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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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10 GLORIA FREEMAN,

No. 2:14-cv-01994-JAM-KJN

11 Plaintiff,

12 v.

**ORDER GRANTING PLAINTIFF'S MOTION
TO AMEND AND REMAND**13 CARDINAL HEALTH PHARMACY
14 SERVICES, LLC dba CARDINAL
15 HEALTH; BHC SIERRA VISTA
16 HOSPITAL, INC. dba SIERRA
17 VISTA HOSPITAL; BRAD MATHIS;
18 and DOES 1 through 50,
19 inclusive,

20 Defendants.

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22 Plaintiff Gloria Freeman ("Plaintiff") alleges that the
23 pharmacy where she worked terminated her employment in
24 retaliation for her complaints about patient and staff safety.
25 Plaintiff now moves to amend the complaint to add the hospital
26 where the pharmacy was located as a defendant. For the reasons
27 stated below, the Court grants the motion and remands the case to
28 state court.¹

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27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for March 25, 2015.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 Plaintiff worked for Defendant Cardinal Health Pharmacy
3 Services ("Defendant") in Sierra Vista Hospital ("Sierra Vista")
4 as Director of Pharmacy. FAC ¶ 8. At the alleged direction of
5 Sierra Vista's CEO, Michael Zauner ("Zauner"), Plaintiff
6 participated in "management rounds" with the hospital's
7 psychiatric patients. FAC ¶ 10. During rounds, she experienced
8 "violent incidents," one of which caused her to hurt her knee.
9 FAC ¶¶ 10, 21.

10 After the injury, Plaintiff requested that Defendant and
11 Sierra Vista accommodate her by allowing her to use crutches and
12 to relocate "important items" in the pharmacy. FAC ¶¶ 22, 31,
13 36. These requests were denied and Plaintiff instead went on
14 medical leave. See FAC ¶¶ 24, 28. Plaintiff asked to return to
15 work with accommodations, but this request was also denied. FAC
16 ¶¶ 36-37. The next day, Plaintiff's supervisor informed her that
17 Defendant was terminating her employment at the conclusion of her
18 leave. FAC ¶ 37.

19 Plaintiff claims that she was terminated because of her
20 complaints about dangerous hospital conditions, including
21 "placing untrained staff . . . in contact with sometimes violent
22 psychiatric patients" and other complaints she had made about
23 salary discrepancies between men and women, improper storage of
24 medications, and electrical failures. FAC ¶¶ 11, 17-20, 49, 64-
25 65.

26 Plaintiff sued Defendant, her supervisor, and Sierra Vista
27 in state court alleging eight causes of action (Doc. #1). Sierra
28 Vista demurred, and Plaintiff responded by voluntarily dismissing

1 Sierra Vista from the action. See Havey Decl. Exh. E.
2 Plaintiff's attorney advised opposing counsel at the time that,
3 "We may wish to amend the complaint again as discovery
4 progresses, but at this point, your demurrer was well taken."
5 Id.

6 Two months later, Defendant removed the case to this Court
7 (Doc. #1). Discovery commenced, including the deposition of
8 Zauner. See Boucher Decl. ¶¶ 12-15. Plaintiff represents that
9 this deposition produced sufficient facts to support her original
10 claim against Sierra Vista, and now moves for leave to amend to
11 add Sierra Vista as a defendant (Doc. #6). Because adding Sierra
12 Vista would destroy diversity, Plaintiff also moves for remand
13 (Doc. #6). Defendant opposes amendment and remand (Doc. #7).

14 15 II. OPINION

16 A. Legal Standard

17 Generally, a court assesses subject matter jurisdiction as
18 it existed at the time of removal. See Miller v. Grgurich, 763
19 F.2d 372, 373 (9th Cir. 1985). But "[i]f after removal the
20 plaintiff seeks to join additional defendants whose joinder would
21 destroy subject matter jurisdiction, the court may deny joinder,
22 or permit joinder and remand the action to the State court." 28
23 U.S.C. § 1447(e); Newcombe v. Adolf Coors Co., 157 F.3d 686, 691
24 (9th Cir. 1998) ("[T]he decision regarding joinder of a diversity
25 destroying-defendant is left to the discretion of the district
26 court."). "Plaintiffs may not circumvent [section] 1447(e) by
27 relying on Fed. Rule Civ. Proc. 15(a) to join non-diverse
28 parties." Hardin v. Wal-Mart Stores, Inc., 813 F. Supp. 2d 1167,

1 1173 (E.D. Cal. 2011) (citing Clinco v. Roberts, 41 F. Supp. 2d
2 1080, 1086 (C.D. Cal. 1999)). The Court therefore considers
3 Plaintiff's proposed amendment under section 1447(e) rather than
4 15(a). Accord McGrath v. Home Depot USA, Inc., 298 F.R.D. 601,
5 607 (S.D. Cal. 2014).

6 Courts consider numerous factors in deciding whether to
7 allow joinder under section 1447(e), including (1) whether the
8 party to be joined is a necessary party under Federal Rule of
9 Civil Procedure 19(a); (2) whether the statute of limitations
10 would prevent the plaintiff from filing a new action against the
11 defendant she hopes to join; (3) whether there has been an
12 "unexplained delay in seeking the joinder"; (4) whether the
13 plaintiff's purpose is solely to defeat federal jurisdiction;
14 (5) whether the claim against the new defendant "seems valid";
15 (6) "possible prejudice" to the existing parties; and (7) the new
16 defendant's "notice of the pending action." See Hardin, 813 F.
17 Supp. 2d at 1173-74 (quoting Oum v. Rite Aid Corp., 2009 WL
18 151510, at *3 (C.D. Cal. Jan. 20, 2009)) (quotation marks
19 omitted).

20 B. Discussion

21 1. Necessary Party

22 Plaintiff argues that Sierra Vista is a necessary party
23 under Rule 19, because the matter "cannot be fully adjudicated"
24 without the hospital. Reply at 1:22. Defendant counters that
25 that Sierra Vista does not fall under this rule because "[t]here
26 is no overlap between parties or causes of action[.]" Opp. at
27 8:6.

28 ///

1 Sierra Vista is not a necessary party. Plaintiff appears to
2 argue that Sierra Vista falls under Rule 19(a)(1)(A), which
3 defines a party as necessary if, "in that person's absence, the
4 court cannot accord complete relief among existing parties[.]"
5 "In considering the Rule 19(a)(1) analysis, the court asks
6 whether the absence of the party would preclude the district
7 court from fashioning meaningful relief as between the parties."
8 Disabled Rights Action Comm. v. Las Vegas Events, Inc., 357 F.3d
9 861, 879 (9th Cir. 2004). This standard is "concerned only with
10 relief as between the persons already parties, not as between a
11 party and the absent person whose joinder is sought." Brum v.
12 Cty. Of Merced, 2013 WL 2404844, at *5 (E.D. Cal. May 21, 2013)
13 (quoting Eldredge v. Carpenters 46 N. Cal. Ctys. Joint
14 Apprenticeships & Training Comm., 662 F.2d 534, 537 (9th Cir.
15 1981)) (quotation marks omitted).

16 Plaintiff here seeks only money damages. See FAC at 19.
17 And she has given no indication that an order binding Sierra
18 Vista is required to achieve this relief from the existing
19 Defendants. See Disabled Rights Action Comm., 357 F.3d at 880
20 ("These forms of relief, which are neither hollow nor
21 meaningless, would be available with or without [the new party's]
22 participation.") (citations omitted). Sierra Vista is not,
23 therefore, necessary to provide complete relief among the
24 existing parties. This factor weighs in favor of denying
25 joinder.

26 2. Statute of Limitations

27 The parties agree that the statute of limitations has not
28 yet run, such that Plaintiff could file her claims against Sierra

1 Vista in a separate case. This factor too weighs against
2 joinder.

3 3. Delay in Seeking Joinder

4 The parties dispute whether Plaintiff improperly delayed
5 bringing this motion. Defendant contends that Plaintiff should
6 have attempted to keep Sierra Vista in the action in state court
7 rather than waiting until removal to file this motion. See Opp.
8 at 8. Plaintiff asserts that she sought this amendment within a
9 reasonable amount of time after discovery revealed the nature of
10 Sierra Vista's role in her employment and termination. See Mot.
11 at 11; Reply at 2.

12 The Court agrees with Plaintiff. The following timeline
13 illustrates that Plaintiff has diligently pursued joinder:

- 14 • In March 2014, Sierra Vista demurred in state court,
15 Boucher Decl. ¶ 9;
- 16 • In June 2014, Plaintiff voluntarily dismissed Sierra
17 Vista, advising opposing counsel by email that "your
18 demurrer was well taken[,] but Plaintiff "may wish to
19 amend the complaint again as discovery progresses," Havey
20 Decl. Exh. E;
- 21 • In August 2014, Defendant removed the case, see Not. of
22 Removal (Doc. #1);
- 23 • In October 2014, Plaintiff subpoenaed Zauner and the
24 parties agreed to conduct his deposition in December
25 2014, Boucher Decl. ¶¶ 14-15. Plaintiff contends that
26 information learned in this deposition forms the basis of
27 the proposed amended claims against Sierra Vista. Mot.
28 at 11. This contention is supported by the record, in

1 that Zauner testified about the employment relationship
2 between Sierra Vista and the Director of Pharmacy
3 position, which is now reflected in the proposed amended
4 complaint. See Boucher Decl. Exh. E; Proposed SAC ¶¶ 42-
5 53;

- 6 • In February 2015, Plaintiff sought a stipulation to add
7 Sierra Vista and file the amended complaint, Boucher
8 Decl. ¶ 16;
- 9 • Three days after Defendant declined to stipulate,
10 Plaintiff filed this motion to amend, see id.

11 This timeline evidences no unexplained delay, so this factor
12 weighs in favor of allowing joinder.

13 4. Purpose to Defeat Jurisdiction

14 Defendant asserts that Plaintiff's "underlying motive is to
15 destroy diversity and delay the case." Opp. at 9:24. This
16 motive is apparent, according to Defendant, because Plaintiff had
17 the necessary information to "raise the theory at the time she
18 filed her initial pleading[.]" Opp. at 9:20-21. But as
19 discussed above, the record supports Plaintiff's contention that
20 she first learned essential facts about Sierra Vista during
21 Zauner's deposition. The parties' correspondence also
22 demonstrates that Plaintiff's counsel candidly acknowledged that
23 there were not enough facts to support a claim against Sierra
24 Vista in June 2014, and disclosed their intention to seek facts
25 supporting amendment. See Havey Decl. Exh. E; id. Exh. I (email
26 from Plaintiff's attorney dated Sept. 10, 2014) ("Be advised that
27 Plaintiff may still amend, adding additional facts which may
28 include Sierra [Vista] or other causes of action."). Plaintiff

1 is now simply following through with her stated intention. This
2 factor therefore supports joinder.

3 5. Validity of Claims

4 The parties urge the Court to scrutinize the proposed
5 amended complaint and Zauner's deposition testimony to determine
6 whether Plaintiff can ultimately succeed in a dual-employer
7 liability theory. Mot. at 16-19; Opp. at 10-14. But this is not
8 a motion to dismiss or a motion for summary judgment; under
9 section 1447(e), the Court need only determine whether the claim
10 "seems" valid. See Hardin, 813 F. Supp. 2d. at 1174; IBC
11 Aviation Servs., Inc. v. Compania Mexicana de Aviacion, S.A. de
12 C.V., 125 F. Supp. 2d 1008, 1012-13 (N.D. Cal. 2000). Defendant
13 asserts that the Court should consider whether the amended
14 complaint "could be defeated by a motion to dismiss" and whether
15 "Plaintiff cannot prevail on the merits." Opp. at 10. But that
16 is not the standard under section 1447(e) and the cases Defendant
17 cites do not interpret 1447(e). See Mot. Opp. at 10; Lockheed
18 Martin Corp. v. Network Solns, Inc., 194 F.3d 980 (9th Cir.
19 1999); Smith v. Commanding Officer, Air Force Accounting &
20 Finance Center, 555 F.2d 234 (9th Cir. 1977); Weber v. Time
21 Warner, Inc., 2006 WL 681032 (W.D. Wash. Mar. 15, 2006).

22 Applying the proper standard, the Court determines that the
23 new claim against Sierra Vista "seems valid." This claim alleges
24 a violation of California Health and Safety Code section 1278.5,
25 which prohibits a "health facility" from "retaliat[ing], in any
26 manner, against any patient, employee, member of the medical
27 staff, or any other health care worker of the health facility
28 because the person has . . . [p]resented a grievance, complaint

1 or report to the facility . . . or the medical staff of the
2 facility" Cal. Health & Safety Code § 1278(b)(1).

3 Retaliation can include "discharge, demotion, suspension, or any
4 unfavorable changes in, or breach of, the terms or conditions
5 of a contract, employment, or privileges of the employee, member
6 of the medical staff, or any other health care worker of the
7 health care facility, or the threat of any of these actions."
8 Cal. Health & Safety Code § 1278(d)(2).

9 Plaintiff's amended complaint alleges that she reported
10 unsafe conditions to Sierra Vista and because of those reports,
11 Sierra Vista denied her valid requests for accommodation, and
12 ultimately directed her termination. Proposed SAC ¶¶ 11, 16, 19,
13 22, 28, 31, 37, 45. This claim appears valid, and so this factor
14 weighs in favor of granting the amendment.

15 6. Prejudice

16 Both parties assert that they will suffer prejudice if the
17 Court does not resolve the motion in their favor. Defendant
18 argues that amendment would require "new and additional discovery
19 after [it] has completed its written discovery." Opp. at 15:11-
20 12. But Defendant has not explained what additional discovery is
21 needed, or why doing additional discovery would be prejudicial
22 since discovery is still open. See Pre-trial Scheduling Order at
23 3. Defendant also contends that "it relied on Plaintiff's
24 statement . . . on September 10, 2014, that she would not seek a
25 stipulation to add Sierra Vista back into the litigation." Opp.
26 at 15:15-16. But Defendant misconstrues the September 10th
27 exchange, in which Plaintiff's counsel advised that she "may
28 still amend, adding additional facts which may include Sierra

1 [Vista] or other causes of action." Havey Decl. Exh. I. Because
2 Plaintiff had made her intention to join Sierra Vista clear all
3 along, the Court finds that Defendant will not suffer prejudice.

4 Plaintiff contends that she will be prejudiced if the court
5 denies amendment because of the possibility of inconsistent
6 outcomes. Mot. at 15; Reply at 5. The Court is not persuaded,
7 however, that Plaintiff will suffer any such prejudice. Indeed,
8 the single cause of action she seeks against Sierra Vista is
9 independent of her claims against Cardinal Health.

10 Because neither party is likely to suffer prejudice based on
11 the outcome of this motion, this factor is neutral.

12 7. New Defendant's Notice

13 The parties did not address this factor, but it weighs in
14 favor of amendment. Sierra Vista has had notice of this action
15 because it used to be a party to the state court action and
16 because its CEO has already been deposed.

17 * * *

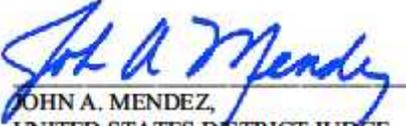
18 As described above, four of the seven factors weigh in favor
19 of allowing joinder. Two factors weigh in favor of denying
20 joinder and one factor is neutral. The Court therefore exercises
21 its discretion to permit joinder and remand this action to state
22 court.

23 III. ORDER

24 The Court GRANTS Plaintiff's motion to amend and remand.

25 IT IS SO ORDERED.

26 Dated: April 30, 2015

27 
28 JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE