

1 **I.**

2 **BACKGROUND**

3 On November 25, 2016,¹ Plaintiff Thu Vu Tran went to the Macy’s Store in
4 Westfield North County of Escondido. (*Id.*) While in the store, Plaintiff tripped and
5 fell on a necklace that was lying on the floor. (*Id.*) After the fall, Plaintiff was trampled
6 by a throng of shoppers. (*Id.*) As a result of this incident, Plaintiff suffered “multiple
7 fractures to her left leg, necessitating surgery with implantation of rods and screws,
8 lower back injuries and severe bruising, most especially on her left arm, and causing
9 other associated damages and losses[.]” (*Id.*)

10 On March 9, 2017, Plaintiff filed the present case in San Diego Superior Court
11 against Macy’s Inc., Macy’s Store No. 550 and Jane “Doe,” a resident of the County of
12 San Diego, California. The Complaint alleges claims for negligence and premises
13 liability. On April 20, 2017, Plaintiff amended the Complaint to name Macy’s West
14 Stores, Inc. in place of Macy’s, Inc. Macy’s West Stores, Inc. filed an Answer to the
15 Complaint on May 5, 2017, and on May 11, 2017, removed the case to this Court on the
16 basis of diversity jurisdiction. The present motion followed.

17 **II.**

18 **DISCUSSION**

19 Plaintiff requests leave to amend her Complaint to substitute Christine
20 Loughridge for Defendant Jane “Doe.” With this amendment, Plaintiff asserts diversity
21 jurisdiction is lacking, and the case must be remanded to state court.

22 Although leave to amend generally is governed by Federal Rule of Civil
23 Procedure 15(a), this Rule ““does not apply when a plaintiff amends her complaint after
24 removal to add a diversity destroying defendant.”” *Dorfman v. Mass. Casualty Ins. Co.*,

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26 ¹ The Complaint alleges the date of the accident was September 2, 2016. (*See*
27 *Compl.* ¶ 16.) However, Plaintiff later alleges “[i]t was so-called ‘Black Friday,’ the
28 first day of shopping after Thanksgiving[.]” (*Id.*) In the present motion, Plaintiff states
the accident occurred on November 25, 2016. (*See Mot.* at 2.) Because that date
corresponds to “Black Friday,” the Court assumes the accident occurred on that date,
not on September 2, 2016.

1 No. CV 15-06370 MMM (ASx), 2015 WL 7312413, at *2 (C.D. Cal. Nov. 19, 2015)
2 (quoting *Greer v. Lockheed Martin*, No. CV 10-1704 JF (HRL), 2010 WL 3168408, at
3 *4 (N.D. Cal. Aug. 10, 2010)). In that situation, courts look to 28 U.S.C. § 1447(e),
4 which states, “[i]f after removal the plaintiff seeks to join additional defendants whose
5 joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit
6 joinder and remand the action to the State court.” 28 U.S.C. § 1447(e).

7 When deciding whether to permit joinder under § 1447(e), a court should
8 consider the following factors: (1) whether the party sought to be joined
9 is needed for just adjudication and would be joined under Federal Rule of
10 Civil Procedure 19(a); (2) whether the statute of limitations would prevent
11 the filing of a new action against the new defendant in state court; (3)
12 whether there has been an unexplained delay in seeking to join the new
13 defendant; (4) whether the plaintiff seeks to join the new party solely to
14 defeat federal jurisdiction; (5) whether denial of the joinder would
15 prejudice the plaintiff; and (6) the strength of the claims against the new
16 defendant.

13 *Mkrtchian v. AT&T Mobility Services, LLC*, No. LACV 16-09102 VAP (AJWx), 2017
14 WL 2957931, at *2 (C.D. Cal. July 7, 2017) (citing *Boon v. Allstate Ins. Co.*, 229
15 F.Supp.2d 1016, 1020 (C.D. Cal. 2002)).

16 **A. Just Adjudication**

17 “Federal Rule of Civil Procedure 19 requires joinder of persons whose absence
18 would preclude the grant of complete relief, or whose absence would impede their
19 ability to protect their interests or would subject any of the parties to the danger of
20 inconsistent obligations.” *Id.* (quoting *Clinco v. Roberts*, 41 F.Supp.2d 1080, 1082
21 (C.D. Cal. 1999)). “While courts consider the standard set forth under Rule 19 in
22 determining whether to permit joinder under section 1447(e), ‘amendment under §
23 1447(e) is a less restrictive standard than for joinder under [Rule 19]’” *Id.* (quoting *IBC*
24 *Aviation Services, Inc. v. Compania Mexicana de Aviacion, S.A. de C.V.*, 125 F.Supp.2d
25 1008, 1011-12 (N.D. Cal. 2000)). This less restrictive standard “‘is met when failure
26 to join will lead to separate and redundant actions,’ but it is not met when

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1 ‘defendants are only tangentially related to the cause of action or would not prevent
2 complete relief.’” *Id.* (quoting *IBC Aviation*, 125 F.Supp.2d at 1012).

3 Neither Plaintiff nor Defendant addresses this factor directly, but based on the
4 facts presented, it is possible that failure to join Ms. Loughridge could lead to separate
5 and redundant actions. Ms. Loughridge is alleged to be the Merchandise Lead at the
6 Macy’s Store where the accident occurred. Thus, she could be held responsible for any
7 negligent conduct on her own behalf or on behalf of any employees under her
8 supervision. Assuming Ms. Loughridge was acting in the course and scope of her
9 employment at the time of the accident, it is likely Macy’s would defend Ms.
10 Loughridge, and thus a separate action against her would be unnecessary.
11 Theoretically, however, it is possible that failure to join Ms. Loughridge as a party to
12 this case could result in Plaintiff having to litigate two separate cases in two separate
13 courts arising out of the same incident. Accordingly, this factor weighs in favor of
14 granting leave to amend.

15 **B. Statute of Limitations**

16 The next factor is “whether the statute of limitations would prevent the filing of
17 a new action against the new defendant in state court[.]” *Id.* Here, the statute of
18 limitations on Plaintiff’s negligence claim is two years. *See* Cal. Code of Civ. P. §
19 335.1 (stating “action for assault, battery, or injury to, or for the death of, an individual
20 caused by the wrongful act or neglect of another” is two years). The accident having
21 occurred on November 25, 2016, Plaintiff would not be prevented from filing a case
22 against Ms. Loughridge in state court. Therefore, this factor weighs against granting
23 leave to amend.

24 **C. Unexplained Delay**

25 The next factor is “whether the amendment was attempted in a timely fashion.”
26 *Mrktchian*, 2017 WL 2957931, at *3 (quoting *Clinco*, 41 F.Supp.2d at 1083). Plaintiff
27 asserts it was, Defendant does not dispute that assertion, and the Court agrees with
28 Plaintiff. Defendant removed the case to this Court on May 11, 2017. Plaintiff filed

1 the present motion three weeks later on June 1, 2017. The present motion was filed in
2 a timely manner, and thus this factor weighs in favor of granting leave to amend.

3 **D. Purpose of Joinder**

4 The next factor is “whether the plaintiff seeks to join the new party solely to
5 defeat federal jurisdiction[.]” *Id.* at 2. Plaintiff here asserts she “has good faith reasons
6 for adding Christine Loughridge as a Defendant in the case[.]” (Mot. at 6), *e.g.*, she was
7 the Merchandise Manager at the Macy’s Store where Plaintiff’s accident occurred, and
8 her negligence caused Plaintiff’s injuries. (*Id.* at 9.) Accordingly, this factor weighs
9 in favor of granting leave to amend.

10 **E. Prejudice to Plaintiff**

11 The next factor asks “whether denial of the joinder would prejudice the
12 plaintiff[.]” *Mrktchian*, 2017 WL 2957931, at *2. As indicated in the discussion of
13 factor number one above, the answer to this question is “yes.” Absent joinder of Ms.
14 Loughridge, Plaintiff would be forced to file another complaint against her in state
15 court, and then to litigate that claim in state court and the present claims in this Court.
16 That situation would result in prejudice to Plaintiff, and thus this factor also weighs in
17 favor of granting leave to amend.

18 **F. Strength of Claims**

19 The final factor for consideration is “the strength of the claims against the new
20 defendant.” *Id.* Here, Plaintiff asserts she has a valid negligence claim against
21 Christine Loughridge. However, Defendant disagrees. It argues there is no evidence
22 Ms. Loughridge is the Jane “Doe” identified in the Complaint, and thus Plaintiff’s
23 proposed claim against her is not viable.

24 As evidence that Christine Loughridge is the Jane “Doe” identified in the
25 Complaint, Plaintiff relies on Ms. Loughridge’s LinkedIn Profile. (*See* Mot., Ex. H.)
26 This Profile, accessed on May 31, 2017, states Ms. Loughridge is the Merchandise Lead
27 at Macy’s, and lists her location as Oceanside, California. (*Id.*) It is unclear from the
28 Profile whether Ms. Loughridge works at the Macy’s store in Oceanside or Escondido,

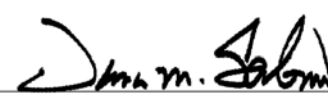
1 and it is also unclear whether she worked at Macy's at the time of subject accident.
2 Nevertheless, Defendant "bears the burden of establishing that the proposed amendment
3 is futile[.]" *Dorfman*, 2015 WL 7312413, at *3 (citing *Mead v. City First Bank of CD,*
4 *N.A.*, 256 F.R.D. 6, 8 (D.D.C. 2009)), and it has not met that burden here. Assuming
5 the facts alleged are true, that Ms. Loughridge was the Merchandise Lead at the
6 Escondido Macy's Store on the date of Plaintiff's accident, Plaintiff may have a viable
7 claim against Ms. Loughridge. Thus, this factor weighs in favor of granting leave to
8 amend.

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10 **III.**
CONCLUSION

11 Having considered the factors discussed above, the Court grants Plaintiff leave
12 to amend her Complaint to substitute Christine Loughridge for Defendant Jane "Doe."
13 Plaintiff shall file her First Amended Complaint to that effect on or before July 28,
14 2017. Upon the filing of the First Amended Complaint, the case will be remanded to
15 San Diego Superior Court for lack of subject matter jurisdiction.

16 **IT IS SO ORDERED.**

17 DATED: July 20, 2017

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20 HON. DANA M. SABRAW
21 United States District Judge
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