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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

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12 **AMY TAN,**

13 **Plaintiff,**

14 **v.**

15 **INVENTIV HEALTH CONSULTING**
16 **INC. et al.,**

17 **Defendants.**
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} **Case No.: CV 19-07512-CJC(ASx)**

} **ORDER GRANTING PLAINTIFF'S**
} **MOTION TO REMAND [Dkt. 12]**

21
22 **I. INTRODUCTION**
23

24 On June 28, 2019, Plaintiff Amy Tan brought this employment discrimination
25 action against InVentiv Health, Inc., InVentiv Health Consulting, Inc. (collectively,
26 "InVentiv"), Melissa Landers, Jemma Contreras, and Does 1 through 100 in Los Angeles
27 County Superior Court. (Dkt. 1-1 [Complaint, hereinafter "Compl."].) Before the Court
28

1 is Plaintiff’s motion to remand. (Dkt. 12 [hereinafter “Mot.”].) For the following
2 reasons, the motion is **GRANTED**.¹

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4 **II. BACKGROUND**

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6 This case arises from instances of alleged workplace harassment and
7 discrimination that occurred while Plaintiff was employed by InVentiv as a consultant.
8 Plaintiff started work at InVentiv in November 2010 but voluntarily resigned seven
9 months later. (Compl. ¶ 11.) However, Plaintiff was “quickly rehired” when she applied
10 for the same position in September 2013. (*Id.*) Plaintiff allegedly enjoyed considerable
11 success in the workplace during her second stint at InVentiv. She worked on one of
12 InVentiv’s largest projects, managed a twelve-person project team, and helped grow the
13 number of companies that sponsored the project from 18 to 70. (*Id.* ¶ 12.) InVentiv
14 compensated Plaintiff accordingly—between April 2014 and March 2018, her salary
15 increased from \$125,000 to \$172,800 and she received nearly \$100,000 in cash bonuses.
16 (*Id.*)

17
18 Plaintiff began to experience problems at work in early 2018 when she was
19 reassigned to work under Melissa Landers, a Managing Director at InVentiv. (*Id.* ¶ 13.)
20 This reassignment came just after Plaintiff reported to management two instances of
21 alleged misconduct committed by her colleague, Caitlin Briggs. (*Id.*) Plaintiff alleges
22 that after coming under Landers’ supervision, she was discriminated against on the basis
23 of her age and her race. (*Id.*) On one instance, Landers directed a younger Asian
24 employee to speak with Plaintiff—who is also Asian—about career advice. (*Id.* ¶ 14.)
25 When Plaintiff inquired as to why Landers gave her this assignment, Landers allegedly
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27
28 ¹ Having read and considered the papers presented by the parties, the Court finds this matter appropriate
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set
for November 4, 2019, at 1:30 p.m. is hereby vacated and off calendar.

1 responded “you know, the way you are . . . quiet . . . not like me, I can talk to anyone.”
2 (*Id.*) Plaintiff alleges that Landers unjustly criticized her performance and also belittled
3 her in front of other Managing Directors, including Defendant Jemma Contreras. (*Id.*)
4 During one meeting attended by Plaintiff, Landers, Contreras, and other managing
5 directors, Landers made a joke at Plaintiff’s expense and the other attendees laughed,
6 “making Plaintiff feel humiliated.” (*Id.*) Plaintiff alleges that Landers treated younger,
7 Caucasian subordinates with more dignity and respect. (*Id.*)
8

9 At one point, Plaintiff told Landers that she believed that some of her business
10 practices violated the law. (*Id.* ¶ 15.) In response, InVentiv, Landis, and Contreras
11 allegedly retaliated against Plaintiff by removing all of her direct reports and putting her
12 on a performance improvement plan. (*Id.*) Undeterred, Plaintiff filed several complaints
13 with InVentiv’s human resources department which made similar allegations against
14 Landers. (*Id.* ¶ 16.) Plaintiff alleges that InVentiv never investigated these complaints.
15 (*Id.*) At some point after that, Plaintiff took an approved, unpaid leave of absence from
16 InVentiv. (*Id.* ¶ 17.) It does not appear that she has returned to work since then.
17 Plaintiff has exhausted her administrative remedies with the California Department of
18 Fair Employment and Housing (“DFEH”) and received a notice of the right to sue on
19 June 28, 2019. (*Id.* ¶ 18.)
20

21 Plaintiff sued Defendants in Los Angeles Superior Court, asserting a number of
22 violations of California law including (1) hostile work environment in violation of the
23 California Fair Employment and Housing Act (“FEHA”), (2) discrimination in violation
24 of FEHA, (3) retaliation in violation of FEHA, (4) failure to prevent harassment,
25 discrimination, and retaliation in violation of FEHA, and (5) retaliation in violation of
26 Labor Code § 1102.5. (*See generally id.*) On August 29, 2019, InVentiv removed the
27 case to federal court, alleging that this Court has diversity jurisdiction because Jemma
28 Contreras was fraudulently joined as a Defendant. (Dkt. 1 [Notice of Removal,

1 hereinafter “NOR”].) Plaintiff then filed a motion to remand the case to Los Angeles
2 County Superior Court.

3 4 **III. DISCUSSION**

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6 “Federal courts are courts of limited jurisdiction,” possessing “only that power
7 authorized by Constitution and statute.” *Gunn v. Minton*, 568 U.S. 251, 256 (2013)
8 (internal quotations omitted). A civil action brought in state court may only be removed
9 by the defendant to a federal district court if the action could have been brought there
10 originally. 28 U.S.C. § 1441(a). Federal district courts have diversity jurisdiction over
11 suits where more than \$75,000 is in controversy if the citizenship of each plaintiff is
12 different from that of each defendant. 28 U.S.C. § 1332(a). When a case is removed, the
13 burden of establishing subject matter jurisdiction falls on the defendant, and the removal
14 statute is strictly construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d
15 564, 566 (9th Cir. 1992). “Federal jurisdiction must be rejected if there is any doubt as to
16 the right of removal in the first instance.” *Id.*

17 18 **A. Complete Diversity**

19
20 The parties dispute whether there is complete diversity of citizenship between
21 them. Federal courts only have diversity jurisdiction over a matter when the parties are
22 completely diverse. 28 U.S.C. § 1332(a). Plaintiff, a California citizen, alleges that
23 complete diversity is not present here due to her claims against Jemma Contreras, who
24 she alleges is also a California citizen. InVentiv asserts that Contreras was fraudulently
25 joined and cannot be used to destroy complete diversity. On this point, the Court agrees
26 with Plaintiff.

1 Fraudulently joined defendants do not defeat removal on diversity grounds.
2 *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998). When a sufficient
3 showing of fraudulent joinder is made, a court will not consider the citizenship of the
4 fraudulently joined party when determining if there is complete diversity in a case. *See*
5 *Grancare, LLC v. Thrower by and through Mills*, 889 F.3d 543, 548 (9th Cir. 2018). “A
6 defendant invoking federal court diversity jurisdiction on the basis of fraudulent joinder
7 bears a heavy burden since there is a general presumption against [finding] fraudulent
8 joinder.” *Id.* (internal quotations omitted). Defendants establish fraudulent joinder by
9 showing that the defendant who purportedly destroys complete diversity “cannot be liable
10 on any theory.” *See Ritchey*, 139 F.3d at 1318. This is an exacting standard because “if
11 there is a possibility that a state court would find that the complaint states a cause of
12 action against any of the resident defendants, the federal court must find that the joinder
13 was proper and remand the case to the state court.” *Hunter v. Philip Morris USA*, 582
14 F.3d 1039, 1046 (9th Cir. 2009). Joinder is only fraudulent when a plaintiff’s claims
15 against the resident defendant fail “and the failure is obvious according to the settled
16 rules of the state.” *Id.* at 1043.

17
18 The Ninth Circuit recently reiterated that the tests for fraudulent joinder and for
19 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) are not equivalent.
20 *See Grancare*, 889 F.3d at 549. Even if a plaintiff’s claims against a defendant could not
21 withstand a 12(b)(6) motion, that does not mean that the defendant has been fraudulently
22 joined. Before finding fraudulent joinder, a court must also determine “whether a
23 deficiency in the complaint can possibly be cured by granting the plaintiff leave to
24 amend.” *See id.*

25
26 Of Plaintiff’s five claims, only the fifth—her section 1102.5 retaliation claim—is
27 asserted against Contreras. Thus, if Defendants can establish that Contreras “cannot be
28 held liable on any theory” as to this claim, Plaintiff’s motion to remand must be denied.

1 *See Ritchey*, 139 F.3d at 1318. Prior to 2014, there was little question that section 1102.5
2 precluded individual liability and that the only proper defendants were employers
3 themselves. *See CTC Glob. Corp. v. Huang*, 2018 WL 4849715, at *4 (C.D. Cal. Mar.
4 19, 2018). In 2014 however, the California Legislature amended the statute. These
5 amendments added the following italicized language to section 1102.5: “[a]n employer,
6 *or any person acting on behalf of the employer*, shall not retaliate against an employee . .
7 . .” California Labor Code § 1102.5(b). After the amendments, “the plain language of
8 section 1102.5 seems to stretch itself to individual liability.” *See CTC Glob.*, 2018 WL
9 4849715, at *4.

10
11 “When interpreting state law, federal courts are bound by decisions of the state’s
12 highest court.” *Strother v. S. Cal. Permanente Med. Grp.*, 79 F.3d 859, 865 (9th Cir.
13 1996). However, California state courts have yet to weigh in on whether the revisions to
14 section 1102.5 opened the door for claims against individual defendants. *See Bales v.*
15 *County of El Dorado*, 2018 WL 4558235, at *2 (E.D. Cal. Sept. 20, 2018) (noting that
16 “[n]o California court has addressed the issue of individual liability since the
17 amendment”) (internal quotation omitted). This lack of guidance has caused California
18 district courts to split on the issue. *Compare Jackson v. Dollar Tree Distrib., Inc.*, 2018
19 WL 2355983, at *1 (C.D. Cal. May 23, 2018) (granting plaintiff’s motion to remand
20 because the 2014 amendments caused ambiguity as to whether section 1102.5 permitted
21 individual liability) *with Tillery v. Lollis*, 2015 WL 4873111, at *1 (E.D. Cal. Aug. 13,
22 2015) (granting individual defendants’ 12(b)(6) motion to dismiss after finding that
23 “individuals are not susceptible to liability under section 1102.5”).

24
25 This Court previously addressed this issue in *Khan v. Infor (US) Inc.*, 2016 WL
26 3751615, at *4 (C.D. Cal. July 13, 2016). There, it granted the plaintiff’s motion to
27 remand after concluding that the defendant failed to establish fraudulent joinder given the
28 unsettled nature of California law after the amendments to section 1102.5. *See id.*

1 InVentiv now urges the Court to change its course. It alleges that since *Khan*, a
2 consensus has developed and “under the now-settled law of California, there can be no
3 individual liability under Labor Code § 1102.5.” (Dkt. 14 at 7.) The Court is not
4 convinced that the law is now settled on this issue. No California appellate court has yet
5 confronted the question. And all of the district court cases which purportedly establish
6 the “consensus” were decided on Rule 12(b)(6) motions, rather than motions to remand,
7 where “any doubt is resolved against removability.” See *Luther v. Countrywide Home*
8 *Loans Servicing LP*, 533 F.3d 1031, 1034 (9th Cir. 2008). When district courts confront
9 this issue on motions to remand, they consistently rule for plaintiffs. See, e.g., *Jackson*,
10 2018 WL 2355983, at *1 (granting motion to remand after finding that amendments to
11 § 1102.5 created an ambiguity as to the permissibility of individual liability and resolving
12 that ambiguity in plaintiff’s favor). InVentiv has pointed to nothing that convinces this
13 Court to deviate from its previous holding in *Khan*.

14
15 Nor is the Court persuaded that Plaintiff’s allegations against Contreras are so
16 deficient that they could not be cured by amendment. To be sure, as currently pled,
17 Plaintiff’s section 1102.5 retaliation claim against her is far from ironclad. Especially
18 when compared to Defendant Landers, Plaintiff’s direct supervisor, Contreras’s role in
19 the alleged retaliation appears peripheral. But when conducting a fraudulent joinder
20 analysis, courts must consider “whether a deficiency in the complaint can possibly be
21 cured by granting the plaintiff leave to amend.” See *Grancare*, 889 F.3d at 549. Despite
22 the relative weakness of Plaintiff’s claim against Contreras, the Court is not persuaded
23 that it is so unsalvageable as to merit a finding of fraudulent joinder. See *De La Torre v.*
24 *Progress Rail Servs. Corp.*, 2015 WL 4607730, at *4 (C.D. Cal. July 31, 2015) (refusing
25 to find fraudulent joinder even though the individual defendant was mentioned only once
26 in plaintiff’s complaint). Plaintiff’s complaint sufficiently alleges that there is a
27 *possibility* that she could recover against Contreras under section 1102.5. That is all that
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1 is required to show that a finding of fraudulent joinder is not appropriate here. *See*
2 *Grancare*, 889 F.3d at 551. Accordingly, Plaintiff’s motion to remand is **GRANTED**.

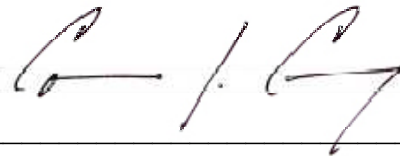
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4 **B. Attorneys’ Fees**

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6 Plaintiff also requests an award of attorneys’ fees and costs for filing this motion.
7 “Courts may award attorney’s fees under [28 U.S.C. § 1447(c)] only where the removing
8 party lacked an objectively reasonable basis for seeking removal.” *Martin v. Franklin*
9 *Capital Corp.*, 546 U.S. 132, 141 (2005). The Court finds that InVentiv had an
10 objectively reasonable basis for removal given the lack of binding authority on whether
11 there can be individual liability under section 1102.5 after the 2014 amendments.
12 Plaintiff’s request for attorneys’ fees and costs is **DENIED**.

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14 **IV. CONCLUSION**

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16 For the following reasons, Plaintiff’s motion to remand is **GRANTED**. This
17 action is hereby remanded to Los Angeles County Superior Court.

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19 DATED: October 24, 2019



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21 _____
22 CORMAC J. CARNEY
23 UNITED STATES DISTRICT JUDGE
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