UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. EDCV-17-922-MWF (DTBx) **Date: July 24, 2017**
Title: Stephanie Patton, et al. v. Allergan PLC, et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported

Attorneys Present for Plaintiff:	Attorneys Present for Defendant:
None Present	None Present

Proceedings (In Chambers): ORDER RE PLAINTIFFS' MOTION TO REMAND [7]

The Court offers its condolences to Ms. Patton and Mr. Knighten.

Before the Court is Plaintiffs' Motion to Remand this matter to the Riverside County Superior Court, filed on May 30, 2017. (the "Motion" (Docket No. 7)). Defendant Forest Laboratories, LLC filed an Opposition on July 3, 2017. (Docket No. 17).

The Court held a hearing on July 24, 2017. For the reasons stated below, the Motion is **DENIED**. The Motion is denied both on the basis of claims-splitting and the impossibility that RCRMC is a valid defendant to defeat diversity. At the hearing, Plaintiff submitted on the tentative ruling that came to this conclusion.

I. BACKGROUND

This case arises out of the suicide of the daughter of Plaintiffs Knighten and Patton, who is referred to as "K.K." in the briefing. (Complaint, Docket No. 1-2, ¶¶ 1–2). K.K. had been a medical patient of several of the Defendants, and Plaintiffs allege she committed suicide as a result of negligent treatment and her taking the prescription drug Lexapro. (*Id.* ¶ 3).

Plaintiffs have filed two separate suits arising out of K.K.'s suicide. The first was filed in Superior Court on January 30, 2017. (Complaint (Docket No. 17-2)). As to Defendant Riverside County Regional Medical Center ("RCRMC"), this

suit alleged negligence and wrongful death in that RCRMC and its doctor—Doctor Bipin Patel—failed to reasonably advise Plaintiffs of the risks of Lexapro, and that RCRMC failed to conduct its own research into Lexapro's efficacy. This first suit named only RCRMC and Dr. Patel as Defendants.

On May 15, 2017, Plaintiffs filed an amended pleading in the first suit, adding as Defendants various pharmacies and corporations. (First Amended Complaint (Docket No. 17-2)).

The second suit was filed on April 4, 2017, also in Superior Court. (Docket No. 1-2). This suit named RCRMC as a Defendant in addition to a host of various pharmacies and drug manufacturers. In addition to negligence and wrongful death claims, the suit alleges product liability, fraud, breach of warranty, and violations of California consumer protection laws. While the first suit claimed that RCRMC had failed to investigate the side effects of Lexapro, the second suit claims that Lexapro's manufacturer–Defendant Forest Labs—failed to disclose the dangers of the drug to healthcare providers. (*Id.* ¶ 52). The second suit also argues that RCRMC acted as a "distributor" of the drug in its role as a pharmacy.

On May 11, 2017, Forest Labs removed the second suit to this Court on the basis of diversity jurisdiction. (Notice of Removal (Docket No. 1)). Forest Labs argues that RCRMC has been fraudulently joined in this suit, and that its citizenship should be ignored for diversity purposes.

II. LEGAL STANDARD FOR REMAND

As all parties recognize, the threshold requirement for removal under 28 U.S.C. § 1441 is a "finding that the complaint . . . is within the original jurisdiction of the district court." *Ansley v. Ameriquest Mortgage Co.*, 340 F.3d 858, 861 (9th Cir. 2003). In most circumstances, "federal district courts have jurisdiction over suits for more than $75,000 where the citizenship of each plaintiff is different from that of each defendant." *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1043 (9th Cir. 2009) (citing 28 U.S.C. § 1332(a)). A well-established exception to the complete-diversity rule is "'where a non-diverse defendant has been 'fraudulently

joined.'" *Id.* (quoting *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001)). The joinder is considered fraudulent "[i]f the plaintiff fails to state a cause of action against the [non-diverse] defendant, and the failure is obvious according to the settled rules of the state . . . ." *Hamilton Materials, Inc. v. Dow Chemical Co.*, 494 F.3d 1203, 1206 (9th Cir. 2007). Defendant must "prove that individuals joined in the action cannot be liable on any theory." *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998)

Because all doubts weigh against removal, a court determining whether joinder is fraudulent "must resolve all material ambiguities in state law in plaintiff's favor." *Macey v. Allstate Property and Cas. Ins. Co*., 220 F.Supp.2d 1116, 1117 (N.D. Cal. 2002) (citing *Good v. Prudential Ins. Co. of America*, 5 F.Supp.2d 804, 807 (N.D. Cal. 1998)). "If there is a non-fanciful possibility that plaintiff can state a claim under [state] law against the non-diverse defendant[,] the court must remand." *Id*.; *see also Good*, 5 F. Supp. 2d at 807 ("[T]he defendant must demonstrate that there is no possibility that the plaintiff will be able to establish a cause of action in State court against the alleged sham defendant."). Given this standard, "[t]here is a presumption against finding fraudulent joinder, and defendants who assert that plaintiff has fraudulently joined a party carry a heavy burden of persuasion." *Plute v. Roadway Package Sys., Inc.*, 141 F. Supp. 2d 1005, 1008 (N.D. Cal. 2001).

Even when a pleading contains insufficient allegations to state a claim for relief against a non-diverse defendant, a remand is proper "where defendant fail[s] to show that plaintiff would not be granted leave to amend his complaint to cure the asserted deficiency by amendment." *Johnson v. Wells Fargo & Co.*, No. CV 14-06708 MMM JCX, 2014 WL 6475128, at *8 (C.D. Cal. Nov. 19, 2014) (quoting *Padilla v. AT & T Corp.*, 697 F. Supp. 2d 1156, 1159 (C.D. Cal. 2009)). "Consequently, if a defendant simply argues that plaintiff has not pled sufficient facts to state a claim, the heavy burden of showing fraudulent joinder has not been met." *Martinez v. Michaels*, No. CV 15-02104 MMM (EX), 2015 WL 4337059, at *5 (C.D. Cal. July 15, 2015); *see Birkhead v. Parker*, No. C 12–2264 CW, 2012 WL 4902695 at *3 (N.D. Cal. Oct. 15, 2012) ("Even if these allegations do not rise

to the level of outrageous conduct, Defendants cannot establish that Plaintiff would not be able to amend the complaint to allege a[ ] viable claim [for intentional infliction of emotional distress] against [his former supervisor] under California law.").

III. DISCUSSION

As Forest Labs notes, many of the allegations in the Complaint in the second suit (the one removed to this Court) simply cannot apply to RCRMC. For example, the allegation that "Defendants"—including RCRMC—had designed and manufactured Lexapro. (Docket No. 1-2, ¶ 12). Clearly RCRMC, a hospital, has not designed or manufactured Lexapro. Plaintiffs' Motion seems to argue only that RCRMC "distributed" the drug in its role as a pharmacy, and that RCRMC failed to include sufficient warnings in the packaging of the drug. (Motion at 6).

A. Claim Splitting

Forest Labs argues first that Plaintiffs have improperly "split" their claims between the two suits discussed above. "The doctrine of claim-splitting embodies the notion that a party is 'not at liberty to split up his demand, and prosecute it by piecemeal, or present only a portion of the grounds upon which special relief is sought, and leave the rest to be presented in a second suit, if the first fail. There would be no end to litigation if such a practice were permissible.'" *Bojorquez v. Abercrombie & Fitch, Co.*, 193 F. Supp. 3d 1117, 1123 (C.D. Cal. 2016) (quoting *United States v. Haytian Republic*, 154 U.S. 118, 125 (1894)). The purpose of the rule is to ""protect the Defendant from being harassed by repetitive actions based on the same claim" and to promote judicial economy and convenience." *Clements v. Airport Auth. of Washoe Cnty*, 69 F.3d 321, 328 (9th Cir. 1995). When faced with duplicative allegations, "[d]ismissal of the duplicative lawsuit, more so than the issuance of a stay or the enjoinment of proceedings, promotes judicial economy and the comprehensive disposition of litigation." *Adams v. California Dep't of Health Servs.*, 487 F.3d 684, 692 (9th Cir. 2007).

The Court agrees with Forest Labs that the claims against RCRMC would be dismissed under the claim splitting doctrine were this suit to proceed in this Court. The claims asserted against RCRMC in the first suit are identical to those alleged in the second suit removed to this Court. Plaintiffs allege in both suits that RCRMC caused K.K.'s suicide by failing to warn K.K. or her parents about the risks of taking Lexapro. Plaintiffs also seek identical relief in their two suits. Plaintiffs have filed a Notice of Related Case in State Court that concedes that the first action involves the same parties and arises from the same or substantially identical transactions. (Docket No. 6). As a result, the Court would determine that Plaintiffs cannot proceed against RCRMC both in this Court and in the identical state court proceeding, and would dismiss the claims in this suit against RCRMC. Because Plaintiffs' claims against RCRMC could not possibly proceed in this Court, RCRMC has been fraudulently joined and its citizenship should be ignored for diversity purposes. Therefore, the Motion must be **DENIED**.

B. Plaintiffs' Claims Against RCRMC

Forest Labs also argues that Plaintiffs' claims against RCRMC are not viable, and are liable to be dismissed on a motion under Rule 12(b)(6). The Court agrees that several of Plaintiffs' allegations against RCRMC are absurd, if read literally. For example, the Complaint alleges that each Defendant "intentionally concealed harmful information about [Lexapro] from the United States Food and Drug Administration, doctors, pharmacists, pharmacies, patients, and customers." (Docket No. 1-2, ¶ 14). But RCRMC is alleged to be one of those "pharmacies," leading to the allegation that RCRMC misled *itself* about the risks of Lexapro.

The Court agrees that the Complaint is actually directed at Lexapro's manufacturers. The Complaint fails to allege any specific conduct by RCRMC that gave rise to any of Plaintiffs' claims. The entire Complaint is full of conclusory allegations, both as to RCRMC and other Defendants. While the conclusory allegations against the other Defendants, such as actual drug manufacturers, could potentially be cured by amendment, the allegations against RCRMC are so baseless as to lack any hope of curative amendment. For example, hospitals cannot

be held strictly liable when they furnish a product in connection with the care and treatment of a patient. *See Silverhart v. Mount Zion Hosp*., 20 Cal. App. 3d 1022, 1028, 98 Cal. Rptr. 187 (1971) ("We are persuaded, moreover, that the rule of strict liability adopted by the courts of this state precludes the application of that doctrine to a hospital."). Neither can a pharmacy or pharmacist be held strictly liable for giving out a properly prescribed medication that leads to negative side effects for the patient. *See Murphy v. E. R. Squibb & Sons, Inc*., 40 Cal. 3d 672, 675, 221 Cal. Rptr. 447 (1985).

Plaintiffs' fraud claims allege a "false, fraudulent, and misleading nationwide marketing campaign." (Docket No. 1-2, ¶¶ 46–51). But RCRMC, a hospital in Riverside, obviously had nothing to do with any nationwide marketing campaign. And Plaintiffs' Motion does not argue as much (Plaintiffs failed to file any Reply). If anything, the Complaint alleges that RCRMC was a *victim* of the fraud, not its perpetrator.

As to Plaintiffs' statutory claims under the California Unfair Competition Act and the Consumer Legal Remedies Act, because RCRMC is a public entity it cannot be held liable under either claim. *See United Motors Int'l, Inc. v. Hartwick*, 2017 WL 888304, at *11 (C.D. Cal. Mar. 6, 2017) ("[T]he Court finds that the City of Downey, as a public entity, cannot be held liable under the UCL."); Cal. Civ. Code § 1761 (defining "person" as "an individual, partnership, corporation, limited liability company, association").

Accordingly, the only claims that could possibly be alleged against RCRMC are for negligence and wrongful death. And those claims have already been alleged in the first suit, as discussed above. Thus, the Court is forced to dismiss the claims alleged in this suit to allow the first suit to go forward in Superior Court. Plaintiffs could not join RCRMC as a Defendant in this suit to defeat jurisdiction.

IV. CONCLUSION

Accordingly, the Court concludes that RCRMC has been fraudulently joined in this action. No viable claim could possibly exist against RCRMC in this forum

because Plaintiffs have already brought their claims against RCRMC in the first suit in Superior Court. Therefore, RCRMC has been fraudulently joined and its citizenship should be ignored for diversity purposes. After doing so, Defendant Forest Labs has adequately alleged the existence of diversity jurisdiction and the Motion to Remand is **DENIED**.

Defendant RCRMC is **DISMISSED**.

IT IS SO ORDERED.