

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES—GENERAL

Case No. **EDCV 24-1137-KK-SHKx**

Date: July 26, 2024

Title: ***Prapapon Gem Garcia v. Costco Wholesale Corporation, et al.***Present: The Honorable **KENLY KIYA KATO, UNITED STATES DISTRICT JUDGE**

Noe Ponce

Not Reported

Deputy Clerk

Court Reporter

Attorney(s) Present for Plaintiff(s):

Attorney(s) Present for Defendant(s):

None Present

None Present

**Proceedings: (In Chambers) Order DENYING Plaintiff's Motion to Remand [Dkt. 8]**

**I.**  
**INTRODUCTION**

On April 24, 2024, plaintiff Prapapon Gem Garcia (“Plaintiff”) filed a Complaint in Riverside County Superior Court against defendants Costco Wholesale Corporation (“Costco”) and Does 1 through 20, asserting claims for negligence and premises liability arising from a slip and fall at a Costco store. ECF Docket No. (“Dkt.”) 1 at 8-12. On May 30, 2024, the action was removed to this Court. Dkt. 1.

On June 25, 2024, Plaintiff filed the instant Motion to Remand (“Motion”). Dkt. 8. The Court finds this matter appropriate for resolution without oral argument. See FED. R. CIV. P. 78(b); L.R. 7-15. For the reasons stated below, the Court **DENIES** Plaintiff’s Motion to Remand.

**II.**  
**BACKGROUND**

**A. PROCEDURAL HISTORY**

On April 24, 2024, Plaintiff filed the operative Complaint in Riverside County Superior Court against defendants Costco and Does 1 through 20. Dkt. 1 at 8-12, Compl. On May 30, 2024, Plaintiff amended the Complaint to name Costco Wholesale Membership, Inc. (“Costco Membership”) as a defendant. Dkt. 8-1 at 1-4, Declaration of Seri Kattan-Wright (“Kattan-Wright Decl.”), ¶ 4, Ex. D. Plaintiff alleges defendants Costco and Costco Membership (“Defendants”)

“negligently designed, constructed, maintained, owned, operated and controlled” a Costco store located in Moreno Valley, creating a hazard that caused Plaintiff to slip and fall in the store “despite her reasonably careful conduct.” Id. at 11-12. Based upon these allegations, Plaintiff asserts claims against Defendants for: (1) general negligence, and (2) premises liability. Id.

On May 30, 2024, defendant Costco removed the action to this Court on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). Dkt. 1, Notice of Removal.

On June 25, 2024, Plaintiff filed the instant Motion seeking to remand this action. Dkt. 8. Plaintiff argues the Court lacks diversity jurisdiction because the joinder of defendant Costco Membership destroys complete diversity. Id. at 5. Plaintiff additionally seeks an award of attorney’s fees and costs incurred in connection with the filing of the Motion on the ground defendant Costco lacked an objectively reasonable basis for removal. Id. at 6.

On June 27, 2024, defendant Costco filed an Opposition to the Motion. Dkt. 11. Defendant Costco argues the joinder of defendant Costco Membership “constitutes fraudulent joinder” because defendant Costco Membership “has no responsibility whatsoever relating to the operation of the” premises at issue. Id. at 3-8.

On July 18, 2024, Plaintiff filed a Reply in support of the Motion. Dkt. 13.

The matter thus stands submitted.

## **B. RELEVANT FACTS**

As alleged in defendant Costco’s Notice of Removal, Plaintiff is a citizen of California, and defendant Costco – a Washington corporation with its principal place of business in Washington – is a citizen of Washington. Notice of Removal ¶¶ 3-4.

Defendant Costco Membership is a California corporation. Kattan-Wright Decl., ¶ 4. It is a “separate corporate entity” from defendant Costco that was created “to receive membership fees.” Dkt. 11-1, Declaration of Leigh Ann Ruijters (“Ruijters Decl.”), ¶¶ 4-5. Defendant Costco Membership does not own or lease the premises at issue and does not employ or supervise any of the persons who work at the premises. Id. ¶¶ 6-8.

## **III. LEGAL STANDARD**

Pursuant to 28 U.S.C. § 1441(a), a civil action may be removed from state to federal court if the action is one over which federal courts could exercise original jurisdiction. Courts “strictly construe the removal statute against removal jurisdiction.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). Thus, “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” Id.; see also Luther v. Countrywide Home Loans Servicing LP, 533 F.3d 1031, 1034 (9th Cir. 2008) (holding “any doubt” as to the propriety of removal “is resolved against removability”).

When an action is removed to federal court on the basis of diversity jurisdiction under 28 U.S.C. § 1332, the defendant must establish (1) complete diversity among the parties, and (2) the

amount in controversy exceeds \$75,000. Chavez v. JPMorgan Chase & Co., 888 F.3d 413, 415 (9th Cir. 2018). Complete diversity requires each plaintiff to be of a different citizenship than each defendant. Grancare, LLC v. Thrower, 889 F.3d 543, 548 (9th Cir. 2018) (citing Caterpillar Inc. v. Lewis, 519 U.S. 61, 68 (1996)).

In determining whether complete diversity exists for purposes of establishing diversity jurisdiction, a court “may disregard the citizenship of a non-diverse defendant who has been fraudulently joined.” Id.; see also Morris v. Princess Cruises, Inc., 236 F.3d 1061, 1067 (9th Cir. 2001) (“[O]ne exception to the requirement of complete diversity is where a non-diverse defendant has been ‘fraudulently joined.’”). There are two ways to establish fraudulent joinder: “(1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court.” Hunter v. Philip Morris USA, 582 F.3d 1039, 1044 (9th Cir. 2009). “Fraudulent joinder must be proven by clear and convincing evidence.” Hamilton Materials, Inc. v. Dow Chem. Corp., 494 F.3d 1203, 1206 (9th Cir. 2007).

Under the second theory of fraudulent joinder, “if the plaintiff fails to state a cause of action against a resident defendant, and the failure is obvious according to the settled rules of the state[,]” then “the defendant’s presence in the lawsuit is ignored for purposes of determining diversity[.]” Morris, 236 F.3d at 1067 (internal brackets omitted). But “if there is a possibility that a state court would find that the complaint states a cause of action against any of the resident defendants, the federal court must find that the joinder was proper and remand the case to the state court.” Hunter, 582 F.3d at 1046. The standard for evaluating fraudulent joinder “is similar to the ‘wholly insubstantial and frivolous’ standard for dismissing claims under [Federal Rule of Civil Procedure] 12(b)(1) for lack of federal question jurisdiction.” Grancare, 889 F.3d at 549 (quoting Bell v. Hood, 327 U.S. 678, 682-83 (1946)). “[T]he test for fraudulent joinder and for failure to state a claim under [Federal Rule of Civil Procedure] 12(b)(6) are not equivalent” because “[a] claim against a defendant may fail under [Federal Rule of Civil Procedure] 12(b)(6), but that defendant has not necessarily been fraudulently joined.” Id.

#### **IV. DISCUSSION**

##### **A. APPLICABLE LAW**

Under California law, “[t]he elements of a negligence claim and a premises liability claim are the same: a legal duty of care, breach of that duty, and proximate cause resulting in injury.” Kesner v. Superior Ct., 384 P.3d 283, 300 (Cal. 2016). “[A] defendant generally does not have an affirmative duty to protect others when he or she has not created the peril or increased the risk of danger.” Moses v. Roger-McKeeever, 91 Cal. App. 5th 172, 178-79 (Cal. Ct. App. 2023). Thus, “a defendant cannot be held liable for the defective or dangerous condition of property which it does not own, possess, or control.” Id. at 179.

##### **B. ANALYSIS**

Here, Plaintiff is unable to establish a cause of action against defendant Costco Membership, because defendant Costco Membership did not “own, possess, or control” the premises at issue. See Moses, 91 Cal. App. 5th at 179. Plaintiff conclusorily alleges defendant Costco Membership “negligently designed, constructed, maintained, owned, operated and controlled” the Moreno Valley

store premises. Dkt. 1 at 11-12. However, defendant Costco's evidence establishes defendant Costco Membership is a distinct entity from defendant Costco, does not own or lease the premises, and does not employ or supervise any of the persons who work at the premises. Ruijters Decl., ¶¶ 4, 6-8. Hence, because defendant Costco Membership did not own, possess, or control the premises at issue, Plaintiff cannot establish a cause of action for negligence or premises liability against defendant Costco Membership.<sup>1</sup> See Navarro v. Costco Wholesale Corp., No. CV 20-2146-VAP-ASx, 2020 WL 2521270, at \*3 (C.D. Cal. May 18, 2020) (finding fraudulent joinder in premises liability action against defendants Costco Wholesale Corporation and Costco Wholesale Membership, Inc. where evidence established Costco Wholesale Membership, Inc. was a separate entity that did not own, lease, operate, or manage the premises at issue or employ any persons thereon); Holliday v. Costco Wholesale Corp., No. CV 22-1106-SVW-RAOx, 2020 WL 1638607, at \*2 (C.D. Cal. Apr. 2, 2020) (finding fraudulent joinder in premises liability action against defendants Costco Wholesale Corporation and Costco Wholesale Membership, Inc. where evidence established defendant Costco Wholesale Membership, Inc. did not “maintain any control over the premises where the alleged injury occurred”).

The Court, therefore, finds defendant Costco Membership's joinder was fraudulent, and will disregard its citizenship for jurisdictional purposes. See Grancare, 889 F.3d at 548; Morris, 236 F.3d at 1067. Thus, because Plaintiff is a citizen of California and defendant Costco is a citizen of Washington, complete diversity exists. See Notice of Removal ¶¶ 3-4. Accordingly, the Court has subject matter jurisdiction over this action.

## V. CONCLUSION

For the reasons set forth above, the Court **DENIES** Plaintiff's Motion to Remand.

**IT IS SO ORDERED.**

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<sup>1</sup> While Plaintiff argues joinder is proper because “a dangerous condition . . . may have been created by a Costco member from whom [defendant Costco Membership] collects fees and/or whom [defendant Costco Membership] otherwise approved as a member[.]” Plaintiff cites no authority for the proposition that such circumstances give rise to a duty of care. See dkt. 13 at 2; see also Jackson v. Airbnb, Inc., 639 F. Supp. 3d 994, 1006 (C.D. Cal. Nov. 4, 2022) (“[A]s a general matter, there is no duty to act to protect others from the conduct of third parties.”).