

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

3
4 JOHN FRIEDMAN; and BARBARA
5 FRIEDMAN,

6 Plaintiffs,

7 v.

8 TAKEDA PHARMACEUTICALS NORTH
9 AMERICA, INC.; TAKEDA
10 PHARMACEUTICALS INTERNATIONAL,
11 INC.; TAKEDA PHARMACEUTICAL
12 COMPANY LIMITED; TAKEDA
13 PHARMACEUTICALS, LLC; TAKEDA
14 GLOBAL RESEARCH & DEVELOPMENT
15 CENTER, INC.; and TAKEDA SAN
16 DIEGO, INC.,

17 Defendants.

No. C 11-6725 CW

ORDER GRANTING
PLAINTIFFS' MOTION
TO REMAND
(Docket No. 14)

United States District Court
For the Northern District of California

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Plaintiffs John and Barbara Friedman move to remand this case to state court. Defendants Takeda Pharmaceuticals North America, Inc., Takeda Pharmaceuticals International, Inc., Takeda Pharmaceutical Company Limited, Takeda Pharmaceuticals, LLC, Takeda Global Research & Development Center, Inc., and Takeda San Diego, Inc. have not filed a response to Plaintiffs' motion. For the reasons set forth below, the Court GRANTS Plaintiffs' motion.

BACKGROUND

Plaintiffs, a married couple, are California citizens currently residing in San Francisco County. Compl. ¶¶ 2, 170. They filed this action in San Francisco Superior Court on December 8, 2011. All Defendants, with the exception of Takeda San Diego,

1 are non-California citizens; Takeda San Diego is a California
2 citizen. Id. at ¶¶ 14-19. Plaintiffs allege that Takeda San
3 Diego individually and in partnership with the other Defendants,
4 designed, researched, manufactured, tested, promoted, marketed and
5 distributed a drug, Actos (pioglitazone). Id. at ¶¶ 19, 26.

6 Mr. Friedman used Actos from March 2000 through October 2010.
7 Id. at ¶ 41. He was diagnosed with bladder cancer in June 2008.
8 Id. at ¶¶ 3, 42. Plaintiffs allege, among other things, that, as
9 a result of the defective design, manufacturing and testing of
10 Actos by Defendants, people who took Actos were at an increased
11 risk for developing bladder cancer. Plaintiffs assert various
12 claims against Defendants arising out of these events, including
13 claims for negligence. Id. at ¶¶ 3, 48-168, 169-176.

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15 On December 30, 2011, certain Defendants removed the instant
16 action to this Court pursuant to 28 U.S.C. § 1332 diversity
17 jurisdiction, arguing that Takeda San Diego was fraudulently
18 joined. In the Notice of Removal, Defendants argue that "Takeda
19 San Diego, Inc. did not design, develop, manufacture, market,
20 sell, distribute, participate in labeling, or conduct safety
21 testing of Actos" and could not be held liable. Notice of Removal
22 ¶ 27. However, the president and chief scientific officer of
23 Takeda San Diego stated in a declaration supporting removal that
24 Takeda San Diego has in fact played a role in the study and
25 testing of pioglitazone. Wilson Decl., Ex. B to Notice of
26 Removal, ¶ 6.
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DISCUSSION

To make a showing of fraudulent joinder, Defendants "must demonstrate that there is no possibility" that Plaintiffs will be able to establish a cause of action in state court against Takeda San Diego. Lantz v. DaimlerChrysler Corp., 2005 WL 1629937, at *1 (N.D. Cal.). However, here, there is a reasonable possibility that Plaintiffs could prove that Takeda San Diego is liable for negligence, both directly and under a joint enterprise theory pursuant to California law. See Hill v. Takeda Pharmaceuticals North America, Inc., 2012 U.S. Dist. LEXIS 6451, at *4-8 (N.D. Cal.) (Alsup, J.) (addressing identical allegations against Takeda San Diego).

Further, "[t]he 'strong presumption' against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper." Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). Defendants did not respond to Plaintiffs' motion to remand and have not met their burden.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion to remand is GRANTED (Docket No. 14). The Clerk shall remand this action to San Francisco County Superior Court and close the file.

IT IS SO ORDERED.

Dated: 2/3/2012



CLAUDIA WILKEN
United States District Judge