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2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION  
5

6 AMY WELS,

7 Plaintiff,

8 vs.

9 STARBUCKS CORPORATION and  
10 DONALD WALLIS,

11 Defendants.

Case No: C 14-0200 SBA

**ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND**

Dkt. 15

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13 Plaintiff Amy Wels commenced the instant personal injury lawsuit against  
14 Defendant Starbucks Corporation ("Starbucks") and store manager Donald Wallis  
15 ("Wallis") in San Francisco County Superior Court. Defendants subsequently removed the  
16 action on the basis of diversity jurisdiction. 28 U.S.C. § 1332. The parties are presently  
17 before the Court on Plaintiff's Motion for Remand of Action to State Court. Dkt. 15.  
18 Having read and considered the papers filed in connection with this matter and being fully  
19 informed, the Court hereby GRANTS the motion to remand and DENIES Plaintiff's related  
20 request for an award of fees. The Court, in its discretion, finds this matter suitable for  
21 resolution without oral argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

22 **I. BACKGROUND**

23 On June 7, 2013, Plaintiff was at a Starbucks store located in San Francisco  
24 managed by Defendant Wallis. While Plaintiff was waiting in line, another customer  
25 became involved in a heated discussion with a Starbucks' employee. During the course of  
26 the argument, the customer picked up a metal display and hurled it in Plaintiff's direction.  
27 The display landed on Plaintiff's foot and resulted in an injury that eventually required  
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1 surgery. Plaintiff alleges that Starbucks was on notice of the customer’s violent tendencies  
2 based on its prior encounters with him, but did nothing to protect its patrons.

3 On August 7, 2013, Plaintiff filed suit against Starbucks and Wallis in state court.  
4 The California Judicial Council form complaint alleges causes of action for negligence and  
5 premises liability, and seeks damages for wage loss, medical expenses and lost earning  
6 capacity. No specific amount of damages is alleged in the pleadings.<sup>1</sup>

7 In late August 2013, Plaintiff and Defendants, through their respective counsel,  
8 began corresponding by email to explore settlement. On August 28, 2013, Plaintiff  
9 confirmed that her plan was to make a formal settlement demand within two months. Caleo  
10 Decl. Ex. D, Dkt. 19-5. On October 29, 2013, Plaintiff reiterated her intention to send  
11 Starbucks a “demand package.” Id. Plaintiff further indicated that she earns \$137,000 per  
12 year, and will miss “6 full months of work” due to her injuries. Id.

13 The next day, Defendants acknowledged to Plaintiff’s attorney that “it appears your  
14 client will likely proffer a sizable demand to Starbucks given the damages you alluded to in  
15 your recent emails,” and that “if you believe your client’s demand will fall in the 6-figure  
16 range, it will be necessary for Starbucks to answer and conduct discovery.” Id. In  
17 response, counsel confirmed, “Yes, the [settlement] demand will undoubtedly be in the  
18 multiple six figures,” and as such, he anticipated that Defendants would answer the  
19 complaint and begin serving discovery shortly. Id. Plaintiff’s counsel also indicated that  
20 he also planned to serve discovery and inquired where to direct such requests. Id.

21 Though not entirely clear, it appears that the parties subsequently engaged in  
22 discussions regarding Defendants’ possible removal of the action to federal court. During  
23 the course of those discussions, Plaintiff’s counsel stated in an email sent on December 14,  
24 2013, that “Plaintiff seeks damages in excess of \$75,000.” Id. Ex. E, Dkt. 19-6.

25 On January 13, 2014, Defendants removed the action on the basis of diversity  
26 jurisdiction. Plaintiff now moves to remand the action on the grounds that the removal is

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27 <sup>1</sup> No specific facts are alleged in the pleadings to establish personal liability on the  
28 part of Wallis.

1 untimely and complete diversity is lacking because Plaintiff and Wallis are both citizens of  
2 California. Plaintiff also seeks recovery of \$4,000 in fees and costs incurred as a result of  
3 the alleged improper removal, pursuant to 28 U.S.C. § 1447(c). Defendants deny that their  
4 notice of removal is untimely and counter that Wallis is a “sham” defendant whose  
5 citizenship should be disregarded for purposes of ascertaining the existence of diversity  
6 jurisdiction. The matter is fully briefed and ripe for adjudication.

## 7 **II. LEGAL STANDARD**

8 “A motion to remand is the proper procedure for challenging removal.” Moore-  
9 Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1244 (9th Cir. 2009). Remand may be  
10 ordered either for lack of subject matter jurisdiction or for any defect in the removal  
11 procedure. See 28 U.S.C. § 1447(c). “[R]emoval statutes are strictly construed against  
12 removal.” Luther v. Countrywide Home Loans Servicing, LP, 533 F.3d 1031, 1034 (9th  
13 Cir. 2008). “The presumption against removal means that the defendant always has the  
14 burden of establishing that removal is proper.” Moore-Thomas, 553 F.3d at 1244. As such,  
15 any doubts regarding the propriety of the removal favor remanding the case. See Gaus v.  
16 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

## 17 **III. DISCUSSION**

### 18 **A. REMAND**

19 Under to 28 U.S.C. § 1441(a), a defendant may remove to federal court any matter  
20 that originally could have been filed here. Caterpillar Inc. v. Williams, 482 U.S. 386, 392  
21 (1987). Federal courts are court of limited jurisdiction, and only possess subject matter  
22 jurisdiction in civil cases based on federal question or diversity jurisdiction. Id.; 28 U.S.C.  
23 §§ 1331, 1332. To invoke diversity jurisdiction, the complaint must allege that “the matter  
24 in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is  
25 between . . . citizens of different States ... [or] citizens of a State and citizens or subjects of  
26 a foreign state . . . .” 28 U.S.C. § 1332(a). To invoke federal question jurisdiction, the  
27 complaint must allege that the “action[ ] aris[es] under the Constitution, laws, or treaties of  
28 the United States.” 28 U.S.C. § 1331.

1 In order to remove a case to federal court, a defendant is required to file a notice of  
2 removal within the thirty-day time limit set forth in 28 U.S.C. § 1446(b). Under this  
3 section, a defendant must file a notice of removal, inter alia, either (1) “within thirty days  
4 after the receipt by the defendant . . . of a copy of the initial pleading,” or (2) “[i]f the case  
5 stated by the initial pleading is not removable, . . . within thirty days after receipt by the  
6 defendant . . . of a copy of an amended pleading, motion, order *or other paper* from which  
7 it may first be ascertained that the case is one which is or has become removable.” *Id.*  
8 (emphasis added). “When the defendant receives enough facts to remove on any basis  
9 under section 1441, the case is removable, and section 1446’s thirty-day clock starts  
10 ticking.” *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1253 (9th Cir. 2006).  
11 A defendant’s failure to timely remove may result in the waiver of a federal forum.  
12 *Resolution Trust Corp. v. Bayside Developers*, 43 F.3d 1230, 1240 (9th Cir. 1994).

13 Here, there is no dispute between the parties that the pleadings do not disclose facts  
14 sufficient to commence the thirty-day clock for removal under § 1446(b). Consequently,  
15 the salient issue presented is *when*—during the course of their email correspondence with  
16 Plaintiff—Defendants received sufficient facts to conclude that the action is removable.  
17 See *Babasa v. LensCrafters, Inc.*, 498 F.3d 972, 975 (9th Cir. 2007) (“[a] settlement letter  
18 is relevant evidence of the amount in controversy if it appears to reflect a reasonable  
19 estimate of the plaintiff’s claim.”) (quoting *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th  
20 Cir. 2002)).

21 Defendants claim that they were not on notice that at least \$75,000 was in  
22 controversy until December 14, 2013, when Plaintiff confirmed in an email that she is  
23 seeking “damages in excess of \$75,000,” and that they timely filed their notice of removal  
24 within thirty days of that date. See Calso Decl. Ex. D. This contention lacks merit. The  
25 record shows that, well before that email, Defendants had “enough facts” to ascertain that  
26 the requisite amount was in controversy for purposes of removal. See *Durham*, 445 F.3d at  
27 1253. In particular, on October 30, 2013, over two months prior to filing their notice of  
28 removal, Defendants received an email from Plaintiff responding to Defendants’ inquiry as

1 to whether the Plaintiff’s demand would “fall in the 6-figure range.” *Id.* Plaintiff  
2 responded: “Yes, the demand will *undoubtedly* be in the *multiple six figures*.” *Id.*  
3 (emphasis added).

4 Defendants argue that Plaintiff’s reference to “multiple six figures” is inapposite  
5 because it merely estimates what Plaintiff was likely to demand, as opposed to being an  
6 actual settlement demand. However, for purposes of assessing whether the thirty-day time  
7 period has been triggered under § 1446(b), it is sufficient that the letter simply provide a  
8 “reasonable estimate” of the plaintiff’s claim. *Babasa*, 498 F.3d at 975. In this case,  
9 Defendants advised Plaintiff that if her demand were to “fall within the 6-figure range,”  
10 they would answer the complaint and commence discovery. *Caleo Decl. Ex. D.* Plaintiff  
11 immediately confirmed that, in fact, she “undoubtedly” will demand “multiple six figures.”  
12 *Id.* Moreover, Plaintiff stated that in view of the amount in dispute, she anticipated that  
13 Defendants would file their answer and begin serving discovery and correspondingly  
14 inquired to whom she should serve her discovery requests. *Id.* Given Plaintiff’s  
15 confirmation that “a multiple six figure[.]” sum was in controversy, the Court finds that as  
16 of October 30, 2013, Defendants had “enough facts” to ascertain whether the action was  
17 removable on diversity grounds. Because Defendants filed their notice of removal more  
18 than thirty days after that date, the removal is untimely.<sup>2</sup>

19 **B. SANCTIONS**

20 Plaintiff requests an award of \$4,000 under 28 U.S.C. § 1447(c). Section 1447(c)  
21 provides, in relevant part, that “[a]n order remanding the case may require payment of just  
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23 <sup>2</sup> The Court finds no merit to Plaintiff’s alternative contention that there is a lack of  
24 diversity between Plaintiff and Wallis, as it is clear that Wallis was fraudulently joined to  
25 destroy diversity. A party is fraudulently joined where there is “no possibility that the  
26 plaintiff will be able to establish a cause of action in state court against the alleged sham  
27 defendant.” *Plute v. Roadway Package Sys.*, 141 F. Supp. 2d 1005, 1008 (N.D. Cal. 2001).  
28 Here, at the time of the incident, Wallis was acting within the course and scope of his  
employment as a Starbucks store manager. In the absence of any facts establishing that  
Wallis’ individual conduct (which is not otherwise specific in the pleadings) was for his  
own benefit, he cannot be held *personally* liable for Plaintiff’s injuries. *See McCabe v.*  
*General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987) (holding that company manager  
acting on behalf of his employer was fraudulently joined in a wrongful termination action).

1 costs and any actual expenses, including attorney fees, incurred as a result of the removal.  
2 28 U.S.C. § 1447(c). “Absent unusual circumstances, courts may award attorney’s fees  
3 under § 1447(c) only where the removing party lacked an objectively reasonable basis for  
4 seeking removal.” Martin v. Franklin Capital Corp., 546 U.S. 132, 141 (2005). Here, the  
5 Court finds that Defendants’ arguments, while ultimately unpersuasive, are not objectively  
6 unreasonable. Plaintiff’s request for sanctions is therefore denied.

7 **IV. CONCLUSION**

8 For the reasons stated above,  
9 IT IS HEREBY ORDERED THAT:

- 10 1. Plaintiff’s motion to remand is GRANTED.  
11 2. The instant action is REMANDED to the San Francisco County Superior  
12 Court. The Clerk shall close the file and terminate any pending matters and deadlines.  
13 3. Plaintiff’s request for an award of fees and costs is DENIED.

14 IT IS SO ORDERED.

15 Dated: March 4, 2014

  
SAUNDRA BROWN ARMSTRONG  
Senior United States District Judge

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