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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VINCE VREELAND,

No. C 09-5673 MEJ

Plaintiff,

**ORDER GRANTING PLAINTIFF'S
MOTION TO REMAND
(Dkt. #10)**

v.

TARGET CORPORATION, DARLA
THOMPSON, and DOES 2-10, inclusive,

Defendants.

I. INTRODUCTION

Before the Court is Plaintiff Vince Vreeland's Motion to Remand this action to state court. (Dkt. #10.) After consideration of the parties' papers, relevant legal authority, and good cause appearing, the Court hereby **GRANTS** Plaintiff's motion for the reasons set forth below.

II. BACKGROUND

On October 19, 2009, Plaintiff Vince Vreeland ("Plaintiff") brought this action against Defendant Target Corporation ("Target") in California Superior Court, County of San Benito. (Removal Pet. Ex. B, Dkt. #1.) Plaintiff alleges damages arising out of a slip and fall incident at the Gilroy, California Target store on January 2, 2009. *Id.*

On December 2, 2009, Target, a Minnesota corporation, removed the action to this Court

1 pursuant to 28 U.S.C. § 1441(b), based on the diversity of citizenship between itself and Plaintiff, a
2 California resident, and based on Target’s belief that Plaintiff’s alleged injuries would cause the
3 amount in controversy to exceed \$75,000, exclusive of attorney’s fees and costs. (Removal Pet.
4 2:16-19, Dkt. #1; Trabish Decl. ¶ 4, Dkt. #16.) Additionally, Target filed an Answer on December
5 2, 2009. (Dkt. #2.) Plaintiff thereafter filed his First Amended Complaint (“FAC”) on December
6 18, 2009, naming Target store manager and California resident Darla Thompson (collectively with
7 Target, “Defendants”) as a defendant. (Pl.’s FAC ¶ 2, Dkt. #8.)

8 On December 21, 2009, Plaintiff filed the present motion to remand. (Dkt. #10.) Based on
9 the addition of a non-diverse defendant, Plaintiff asks this Court to remand the action back to the
10 superior court. (Pl.’s Mot. 2:19-21, Dkt. #10.) Target filed an opposition on January 4, 2010, (Dkt.
11 #15), to which Plaintiff subsequently filed a reply (Dkt. #18). On February 1, 2010, the Court found
12 this matter suitable for disposition without a hearing and vacated the February 4, 2010 hearing date.
13 (Dkt. #21.)

14 15 III. DISCUSSION

16 In his motion to remand, Plaintiff argues that complete diversity of citizenship does not exist
17 between him and Defendants Target and Thompson, and that the amount in controversy does not
18 exceed \$75,000. (Pl.’s Mot. 1:25-2:2, Dkt. #10.) While the Court notes that removal may have been
19 proper at the time of removal, based on the diversity of citizenship between Plaintiff and Target, and
20 Target’s belief that the amount in controversy would be in excess of \$75,000, Plaintiff argues his
21 amended complaint defeats any claim of diversity. *Id.* at 2:20-21. In response, Target argues that
22 Plaintiff improperly amended his complaint to add Thompson, and that joining her was a sham
23 aimed at defeating diversity. (Def.’s Opp’n 3:6-7, 4:3-4, Dkt. #15.) Target argues that even though
24 discovery has not yet been propounded, Plaintiff was aware of the identity of Thompson as early as
25 January 3, 2009 (prior to filing his complaint) when he reported his injury to her. (Def.’s Opp’n 4:2-
26 3, Dkt. #15; Trabish Decl. ¶ 5, Ex. D, Dkt. #16.) Additionally, Target argues that joinder of
27 Thompson is a sham because there is no joint, several, or alternative liability against Thompson and
28 because she has no real connection to the claim against Target. (Def.’s Opp’n 3:19-22, Dkt. #15.)

1 Target further argues that because there is no allegation that Thompson created the dangerous
2 condition that caused Plaintiff to fall, she is not an indispensable party. *Id.* at 3:26-4:5.

3 As to the amount in controversy, Plaintiff argues in his motion that Target failed to satisfy its
4 burden of proving that the amount in controversy exceeds the jurisdictional minimum (Pl.’s Mot.
5 2:21-26,. Dkt. #10.) In response, Target argues that it is more than likely that the amount in
6 controversy in this matter exceeds \$75,000, based on Plaintiff’s allegations of serious injury
7 requiring surgery, the use of three braces, claims for wage loss, and loss of earning capacity. (Def.’s
8 Opp’n 4:15-17, Dkt. #15.) In his Reply, Plaintiff concedes that Target “makes reasonable arguments
9 concerning the amount in controversy, based upon the Declaration of Gail C. Trabish in Opposition
10 to Plaintiff’s Motion to Remand, which provides facts indicating that the amount in controversy in
11 this action exceeds \$75,000.” (Pl.’s Reply 2:25-26, Dkt. #18.)

12 Finally, Target argues that because the Court has original jurisdiction over this matter under
13 28 U.S.C. § 1332(a), it would also have supplemental jurisdiction over the claim against the non-
14 diverse Defendant Thompson under 28 U.S.C. § 1367. (Def.’s Opp’n 4:7-9, Dkt. #15.) Plaintiff
15 responds that this Court has been divested of original jurisdiction over this matter by joinder of
16 Thompson, a non-diverse defendant. (Pl.’s Reply 4:12-15, Dkt. #18.)

17 The Court will address each argument in turn.
18

19 **A. Legal Standard**

20 If at any time before final judgment it appears that the district court lacks subject matter
21 jurisdiction over a case that has been removed to federal court, the case shall be remanded. 28
22 U.S.C. § 1447(c). The Court “strictly construe[s] the removal statute against removal jurisdiction.”
23 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Under this strong presumption against
24 removal jurisdiction, the defendant always has the burden of proving that removal is proper. *Id.*
25 “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first
26 instance.” *Id.*

27 District courts have diversity jurisdiction over all civil actions between citizens of different
28 states, or between citizens of a state and citizens or subjects of a foreign state, where the amount in

1 controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332. When a plaintiff
2 files in state court a civil action over which the federal district courts would have had original
3 jurisdiction based on diversity of citizenship, a defendant may remove the action to federal court,
4 provided that no defendant is a citizen of the state in which such action is brought. *Caterpillar, Inc.*
5 *v. Lewis*, 519 U.S. 61, 62 (1996) (citing 28 U.S.C. § 1441(a) and (b)).

6
7 **B. Whether the Addition of Defendant Thompson Destroys Diversity Between the Parties**

8 1. Rule 15(a) Amendment

9 Target first argues that Plaintiff improperly amended his complaint to add Defendant
10 Thompson. Specifically, Target argues that joinder of Thompson was improper because Plaintiff
11 failed to seek leave of court under Federal Rule of Procedure 15(a). (Def.'s Mot. 3:6-8, Dkt. #15.)

12 Under Federal Rule of Civil Procedure 15(a), a party may amend its pleading once "as a
13 matter of course" within 21 days following service of a responsive pleading. Here, Plaintiff filed his
14 initial complaint on October 19, 2009, (Removal Pet., Ex. B, Dkt. #1; Trabish Decl., Ex. A, Dkt.
15 #16), Target filed its Answer on December 2, 2009, (Dkt. #2), and Plaintiff filed his First Amended
16 Complaint on December 18, 2009, naming Thompson as a defendant (Pl.'s FAC, Dkt. #8). Thus,
17 because Plaintiff amended his complaint within 21 days after Defendant filed its answer, the Court
18 finds that the amendment was proper under Rule 15(a).

19 2. Whether Joinder of Thompson is a Sham

20 Next, Target argues that the late inclusion of Thompson is merely a sham intended to defeat
21 diversity. (Def. Opp'n 3:10-11, Dkt. #15.) Target's basis for this argument is that Plaintiff did not
22 allege that Thompson "created the dangerous condition in which Plaintiff fell, only that she was the
23 manager of the store at the time the incident occurred." *Id.* at 3:27-4:1. In response, Plaintiff argues
24 that joinder is not fraudulent because he alleges that Thompson undertook to maintain Target
25 premises yet failed to do so; he thus asserts that he states a viable cause of action against Thompson.
26 (Pl.'s Reply 3:9-13, Dkt. #18.)

1 When subject matter jurisdiction lies based on diversity, there must be complete diversity
2 between each plaintiff and each defendant. *Morris v. Princess Cruises, Inc.* 236 F.3d 1061, 1067
3 (9th Cir. 2001). However, there is an exception to the complete diversity rule where a defendant has
4 been joined fraudulently. *Id.* Joinder of a non-diverse defendant will be deemed fraudulent, “and
5 the defendant’s presence in the lawsuit is ignored for purposes of determining diversity, if the
6 plaintiff fails to state a cause of action against a resident defendant, and the failure is obvious
7 according to the settled rules of the state.” *Id.* In *Morris*, the plaintiff booked a cruise through one
8 of the defendants, a booking agent, and subsequently alleged a cause of action for negligent
9 misrepresentation against it. *Id.* at 1067-1068. When the other defendant in the case removed the
10 action to federal court, the plaintiff brought an action for remand, contending that the presence of the
11 booking agent, a non-diverse defendant, destroyed diversity. *Id.* at 1066. In considering the
12 elements of a claim for negligent misrepresentation under Texas law, the court held that the
13 plaintiff’s allegation was clearly insufficient to support such a claim. *Id.* at 1067-68. Thus, the court
14 found that the agent’s presence in the lawsuit at the time of removal was properly ignored, and that
15 removal was proper based on diversity of citizenship. *Id.* at 1068.

16 Here, Plaintiff alleges general negligence against Thompson and Target related to his fall,
17 claiming that Defendants “failed to properly maintain, control and repair the condition of th[e] floor,
18 although they undertook to do so.” (Pl.’s FAC ¶ 12, Dkt. # 8). Specifically, Plaintiff alleges that
19 Defendants “failed to warn the public of the puddle on the floor, or to cordon off the area of the floor
20 where the puddle was, although they knew that the public would be walking on the floor in that
21 area,” and that “[t]here were no cones, barriers, or signs warning of the floor and puddle’s hazard to
22 the public, and this created a dangerous condition.” (Pl.’s FAC ¶ 12, Dkt. # 8). Plaintiff alleges that
23 this failure on Defendants’ part “is the direct and proximate cause of the serious injuries and the
24 resulting economic and non-economic damages sustained by Plaintiff Vince Vreeland.” *Id.*

25 To state a claim for negligence, “plaintiff must demonstrate that the defendant owed the
26 plaintiff a legal duty, that the defendant breached the duty, and that the breach was a proximate or
27 legal cause of his or her injuries.” *Morris v. De La Torre*, 36 Cal. 4th 260, 264 (2005). Though “a
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1 store owner is not an insurer of the safety of its patrons, the owner does owe them a duty to exercise
2 reasonable care in keeping the premises reasonably safe.” *Ortega v. Kmart Corp.* 26 Cal. 4th 1200,
3 1205 (2001). The exercise of care requires that reasonable inspections be made. *Id.* The “care
4 required is commensurate with the risks involved.” *Id.* Thus, to establish liability, the plaintiff must
5 prove actual or constructive knowledge of the risk. *Id.* at 1206. However, an inference of
6 negligence may be established where there has been a failure to inspect the area for an extended
7 period of time. *Id.* at 1208. Here, based on the allegations of negligence in Plaintiff’s FAC and the
8 law cited above, there is not an obvious failure to state a cause of action against Defendant
9 Thompson, and her joinder is not fraudulent. *Morris v. Princess Cruises, Inc.*, 236 F.3d at 1067.
10 Plaintiff has alleged that Thompson had a duty to keep the floor safe and that her alleged failure to
11 do so caused his injuries. Accordingly, Plaintiff has properly stated a claim of negligence against
12 Thompson, and the Court finds that the joinder of Thompson was proper.

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14 **C. Amount in Controversy Requirement**

15 Next, Target argues that it is more than likely that the amount in controversy in this matter
16 exceeds \$75,000, based on Plaintiff’s allegations of serious injury. (Def.’s Opp’n 4:15-17, Dkt.
17 #15.) Though Plaintiff originally contended that Target failed to satisfy its burden of proving that
18 the amount in controversy exceeds the jurisdictional minimum, (Pl.’s Mot. 2:21-26, Dkt. #10),
19 Plaintiff’s Reply concedes that Target “makes reasonable arguments concerning the amount in
20 controversy, based upon the Declaration of Gail C. Trabish in Opposition to Plaintiff’s Motion to
21 Remand, which provides facts indicating that the amount in controversy in this action exceeds
22 \$75,000.” (Pl.’s Reply 2:25-26, Dkt. #18.)

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24 In actions based on diversity, “[t]he district courts shall have original jurisdiction of all civil
25 actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest
26 and costs. . . .” 28 U.S.C. § 1332(a). When the complaint is unclear as to the amount of damages
27 sought by the plaintiff, “the defendant bears the burden of actually proving the facts to support
28 jurisdiction, including the jurisdictional amount.” *Gaus*, 980 F.2d at 566-67. Here, Target notes that
Plaintiff alleges serious injuries for which he underwent surgery, that he had to wear at least three

1 braces, and that he claims wage loss and loss of earning capacity. (Def.'s Opp'n 4:15-18, Dkt. #15.)
2 Because Plaintiff acknowledges that the amount in controversy likely exceeds \$75,000 (Pl.'s Reply
3 2:25-26, Dkt. #18), the Court finds that Target has met its burden on this issue. However, as
4 discussed above, there is not complete diversity between the parties as required by 28 U.S.C. § 1332,
5 and the Court lacks jurisdiction despite the amount in controversy.

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7 **D. Supplemental Jurisdiction**

8 Finally, Target argues that because the Court had original jurisdiction over this matter at the
9 time of removal under 28 U.S.C. § 1332(a), it has supplemental jurisdiction over the claim against
10 Defendant Thompson under 28 U.S.C. § 1367. (Def.'s Opp'n 4:7-9, Dkt. #15.) Other than quoting
11 § 1367, Target provides no legal authority for this argument. 28 U.S.C. § 1367 provides that where
12 additional parties are joined and the claims against them are related to claims against the original
13 defendant, the court shall have supplemental jurisdiction over those claims and parties. 28 U.S.C. §
14 1367(a). However, where the original basis for jurisdiction is based on diversity and the plaintiff
15 later joins a non-diverse party as a defendant under Federal Rule of Civil Procedure 20 ("FRCP"),
16 supplemental jurisdiction cannot be exercised over that party. 28 U.S.C. § 1367(b). FRCP 20
17 provides that persons may be joined as defendants where the right to relief asserted arises out of the
18 same transaction or occurrence and where there is a question of law or fact common to all
19 defendants. Fed. R. Civ. P. 20(a). Here, Plaintiff's claim against both Defendants arises out of the
20 same occurrence, and questions of law and fact, such as duty to warn and maintain and knowledge
21 of the wet floor, are common to both Defendants. Thus the Rule 20 joinder of Thompson prevents
22 this Court from exercising supplemental jurisdiction over Plaintiff's claims against her.
23 Accordingly, this Court has neither original nor supplemental jurisdiction over this claim as it stands
24 following the amendment of Plaintiff's complaint adding Defendant Thompson.

25
26 **IV. CONCLUSION**

27 Based on the foregoing, the Court finds that Plaintiff's Rule 15(a) addition of Defendant
28 Thompson divested this Court of diversity jurisdiction pursuant to 28 U.S.C. § 1332. Accordingly,

1 Plaintiff's Motion to Remand to state court is hereby GRANTED and this matter is REMANDED to
2 the San Benito County Superior Court of the State of California.

3 **IT IS SO ORDERED.**

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5 Dated: February 11, 2010



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7 MARIA-ELENA JAMES
8 Chief United States Magistrate Judge
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