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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAUL SINGH and ANDREA SINGH,
Plaintiffs,
v.
LOWE'S HOME CENTERS, LLC, and
DOES 1-50, inclusive
Defendants.

CIV. NO. 2:18-445 WBS AC

MEMORANDUM AND ORDER RE: MOTION
TO DISMISS, MOTION TO REMAND,
AND MOTION TO FILE SECOND
AMENDED COMPLAINT

Plaintiffs Paul Singh and Andrea Singh initiated this action against defendants Lowe's Home Centers, LLC ("Lowe's) and Does 1 through 50, bringing claims for assault, battery, intentional infliction of emotional distress, negligence, vicarious liability, and negligent supervision, instruction, and training. (First Amended Compl. ("FAC") (Docket No. 1., Ex. B).) Presently before the court are plaintiffs' Motion to Remand (Docket No. 7); plaintiffs' Motion for Leave to File a Second Amended Complaint (Docket No. 9); and Lowe's Motion to Dismiss or, in the alternative, for More Definite Statement (Docket No. 4).

1 I. Motion to Remand

2 Generally, jurisdiction is a preliminary matter that
3 should be resolved before all others. Smith v. Mail Boxes, Etc.,
4 191 F. Supp. 2d 1155, 1157 (E.D. Cal. 2002) (“[J]urisdictional
5 issues should be resolved before the court determines if a stay
6 is appropriate.”). Accordingly, the court will first address
7 plaintiff’s Motion to Remand.

8 A. Legal Standard

9 “[A]ny civil action brought in a State court of which
10 the district courts of the United States have original
11 jurisdiction, may be removed by the defendant or the defendants,
12 to the district court of the United States for the district . . .
13 where such action is pending.” 28 U.S.C. § 1441(a). However, if
14 “it appears that the district court lacks subject matter
15 jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).
16 On a motion to remand, the defendant bears the burden of showing
17 by a preponderance of the evidence that federal jurisdiction is
18 appropriate. Geographic Expeditions, Inc. v. Estate of Lhotka,
19 599 F.3d 1102, 1107 (9th Cir. 2010) (citation omitted).

20 B. Discussion

21 Federal courts have original jurisdiction over cases
22 where complete diversity exists between the parties and the
23 amount in controversy exceeds \$75,000, exclusive of interest and
24 costs. 28 U.S.C. § 1332(a). To satisfy the requirements for
25 complete diversity, “each of the plaintiffs must be a citizen of
26 a different state than each of the defendants.” Morris v.
27 Princess Cruises, Inc., 236 F.3d 1061, 1067 (9th Cir. 2001)
28 (citing Caterpillar Inc. v. Lewis, 519 U.S. 61, 68 (1996)).

1 Plaintiffs initiated this case in Sutter County
2 Superior Court, and Lowe's removed it to federal court, alleging
3 that "it is a civil action wherein the matter in controversy
4 exceeds the sum of \$75,000.00," and additionally alleging that
5 "the action is between citizens of different states." (Notice of
6 Removal (Docket No. 1) ¶ 17.) Defendants include Lowe's, the
7 sole named defendant, as well as Does 1 through 50. It is
8 undisputed that plaintiffs were, and presently remain, residents
9 of California, while Lowe's is a citizen of North Carolina. (Id.
10 ¶¶ 18-19.)

11 Plaintiffs argue that the presence of doe defendants
12 destroys complete diversity and thus precludes removal. However,
13 it is well established that "[i]n determining whether a civil
14 action is removable on the basis of jurisdiction under section
15 1332(a) . . . the citizenship of defendants sued under fictitious
16 names shall be disregarded." 28 U.S.C. § 1441(b)(1). From this
17 language, the Ninth Circuit has concluded that "Congress
18 obviously reached the conclusion that doe defendants should not
19 defeat diversity jurisdiction." Bryant v. Ford Motor Co., 886
20 F.2d 1526, 1528 (9th Cir. 1989). Therefore, because the court
21 will disregard the citizenship of all doe defendants, it
22 concludes that complete diversity exists under 28 U.S.C. §
23 1332(a). Further, there is no debate regarding the satisfaction
24 of the \$75,000 requirement. Accordingly, the court concludes
25 that this action was removable and will deny plaintiffs' Motion
26 to Remand.

27 It is possible that plaintiffs may later seek leave to
28 add a nondiverse party. In the event that occurs, "the court may

1 deny joinder, or permit joinder and remand the action to the
2 State court.” Newcombe v. Adolf Coors Co., 157 F.3d 686, 690
3 (9th Cir. 1998) (explaining that if after removal plaintiff seeks
4 to join additional defendants whose joinder would destroy subject
5 matter jurisdiction, court has discretion to deny).

6 II. Leave to Amend

7 A. Legal Standard

8 Federal Rule of Civil Procedure 15 empowers
9 parties to agree to amendments and alternatively directs
10 the court to freely grant leave to amend “when justice so
11 requires.” Fed. R. Civ. P. 15(a)(2). “[T]his policy is
12 to be applied with extreme liberality.” Morongo Band of
13 Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir.
14 1990). Whether to grant or deny leave to amend is within
15 the discretion of the district court. Foman v. Davis,
16 371 U.S. 178, 182 (1962).

17 B. Discussion

18 Courts commonly consider four factors when deciding
19 whether to grant a motion for leave to amend a complaint: (1) bad
20 faith on the part of the movant; (2) undue delay in filing the
21 motion; (3) prejudice to the opposing party; and (4) the futility
22 of the proposed amendment. Roth v. Garcia Marquez, 942 F.2d 617,
23 628 (9th Cir. 1991). Absent a strong showing of any of these
24 factors, there exists a presumption under Rule 15(a) in favor of
25 granting leave to amend. Eminence Capital, LLC v. Aspeon, Inc.,
26 316 F.3d 1048, 1052 (9th Cir. 2003).

27 Here, the court does not find that plaintiff unduly
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1 delayed proceedings or acted in bad faith. Further, prejudice
2 generally only exists where amendment will significantly hinder a
3 defendant's ability to defend against the plaintiff's claims, as
4 in cases where discovery has already been completed or when the
5 amendment will require relitigation of significant issues. See
6 Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1161 (9th
7 Cir. 1989); see also Georgiou Studio, Inc. v. Boulevard Invest,
8 LLC, 663 F. Supp. 2d 973, 978 (D. Nev. 2009). In this case, the
9 court has not yet issued a scheduling order--no discovery has
10 occurred and no trial date has been set. Because of this, there
11 is no indication that defendants would be prejudiced by the
12 amendment.

13 Defendants' final argument regarding futility is also
14 insufficient to overcome the presumption in favor of amendment.
15 A court need not deny plaintiff's motion for leave to amend based
16 on futility alone. Argueta v. J.P. Morgan Chase, Civ. No. 2:11-
17 411 WBS GGH, 2011 WL 4006686, at *1 (E.D. Cal. Sept. 8,
18 2011) (citing Duhn Oil Tool, Inc. v. Cooper Cameron Corp., No.
19 CV-F-05-1411 OWW GSA, 2010 WL 596312, at *14 (E.D. Cal. Feb. 16,
20 2010) ("[D]enial on [the ground of futility] is rare and courts
21 generally defer consideration of challenges to the merits of a
22 proposed amended pleading until after leave to amend is granted
23 and the amended pleading is filed.")) Accordingly, the court
24 will grant plaintiffs' Motion for Leave to Amend.

25 III. Lowe's Motion to Dismiss

26 Lowe's has moved to dismiss plaintiffs' First Amended
27 Complaint for failure to state a claim upon which relief can be
28 granted, pursuant to to Federal Rule of Civil Procedure 12(b)(6),

1 or, in the alternative, Motion for a More Definite Statement
2 pursuant to Federal Rule of Civil Procedure 12(e). Because the
3 court will grant plaintiffs' Motion for Leave to Amend, it will
4 deny as moot Lowe's Motion to Dismiss and will defer
5 consideration of any challenges to the merits until after
6 plaintiffs have filed their second amended complaint.

7 IT IS THEREFORE ORDERED that plaintiffs' Motion to
8 Remand (Docket No. 7) be, and the same hereby is, DENIED.

9 IT IS FURTHER ORDERED that plaintiffs' Motion for Leave
10 to File a Second Amended Complaint (Docket No. 9) be, and the
11 same hereby is, GRANTED.

12 IT IS FURTHER ORDERED that Lowe's Motion to Dismiss or,
13 in the alternative, for More Definite Statement (Docket No. 4)
14 be, and the same hereby is, DENIED as moot.

15 Plaintiffs are ordered to file their Second Amended
16 Complaint within ten days of the date this Order is filed.

17 Dated: May 10, 2018



18 **WILLIAM B. SHUBB**
19 **UNITED STATES DISTRICT JUDGE**

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