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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TIFFANY ANNE HODGES,

 Plaintiff,

 v.

IN SHAPE HEALTH CLUBS, LLC, a
limited liability company,

 Defendant.

No. 2:17-cv-01274-JAM-DB

**ORDER GRANTING PLAINTIFF LEAVE
TO AMEND COMPLAINT**

 This matter comes before the Court upon Tiffany Anne
Hodges's ("Plaintiff" or "Hodges") Motion to Remand and for Leave
to Amend. Mot. & Mem., ECF Nos. 8-9. In Shape Health Clubs
("Defendant" or "In Shape") opposes Hodges's motions. Opp'n, ECF
No. 13. Having reviewed the parties' briefs and applicable law,
the Court GRANTS Hodges Leave to Amend and takes her Motion for
Remand under submission.¹

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¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for September 19, 2017.

1 I. BACKGROUND

2 On February 15, 2017, Hodges filed a complaint in San
3 Joaquin County Superior Court against her former employer, In
4 Shape, alleging race discrimination and retaliation. Compl., ECF
5 No. 2. Hodges pleaded two causes of action, both under Title VII
6 of the Civil Rights Act of 1964. Id. On June 21, 2017, In Shape
7 filed a notice of removal, invoking the Court's federal question
8 jurisdiction under 28 U.S.C. §§ 1331 and 1337(a). Notice of
9 Removal, ECF No. 2. A week later, In Shape filed a Rule 12(b)(6)
10 Motion to Dismiss. Mot. Dismiss, ECF No. 7. The following
11 month, Hodges filed a joint Motion to Remand and to "Correct
12 Pleading under (FRCP 15(1)(b)(1)." Mem., ECF No. 9.

13 The Court dismissed In Shape's Motion without prejudice for
14 failure to comply with the Court's Meet and Confer Requirements.
15 Min. Order, ECF No. 15. Accordingly, the Court considers only
16 Hodges's Motion.

17
18 II. OPINION

19 A. Legal Standard

20 1. Removal

21 As courts of limited jurisdiction, federal courts possess
22 only that jurisdiction authorized by either the Constitution or
23 federal statute. Kokkonen v. Guardian Life Ins. Co. of Am., 511
24 U.S. 375, 377 (1994). Federal courts have jurisdiction over
25 "all civil actions arising under the Constitution, laws, or
26 treaties of the United States." 28 U.S.C. § 1331. A case
27 "arises under" federal law if a plaintiff's "well-pleaded
28 complaint establishes either that federal law creates the cause

1 of action" or that the plaintiff's "right to relief under state
2 law requires resolution of a substantial question of federal law
3 in dispute between the parties." Franchise Tax Bd. v. Constr.
4 Laborers Vacation Tr. for S. Cal., 463 U.S. 1, 13 (1983). A
5 civil action may be removed to a federal district court only if
6 the court has original jurisdiction over the issues alleged in
7 the state court complaint. 28 U.S.C. § 1441(a).

8 To determine whether removal is proper, a court should
9 "strictly construe the removal statute against removal
10 jurisdiction." Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir.
11 1992) (per curiam). "Federal jurisdiction must be rejected if
12 there is any doubt as to the right of removal in the first
13 instance." Id. The removing party must show removal is proper.
14 See id. "[T]he court resolves all ambiguity in favor of remand
15 to state court." Hunter v. Philip Morris USA, 582 F.3d 1039,
16 1042 (9th Cir. 2009) (citing Gaus, 980 F.2d at 566).

17 2. Amendment

18 Federal Rule of Civil Procedure 15 provides:

19 (1) Amending as a Matter of Course. A party may amend
20 its pleading once as a matter of course within:

21 (A) 21 days after serving it, or

22 (B) if the pleading is one to which a responsive
23 pleading is required, 21 days after service of a
24 responsive pleading or 21 days after service of a
25 motion under Rule 12(b), (e), or (f), whichever
26 is earlier.

27 (2) Other Amendments. In all other cases, a party may
28 amend its pleading only with the opposing party's
written consent or the court's leave. The court should
freely give leave when justice so requires.

Fed. R. Civ. P. 15(a)(1)-(2).

Whether to grant or deny leave to amend lies within the

1 district court's discretion, although leave to amend "shall be
2 freely given when justice so requires." Foman v. Davis, 371
3 U.S. 178, 182 (1962) (quoting Fed. R. Civ. P. 15(a)); see also
4 Sonoma Cty. Ass'n of Retired Emps. v. Sonoma Cty., 708 F.3d
5 1109, 1117 (9th Cir. 2013) ("In general, a court should
6 liberally allow a party to amend its pleading.").

7 "Courts may decline to grant leave to amend only if there
8 is strong evidence of 'undue delay, bad faith or dilatory motive
9 on the part of the movant, repeated failure to cure deficiencies
10 by amendments previously allowed, undue prejudice to the
11 opposing party by virtue of allowance of the amendment, [or]
12 futility of amendment, etc.'" Sonoma Cty., 708 F.3d at 1117
13 (quoting Foman, 371 U.S. at 182).

14 3. Remand

15 When assessing federal jurisdiction, a court must analyze
16 the pleadings filed at the time of removal, and not any
17 subsequent amendments. Sparta Surgical Corp. v. National Ass'n
18 of Secs. Dealers, Inc., 159 F.3d 1209, 1213 (9th Cir. 1998),
19 abrogated on other grounds by Merrill Lynch, Pierce, Fenner &
20 Smith Inc. v. Manning, 136 S. Ct. 1562 (2016).

21 When a plaintiff amends a complaint to eliminate the
22 federal question upon which proper removal was based, the
23 district court has several options. The court may exercise its
24 discretion to retain jurisdiction over state law claims. Acri
25 v. Varian Assocs., Inc., 114 F.3d 999, 1000 (9th Cir. 1997).
26 The conditions listed in 28 U.S.C. § 1367(c) and "economy,
27 convenience, fairness, and comity" interests guide the inquiry
28 into whether to decline or retain jurisdiction. Id. at 1001.

1 “[I]n the usual case in which all federal-law claims are
2 eliminated before trial, the balance of factors . . . will point
3 toward declining to exercise jurisdiction over the remaining
4 state-law claims.” Id. at 1001 (9th Cir. 1997) (quoting
5 Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988)).
6 When relinquishing jurisdiction, the district court must then
7 choose whether to dismiss the remaining claims without prejudice
8 or to remand the case to state court. See Carnegie-Mellon, 484
9 U.S. at 351-52.

10 When considering remand, the court may also consider
11 whether a party engaged in manipulative tactics to secure her
12 desired forum. Id. at 357. But amendment to eliminate federal
13 claims after removal is not evidence, in itself, of manipulative
14 tactics. Baddie v. Berkeley Farms, Inc., 64 F.3d 487, 491 (9th
15 Cir. 1995). Although a plaintiff may not “*compel* remand by
16 amending a complaint to eliminate the federal question upon
17 which removal was based,” Sparta Surgical, 159 F.3d at 1213
18 (emphasis added), the Ninth Circuit has called elimination of
19 federal claims after removal a “straight-forward tactical
20 decision.” Baddie, 64 F.3d at 491 (finding amendment to omit
21 federal claims after removal “solely in order to obtain remand”
22 did not warrant Rule 11 sanctions).

23 B. Analysis

24 1. Defendant Properly Removed Plaintiff’s Original
25 Complaint

26 Here, In Shape properly removed the case because Hodges’s
27 claims arose under federal law. It is abundantly clear Hodges’s
28 original complaint relied solely on Title VII, which appeared in

1 the heading for each cause of action and on nearly every page.
2 See generally Compl. No other state or federal acts were
3 mentioned, despite Hodges's counsel's incorrect assertion that
4 California Fair Employment & Housing Act ("FEHA") was referenced
5 along with Title VII. Compare Compl. with Mot. Because the
6 Court analyzes federal jurisdiction based on the pleadings filed
7 at time of removal, Sparta Surgical, 159 F.3d at 1213, Hodges's
8 references to Title VII conferred original jurisdiction on this
9 Court and formed a proper basis for removal.

10 2. The Court Grants Plaintiff Leave to Amend the
11 Complaint

12 Upon being notified by In Shape's Motion to Dismiss that
13 her Title VII claims were time-barred, Hodges sought to
14 "correct" her complaint under "FRCP 15(1)(b)(1)." Mem. at 1-2.
15 Despite a diligent search, the Court is unable to find any
16 mention of a Rule 15(1)(b)(1) in state or federal law. Judging
17 from the content of Hodges's pleadings, it appears the intended
18 cite was to Federal Rule of Civil Procedure 15(a)(2), from which
19 a plaintiff may seek leave of court to amend her complaint.

20 Had Hodges sought to amend two days earlier, on July 19,
21 2017, she would have fallen within the 21-day window in which
22 she could have amended her complaint as a matter of course. See
23 Fed. R. Civ. P. 15(a)(1)(B). Instead, she filed a motion on
24 July 21, 2017 seeking to "correct the pleading by deleting the
25 references to Title VII contained in the Complaint." ECF No. 9,
26 p. 2. Omitted from that request is the need to substitute
27 references to state law claims under FEHA, which the original
28 complaint never mentioned.

1 Perplexingly, Hodges's reply brief focuses on arguing
2 against binding arbitration and alleging that In Shape somehow
3 engaged in forum shopping by properly removing Hodges's Title
4 VII claims to federal court. See ECF No. 17. Had Hodges wanted
5 to bring state law claims and challenge the arbitration
6 agreement's validity, she could have saved time and effort by
7 doing so in her original complaint in San Joaquin County
8 Superior Court. Instead, it appears Hodges's omission of state
9 law claims in her original complaint was an intentional strategy
10 to avoid wrangling with the arbitration agreement. See Valenza
11 Decl., Ex. A, ECF No. 13-2, p. 5 (stating plaintiff "will be
12 filing suit under Title VII (the arbitration agreement is
13 limited to claims arising under state law)").

14 Hodges's counsel never explains how pleading federal claims
15 was a mistake, rather than a deliberate attempt to avoid
16 arbitration. Mem. at 2 (alleging "references to TITLE VII" were
17 a "mistake in a pleading"). Similarly lacking is any argument
18 as to how the original complaint complied with Rule 11, which
19 requires individuals to perform a reasonable inquiry into
20 whether a party's "claims, defenses, and other legal contentions
21 are warranted by existing law or by a nonfrivolous argument for
22 extending, modifying, or reversing existing law or for
23 establishing new law." Fed. R. Civ. P. 11(b)(2). Had Hodges's
24 counsel engaged in such an inquiry, he would have quickly
25 realized the Title VII claims were time-barred when Hodges filed
26 her February 2017 complaint.

27 While Hodges's counsel's conduct and strategic choices are a
28 source of great concern to this Court, the difficult question

1 that this Court faces is whether it should punish plaintiff for
2 her counsel's carelessness. The answer surely is no. Hodges
3 should not be denied a chance to pursue her claims based on her
4 counsel's errors.²

5 This case is still at an early stage. Although Hodges filed
6 suit in February 2017, nearly eleven months after receiving her
7 Notice of Right to Sue, she did not serve In Shape until late May
8 2017. See Compl.; Judicial Req. Notice, Ex. A, ECF No. 7-2.
9 Timely removal occurred in June, followed by In Shape's Motion to
10 Dismiss a week later. See ECF Nos. 2, 7. Hodges moved to amend
11 her complaint within a month of removal, prior to the start of
12 discovery. See Jackson v. Bank of Hawaii, 902 F.2d 1385, 1388
13 (9th Cir. 1990) ("A second factor in determining whether the
14 district court properly denied the motion for leave to amend is
15 whether appellants unduly delayed in filing their motion."
16 (emphasis added)); AmerisourceBergen Corp. v. Dialysist W., Inc.,
17 465 F.3d 946, 953 (9th Cir. 2006) (denying leave to amend twelve
18 months into litigation); Kaplan v. Rose, 49 F.3d 1363, 1370 (9th
19 Cir. 1994) (denying leave to amend two months before trial after
20 completion of "voluminous and protracted discovery").

21 In Shape has not cited any cases where conduct like Hodges's
22 counsel's has qualified as bad faith, resulting in denial of
23 leave to amend. While Hodges's counsel's "mistake" explanation

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25 ² Were Hodges to be denied relief based on her counsel's errors,
26 she would not be entirely without a remedy. Her remedy would,
27 instead, lie in a claim against her counsel for malpractice. Cf.
28 Latshaw v. Trainer Wortham & Co., 452 F.3d 1097, 1101 (9th Cir.
2006) (noting, in the context of Rule 60(b)(1), that "an
innocent, albeit careless or negligent, attorney mistake" is
"more appropriately addressed through malpractice claims.").

1 is not credible, this conduct does not rise to the level of bad
2 faith. Further, In Shape has not provided strong evidence that
3 it would suffer undue prejudice from amendment. See Sonoma Cty.,
4 708 F.3d at 1117 (noting that “[c]ourts may decline to grant
5 leave to amend only if there is strong evidence” of the Foman
6 factors); Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048,
7 1052 (9th Cir. 2003) (“[T]he consideration of prejudice to the
8 opposing party carries the greatest weight.”). Because Rule
9 15(a) instructs courts to “liberally” grant amendment, the Court
10 finds that allowing Hodges to amend her pleading for the first
11 time is in the interest of justice. See Fed. R. Civ. P. 15(a);
12 Eminence, 316 F.3d at 1051 (directing that leave to amend shall
13 be given “with extreme liberality.”)

14 Hodges is granted leave to amend her complaint to add state
15 law FEHA claims. Because her current proposed amended complaint,
16 Proposed Am. Compl., ECF No. 9-3, includes a caption that
17 improperly identifies the San Joaquin County Superior Court,
18 instead of the present court, the Court will grant Hodges ten
19 (10) days in which to file a first amended complaint that
20 includes her state law claims.

21 3. The Court Takes Plaintiff’s Motion to Remand
22 Under Submission

23 Hodges’s counsel argues that amending the complaint to
24 substitute state law claims for federal claims revokes the basis
25 for removal. ECF No 9, p. 5. This is incorrect. As referenced
26 above, jurisdiction is based on the pleadings at the time of
27 removal, not after post-removal amendment. Sparta Surgical, 159
28 F.3d at 1213. The Court will retain jurisdiction over Hodges’s

1 state law claims unless it chooses to dismiss or remand them.

2 Because Hodges has not yet filed a proper amended
3 complaint, the Court takes her Motion to Remand under
4 submission. Once Hodges files her amended complaint, In Shape's
5 Motion to Dismiss, Mot. Dismiss, ECF No. 7, will be vacated as
6 moot. In Shape may either file a responsive pleading to the
7 amended complaint within twenty (20) days after filing, or
8 alternatively, the parties may stipulate to dismissal of the two
9 federal claims with prejudice and stipulate to remand the state
10 law claims.

11 If In Shape elects to file a motion to dismiss the federal
12 claims, which will likely be granted, the Court will in all
13 likelihood refuse to assume supplemental jurisdiction over the
14 remaining state law claims and remand the case to state court.
15 The parties can, of course, expedite this inevitable outcome by
16 stipulation.

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18 III. ORDER

19 For the reasons set forth above, the Court GRANTS Plaintiff
20 leave to amend her complaint to include state law FEHA claims.
21 Plaintiff is to file an amended complaint within ten (10) days of
22 this order's filing. Defendant may file a responsive pleading or
23 the parties may file a stipulation within twenty (20) days of the
24 amended complaint's filing consistent with the Court's
25 recommendation.

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1 The Court takes Plaintiff's motion to remand under
2 submission.

3 IT IS SO ORDERED.

4 Dated: October 2, 2017

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6 JOHN A. MENDEZ,
7 UNITED STATES DISTRICT JUDGE
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