 WL 4864490, at *5
16 (finding that a negligence and premises liability claim
17 against a store manager appeared to have merit where he
18 was responsible for the maintenance of the store and in
19 charge of training and educating employees); Revay v.
20 Home Depot U.S.A., Inc., No. 2:14-CV-03391-RSWL-AS,
21 2015 WL 1285287, at *3 (C.D. Cal. Mar. 19, 2015)
22 (finding viable negligence and premises liability
23 claims against a store manager because defendants had
24 failed to establish that a store manager was immune
25 from such claims under California law). Walmart has
26 not provided any persuasive argument as to why this
27 Action is any different than the above-cited cases.
28 Because there appears to be a viable claim against Ms.

1 Hinojos, this final factor weighs in favor of allowing
2 amendment.

3 In total, five of the six factors weigh in favor of
4 allowing Plaintiff's amendment, and therefore, the
5 Court **GRANTS** Plaintiff's request to amend her Complaint
6 to add Ms. Hinojos. Ms. Hinojos' California
7 citizenship must therefore be considered in assessing
8 diversity jurisdiction. Because both Plaintiff and Ms.
9 Hinojos are citizens of California, complete diversity
10 does not exist, and the Court lacks subject matter
11 jurisdiction over this Action. The Court therefore
12 **GRANTS** Plaintiff's request to remand this Action.

13 **III. CONCLUSION**

14 Based on the foregoing, the Court **GRANTS**
15 Plaintiff's Motion. Accordingly, the Action shall be
16 remanded to the Superior Court of California for the
17 County of Los Angeles, Case No. **BC661128**.

18 **IT IS SO ORDERED.**

19
20 DATED: June 19, 2018

S/ RONALD S.W. LEW
HONORABLE RONALD S.W. LEW
Senior U.S. District Judge