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JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NILOOFAR VAGHAR,  
  
Plaintiff,  
  
v.  
  
COSTCO WHOLESALE  
CORPORATION; BARRY MEIZEL;  
RUDY GARCIA; and DOES 1 to 25,  
inclusive,  
  
Defendants.

Case No. 5:19-cv-02147 AB (AFMx)  
  
**ORDER GRANTING PLAINTIFF’S  
MOTION TO REMAND**

On April 19, 2019, Plaintiff Niloofar Vaghar (“Plaintiff”) filed a Motion to Remand. (Dkt. No. 10.) Defendant Costco Wholesale Corporation et al. (“Costco”) opposed the motion and Plaintiff filed a reply. (Dkt. Nos. 16, 17.) The Court took the matter under submission on May 16, 2019. For the following reasons, the Court **GRANTS** Plaintiff’s Motion to Remand.

**I. BACKGROUND**  
**A. The Parties**

Plaintiff is a resident of California. Complaint (“Compl.”) ¶ 1 (Dkt. No. 10-2). Plaintiff began her employment in November 2011 as a pharmacist at various Costco locations in California. *Id.* ¶ 11. During Plaintiff’s employment with Costco, she was

1 managed by Regional Pharmacy Supervisor, Barry Meizel (“Meizel”). *Id.* At all  
2 relevant times, Meizel was employed by Costco Wholesale Corporation in Ventura  
3 County. *Id.* ¶ 3. Defendant Rudy Garcia, at all relevant times, was employed by  
4 Costco Wholesale Corporation in Ventura County and served as Plaintiff’s store  
5 manager. *Id.* ¶¶ 4, 14.

6 Defendant Costco Wholesale Corporation is a Washington corporation with its  
7 principal place of business in Washington. (Notice of Removal, ¶¶ 24-26 (Dkt. No.  
8 1)).

### 9 **B. Plaintiff’s Allegations**

10 Plaintiff’s Complaint raises four state law claims against Costco: (1)  
11 discrimination based on gender, national origin/ancestry, religion, and/or age under  
12 FEHA; (2) retaliation under FEHA; (3) failure to prevent discrimination, harassment,  
13 and retaliation; and (4) wrongful termination. Plaintiff also alleges a state law claim,  
14 under FEHA, for harassment on the bases of gender, national origin or ancestry,  
15 religion, and age against Meizel and Garcia.

16 Plaintiff alleges Defendants Meizel and Garcia “engaged in a discriminatory  
17 and harassing course of conduct against plaintiff, at least in part, on the basis of  
18 plaintiff’s gender, national origin/ancestry, religion and/or age” during her time at  
19 Costco. Compl. ¶ 40. Plaintiff alleges examples of harassment including: giving  
20 Plaintiff unfair and untrue performance evaluations, giving Plaintiff unwarranted  
21 discipline and threats of discipline in a demonstrably unfair manner, especially when  
22 compared to her male co-workers, giving plaintiff conflicting directions and punishing  
23 her when she could not follow both sets of directions, demoting Plaintiff and  
24 promoting an underqualified male counterpart, and speaking to Plaintiff in a  
25 demeaning and condescending manner. *Id.* ¶ 11.

### 26 **C. Removal to This Court**

27 On March 21, 2019, Costco removed the case to this Court from the  
28 Superior Court of California Ventura County. (*See* Notice of Removal (Dkt. No. 1)).

1 According to Costco, the Court has subject matter jurisdiction over this case because  
2 the amount in controversy exceeds \$75,000 and there is complete diversity of  
3 citizenship amongst the parties. *Id.* Costco does not challenge Meizel and Garcia are  
4 California citizens, instead, it alleges that Defendants Meizel and Garcia are “sham”  
5 defendants whose citizenship should be disregarded when evaluating diversity. *Id.* ¶¶  
6 27-40.

## 7 **II. LEGAL STANDARD**

### 8 **A. Removal**

9 Federal courts are courts of limited jurisdiction and possess only that  
10 jurisdiction as authorized by the Constitution and federal statute. *Kokkonen v.*  
11 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Under 28 U.S.C. § 1441(b)  
12 (“Section 1441”), a civil action may be removed to the district court where the action  
13 is pending if there is diversity jurisdiction. A federal district court has diversity  
14 jurisdiction over a dispute between “citizens of different States” that places more than  
15 \$75,000 in controversy, exclusive of interest and costs. 28 U.S.C. § 1332(a). Section  
16 1332(a)(1) requires complete diversity such that “the citizenship of each plaintiff is  
17 diverse from the citizenship of each defendant.” *Caterpillar Inc. v. Lewis*, 519 U.S.  
18 61, 68 (1996).

### 19 **B. Diversity Jurisdiction–Fraudulent Joinder**

20 A non-diverse party may be disregarded for purposes of determining whether  
21 jurisdiction exists if the court determines that the party’s joinder was “fraudulent” or a  
22 “sham.” *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998).  
23 “Fraudulent joinder” occurs, for the purpose of determining diversity jurisdiction,  
24 where the plaintiff fails to state a cause of action against the resident defendant, and  
25 the failure is obvious according to settled rules of state. *McCabe v. Gen. Foods Corp.*,  
26 811 F.2d 1336 (9th Cir. 1987). “But if there is a possibility that a state court would  
27 find that the complaint states a cause of action against any of the resident defendants,  
28 the federal court must find that the joinder was proper and remand the case to the state

1 court.” *Grancare, LLC v. Thrower by & through Mills*, 889 F.3d 543, 548 (9th Cir.  
2 2018) (quotations omitted).

3 The defendant has a high burden of proof when establishing fraudulent joinder.  
4 A removing defendant may present evidence to prove fraudulent joinder, but the  
5 district court must resolve all disputed questions of fact in the plaintiff’s favor. *See*  
6 *Grancare*, 889 F.3d at 549. Thus, a defense should not require “a searching inquiry  
7 into the merits of the plaintiff’s case, even if that defense, if successful, would prove  
8 fatal.” *Id.* In this regard, “[r]emand must be granted unless the defendant shows that  
9 the plaintiff would not be afforded leave to amend his complaint to cure [a] purported  
10 deficiency” in its allegations against the non-diverse defendant. *Padilla v. AT & T*  
11 *Corp.*, 697 F. Supp. 2d 1156, 1159 (C.D. Cal. 2009) (quotations omitted). Ultimately,  
12 “[f]raudulent joinder must be proven by clear and convincing evidence.” *Hamilton*  
13 *Materials, Inc. v. Dow Chem. Corp.*, 494 F.3d 1203, 1206 (9th Cir. 2007).

### 14 **III. DISCUSSION**

#### 15 **A. The Court Does Not Have Subject Matter Jurisdiction**

16 Costco asserts that there is complete diversity of citizenship because Meizel and  
17 Garcia are “sham” defendants that should be ignored for purposes of determining  
18 diversity jurisdiction. Defendants do not dispute that Meizel and Garcia are California  
19 citizens; further, Costco is a citizen of Washington. Thus, absent Plaintiff’s claims  
20 against Meizel and Garcia, diversity jurisdiction exists. Subject matter jurisdiction in  
21 this case rests on the issue of whether there is complete diversity because the parties  
22 do not dispute that the amount in controversy, in this case, exceeds \$75,000. The  
23 Court finds that it does not have subject matter jurisdiction to hear this case.

#### 24 **1. Harassment Claim**

25 For a claim to constitute harassment, a plaintiff must demonstrate that a  
26 defendant’s conduct was “sufficiently severe or pervasive to ‘alter the conditions of  
27 [the victim’s] employment and create an abusive work environment.’” *Fisher v. San*  
28 *Pedro Peninsula Hosp.*, 214 Cal.App.3d 590, 609 (Cal. Ct. App. 1989) (citation

1 omitted). When determining if the conduct complained of is sufficiently pervasive or  
2 severe, a court should look at the totality of the circumstances. *Id.* at 610.

3 Additionally, it is established that “harassment by a high-level manager of any  
4 organization may be more injurious to the victim because of the prestige and authority  
5 that the manager enjoys.” *Roby v. McKesson Corp.*, 47 Cal.4th 686, 709 (Cal. 2009).

6 Plaintiff’s allegations, viewed in the totality of the circumstances, support a  
7 plausible harassment claim against Meizel and Garcia. Plaintiff alleges numerous  
8 grievances against Defendants, specifically that Defendants engaged in discriminatory  
9 behavior based on Plaintiff’s gender, ethnicity, religion, and age. In addition, Plaintiff  
10 alleges that Defendants unfairly provided false performance evaluations, disciplined  
11 her without proper grounds, and threatened to discipline her unfairly when compared  
12 to her male co-workers. Finally, Plaintiff alleges she was unfairly kept from  
13 promotion without merit.

14 Costco argues that Meizel and Garcia were fraudulently joined because  
15 managerial privilege precludes their personal liability with respect to their personnel  
16 decisions. *See* Costco Opposition at 7. Costco attempts to assert that each of  
17 Plaintiff’s claims are “based solely on personnel decisions.” *Id.* However, as  
18 addressed above, Plaintiff’s harassment claim is based on discrimination, threats of  
19 disciplinary action, and unwarranted disciplinary action. Plaintiff was micromanaged  
20 and disciplined in ways she perceived to be different from her male counterparts,  
21 creating a belief that Plaintiff’s age, ethnicity, religion and gender were the motivating  
22 factors for her supervisors’ severe treatment of her. “[A]cts of discrimination can  
23 provide evidentiary support for a harassment claim by establishing discriminatory  
24 animus on the part of the manager responsible for the discrimination, thereby  
25 permitting the inference that rude comments or behavior by that same manager was  
26 similarly motivated by discriminatory animus.” *Roby*, 27 Cal.4th at 709. Plaintiff has  
27 provided allegations to support her harassment claim.

28 Costco asserts that Plaintiff has not plead facts to support the pervasiveness of

1 the harassment. “With respect to the pervasiveness of harassment, courts have held an  
2 . . . employee must show a concerted pattern of harassment of a repeated, routine, or a  
3 generalized nature.” *Lyle v. Warner Bros. Television Prods.*, 38 Cal. 4th 264, 283  
4 (2006). Plaintiff cites numerous incidents over the span of her years-long  
5 employment with Costco that may support her claims against Defendants. Ultimately,  
6 Plaintiff’s allegations establish a pattern of harassing conduct.

7 Plaintiff’s allegations are to be viewed in the totality of circumstances. The  
8 Court does not take the position that, as a matter of law, Plaintiff’s claim against  
9 Meizel and Garcia must fail. Further, Costco has failed to meet its burden to establish  
10 that Plaintiff could not cure whatever potential defects exist in her pleadings at this  
11 stage. *See Padilla v. AT&T Corp.*, 697 F.Supp.2d 1156, 1169-70 (C.D. Cal. 2009). In  
12 light of this failure, the Court sees no reason why Plaintiff would not have leave to  
13 amend her Complaint to more robustly allege her harassment claim against Meizel and  
14 Garcia. In the absence of clear and convincing evidence that Plaintiff could not allege  
15 claims against Meizel and Garcia, the Court must remand the case to state court.

16 **B. Attorneys’ Fees Are Not Proper**

17 While the Court disagrees with Costco’s position and remands the action back  
18 to the state tribunal, attorney’s fees under § 1447(c) may only be granted “where the  
19 removing party lacked an objectively reasonable basis for seeking removal.” *Martin*  
20 *v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). Here, Costco brought its claim  
21 for perceived deficiencies in Plaintiff’s Complaint regarding her harassment claims  
22 against Meizel and Garcia. The law does not cut in Defendants’ favor here, but their  
23 attempt at removal was not so unreasonable as to warrant an award of attorney’s fees.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court **GRANTS** Plaintiffs' Motion to Remand.  
3 The matter is remanded to Superior Court of California Ventura County.

4  
5 **IT IS SO ORDERED.**

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7 Dated: May 21, 2019



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8 HONORABLE ANDRÉ BIROTTE JR.  
9 UNITED STATES DISTRICT COURT JUDGE