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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MADEL GRAGEOLA,  
Plaintiff,  
v.  
WALMART ASSOCIATES, INC.,  
*et al.*,  
Defendants.

Case No. 5:23-cv-02210-FLA (SHKx)

**ORDER TO SHOW CAUSE  
WHETHER PLAINTIFF CAN  
PLEAD SUFFICIENT FACTS TO  
STATE THE SECOND AND NINTH  
CAUSES OF ACTION AGAINST  
DEFENDANT BRIANA GONZALEZ  
[DKT. 10]**

1 **ORDER**

2 On August 8, 2023, Plaintiff Madel Grageola (“Plaintiff” or “Grageola”) filed a  
3 Complaint in the Riverside County Superior Court, asserting nine causes of action for:  
4 (1) discrimination in violation of California’s Fair Employment and Housing Act  
5 (“FEHA”), Cal. Gov’t Code § 12940; (2) harassment in violation of FEHA; (3)  
6 retaliation in violation of FEHA; (4) failure to prevent discrimination, harassment, or  
7 retaliation in violation of FEHA; (5) failure to accommodate in violation of FEHA; (6)  
8 failure to engage in a good faith interactive process in violation of FEHA; (7)  
9 wrongful termination in violation of California public policy; (8) breach of  
10 oral/implied contract; and (9) intentional infliction of severe emotional distress. Dkt.  
11 1-1 (“Compl.”) ¶¶ 14–80.<sup>1</sup>

12 Plaintiff asserts all causes of action against Defendants Walmart, Inc. and Wal-  
13 Mart Associates, Inc. (the “Walmart Defendants”), and additionally asserts the second  
14 and ninth causes of action against Defendants Briana Gonzalez (“Gonzalez”), Alex  
15 Doe, and Rebecca Doe. *Id.* On October 27, 2023, the Walmart Defendants removed  
16 the action to this court, alleging the existence of diversity jurisdiction under 28 U.S.C.  
17 § 1332 (“§ 1332”). Dkt. 1 (“NOR”) at 3–5.

18 On November 27, 2023, Plaintiff filed a Motion for Remand to State Court  
19 (“Motion”). Dkt. 10 (“Mot.”); Dkt. 10-1 (“Mot. Br.”). Plaintiff contends the action  
20 was improperly removed because complete diversity does not exist between the  
21 parties. Mot. Br. at 2–3, 5–6. The Wal-Mart Defendants respond the removal was  
22 proper because the non-diverse Defendant, Gonzalez, is a sham Defendant whose  
23 citizenship should be disregarded under the doctrine of fraudulent joinder. Dkt. 14  
24 (“Opp’n”) at 2.

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27 <sup>1</sup> Although the caption of the Complaint also lists a cause of action for violation of the  
28 California Family Rights Act, Cal. Gov’t Code § 12945.2 (Compl. at 1), Plaintiff did  
not plead such a cause of action in the body of the Complaint.

1 Diversity jurisdiction under § 1332 “requir[es] complete diversity: In a case  
2 with multiple plaintiffs and multiple defendants, the presence in the action of a single  
3 plaintiff from the same State as a single defendant deprives the district court of  
4 original diversity jurisdiction over the entire action.” *Exxon Mobil Corp. v. Allapattah*  
5 *Servs.*, 545 U.S. 546, 553 (2005). “In determining whether there is complete  
6 diversity, district courts may disregard the citizenship of a non-diverse defendant who  
7 has been fraudulently joined.” *GranCare, LLC v. Thrower*, 889 F.3d 543, 548  
8 (9th Cir. 2018) (citing *Chesapeake & Ohio Ry. Co. v. Cockrell*, 232 U.S. 146, 152  
9 (1914)). “There are two ways to establish fraudulent joinder: (1) actual fraud in the  
10 pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of  
11 action against the non-diverse party in state court.” *Id.* (quotation marks and citation  
12 omitted). “Fraudulent joinder is established the second way if a defendant shows that  
13 an individual joined in the action cannot be liable on any theory.” *Id.* (quotation  
14 marks, citation, and brackets omitted).

15 “[R]emoval statutes should be construed narrowly in favor of remand to protect  
16 the jurisdiction of state courts.” *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 698  
17 (9th Cir. 2005). It is not enough for a defendant to show that a plaintiff is unlikely to  
18 prevail on her claim; “if there is a *possibility* that a state court would find that the  
19 complaint states a cause of action against any of the [non-diverse] defendants, the  
20 federal court must find that the joinder was proper and remand the case to the state  
21 court.” *GranCare*, 889 F.3d at 548 (emphasis in original, quotation marks and  
22 citation omitted). “A defendant invoking federal court diversity jurisdiction on the  
23 basis of fraudulent joinder bears a heavy burden since there is a general presumption  
24 against finding fraudulent joinder.” *Id.* (quotation marks and brackets omitted).


25 The Walmart Defendants contend “Plaintiff has failed to state a cognizable  
26 claim for relief against Defendant Briana Gonzalez, whom Plaintiff alleges to be her  
27 ‘supervisor/manager’ and whom Plaintiff named as defendant to the Second Cause of  
28 Action for Harassment in Violation of California Government Code Section 12940(j)

1 and the last purported cause of action for Intentional Infliction of Emotional Distress  
2 ('IIED')." Opp'n at 4. According to the Walmart Defendants, Plaintiff has not  
3 pleaded and cannot plead specific facts regarding conduct by Gonzalez sufficient to  
4 constitute harassment under FEHA (*id.* at 7–8) or "that is so extreme and outrageous  
5 as to go beyond all possible bounds of decency, and to be regarded as atrocious, and  
6 utterly intolerable in a civilized society," as required to support a claim for IIED (*id.* at  
7 6). Plaintiff did not file a reply or respond to this argument.

8 As this action must be remanded "if there is a *possibility* that a state court  
9 would find that the complaint states a cause of action against [Gonzalez]," *see*  
10 *GranCare*, 889 F.3d at 548 (emphasis in original), the court ORDERS Plaintiff to  
11 show cause ("OSC") in writing, within fourteen (14) days of this Order, whether  
12 Plaintiff can plead sufficient facts to state the second and ninth causes of action  
13 against Gonzalez. Plaintiff's response shall not exceed 8 pages and shall identify  
14 specifically the facts sufficient to state these claims that she has pleaded or will plead  
15 if given leave to amend. Failure to respond timely may be deemed an admission that  
16 these claims lack merit and result in the dismissal of Plaintiff's claims against  
17 Gonzalez with prejudice. Defendants may file a response within seven (7) days of  
18 Plaintiff's response, if any is filed.

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20 IT IS SO ORDERED.

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22 Dated: July 25, 2024

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25 FERNANDO L. AENLLE-ROCHA  
26 United States District Judge  
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