

1 **II. BACKGROUND**

2 **A. Statement of Facts**

3 Plaintiff alleges that on April 14, 2019, after he boarded the Sea Dragon Drop Ride
4 at SeaWorld Park in San Diego, California, Defendant’s employee, Doe 1, crushed and
5 fractured Plaintiff’s left wrist and forearm when Doe 1 attempted to latch the attraction’s
6 safety bar. NOR at 2¹:13-16, 11. The Complaint alleges that because of that incident,
7 Plaintiff incurred medical expenses and general damages. *Id.* at 2:16-18.

8 **B. Procedural History**

9 On December 3, 2020, Plaintiff filed a Complaint in the Superior Court of the State
10 of California for the County of San Diego styled *Samuel Rojas, a minor, by and through*
11 *his Guardian ad Litem, Walter Rojas v. Sea World Parks & Entertainment, Inc., et al.*,
12 Case No. 37-2020-00045846-CU-PO-CTL (“the State Court Lawsuit”). *See* NOR at 2:6-
13 11. The Complaint alleges two causes of action for (1) premises liability and (2) general
14 negligence. *Id.* at 2:12-13, 10, 11.

15 On December 28, 2020, Plaintiff served Defendant with the Summons and
16 Complaint. NOR at 2:19-22; *see also* ECF No. 4-1 at 1:20-21. On January 26, 2021,
17 Defendant filed its Notice of Removal pursuant to 28 U.S.C. § 1441 (“Section 1441”),
18 claiming that the case arises “between citizens of different states” as Defendant is a citizen
19 of Delaware and Florida, while Plaintiff is a California resident.² ECF No. 1 at 3:12-15.
20 On January 27, 2021, Defendant filed an Answer to the Complaint. ECF No. 2.

21 On February 22, 2021, Plaintiff filed the instant Motion to Remand. Motion, ECF
22 No. 4-1 (“Mot.”). On March 15, 2021, Defendant filed an Opposition. Opposition, ECF
23 No. 7 (“Oppo.”). Plaintiff did not file a reply brief.

24 _____
25 ¹ Unless otherwise indicated, all page number references are to the ECF generated
26 page number contained in the header of each ECF-filed document.

27 ² Neither the Complaint nor Plaintiff’s Motion to Remand allege that he is a citizen of
28 California, but the Court infers this based on Plaintiff’s argument that the citizenship of
Doe 1, which Plaintiff presumes is a California resident, destroys diversity, as Plaintiff
must be a California resident in order for that argument to hold water.

1 **III. LEGAL STANDARD**

2 Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co.*
3 *of Am.*, 511 U.S. 375, 377 (1994). Consequently, district courts are presumed to lack
4 jurisdiction unless the Constitution or a statute expressly provides otherwise. *Stock West,*
5 *Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989). The party seeking to
6 prove federal jurisdiction bears the burden of establishing it. *See, e.g., McNutt v. Gen.*
7 *Motors Acceptance Corp. of Indiana*, 298 U.S. 178, 189 (1936) (providing that “the party
8 who seeks the exercise of jurisdiction in his favor . . . must allege in his pleading the facts
9 essential to show jurisdiction”). Generally, federal subject matter jurisdiction exists due to
10 the presence of a federal question, *see* 28 U.S.C. § 1331, or complete diversity between the
11 parties, *see* 28 U.S.C. § 1332. In cases arising out of diversity jurisdiction, such as the
12 present case, district courts have “original jurisdiction of all civil actions where the matter
13 in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is
14 between . . . citizens of different States.” 28 U.S.C. § 1332(a)(1).

15 “Except as otherwise expressly provided by Act of Congress,” where a plaintiff files
16 a civil action in state court over which the district courts of the United States have original
17 jurisdiction, the defendant may remove that case “to the district court of the United States
18 for the district and division embracing the place where such action is pending.” 28 U.S.C.
19 § 1441(a). In other words, a defendant may remove to federal court a claim filed in state
20 court that could have initially been brought in federal court. 28 U.S.C. § 1441(a). However,
21 a civil action otherwise removable solely on the basis of diversity jurisdiction under 28
22 U.S.C. § 1332(a) “may not be removed if any of the parties in interest properly joined and
23 served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C.
24 § 1441(b)(2); *see also Martinez v. Omni Hotels Mgmt. Corp.*, No. 20-CV-1924-MMA
25 (BLM), ---F. Supp. 3d---, 2021 WL 196509, at *2. “In determining whether a civil action
26 is removable on the basis of the jurisdiction under section 1332(a) of this title, the
27 citizenship of defendants sued under fictitious names shall be disregarded.” 28 U.S.C. §
28 1441(b)(1).

1 In a case where there are more than two plaintiffs and more than two defendants,
2 complete diversity must exist, meaning that all parties on opposite sides of the case must
3 be from different states. See, e.g., *Strawbridge v. Curtiss*, 7 U.S. 267, 267
4 (1806), *overruled in part on other grounds by Louisville, C. & C.R. Co. v. Letson*, 43 U.S.
5 497 (1844), *overruled in part by Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010)
6 (adopting the nerve center approach to determine a corporation’s citizenship, pursuant to
7 which courts determine a business’ citizenship by its state of incorporation along with its
8 “principal place of business,” or “nerve center,” which refers “to the place where a
9 corporation’s officers direct, control, and coordinate the corporation’s activities”). “A
10 corporation shall be deemed a citizen of every State and foreign state by which it has been
11 incorporated and of the State or foreign state where it has its principal place of
12 business.” 28 U.S.C. § 1332(c)(1).

13 Removing a case does not deprive another party “of his right to move to remand the
14 case.” 28 U.S.C. § 1448. If the district court lacks subject matter jurisdiction, the plaintiff
15 may seek to remand the case back to state court. 28 U.S.C. § 1447(c). Courts strictly
16 construe the removal statute against removal jurisdiction. See *Grancare, LLC v. Thrower*
17 *by & through Mills*, 889 F.3d 543, 550 (9th Cir. 2018) (citing *Gaus v. Miles, Inc.*, 980 F.2d
18 564, 566 (9th Cir. 1992)). Further, “[t]he presumption against removal means that ‘the
19 defendant always has the burden of establishing that removal is proper.’” *Moore-Thomas*
20 *v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (quoting *Gaus*, 980 F.2d at
21 566). Courts resolve any doubt about the right of removal in favor of remand. *Grancare*,
22 889 F.3d at 550.

23 **IV. DISCUSSION**

24 To date, the only named defendant by Plaintiff is Defendant SeaWorld Parks &
25 Entertainment, Inc., a Delaware corporation, with its principal place of business in the State
26 of Florida. NOR at 3:3-6. As stated, the Court presumes Plaintiff is a citizen of the State
27 of California who resides in the County of San Diego, where the injury occurred. *Id.* at
28 3:9-10, 8. Thus, disregarding the doe defendants, complete diversity exists between the

1 named Plaintiff and the named defendant, and the Court’s subject matter jurisdiction is
2 proper. However, Plaintiff argues that his naming Doe Defendants 1 through 25 in the
3 original superior court complaint destroys diversity jurisdiction because he alleges that
4 “Doe defendants 1-25 were the agents or employees of other named defendants and acted
5 within the scope of that agency or employment.” NOR at 8. Plaintiff believes that if the
6 doe defendants work at Sea World, which is located in San Diego, California, then,
7 presumably, Doe Defendants 1 through 25, and especially Doe Defendant 1, must be
8 California residents. Thus, Plaintiff argues the Court should grant his Motion to Remand
9 “based on the underlying Complaint’s plain allegations establishing DOE 1’s California
10 activities and diversity-destroying citizenship.” Mot. at 1:8-13. He asserts that his
11 “Complaint alleges DOE 1 is Sea World’s employee, whose negligence directly caused
12 Plaintiff’s injuries, while in the course and scope of his employment in San Diego,” and
13 “[t]his Court should not ignore his California citizenship.” *Id.* at 6:13-16.

14 Defendant responds that the Court should deny Plaintiff’s Motion to Remand for
15 two reasons: “First, this Court can rely on the plain language of 28 U.S.C. § 1441(b)(1)
16 stating that citizenship of fictitious defendants should be disregarded for purposes of
17 diversity.” *Oppo.* at 2:18-20. “Second, if this Court chooses to consider whether DOE 1
18 is a citizen of California, it should necessarily conclude that naming DOE 1, constitutes
19 fraudulent joinder and therefore deny the remand.” *Id.* at 2:20-22.

20 As outlined below, this Court concludes that (1) Doe 1 does not destroy diversity
21 jurisdiction; (2) Doe 1 is fraudulently joined; and (3) Doe 1 is subject to dismissal.

22 **A. Doe 1 Does Not Destroy Diversity Jurisdiction.**

23 To whether Doe 1 destroys diversity such that the Court should grant Plaintiff’s
24 Motion, the Court must examine the procedure of doe defendant pleading along with its
25 interrelation to Section 1441. Although the Court finds the text of Section 1441 to be clear,
26 district courts within the Ninth Circuit have applied it in an unclear manner. Ultimately,
27 this Court concludes that Section 1441’s plain text and legislative history warrant rejection
28 of the cases raised by both parties in favor of adopting the approach used by fellow courts

1 within the Southern District. This approach requires denial of Plaintiff’s Motion.

2 **1. Doe Defendant Pleading**

3 Under the Federal Rules of Civil Procedure (“FRCP”), “[a] party may amend its
4 pleading once as a matter of course within” twenty-one days of (1) serving the pleading or
5 (2) being served with a responsive pleading or motion brought pursuant to Rule 12(b) of
6 the Federal Rules of Civil Procedure.” FED. R. CIV. P. 15(a)(1). “In all other cases, a party
7 may amend its pleading only with the opposing party’s written consent or the court’s
8 leave,” which “[t]he court should freely give . . . when justice so requires.” FED. R. CIV.
9 P. 15(a)(2). For statute of limitations purposes, “[a]n amendment to a pleading relates back
10 to the date of the original pleading when” either (1) “the law that provides the applicable
11 statute of limitations allows relation back,” (2) “the amendment asserts a claim or defense
12 that arose out of the conduct, transaction, or occurrence set out . . . in the original pleading,”
13 or (3) “the amendment changes the party or the naming of the party against whom a claim
14 is asserted,” provided that (a) such an amendment relates to the same events set out in the
15 original pleading and (b) the party being brought in by the amendment receives notice of
16 the lawsuit within ninety days of the complaint being filed. FED. R. CIV. P. 15(c)(1).

17 Under California law, “[w]hen the plaintiff is ignorant of the name of a defendant,
18 he must state that fact in the complaint, . . . and such defendant may be designated in any
19 pleading or proceeding by any name, and when his true name is discovered, the pleading
20 or proceeding must be amended accordingly.” CAL. CIV. PROC. CODE § 474. Once the
21 plaintiff amends the complaint “to substitute the true name of the defendant for the fictional
22 name, the defendant is regarded as a party from the commencement of the suit, provided
23 the complaint has not been amended to seek relief on a different theory based on a general
24 set of facts other than those set out in the original complaint.” *Munoz v. Purdy*, 91 Cal.
25 App. 3d 942, 946 (1979). California also requires that “[t]he summons and complaint . . .
26 be served upon a defendant within three years after the action is commenced [i.e., a
27 complaint is filed] against the defendant.” CAL. CIV. PROC. CODE § 583.210. Thus,
28 “[w]hen a defendant is brought in by amendment substituting his name for a Doe defendant,

1 he ‘is considered a party to the action from its commencement for purposes of the statute
2 of limitations.’” *Lindley v. Gen. Elec. Co.*, 780 F.2d 797, 799 (9th Cir. 1986) (quoting
3 *Barrows v. American Motors Corp.*, 144 Cal. App. 3d 1, 7 (1983)). Thus, “[u]nlike [FRCP]
4 15(c), section 474 has no requirement that the newly named defendant have notice of the
5 institution of the action within the time provided for commencement of the action [*i.e.*,
6 ninety days].” *Id.*

7 In *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938), the Supreme Court held that
8 in diversity jurisdiction cases, like the present case, courts should apply state substantive
9 law and disavowed the concept of a federal common law. Almost thirty years later, in
10 *Hanna v. Plumer*, 380 U.S. 460, 465-66 (1965), the Supreme Court elaborated on *Erie*,
11 advising that “federal courts are to apply state substantive law and federal procedural law.”
12 Thus, courts sitting in diversity apply state substantive law and federal procedural law, like
13 the FRCP. As a result, this Court must resolve whether the naming of doe defendants
14 implicates a substantive or procedural issue.

15 In 1980, the Ninth Circuit, in *Garter-Bare Co. v. Munsingwear, Inc.*, 650 F.2d 975,
16 981 (9th Cir. 1980), affirmed dismissal of a claim for relief premised on diversity
17 jurisdiction because the inclusion of doe defendants destroyed complete diversity. The
18 court held that the plaintiffs’ inclusion of “several Doe defendants (none of whom has been
19 identified or served) in their eighth claim for relief, which alleged conspiracy to interfere
20 in the plaintiffs’ business relationships under the district court’s diversity of citizenship
21 jurisdiction, destroyed that jurisdiction.” *Id.* at 981 (internal quotations omitted).

22 In 1986, the Ninth Circuit held that California Code of Civil Procedure, section 474
23 (“Section 474”), which permits a complaint in a federal court to relate back to the date of
24 filing of the original complaint, is state substantive law to be applied in diversity actions.
25 *Lindley*, 780 F.2d at 802. The *Lindley* plaintiffs filed a personal injury action in California
26 state court within California’s one year statute of limitations, and the defendant
27 subsequently removed the case to the Northern District of California based on diversity
28 jurisdiction. *Lindley*, 780 F.2d at 798. After removal, the district court granted the

1 plaintiffs leave to amend the complaint and add another party as a defendant, but the
2 plaintiffs failed to serve the new defendant until after expiration of the one year limitation
3 period. *Id.* Thus, the district court dismissed the case against the new defendant on the
4 grounds that it was time-barred. *Id.* On appeal, the plaintiffs argued that the case against
5 the new defendant was not time-barred because California law, rather than FRCP 15(c),
6 governed the naming of doe defendants. *Id.* at 799. The court agreed, reversing the district
7 court’s dismissal of the new defendant for several reasons. *Id.* at 802. First, it held that
8 FRCP 15(c) “does not determine the timeliness of plaintiffs’ action against” the new
9 defendant. *Id.* at 801. As a result, there was no conflict between FRCP 15(c) and
10 California’s Doe defendant practice that would require application of FRCP 15(c). *Id.*
11 Second, it reasoned that “the absence of a federal pleading mechanism comparable to
12 section 474 should not deprive a plaintiff of the extensions of the limitations period
13 provided under California Doe practice.” *Id.* at 802. It stated that “[a] contrary rule would
14 be a departure from *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), and its progeny,
15 particularly *Guaranty Trust Co. v. York*, 326 U.S. 99 (1945), because it would result in the
16 abridgment of substantive rights under state statutes of limitations.” *Id.*

17 That same year, in *Bryant v. Ford Motor Co.*, 794 F.2d 450, 451 (9th Cir. 1986)
18 (*Bryant I*), *opinion withdrawn*, 818 F.2d 692 (9th Cir. 1987), and *on reh’g*, 832 F.2d 1080
19 (9th Cir. 1987), *opinion amended and superseded*, 844 F.2d 602 (9th Cir. 1987) (en banc)
20 (*Bryant II*), *vacated*, 886 F.2d 1526 (9th Cir. 1989) (*Bryant III*), the Ninth Circuit held that
21 “the district court lacked jurisdiction over [the] action because of the presence of
22 potentially non-diverse Doe defendants at the time of removal from state court.” *Id.* at 451.
23 *Bryant* involved a plaintiff, who was a California resident and sued the defendant, Ford
24 Motor Co., a Delaware corporation with its principal place of business in Michigan, in state
25 court, along with Does 1 through 50. 886 F.2d at 1532. Ford removed the case to the
26 district court; however, the Ninth Circuit held that because the doe defendants were real
27 but not yet identified people or entities, removal was premature as the district court could
28 not yet determine whether they would defeat diversity jurisdiction. 794 F.2d at 453. Thus,

1 it remanded the case back to the district court with instructions to remand to the state court.
2 *Id.* at 453. The defendant petitioned for a hearing en banc to clarify doe defendant law in
3 the Ninth Circuit. *Bryant II*, 844 F.2d at 604. The following year, in 1987, the Ninth
4 Circuit in *Bryant II*, held “that the presence of Doe defendants under California Doe
5 defendant law destroys diversity and, thus, precludes removal.” 844 F.2d at 605. As
6 discussed below, amendments to Section 1441 resulted in this holding being vacated.

7 **2. Section 1441(b)**

8 The year after the court’s ruling in *Bryant II*, “[i]n 1988, Congress passed the Judicial
9 Improvements and Access to Justice Act, which amended 28 U.S.C. § 1441 to address ‘the
10 issue of Doe defendants for purposes of diversity jurisdiction and remand.’” *Johnson v.*
11 *Starbucks Corp.*, 475 F. Supp. 3d 1080, 1083 (C.D. Cal. 2020). This amendment added
12 the following provision to the removal statutes: “In determining whether a civil action is
13 removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship
14 of defendants sued under fictitious names shall be disregarded.” 28 U.S.C. § 1441(b)(1).

15 Generally, when the text of a statute is clear, as it is in this case, a court need look
16 no further as “[t]he people are entitled to rely on the law as written without fearing that
17 courts might disregard its plain terms based on some extratextual consideration.” *Bostock*
18 *v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1749 (2020). However, “even when, as here, a
19 statute’s meaning can clearly be discerned from its text, consulting reliable legislative
20 history can still be useful, as it enables us to corroborate and fortify our understanding of
21 the text.” *Digital Realty Tr., Inc. v. Somers*, 138 S. Ct. 767, 782 (2018) (Sotomayor, J.,
22 concurring) (writing separately to support the use of a Senate Report when interpreting a
23 statute). “Committee reports . . . are a particularly reliable source to which we can look to
24 ensure our fidelity to Congress’ intended meaning.” *Id.* (citing *Garcia v. United States*,
25 469 U.S. 70, 76 (1984)). In this case, not only does the text of Section 1441 indicate courts
26 should disregard doe defendants, but the legislative history corroborates the conclusion that
27 the Legislature enacted Section 1441 in direct response to the general rule in California
28 that doe defendants defeated diversity jurisdiction:

1 The other amendment to § 1441(a) permits the citizenship of fictitious
2 defendants to be disregarded. This amendment addresses a problem
3 that arises in a number of states that permit suits against “Doe”
4 defendants. The primary purpose of naming fictitious defendants is to
5 suspend the running of the statute of limitations. **The general rule has**
6 **been that joinder of Doe defendants defeats diversity jurisdiction**
7 **unless their citizenship can be established**, or unless they are nominal
8 parties whose citizenship can be disregarded even if known. **This rule**
9 **in turn creates special difficulties in defining the time for removal.**
10 Removal becomes possible when the Doe defendants are identified or
11 dropped, perhaps as late as the start of trial, or when it becomes clear
12 that any claims against the Doe defendants are fictitious or merely
13 nominal. At best, the result may be disruptive removal after a case has
14 progressed through several stages in the state court. At worse, the result
15 may be great uncertainty as to the time when removal becomes
16 possible, premature attempts to remove and litigation over
17 removability, and forfeiture of the removal opportunity by delay after
18 the point that in retrospect seems to have made clear the right to
19 remove. **These problems can be avoided by the disregard of**
20 **fictitious defendants for purposes of removal.** Experience in the
21 district courts in California, where Doe defendants are routinely added
22 to state court complaints, suggests that in many cases no effort will be
23 made to substitute real defendants for the Doe defendants, or the newly
24 identified defendants will not destroy diversity. If the plaintiff seeks to
25 substitute a diversity-destroying defendant after removal, the court can
26 act as appropriate under proposed § 1447(d) to deny joinder, or to
27 permit joinder and remand to the state court.

19 S. Heg. 100-1050, *Judicial Branch Improvements Act of 1987*, S. 1482: *Hearing on H.R.*
20 *4807, PL 100-702 Before the Subcomm. on Cts. & Admin. Prac. of the Sen. Comm. on the*
21 *Judiciary*, 100th Cong. 149-50 (1989) (emphasis added).

22 Plaintiff admits that “28 U.S.C. § 1441(b)(1) states that, when jurisdiction is based
23 solely on diversity, ‘the citizenship of defendants sue under fictitious names shall be
24 disregarded.’” Mot. at 2:8-9. However, he argues that the Court must “consider the
25 distinction between ‘fictitious’ and real party Does and assess whether the ‘plaintiffs’
26 description of Doe defendants or their activities is specific enough as to suggest their
27 identity, citizenship, or relationship to the action.” *Id.* at 2:11-19 (citing *Gardiner Fam.,*
28 *LLC v. Crimson Res. Mgmt. Corp.*, 147 F. Supp. 3d 1029, 1036 (E.D. Cal. 2015); *Sandoval*

1 *v. Republic Servs., Inc.*, No. 18-cv-01224-ODW-KSx, 2018 WL 1989528, *3-4 (C. D. Cal.
2 Apr. 24, 2018) (“[W]hen a plaintiff’s allegations give a definite clue about the identity of
3 the fictitious defendant . . . the court should consider the citizenship of the fictitious
4 defendant.”). Plaintiff contends that “[w]here the identity of the Doe defendants is
5 ascertainable based on the allegations in the complaint, their citizenship should be
6 considered for diversity purposes.” *Id.* at 2:23-3:5 (citing *Barnes v. Costco Wholesale*
7 *Corp.*, 2019 WL 6608735, at *2-3 (C.D. Cal. Dec. 4, 2019) (rejecting Costco’s argument
8 that Section 1441(b)(1) “requires the [c]ourt to disregard the Doe Employee’s citizenship”
9 as “overly simplistic” argument; finding citizenship of Doe Defendants is considered for
10 diversity purposes where “Plaintiffs’ description of Doe defendants or their activities is
11 specific enough as to suggest their identity, citizenship, or relationship to the action”)).

12 This Court finds that the legislatively history expressly rejects Plaintiff’s arguments
13 supporting remand. However, given the contested nature of legislative history, *see*
14 *Bostock*, 140 S. Ct. at 1749, the Court analyzes the post-Judicial Improvements and Access
15 to Justice Act case law cited by both parties interpreting Section 1441(b).

16 3. Post-Section 1441(b) Case Law

17 Following the 1988 amendment to the removal statute, the *Bryant III* court noted
18 that “Congress obviously reached the conclusion that doe defendants should not defeat
19 diversity jurisdiction.” 886 F.2d at 1528. Thus, it vacated its judgment in *Bryant II* and
20 affirmed the district court’s entry of summary judgment in the defendant’s favor. *Id.* at
21 1534. It found the plaintiff’s “argument . . . unavailing under the new amendment
22 to section 1441(a), which provides that doe defendants ‘shall be disregarded.’” *Id.* It also
23 noted that given the Judicial Improvements Act was enacted contemporaneously with the
24 Supreme Court’s granting of a petition for writ of certiorari in *Bryant II*, “it [was] unlikely
25 that Congress was ignorant of [the Ninth Circuit’s] decision” when it enacted the Judicial
26 Improvements Act. 886 F.2d at 1530. In other words, the Ninth Circuit believed the
27 amendments to Section 1441 were, in part, a direct response to its *Bryant II* decision. *Id.*

28 Since then, in *Soliman v. Philip Morris Inc.*, 311 F.3d 966, 971 (9th Cir. 2002), the

1 Ninth Circuit has held that “[t]he citizenship of fictitious defendants is disregarded for
2 removal purposes and becomes relevant only if and when the plaintiff seeks leave to
3 substitute a named defendant.” *Id.* (citing 28 U.S.C. §§ 1441(a), 1447(e) superseding
4 *Bryant II*).³ Despite the seemingly clear language of Section 1441(b) as well as the Ninth
5 Circuit’s direction in *Soliman*, the four districts throughout the Ninth Circuit have applied
6 it in an inconsistent nature. *See, e.g., Goldsmith v. CVS Pharmacy, Inc.*, No. CV 20-00750-
7 AB (JCX), 2020 WL 1650750, at *4 (C.D. Cal. Apr. 3, 2020) (“The Court notes, however,
8 that other courts have found that the question of whether Doe defendants may destroy
9 diversity is a ‘convoluted and unsettled’ one.”).

10 The Eastern District Court of California has concluded that the inclusion of doe
11 defendants destroys diversity only if the plaintiff’s “allegations concerning the Doe
12 Defendants provide a reasonable indication of their identity, the relationship to the action,
13 and their diversity-destroying citizenship, then the Court lacks diversity jurisdiction.”
14 *Robinson v. Lowe’s Home Centers, LLC*, No. 1:15-cv-1321-LJO-SMS, 2015 WL
15 13236883, at *3 (E.D. Cal. Nov. 13, 2015). In *Gardiner Fam., LLC v. Crimson Res. Mgmt.*
16 *Corp.*, a case relied on by Plaintiff to support remand, the court denied the defendants’
17 motion to dismiss for lack of jurisdiction and addressed the question of “whether a
18 plaintiff’s Doe pleading defeats original diversity jurisdiction as a matter of law.” 147 F.
19 Supp. 3d at 1032, 1036. The *Gardiner* plaintiffs filed suit in federal court asserting
20 diversity jurisdiction, and both parties agreed the amount-in-controversy requirement had
21 been satisfied, and the plaintiffs, California corporation, were diverse from the defendant,

22
23 ³ The *Soliman* plaintiff was “a citizen of California,” and “[n]one of the named
24 defendants [was] a citizen of that state, but the complaint list[ed] several ‘Doe’ defendants,
25 whose ‘capacities and relationship to other Defendants . . . [were] unknown’ but who
26 [were] . . . ‘responsible for the acts complained of.’” 311 F.3d at 971. “In his appellate
27 brief, Soliman for the first time identifie[d] one of the mystery defendants—a company in
28 Oakland, California” and stated he intended “to substitute this newly identified co-
conspirator for one of the Does.” *Id.* However, because the plaintiff failed to seek leave
to substitute in a named defendant before the district court entered judgment against him,
his post-judgment attempt had no jurisdictional significance. *Id.*

1 a Colorado corporation. *Id.* at 1030. However, the defendants moved to dismiss the
2 complaint for lack of subject matter jurisdiction by arguing that the presence of doe
3 defendants destroyed complete diversity. *Id.* at 1031. They also argued that following
4 *Lindley*, California’s “Doe” statutes are substantive law, which district courts must apply
5 under *Erie*, and as such, they must allow the use of Doe defendants as provided by Section
6 474. *Id.* at 1032.

7 The *Gardiner* court noted that first, the authority relied on by the defendant to argue
8 that the inclusion of doe defendants defeats diversity jurisdiction—namely, *Lindley*, pre-
9 dated the amendments to Section 1441(b)(1), “which itself came on the heels of the Ninth
10 Circuit’s decision in *Bryant*.” 147 F. Supp. 3d at 1032-33. “Second, Congress did not
11 amend § 1332, despite the pre-*Bryant* doctrine’s similar deleterious effect on cases
12 originally filed in federal courts sitting in diversity.” *Id.* at 1033. Third, “in the wake of
13 the amendment to § 1441, the Ninth Circuit vacated *Bryant II*, see 886 F.2d 1526, causing
14 the doctrine to revert to the form it held after *Garter-Bare*, . . . making it ‘near-impossible’
15 for a court to determine ‘when the allegations against Doe defendants are specific enough
16 to defeat diversity.’” *Id.* (citing *Bryant II*, 844 F.2d at 605). “Consequently, courts were
17 (and are) left to wrestle with three problems, how to: (1) reconcile *Garter-Bare* with
18 *Lindley* and the *Erie* doctrine; (2) negotiate the ‘near-impossible’ labyrinth of exceptions
19 to the Doe pleading rule; and, (3) resolve the effect of Doe pleading on those cases brought
20 under § 1332, if at all differently from those brought under § 1441.” *Id.* The court largely
21 relied on the *Lindley* case to reason “[t]here is no getting around that the Ninth Circuit
22 plainly held that California ‘Doe’ statutes are substantive law” or that a federal court sitting
23 in diversity must apply state substantive law. *Id.* at 1035 (citing *Lindley*, 780 F.2d at 799-
24 801; *Erie R.R. Co.*, 304 U.S. at 78). As a result, it held that the “[p]laintiffs’ use of fictional
25 defendants [was] consistent with California substantive law” and did not divest the court
26 of diversity jurisdiction. *Id.* at (citing CAL. CIV. PROC. CODE § 474). Although the court
27 acknowledged various exceptions where including doe defendants could destroy diversity
28 jurisdiction because the description of the doe defendants and their activities was “specific

1 enough to suggest their identity, citizenship, or relationship to the action,” the plaintiffs’
2 complaint in that case “gave no reasonable indication as to the Doe defendants’ relationship
3 to the action.” *Id.* at 1035. Thus, it found Does 1 through 50 to be wholly fictitious because
4 “the charges against the Does [were] so general that no clues exist as to their identity,
5 citizenship, or relationship to the action,” so the court could “disregard [those] fictitious
6 defendants for jurisdictional purposes.” *Id.* at 1036.

7 Other than Plaintiff’s reliance on the *Gardiner* case, the remainder of the authority
8 relied on by Plaintiff comes from the Central District of California. *See* Mot. at 2-5 (citing,
9 *inter alia*, *Sandoval*, 2018 WL 1989528 at *3-4; *Barnes*, 2019 WL 6608735 at *2-3;
10 *Johnson*, 475 F. Supp. 3d at 1081). Plaintiff primarily relies on *Johnson* to support his
11 arguments for remand. *See* Mot. at 3-4. In *Johnson*, 475 F. Supp. 3d at 1081, the Central
12 District of California held that it lacked subject matter jurisdiction and remanded a case
13 back to state court where a plaintiff and California resident sued Starbucks corporation, a
14 Washington corporation; Jane Doe; John Doe; and Roes 1 through 10. *Id.* The *Johnson*
15 plaintiff worked for Starbucks as a shift supervisor in West Hills, California, and as part of
16 his job, often interacted with homeless patrons visiting the establishment. *Id.* He alleged
17 that during his employment, a group of homeless individuals, including Jane and John Doe,
18 called the plaintiff derogatory names during a shift, and as a result of their behavior, he felt
19 unsafe at work and requested a transfer, which Starbucks denied. *Id.* at 1081-82. The
20 plaintiff filed suit in the Los Angeles Superior Court against his former employer,
21 Starbucks, asserting causes of action for, *inter alia*, harassment and discrimination. *Id.* at
22 1082. Starbucks removed the case to federal court based on diversity jurisdiction, but the
23 plaintiff sought to remand. *Id.*

24 In *Johnson*, all parties agreed that if the doe defendants were ignored, complete
25 diversity existed. 475 F. Supp. 3d at 1083. However, the plaintiff argued “that the Doe
26 Defendants are real individuals whose liability and relationship to the suit is fully alleged.”
27 *Id.* He elaborated that his “Doe Defendants are not wholly fictitious but real parties,
28 California citizens whose ‘real names and identities are unknown.’” *Id.* The court noted

1 that the complaint included specific descriptions of the John and Jane Doe homeless
2 patrons, such as their sex, what comments they made to the plaintiff, how they harassed
3 the plaintiff, and their actions. *Id.* at 1083-84. “These allegations demonstrate[d] that both
4 Doe Defendants are not merely fictitious defendants; rather they [were] real parties known
5 to Johnson whose liability and relation to the suit is fully alleged in the FAC.” *Id.* at 1084.
6 Because the operative complaint alleged sufficient facts regarding the doe defendants to
7 establish they were real parties with a relationship to the case rather than “wholly
8 fictitious,” the court concluded “their California citizenship should not be disregarded.”
9 *Id.* at 1084. As a result, it held that the doe defendant’s citizenship destroyed complete
10 diversity along with the court’s jurisdiction and granted the motion to remand. *Id.*

11 In *Johnson*, just as in this case, the plaintiff filed suit in the superior court, the
12 defendant removed the case, and the plaintiff sought to remand on the basis of doe
13 defendants. 475 F. Supp. 3d at 1081-82. Thus, Plaintiff argues this case closely resembles
14 *Johnson*, and as such, this Court should grant his Motion just as the *Johnson* court did.
15 Mot. at 3-5. Defendant responds that “[t]he *Johnson* Court found that Doe Defendants
16 were not merely fictitious defendants, but rather real parties who were sufficiently described
17 (i.e., Jane Doe, ‘a female companion’ and John Doe, a ‘homeless man’), and therefore their
18 California citizenship should not be disregarded.” *Oppo.* at 3-4 (citing *Johnson*, 475 F.
19 Supp. 3d. at 1084). Defendant also argues that *Johnson* should not apply because it
20 involves a third-party doe defendant rather than an employee, “a critical distinction ignored
21 by Plaintiff’s [motion].” *Id.* at 3:7-9. Defendant argues that this case more closely
22 resembles another case out of the Central District of California, which Plaintiff failed to
23 raise: *Goldsmith*, 2020 WL 1650750 at *4-5. *Oppo.* at 4:8-10.

24 In *Goldsmith v. CVS Pharmacy, Inc.*, the Central District of California found that
25 “the presence of Doe Defendants . . . [did] not defeat diversity jurisdiction” because “the
26 clear language of 28 U.S.C. § 1441(b)(1) requires it to disregard the citizenship of the Doe
27 Defendants at this stage.” 2020 WL 1650750, at *4-5. The *Goldsmith* plaintiff alleged
28 that he requested that a CVS pharmacy to fill a prescription for a controlled substance, but

1 Doe 1 refused to fill the prescription and confiscated the prescription document from
2 Plaintiff. *Id.* at *1. Plaintiff, a citizen of California, brought suit in the Los Angeles
3 Superior Court against Defendant CVS Pharmacy, Inc., a Rhode Island citizen, and Does
4 1 through 10. *Id.* The defendant removed the case, and the plaintiff moved to remand by
5 arguing that “the Doe defendants ‘are credibly alleged to be employees of CVS in
6 California and therefore are almost certainly citizens of California.’” *Id.* However, the
7 court denied the plaintiff’s motion to remand and retained jurisdiction over the case. *Id.* at
8 *5. The plaintiffs claimed, like Plaintiff here, that “‘each fictional defendant,’ and
9 particularly Doe 1, ‘is a citizen of California and will destroy complete diversity once
10 identified and joined as parties.’” *Id.* at *4. The complaint also specifically alleged that
11 Doe 1 was a pharmacist employed by CVS at the Los Angeles pharmacy and described his
12 actions, including scrutinizing the plaintiff’s prescription, examining his medical records,
13 contacting the prescriber, and confiscating the prescription. *Id.*

14 The *Goldsmith* court first noted “that every case Plaintiff cites for the proposition
15 that a complaint with Doe allegations is not removable pre-dates 1988, and thus does not
16 consider the fundamental change implemented by the Judicial Improvements and Access
17 to Justice Act.” *Goldsmith*, 2020 WL 1650750, at *3, n.3. Next, it reasoned that under the
18 *Gardiner* standards, the plaintiff had provided (1) a “reasonable indication” of the doe
19 defendant’s identity (the pharmacist), (2) the doe defendant’s “relationship to the action”
20 (*i.e.*, undertaking the actions that caused the alleged harm by confiscating the prescription),
21 and (3) his “diversity-destroying citizenship” based on his alleged employment at the Los
22 Angeles CVS. *Id.* However, the court found that despite having met the *Gardiner*
23 standards, “the clear language of 28 U.S.C. § 1441(b)(1) requires it to disregard the
24 citizenship of the Doe Defendants at this stage.” *Id.* at *4. Further, even if it had not
25 construed Section 1441(b)(1) to require it to disregard doe defendants, the pharmacist
26 and/or pharmacy employees who may have been involved in the alleged harms to Plaintiff
27 were “employees and/or agents of CVS acting within the course and scope of their agency,
28 and as such, their joinder [was] unnecessary.” *Id.* at *4. However, “a plaintiff seeking to

1 hold an employer liable for torts caused by employees acting within the scope of their
2 employment is not required to name or join the employees as defendants.” *Id.* at *5. Thus,
3 even though the plaintiff argued he did not include the doe defendant allegations in an
4 effort to destroy diversity, the court found their joinder was, nonetheless, unnecessary for
5 the plaintiff to secure relief. *Id.* at *4-5.

6 In the Northern District of California, only one case has taken a firm stance on the
7 issue while more recent cases have side-stepped the issue of whether the inclusion of doe
8 defendants destroys diversity jurisdiction. In 2010, in *Hao v. Chen*, No. 10-CV-00826-
9 LHK, 2010 WL 3910165, at *4-5 (N.D. Cal. Oct. 5, 2010), the court held that “the inclusion
10 of Doe defendants does not destroy diversity, and the Court is not divested of jurisdiction
11 on that ground.” However, the *Hao* court granted the defendant’s motion to dismiss for
12 lack of subject matter jurisdiction because the plaintiff had failed to allege the defendant’s
13 domicile or state citizenship and included unnamed Doe defendants in the complaint. *Id.*
14 The court “agreed with courts in Hawaii and California that the more sensible approach is
15 to permit Doe defendants and to defer the jurisdictional question until actual parties are
16 substituted.” *Id.* “[T]his approach is also consistent with the revisions to the removal
17 statute that occurred since *Grater-Bare Co.* and which provide that Doe defendants do not
18 destroy diversity in the removal context.” *Id.*

19 Almost ten years later, in *Chess v. CF Arcis IX LLC*, No. 20-CV-01625-CRB, 2020
20 WL 4207322, at *3-4 (N.D. Cal. July 22, 2020), *appeal dismissed*, No. 20-16621, 2020
21 WL 6802843 (9th Cir. Sept. 21, 2020), the Northern District Court of California noted that
22 “[d]istrict courts within the Ninth Circuit have split on” the issue of “whether the existence
23 of Doe defendants, described with some specificity, defeats diversity in a case that has been
24 removed from state court.” *Id.* at *2. The court noted that under the *Goldsmith* approach,
25 “the analysis [was] straightforward.” *Id.* at *3. Because the doe defendants were unnamed,
26 the plain reading of Section 1441(b)(1) required the court to ignore the unnamed
27 defendants, so diversity jurisdiction remained in tact. *Id.* Under the *Gardiner* test, on the
28 other hand, the court must examine the specificity of the allegations pertaining to the doe

1 defendants. *Id.* at *3. However, the plaintiffs had “not even described the unnamed Doe
2 defendants with sufficient specificity to determine their diversity-destroying relationship.”
3 *Id.* As a result, “[u]nder either test, the Doe defendants [did] not defeat diversity.” *Id.* at
4 *4. Similarly, in *Dedal v. Covenant Aviation Sec. LLC*, No. 19-CV-01842-JD, 2019 WL
5 2996389, at *1-2 (N.D. Cal. July 9, 2019), the court denied a motion to remand where the
6 plaintiff did not contest that complete diversity existed among the parties or the amount in
7 controversy had been met, but argued that the case should be remanded because the “Doe”
8 defendants named in her complaint destroyed complete diversity. It noted that the primary
9 legal support the plaintiff provided to the court to support her argument was out-of-circuit
10 authority. *Id.* Thus, both *Chess* and *Dedal* “punted” the issue at hand and denied the
11 motions to remand without directly siding with the Eastern District’s test set forth in
12 *Gardiner* or the Central District’s decision in *Goldsmith*.

13 Courts in the Southern District have consistently held that courts should not consider
14 doe defendants when ruling on a motion to remand. *See, e.g., Mulalley v. Starbucks Corp.*,
15 No. 21-CV-0032-GPC-DEB, 2021 WL 927362, at *3 (S.D. Cal. Mar. 10, 2021) (Curiel,
16 J.) (granting a motion to remand where the plaintiff, a California citizen, sued the
17 defendant, which was domiciled in Washington; an individual, who was a California
18 citizen; and Does 1 through 10, while providing that “[f]ictitious ‘Doe’ defendants are
19 ignored for determining diversity jurisdiction”); *accord Holt v. Noble House Hotels &*
20 *Resort, Ltd.*, No. 17CV2246-MMA (BLM), 2018 WL 539176, at *3-4 (S.D. Cal. Jan. 23,
21 2018) (Anello, J.) (denying a motion to remand in a case where the plaintiff was a
22 California citizen, and the defendant was a Texas corporation with its principal place of
23 business in Washington state because “[t]he citizenship of unnamed class members and
24 unidentified Doe defendants are disregarded”); *Zappia v. World Sav. Bank, F.S.B.*, No.
25 14CV2873-WQHDHB, 2015 WL 1808545, at *4 (S.D. Cal. Apr. 21, 2015) (Hayes, J.)
26 (denying a motion to remand where the plaintiff, a citizen of California, sued the defendant,
27 a citizen of South Dakota, and Doe Defendants 1 through 20 because “the citizenship of
28 defendants sued under fictitious names shall be disregarded.”); *Bernier v. Travelers Prop.*

1 *Cas. Ins. Co., Inc.*, No. 11-CV-78 JLS (RBB), 2012 WL 12540930, at *1, 4 (S.D. Cal. May
2 21, 2012), *aff'd*, 626 Fed. App'x 666 (9th Cir. 2015) (Sammartino, J.) (denying a motion
3 to remand where the plaintiff, a California citizen, sued the defendant, a Connecticut
4 corporation, and various doe defendants but had not actually moved to amend to specify or
5 join any of the defendants; thus, the plaintiff had “not identified with specificity the name
6 and citizenship of each party to be joined and the claims against each”).

7 Plaintiff argues that Doe 1’s liability is fully alleged in the complaint through his
8 detailed allegations that Doe 1 was operating the ride on which Plaintiff was injured due to
9 the manner in which Doe 1 fastened the metal lap bar. Mot. at 4:12-25. Plaintiff contends
10 these allegations show that Doe 1 “is not wholly fictitious, but a real party and California
11 citizen, employed at SeaWorld’s San Diego location, presumably paying California income
12 taxes.” *Id.* at 4:22-26. He further asserts that “presumably, unlike in *Johnson*, DOE 1 is
13 not a hard-to-identify homeless man; rather, he is an easily ascertainable SeaWorld
14 employee who lives, works and resides in San Diego.” *Id.* at 4:26-5:1. Defendant responds
15 that as in *Goldsmith*, where the court held that because the plaintiff had alleged the doe
16 defendant pharmacist had been acting within the course and scope of his employment, his
17 joinder was unnecessary, this Court should come to the same conclusion. Oppo. at 5:10-
18 15. Indeed, Plaintiff’s complaint alleges that “DOES 1 through 25, were at all times
19 relevant, acting within the course and scope of their employment with the Defendant.”
20 NOR at 11. However, this Court is bound by none of the cases cited by Plaintiff or
21 Defendant as neither party primarily relies on binding Ninth Circuit authority or even
22 authority from the Southern District.

23 This Court finds that not only is the plain language of Section 1441(b) clear in
24 mandating that courts should disregard the citizenship of fictitious defendants when
25 evaluating whether diversity jurisdiction exists on a motion to remand, but the legislative
26 history corroborates and confirms this conclusion. *See* S. Heg. 100-1050, *supra*, at 100th
27 Cong. 149-50 (1989). Thus, this Court joins the other courts within this District in finding
28 that the citizenship of doe defendants, regardless of the detail or specificity with which it

1 is alleged, must be disregarded when determining whether complete diversity exists on a
2 motion to remand. If Plaintiff wishes to amend the complaint to substitute in the true name
3 of Doe 1, Plaintiff may seek leave to amend pursuant to FRCP 15. At that point, the Court
4 will evaluate whether Doe 1's joinder is mandatory or permissible under FRCP 19.

5 **B. Fraudulent Joinder**

6 In his Motion, Plaintiff pre-emptively argues he has not fraudulently joined Doe 1
7 because he alleges Doe 1's direct causation for his injuries as well as Defendant's vicarious
8 liability for those actions. Mot. at 5:19-20. Defendant responds that Doe 1 has been
9 fraudulently joined because Plaintiff's arguments ignore "the application of the doctrine of
10 *respondeat superior* that the losses caused by the torts of the employees that occur in the
11 conduct of the employer's enterprise are placed upon the enterprise itself as a required cost
12 of doing business." Oppo. at 6:18-7:19 (citing *Perez v. Van Groningen & Sons, Inc.*, 41
13 Cal. 3d 962, 967 (1986)). Defendant contends that even "[a]ssuming, *arguendo*, that this
14 Court decides to consider the identity, citizenship and potential liability of DOE 1, the
15 outcome does not change." *Id.* at 8:7-9. Rather, "[t]he allegations of Plaintiff's complaint
16 dictate the outcome" on this Motion, and because Plaintiff alleged that Doe 1 was an
17 employee acting within the course and scope of his employment, Plaintiff cannot establish
18 a claim against Doe 1. *Id.* at 9:3-5 (citing NOR at 11).

19 Plaintiff's complaint alleges two claims for relief: The first claim is for negligence
20 against "[t]he defendants who negligently owned, maintained, managed and operated the
21 described premises," which Plaintiff lists as "Sea World Parks & Entertainment, Inc. and
22 Does 1 to 25." NOR at 10. The second claim is for willful failure to warn, CAL. CIV. CODE
23 § 846, against "[t]he defendant owners who willfully or maliciously failed to guard or warn
24 against a dangerous condition, use, structure, or activity were Sea World Parks &
25 Entertainment, Inc. and Does 1 to 25." *Id.*

26 Plaintiff alleges that with respect to Doe 1, he was an employee of Defendant and
27 acting within the course and scope of his employment. NOR at 11. As to Defendant and
28 Does 2 through 25, Plaintiff alleges that they (1) "are vicariously liable for all of Plaintiffs

1 injuries and harm . . . caused by the wrongful conduct of its employees and agents,
2 including the conduct of DOE 1,” (2) “had a duty to act in a reasonable manner and to
3 properly investigate their employees and agents, and gauge their competence before hiring
4 them,” and (3) are “directly liable for its breaches of the duties it owed to Plaintiff arising
5 from its duties to hire, retain, supervise and train its employees.” *Id.* As to Doe 1, Plaintiff
6 alleges that he “was unfit or incompetent to perform the work for which they were hired.”
7 *Id.* However, he also alleges that Defendant’s “negligence in the hiring, supervising,
8 retaining, and training of DOE 1 was a substantial factor in causing Plaintiff’s harm.” *Id.*
9 In other words, Plaintiff’s own complaint alleges that to the extent Doe 1 caused Plaintiff’s
10 harm, Defendant is to blame for hiring Doe 1 in the first place.

11 “In determining whether there is complete diversity, district courts may disregard
12 the citizenship of a non-diverse defendant who has been fraudulently joined.” *Grancare,*
13 *LLC v. Thrower by & through Mills*, 889 F.3d 543, 548 (9th Cir. 2018) (citing *Chesapeake*
14 *& Ohio Ry. Co. v. Cockrell*, 232 U.S. 146, 152 (1914)). The Ninth Circuit has established
15 that fraudulent joinder arises where either (1) actual fraud exists in the pleading of
16 jurisdictional facts or (2) the plaintiff is unable to establish a cause of action against the
17 non-diverse party in state court. *Id.* (quoting *Hunter v. Philip Morris USA*, 582 F.3d 1039,
18 1044 (9th Cir. 2009)). Under the second “path” to fraudulent joinder, a party may show
19 fraudulent joinder by proving that “an ‘individual[] joined in the action cannot be liable
20 on any theory.’” *Id.* (alteration in original) (quoting *Ritchey v. Upjohn Drug Co.*, 139 F.3d
21 1313, 1318 (9th Cir. 1998)). However, a defendant is not fraudulently joined where “a
22 deficiency in the complaint can possibly be cured by granting the plaintiff leave to
23 amend.” *Grancare*, 889 F.3d at 550; *see also Sessions v. Chrysler Corp.*, 517 F.2d 759,
24 760-61 (9th Cir. 1975) (discussing that the label of a claim is irrelevant “so long as
25 [plaintiff] was entitled to relief against [non-diverse defendants] on any theory.”).

26 Here, Plaintiff alleges that Doe 1 negligently “crushed and fractured” his left arm
27 and wrist. Mot. at 6:3-4. He contends that it is hard to conceive of an argument there is
28 “no possibility California law might impose liability” where it is alleged Doe 1 directly

1 caused the injury in question. Mot. at 6:4-8. Nonetheless, while the complaint alleges Doe
2 1's direct causation and negligence, it also alleges Defendant's vicarious liability for such
3 negligence. *Id.* at 8:8-11 (citing *See* Exhibit 1 to NOR at 5; *see also* CACI series 3700).

4 Defendant points out that "[t]he cases cited by Plaintiff involve non-employee Doe
5 defendants or cases where the Defendants did not raise the issue of fraudulent joinder." *Id.*
6 at 8:9-10. For example, Plaintiff relies on *Sandoval*, but in that case, fraudulent joinder
7 was not argued by defendants, so the court declined to consider it. *Sandoval*, 2018 WL
8 1989528 at *3-4, fn. 4. Likewise, in *Barnes*, "the Court was only asked to decide the
9 singular question of whether it could look at the Doe's citizenship when deciding remand."
10 2019 WL 6608735 at *2-3. Further, in both *Gardiner* and *Johnson*, the doe defendants
11 were not employees of the named defendant, and as a result, there were no employer
12 defendants to assume vicarious liability for the actions of the defendants. *Gardiner*, 147
13 F.Supp.3d at 1036; *Johnson*, 475 F. Supp. 3d. at 1084-1085. Moreover, in *Gardiner*, unlike
14 in this case, the plaintiff alleged no details regarding their identities. 147 F.Supp.3d at
15 1036. Similarly, in *Johnson*, the doe defendants "were not fraudulently joined because
16 they **could** be found individually liable for intentional infliction of emotional distress."
17 *Oppo.* at 4:1-3 (citing *Johnson*, 475 F. Supp. 3d. at 1084-1085) (emphasis added). Rather,
18 the *Johnson* doe defendants were not alleged to be agents, supervisors, or employees of
19 Starbucks, whereas in this case, "DOE 1 is alleged to be an employee of SeaWorld sued
20 for acts within the course of his/her employment." *Id.* at 4:3-5 (citing ECF No. 1 at 11;
21 Mot. at 5). Thus, in this case, unlike in *Johnson*, Plaintiff's pleadings establish that the
22 sole basis of the claim against Doe 1 is that he was negligent in performing duties within
23 the scope of his employment. *Oppo.* at 9:7-8. Thus, Defendant will be vicariously liable
24 for Doe 1's actions.

25 In *Goldsmith*, the plaintiff brought claims for negligence and conversion against the
26 doe defendants along with a separate claim for vicarious liability alleging that at all relevant
27 times, the doe defendants were acting within their scope of employment. 2020 WL
28 1650750 at *4-5. Thus, the court found that even if the doe defendants were named, their

1 joinder was unnecessary “given the nature of Plaintiff’s allegations” (*i.e.*, vicarious
2 liability). *Id.* As a result, it held that that the presence of the doe defendants did not defeat
3 diversity jurisdiction, and the defendant properly removed the case based on diversity
4 jurisdiction. *Id.* Defendant argues that “as in *Goldsmith*, the joinder of DOE 1 is
5 unnecessary because he/she was admittedly acting within the course and scope of their
6 employment and as a result SeaWorld is vicariously liable for his/her actions.” *Oppo.* at
7 5:20-25. Defendant contends that the Court should deny Plaintiff’s Motion because “as in
8 *Goldsmith*, Plaintiff includes DOE 1 for the sole purpose of defeating diversity
9 jurisdiction.” *Oppo.* at 9:11-13.

10 With respect to whether an employee, like Doe 1, may be held liable, California
11 Labor Code § 2802 (“Section 2802”) requires “[a]n employer [to] indemnify his or her
12 employee for all necessary expenditures or losses incurred by the employee in direct
13 consequence of the discharge of his or her duties, or of his or her obedience to the directions
14 of the employer, even though unlawful.” CAL. LAB. CODE § 2802(a). Consequently,
15 Section 2802 “requires an employer to defend or indemnify an employee who is sued by
16 third persons for conduct in the course and scope of his employment.” *Davis v. Wal-Mart*
17 *Stores Inc.*, No. 2:16-cv-9480-JFWAJWX, 2017 WL 499595, at *4-5 (C.D. Cal. Feb. 6,
18 2017). It “shows a legislative intent that duty related losses ultimately fall on the business
19 enterprise, not on the individual employee.” *Janken v. GM Hughes Electronics*, 46 Cal.
20 App. 4th 55, 74, n.24 (1996). This conforms with California’s “strong public policy that
21 favors the indemnification (and defense) of employees by their employers for claims and
22 liabilities resulting from the employees’ acts within the course and scope of their
23 employment.” *Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937, 952 (2008). However,
24 despite all this, “[s]ection 2802 is not a doctrine of immunity.” *Davis*, 2017 WL 499595,
25 at *4-5. Whether actions are committed within the scope of employment under Section
26 2802 is akin to whether employer’s may be held liable for an employee’s actions under the
27 doctrine of respondeat superior. *Exec. Sec. Mgmt., Inc. v. Dahl*, 830 F. Supp. 2d 870, 882
28 (C.D. Cal. 2011). Indeed, similar to Section 2802, “[u]nder the doctrine of *respondeat*

1 superior, an employer is vicariously liable for his employee’s torts committed within the
2 scope of the employment.” *Calderon v. Lowe’s Home Centers, LLC*, No. 2:15-cv-01140-
3 ODW, 2015 WL 3889289, at *4 (C.D. Cal. June 24, 2015) (citing *Perez v. Van Groningen*
4 & Sons, Inc., 41 Cal. 3d 962, 967 (1986)). “A plaintiff seeking to hold an employer liable
5 for injuries caused by employees acting within the scope of their employment is not
6 required to name or join the employees as defendants.” *Perez v. City of Huntington Park*,
7 7 Cal. App. 4th 817, 820 (1992).

8 In *Calderon v. Lowe’s Home Centers, LLC*, No. 2:15-CV-01140-ODW, 2015 WL
9 3889289, at *4 (C.D. Cal. June 24, 2015), the Central District of California denied the
10 plaintiff’s motion to remand by, *inter alia*, holding that “[b]ecause the Court finds that the
11 inclusion of Defendant Kennard in the present case is not necessary to afford Plaintiff the
12 ability to obtain complete relief, this factor weighs against permitting remand.” The
13 plaintiff, a California citizen, sued the defendant, Lowe’s Home Centers, LLC, a North
14 Carolina citizen, in the Superior Court for the County of Los Angeles for premises liability.
15 *Id.* at *1. After the defendant removed the case to federal court, the plaintiff filed an
16 amendment to the complaint substituting in an individual defendant, the manager of
17 Lowe’s, as a previously named Doe defendant and sought to remand the case, arguing the
18 manager, a California citizen, destroyed complete diversity. *Id.* In addressing the issue of
19 whether the addition of the manager destroyed diversity in light of Lowe’s argument that
20 the plaintiff improperly added the manager post-removal for the sole purpose of destroying
21 complete diversity, the court rejected the plaintiff’s argument that the manager was
22 “necessary for a just adjudication” of the case. *Id.* at *2-4. It reasoned that even
23 “[a]ssuming *arguendo*, that [the manager] could be found negligent in this case, it would
24 be Lowe’s, the deep-pocket employer, who will be ultimately responsible for any damages
25 under the doctrine of *respondeat superior*.” *Id.* It noted that for that reason, “juries are
26 loath to saddle a lowly employee with a joint and several judgment.” *Id.* “Given the
27 relative financial positions of most companies versus their employees, the only time an
28 employee is going to be sued is when it serves a tactical legal purpose, like defeating

1 diversity.” *Id.* Thus, the *Calderon* court found that the plaintiff’s allegations against the
2 manager (1) did “not indicate that he [was] necessary to or involved in Plaintiff’s
3 allegations against Defendant Lowe’s,” (2) “simply duplicate the allegations Plaintiff
4 asserts against Defendant Lowe’s,” and (3) contained no allegations of actions by the
5 manager outside the scope of his employment, or any basis for distinguishing him from
6 Lowe’s. *Id.* Thus, the court found that the inclusion of the manager was not necessary to
7 afford the plaintiff the ability to obtain complete relief. *Id.*

8 By contrast, in *Davis v. Wal-Mart Stores Inc.*, the court granted a motion to remand
9 where, as in *Calderon*, the plaintiff, a California citizen, filed suit in the Los Angeles
10 County Superior court, against a store, Wal-Mart Stores, Inc.; Huffey Corporation; and
11 Ebony Storey, a Wal-Mart store manager and California resident. No.
12 216CV9480JFWAJWX, 2017 WL 499595, at *2 (C.D. Cal. Feb. 6, 2017). In granting the
13 plaintiff’s motion to remand, the court found that Section 2802 did not preclude a finding
14 of liability against the manager. *Id.* at *4-5. The court reasoned that “[w]hether Wal-Mart
15 has a duty to defend and indemnify Defendant Storey has no bearing on whether she may
16 or may not, under settled California law, be held liable for negligent hiring, supervision,
17 retention, and training.” *Id.* at *5. As a result, it held that the defendants failed to meet
18 their burden of showing that the plaintiff did not and could not state a claim for negligent
19 hiring against the manager under settled California law. *Id.* at *5.

20 Defendant argues that “[t]he doctrine of *respondeat superior*, codified in California
21 Labor Code § 2802, establishes that the employer, not the employee, is liable for the
22 employee’s acts within the course and scope of employment.” *Oppo.* at 9:9-11. Defendant
23 contends that “[n]umerous state and federal decisions have affirmed that the employer, not
24 the employee, is liable” for actions committed within the course and scope of employment.
25 *Id.* at 6:23-7:23 (citing *Edwards*, 44 Cal. 4th at 952; *Zogbi v. Federated Depart. Store*, 767
26 F. Supp. 1037, 1041 (C.D. Cal. 1991) (holding that a cause of action could not be asserted
27 against the defendant’s employees under California law because the employees “could not
28 be liable for any breach thereof since they were acting within the course and scope of their

1 duties on behalf of their employer”); *Calderon*, 2015 WL 3889289, at *4). On the one
2 hand, the Court agrees with the *Davis* court that whether Defendant, as Doe 1’s employer,
3 has a duty to defend and indemnify, has no bearing on whether or not Plaintiff may sue
4 Doe 1 for negligence. 2017 WL 499595 at *4-5. “[I]f there is a possibility that a state
5 court would find that the complaint states a cause of action against any of the resident
6 defendants, the federal court must find that the joinder was proper and remand the case to
7 the state court.” *Hunter*, 582 F.3d at 1046 (citation omitted). However, the Court also finds
8 persuasive authority suggesting that the naming of an employee in such cases logically can
9 only serve to destroy diversity.

10 For instance, Defendant relies on *Linnin v. Michielsens*, 372 F. Supp. 2d 811, 823
11 (E.D. Va. 2005), where the Eastern District Court of Virginia denied the plaintiff’s motion
12 to remand, finding the plaintiff had fraudulently joined an employee-mechanic of the
13 subject faulty equipment to defeat federal subject matter jurisdiction. *Id.* at 823. The
14 plaintiff, the executor of the estate of her decedent husband, and a resident of Virginia,
15 sued four defendants for negligence and products liability in Norfolk, Virginia. *Id.* at 814-
16 15. The defendants included three out of state corporations involved in some fashion with
17 the aerial lifts on which the decedent was injured, and one mechanic, who was an employee
18 for the one of the corporate defendants and also a Virginia resident. *Id.* at 815. First, the
19 court concluded that there was no possibility of a successful claim against the mechanic
20 because he could not have foreseen the accident that was to occur, and thus, did not have a
21 duty to warn the decedent, Mr. Linnin, about the lift. *Id.* at 820. Hence, it reasoned that
22 there was no possibility the mechanic would be held liable under Virginia law. *Id.* at 822-
23 23. Second, the court concluded that if the mechanic could be found liable, the plaintiff
24 had no intention of getting a joint judgment against both the mechanic and his employer:
25 “Any experienced trial lawyer such as the plaintiff’s attorney who actually desires a
26 judgment against a target defendant would never seek a joint judgment against a target
27 defendant and a lowly employee for fear that the judgment amount would be reduced or
28 negated out of sympathy for the employee.” *Id.* at 823-24 (internal citations and quotations

1 omitted). Finally, the court noted that “[c]lever pleading, of course, is neither unethical
2 nor illegal—it is, in fact, good lawyering”; however, “good lawyering should not defeat
3 good judging, which requires a court to call things as it sees them.” *Id.* at 825. Thus, the
4 court held that the mechanic had been fraudulently joined, denied the plaintiff’s motion to
5 remand, and ordered that the mechanic be dismissed from the case. *Id.* at 825, 827.

6 “An employee may act ‘within the scope of employment’ even if the given act is
7 illegal and not in the employer’s interests.” *O’Hara v. Teamsters Union Loc. No. 856*, 151
8 F.3d 1152, 1157 (9th Cir. 1998). “[A] broad definition of ‘within the scope of employment’
9 ensures that third parties injured by an employee have a remedy against a party that is more
10 likely to be able to pay a judgment—i.e., employers—under the theory of respondeat
11 superior.” *Id.* at 1158. Here, Doe 1 was acting within the course and scope of his
12 employment at the time Plaintiff sustained his injuries, and Plaintiff’s allegations confirm
13 this. *See* NOR at 11. At this early stage in the lawsuit, the Court finds that Plaintiff lacks
14 a true intent to obtain a judgment against Doe 1. If, at a later date, Plaintiff believes it is
15 appropriate to add Doe 1 as a named defendant, Plaintiff may seek the leave of this Court
16 to do so under Rule 15 of the FRCP, as which point in time, the Court will evaluate the
17 propriety of joinder, including under Rule 19 of the FRCP.

18 **C. Doe 1 Is Not an Indispensable Party**

19 Rule 19(a) of the FRCP covers mandatory joinder and requires joinder of a person
20 subject to service of process, who if joined, would not deprive the court of subject-matter
21 jurisdiction, when (1) “the court cannot accord complete relief among existing parties” if
22 that person is not joined or (2) “that person claims an interest relating to the subject of the
23 action and is so situated that disposing of the action in the person’s absence may: (i) as a
24 practical matter impair or impede the person’s ability to protect the interest; or (ii) leave an
25 existing party subject to a substantial risk of incurring double, multiple, or otherwise
26 inconsistent obligations because of the interest.” “[T]he fact that a third party indemnifies
27 one of the named parties to the case does not, as a general rule, influence the diversity
28 analysis.” *Lewis v. Clarke*, 137 S. Ct. 1285, 1294 (2017). Rather, “a party does not become

1 a required party for joinder purposes under Federal Rule of Civil Procedure 19 simply by
2 virtue of indemnifying one of the named parties.” *Id.* “Rule 21 gives courts the ‘discretion
3 to dismiss [a party] from the suit in order to perfect diversity jurisdiction, provided that she
4 is not an indispensable party under Rule 19.’” *Bowles v. Constellation Brands, Inc.*, 444
5 F. Supp. 3d 1161, 1181, n.11 (E.D. Cal. 2020) (quoting *Louisiana Mun. Police Employees’*
6 *Ret. Sys. v. Wynn*, 829 F.3d 1048, 1057 (9th Cir. 2016) (alteration in original); *see also*
7 FED. R. CIV. P. 21 (providing that “[m]isjoinder of parties is not a ground for dismissing an
8 action,” and that a “court may at any time, on just terms, add or drop a party”).

9 For example, in *Linnin*, the court also acknowledged the defendants’ argument that
10 the mechanic was a nominal party who should be dropped from the lawsuit because the
11 mechanic’s employer was the party responsible for any loss resulting from its employee’s
12 negligence. 372 F. Supp. 2d at 825. It reiterated that “a court may maintain diversity
13 jurisdiction under Rule 21 as long as the parties are not indispensable under Rule 19.” *Id.*
14 at 826. Because “settled authorities have held that a tortfeasor with the usual ‘joint-and-
15 several’ liability is merely a permissive party to an action against another with like
16 liability,” the mechanic was a nominal party, which the court dismissed. *Id.* at 826.

17 In this case, if Doe 1 is a California resident, as Plaintiff alleges (despite the lack of
18 any evidence of this), his addition to this lawsuit would destroy diversity, depriving the
19 Court of subject-matter jurisdiction. However, Doe 1 is not necessary to afford complete
20 relief. Plaintiff alleges that Doe 1’s actions were taken within the course and scope of his
21 employment, and he only alleges negligent behavior on Doe 1’s part. Thus, Defendant, the
22 deep pockets in this scenario, would be liable for any behavior for which Doe 1 may be
23 responsible. As a result, not only is it improper for the Court to consider Doe 1’s
24 citizenship at this point, but it appears Plaintiff’s only reason for raising Doe 1’s citizenship
25 may be to destroy diversity. Doe 1 is not an indispensable party.

26 **D. Dismissal of Doe Defendants**

27 The Supreme Court has held that “[w]hen a situation is covered by one of the Federal
28 Rules, the question facing the court is a far cry from the typical, relatively unguided *Erie*

1 Choice: the court has been instructed to apply the Federal Rule, and can refuse to do so
2 only if the Advisory Committee, this Court, and Congress erred in their prima facie
3 judgment that the Rule in question transgresses neither the terms of the Enabling Act nor
4 constitutional restrictions.” *Hanna v. Plumer*, 380 U.S. 460, 471 (1965). *Lindley* held that
5 California’s doe defendant practice qualified as substantive law, and thus, applied in
6 federal court in diversity jurisdiction cases under the *Erie* doctrine. *See* 780 F.2d at 800-
7 01. However, *Lindley* preceded Congress’ enactment of Section 1441(b) in 1988. *See*,
8 *e.g.*, *Bryant II*, 844 F.2d at 616 (Kozinski, J., dissenting) (“The *Lindley* approach is
9 foreclosed by the Supreme Court’s decision in *Hanna v. Plumer*, 380 U.S. 460 (1965),”
10 which held “that if there is a direct conflict between the Federal Rules and state law, the
11 Federal Rule takes precedence unless, of course, the Federal Rule is invalid.”). Judge
12 Kozinski of the Ninth Circuit explained why *Lindley* seems unlikely to remain good law:

13 [I]t is clear that California’s Doe pleading practice is supplanted
14 by the Federal Rules of Civil Procedure once the case is removed
15 to federal court. *Lindley*’s contrary conclusion, 780 F.2d at 800-
16 01, reached without the benefit of the Supreme Court’s
discussion in *Burlington*, is no longer plausible.

17

18 The conflict between state and federal procedure in this case is
19 clear. California’s Doe pleading rule has two components. First,
20 Cal. Civ. Proc. Code § 474 provides that a defendant may be
21 designated by a fictitious name; the real name may be substituted
22 whenever the true identity is discovered. Next, Cal. Civ. Proc.
23 Code § 583.210 provides that a plaintiff has up to three years
24 after filing to serve the summons and complaint on any
25 defendant. California courts have interpreted this to extend the
time available to replace Doe defendants with named parties.
Lesko v. Super. Ct., 127 Cal. App. 3d 476, 481-82 (1982). The
analogous Federal Rules are Fed. R. Civ. P. 4(j), 15(c), 19, 20
and 21.

26 Rule 4(j) provides that the defendant must be served within *120*
27 *days* of the filing of the complaint; absent good cause, failure to
28 serve within this time renders the complaint subject to dismissal.

1 This provision cannot be reconciled with Cal. Civ. Proc. Code §
2 583.210, which allows three years for service.

3

4 Overruling *Lindley* would do much to resolve the confusion in
5 this area of the law . . . If and when new parties are later
6 discovered, they may be added in accordance with the Federal
7 Rules of Civil Procedure.

8 *Bryant II*, 844 F.2d at 616 (Kozinski, J., dissenting).

9 Although courts appear confused as to whether *Lindley* remains good law, other
10 cases from the Ninth Circuit, which have not been overruled, have repeatedly held that
11 federal courts do not permit the use of doe defendants. *See, e.g., Molnar v. Nat'l Broad.*
12 *Co.*, 231 F.2d 684, 687-88 (9th Cir. 1956) (noting that the “attempt to join fictitious
13 defendants is said to be justified in California practice,” but “no one of the Rules of Civil
14 Procedure under which federal courts operate gives warrant for the use of such a device”);
15 *accord Tolefree v. Ritz*, 382 F.2d 566, 567 (9th Cir. 1967) (holding that the case “was also
16 properly dismissed as to the fictitious defendants,” and “[i]f plaintiff later ascertains the
17 names of additional persons he wishes to join as defendants, the Federal Rules of Civil
18 Procedure provide a way of doing so”); *Craig v. United States*, 413 F.2d 854, 856 (9th Cir.
19 1969) (pointing out that “[t]he only purpose the naming of fictitious defendants could
20 possibly serve is to make it possible to substitute named defendants after the statute of
21 limitations has run,” but FRCP 15(c) “provides the only way in which defendants, not
22 accurately named in a pleading before the limitation period has run, may be accurately
23 named afterwards” and “makes no mention of the pleading of fictitious parties”); *Lubin v.*
24 *Sybedon Corp.*, 688 F. Supp. 1425, 1456–57 (S.D. Cal. 1988) (Enright, J.) (striking the doe
25 defendants from the case after noting that “[t]he Ninth Circuit has repeatedly held that a
26 suit naming Doe defendants may not be maintained in federal court.”); *Indian Hills*
27 *Holdings, LLC v. Frye*, No. 3:20-cv-00461-BEN-AHG, 2021 WL 1139419, at *9 (S.D.
28 Cal. Mar. 25, 2021) (Benitez, J.) (noting that “[u]nlike California code pleading,” the FRCP
“neither authorize nor prohibit the use of fictitious parties; however, FRCP 10 does require

1 a plaintiff to include the names of all parties in his complaint.”).

2 To the extent the issues of whether the use of doe defendants is (1) an issue of
3 procedural or substantive law and (2) permitted in federal court in diversity jurisdiction
4 cases, other courts have concluded that doe defendants are not permitted in federal court.
5 *See, e.g., Howell by Goerdt v. Trib. Ent. Co.*, 106 F.3d 215, 218 (7th Cir. 1997) (holding
6 that “because the existence of diversity jurisdiction cannot be determined without
7 knowledge of every defendant’s place of citizenship, ‘John Doe’ defendants are not
8 permitted in federal diversity suits” except where a John Doe is a nominal party, irrelevant
9 to diversity jurisdiction, or where a case is removed to federal court and all parties other
10 than the doe defendant are diverse); *Nat’l Commodity & Barter Ass’n, Nat’l Commodity*
11 *Exch. v. Gibbs*, 886 F.2d 1240, 1245 (10th Cir. 1989) (per curiam) (“Absent permission by
12 the district court to proceed anonymously, and under such other conditions as the court
13 may impose (such as requiring disclosure of their true identity under seal), the federal
14 courts lack jurisdiction over the unnamed parties, as a case has not been commenced with
15 respect to them.”); *accord United States ex rel. Little v. Triumph Gear Sys., Inc.*, 870 F.3d
16 1242, 1249 (10th Cir. 2017); *Saxton v. ACF Indus., Inc.*, 254 F.3d 959, 963 (11th Cir.
17 2001); *Odell v. One W. Bank, NA*, No. CV 16-0984, 2016 WL 3551621, at *1 (E.D. Pa.
18 June 30, 2016); *Controlled Env’t Sys. v. Sun Process Co.*, 936 F. Supp. 520, 521-22 (N.D.
19 Ill. 1996); *Brewer v. Villanova*, No. CIV. A. 90-7886, 1991 WL 274540, at *4–5 (E.D. Pa.
20 Dec. 18, 1991).

21 Because the weight of authority indicates that the FRCP do not permit doe
22 defendants, even in cases arising out of diversity jurisdiction, the Court dismisses Does 2
23 through 25 *without prejudice* because there are no allegations alleging their specific
24 individual potentially liability. Even if the Court allowed the doe defendants to remain in
25 the case, Plaintiff would still be required to seek leave of the Court to substitute in their
26 true names by filing a motion for leave to amend pursuant to Rule 15 of the FRCP. With
27 respect to Doe 1, against whom Plaintiff has made specific allegations, the Court orders
28 that Plaintiff must seek to discover his identity and serve him in compliance with FRCP 4.

1 Upon discovering the true identity of Doe, Plaintiff must file and serve a motion for leave
2 to amend the complaint to substitute in Doe 1's true name. Upon doing so, the Court will
3 further evaluate whether Doe 1's joinder is appropriate in this case under the provisions of
4 FRCP 19 and 21.

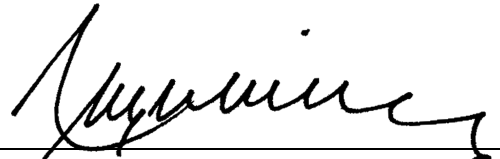
5 **V. CONCLUSION**

6 For the above reasons, the Court orders as follows:

- 7 1. Plaintiff's Motion to Remand is **DENIED**.
- 8 2. Does 2 through 25 are dismissed *without prejudice*.
- 9 3. Plaintiff must seek leave to amend his complaint to substitute in Doe 1's true
10 name and identity within sixty (60) days. If Plaintiff fails to seek such leave to amend, the
11 Court will dismiss Doe for failure to serve Doe 1 in compliance with Rule 4 of the Federal
12 Rules of Civil Procedure.

13 **IT IS SO ORDERED.**

14 DATED: May 10, 2021



15 **HON. ROGER T. BENITEZ**
16 United States District Judge