

**THE DISTRICT OF GUAM**

ROBERT JAY MARKS,

Plaintiff,

vs.

LARS FILIP HELLMONT, DR. DEIDER  
NEUPER, as Trustee for BH Stiftung, and  
FUJITA PROPERTY GUAM, INC.,

Defendant.

CIVIL CASE NO. 19-000142

**ORDER ON DEFENDANT'S MOTION  
TO DISMISS**

This matter is before the court on Defendant Fujita Property Guam, Inc.'s motion to dismiss Plaintiff Robert Marks's Amended Complaint. Def.'s Mot. to Dismiss, ECF No. 37. For the following reasons, the court **DENIES** the motion and **REMANDS** the case to the Superior Court of Guam.

**I. Factual Background and Procedural History****A. Superior Court of Guam Proceedings**

This case arises from an employment contract dispute between Plaintiff Robert Mark, a Guam citizen, and Defendant Lars Hellmont, a citizen of Sweden and the United States. Pl.'s Am. Compl. ¶¶ 1-3, ECF No. 20. In early 2014, Lars was working on behalf of BH Stiftung (BH Trust), a Switzerland-based trust. *Id.* ¶¶ 7, 55. On March 13, 2014, Lars sent an email (the "Original Agreement") to Marks, purportedly offering Marks employment as the "administrator of the trust and its two affiliated Foundations." *Id.* Ex. A. The Original Agreement was addressed to "Mr. Robert Marks, C/O Fujita Property Guam Inc." and the signature line at the bottom listed Lars as "Trustee, BH Trust." *Id.* Under the terms of the agreement, Marks would start working

1 on May 15, 2014 and would receive an \$80,000.00 signing bonus with an \$825,000.00 salary for  
2 two years. *Id.*

3 Marks moved to Guam and provided his “professional and business executive  
4 management services” to Defendants<sup>1</sup> for several years; however, Marks alleges he was never  
5 paid. *Id.* ¶¶ 9-12, 17-19. Marks complained several times to Lars, but Lars provided excuses and  
6 requested extensions for payment. For example, Lars told Marks he would have to see if he could  
7 “release Zurich [sic] funds or advance on the Zurich payment first prior to get together and sign  
8 in a non-taxable [sic] jurisdiction” or that Marks should be patient because Lars could “only push  
9 so hard with the Trust Administrator.” *Id.* ¶¶ 17-21.

11 Endeavoring to collect on his compensation, Marks allegedly committed Lars to pay \$1.6  
12 million to satisfy the terms of the Original Agreement (the “Substitute Agreement”) in December  
13 2016. *Id.* ¶ 22. Seeking additional security, Marks sent Lars two draft promissory notes on  
14 January 28, 2019 requesting payment under the Substitute Agreement. *Id.* ¶¶ 23-26.

16 By June of 2019, no payment had occurred under the Original Agreement, the Substitute  
17 Agreement, or the promissory notes, and Marks finally raised the possibility of litigation with  
18 Lars. *Id.* at ¶¶ 26-28. Asking Marks to hold off on a lawsuit to see if they could “try to settle  
19 without lawyers,” Lars exchanged proposed settlement documents with Marks on June 10, 2019.  
20 *Id.* at ¶¶ 29-34. These negotiations fell through, and on September 11, 2019, Marks filed a  
21 lawsuit in Superior Court of Guam, naming Lars and Dr. Deider Neuper<sup>2</sup> as Defendants. *See*  
22 Pl.’s Compl., ECF No. 1 at 4-7.

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26 <sup>1</sup> The Amended Complaint (ECF No. 20) lumps Defendant Lars Hellmont, Defendant Deider Neuper, and  
27 Defendant Fujita Property Guam, Inc. together and refers to them collectively as “LARS.” The name “Lars” as used  
in this Order represents Defendant Lars Hellmont in his individual capacity.

28 <sup>2</sup> The settlement documents list Defendant Dr. Deider Neuper as Trustee of BH Trust. Pl.’s Am. Compl. ¶ 30.  
However, the parties have been unable to locate Defendant Neuper, and Lars disavows any knowledge of his  
location. *Id.* ¶ 35.

1       B. Removal and Joinder of Defendant Fujita

2             On October 11, 2019, Lars removed the matter to this court pursuant to 28 U.S.C. § 1446  
3 on the basis of diversity jurisdiction. *See* Notice of Removal, ECF No. 1. On June 19, 2020,  
4 Plaintiff filed an Amended Complaint and joined Defendant Fujita Property Guam, Inc. Pl’s Am.  
5 Compl., ECF No. 20.

6       C. Fraudulent Joinder and Fujita’s Motion to Dismiss

7             Fujita Property Guam, Inc., is a real estate management and development company  
8 incorporated in Guam with head offices in Guam; consequently, Fujita’s presence destroys  
9 complete diversity in this case. *See id.* ¶ 5. After the joinder of a non-diverse defendant in a  
10 removed diversity case, “the district court has two options...the court may deny joinder, or  
11 permit joinder and remand the action to the State court.” *Morris v. Princess Cruises, Inc.*, 236  
12 F.3d 1061, 1068 (9th Cir. 2001) (internal citations omitted).

13             However, shortly after its joinder, Fujita filed a motion to dismiss the claims against  
14 Fujita under the doctrine of “fraudulent joinder.” Def.’s Mot. to Dismiss, ECF No. 37. Fujita  
15 argues there is no possibility that Marks can recover from Fujita, and thus Marks fraudulently  
16 joined Fujita to force the case back to the Superior Court of Guam; consequently, the court  
17 should ignore Fujita’s citizenship for purposes of this lawsuit. On the other hand, Marks argues  
18 the Amended Complaint adequately shows he may possibly recover against Fujita. To bolster his  
19 argument, Marks has filed three motions seeking to supplement the record with new documents  
20 recently obtained in discovery. On March 3, 2021, the court granted Marks’s first and second  
21 motions to supplement and allowed Fujita to file a sur-reply. ECF No. 107. Marks filed a third  
22 motion to supplement on February 17, 2021, which remains pending. ECF No. 98.

23       **II. Discussion**

24       A. Legal Standard

25             Under the doctrine of fraudulent joinder, “[a] district court may disregard a non-diverse  
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1 party named in the state court complaint and retain federal jurisdiction if the non-diverse party is  
2 joined as a sham or if the joinder is fraudulent.” *Plute v. Roadway Package System, Inc.*, 141 F.  
3 Supp. 2d 1005, 1008 (N.D. Cal. 2001). Joinder is fraudulent when “the plaintiff fails to state a  
4 cause of action against a resident defendant, and the failure is obvious according to the settled  
5 rules of the state...”. *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998).

6 On the other hand, “[i]f there is doubt as to whether plaintiff[s] have stated a cause of  
7 action, the joinder is not fraudulent, and the case should be remanded.” *Parks v. New York Times*  
8 *Company*, 308 F.2d 474, 478 (5th Cir.1962). Stated another way, “if there is a possibility that a  
9 state court would find that the complaint states a cause of action against any of the resident  
10 defendants, the federal court must find that the joinder was proper and remand the case to the  
11 state court.” *Grancare, LLC v. Thrower by and through Mills*, 889 F.3d 543, 548 (9th Cir. 2018)  
12 (internal quotations omitted). The bar is high; “[t]here is a presumption against finding  
13 fraudulent joinder, and defendants who assert that plaintiff has fraudulently joined a party carry a  
14 heavy burden of persuasion.” *Nishimoto v. Federman–Bachrach & Assocs.*, 903 F.2d 709, 712 n.  
15 3 (9th Cir. 1990). It requires “a near certainty” that joinder of the party was fraudulent. *Lewis v.*  
16 *Time, Inc.*, 83 F.R.D. 455, 466 (E.D. Cal. 1979), *aff’d*, 710 F.2d 549 (9th Cir. 1983).

17 In analyzing whether a plaintiff’s case presents a possibility of recovery against a  
18 defendant, the court may go “somewhat further” than the pleadings as “[t]he defendant [] is  
19 entitled to present the facts showing the joinder to be fraudulent.” *Ritchey*, 139 F.3d at 1318. A  
20 court may consider affidavits or other evidence to determine if the joinder was a sham, including  
21 the consideration of “summary judgment-type evidence such as affidavits and deposition  
22 testimony.” *Morris*, 236 F.3d at 1068 (internal quotations omitted). Despite the consideration of  
23 “summary judgment-type evidence,” the court is to only engage in a “summary inquiry []  
24 appropriate only to identify the presence of discrete and undisputed facts that would preclude  
25 plaintiff’s recovery against the in-state defendant.” *Id.* at 1044. Furthermore, “the inability to  
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1 make the requisite decision in a summary manner itself points to an inability of the removing  
2 party to carry its burden.” *Id.* “[A]ll disputed questions of fact and all ambiguities in the  
3 controlling state law in favor of the non-removing party.” *Plute*, 141 F. Supp. 2d at 1008.

4 While the “fraudulent joinder standard shares some similarities with the analysis under  
5 Rule 12(b)(6)...the test for fraudulent joinder and for failure to state a claim under Rule 12(b)(6)  
6 are not equivalent.” *Grancare*, 889 F.3d at 549. Fraudulent joinder is a “jurisdictional inquiry”  
7 and not an “adjudication on the merits” and is more akin to the “wholly insubstantial and  
8 frivolous” standard for dismissing claims under Rule 12(b)(1) for lack of federal question  
9 jurisdiction.” *Id.* While a Rule 12(b)(6) motion analyzes the sufficiency of a claim, fraudulent  
10 joinder analyzes the viability of the claim; “arguments [that] go to the sufficiency of the  
11 complaint, rather than to the possible viability of [] claims [] do not establish fraudulent joinder.”  
12 *Id.* at 552. Moreover, “[a]ll doubts concerning the sufficiency of a cause of action because of  
13 inartful, ambiguous or technically defective pleading must be resolved in favor of remand” and a  
14 “lack of clear precedent does not render the joinder fraudulent.” *Plute*, 141 F. Supp. 2d at 1008  
15 (referencing *Gaus v. Miles, Inc.*, 980 F.2d 564, 566–67 (9th Cir. 1992)).

## 18 B. Analysis

19 The framework above requires the court to analyze the current record to determine  
20 whether Marks has any possible chance of succeeding against Fujita on his claims in the  
21 Amended Complaint, which assert eight violations of Guam law.<sup>3</sup> Fujita presents three main  
22 arguments for why Marks has no possibility of recover on any of the claims presented in the  
23 Amended Complaint: (1) Fujita was not a party to any contract at all, and thus cannot be held  
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26 <sup>3</sup> The Amended Complaint lists eight causes of action under Guam law: (1) breach of contract for the Original  
27 Agreement, (2) breach of the covenant of good faith and fair dealing for the Original Agreement, (3) breach of  
28 contract for the Substitute Agreement, (4) breach of the covenant of good faith and fair dealing for the Substitute  
Agreement, (5) fraud in the inducement for the Original Agreement, (6) fraud in the performance for the Original  
Agreement, (7) fraud in the inducement for the Substitute Agreement, (8) and fraud in the performance for the  
Substitute Agreement.

1 liable for any breach; (2) the claims alleging fraud are not pled with sufficient particularity; and  
2 (3) the Guam statute of limitations for claims based in contract has run.

3 1. Fujita as a non-party (applicable to Counts I-IV of the Amended Complaint).

4 In Guam, a party may only be held liable for a breach of contract if it was a party to that  
5 contract. *See Hemlani v. Hemlani*, 2015 Guam 16, ¶ 19 (Guam Apr. 29, 2015). Fujita contends  
6 the record shows it was never a party to any employment contract with Marks. Fujita's name  
7 never appeared in any of the communications between Lars and Marks, and Fujita was not a  
8 signatory on any of documents that the two exchanged. Additionally, Lars never was an officer  
9 or director<sup>4</sup> of Fujita from 2012-2016 and consequently had no authority to bind Fujita; even if  
10 he had, there is no indication that Fujita ratified Lars's actions. Marks does not contest the facial  
11 validity of these points. Rather, he argues that Fujita could still be on the hook for the breach of  
12 the employment contract if Fujita was the "alter ego" of Lars.

14 Guam appears to have recognized the "alter ego doctrine" in *Guam Economic*  
15 *Development Authority v. Island Equipment Co., Inc.*, 1998 WL 270280, 1998 Guam 7 (May 28,  
16 1998). In that case, Island Equipment, Inc. was attempting to enforce a consent judgment it had  
17 obtained against several parties, including an individual defendant named "Go." *Id.* at \*1. During  
18 its attempts to enforce the judgment, Island Equipment discovered two things: (1) Go was the  
19 president of a corporation named RSG Philippines, and (2) Guam Visitor's Bureau (GVB) and  
20 Guam Economic Developmental Authority (GEDA) owed RSG money after RSG provided  
21 marketing and liaison services in the Philippines. *Id.* at \*1. Island Equipment obtained a writ of  
22 execution ordering GEDA and GVB to pay the debt to satisfy the consent judgment against Go.  
23 *Id.* GEDA and GVB moved to quash the writ; the trial court denied the motion, finding that RSG  
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27 <sup>4</sup> Fujita filed a motion (ECF No. 39) asking the court to take judicial notice of the annual business reports for Fujita  
28 between 2012 and 2014 to establish that Lars was not an officer or director of record for Fujita. Under Rule 201 of  
the Federal Rules of Evidence, "[a] court may take judicial notice of 'matters of public record.'" *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001). Consequently, the court takes judicial notice of these documents.

1 was the alter ego of Go. *Id.*

2 The Supreme Court of Guam upheld the trial court's denial of the motion to quash. It  
3 reasoned a corporate veil is pierced when "(1) that there is such a unity of interest and ownership  
4 that the separate personalities of the corporation and the individuals no longer exist and (2) that  
5 failure to disregard the corporation would result in fraud or injustice." *Id.* at \*4 (citing *Associated*  
6 *Ins. Underwriters, Inc. v. Guam Int'l Insurers, Inc.*, Civ. No. 90-00059A (D. Guam App. Div.  
7 1991). Among other facts, the court noted that Go was the president of RSG and payments owed  
8 to RSG were transferred directly into accounts held in Go's name; consequently, there was "no  
9 separate identity between RSG" and Go, and thus "piercing the corporate veil was necessary to  
10 avoid a grave injustice and to prevent a fraud." *Id.* at \*5

12 Other state courts applying the alter ego doctrine have recognized the analysis is a fact-  
13 dependent inquiry. For example, Californian courts have reasoned the analysis "encompasses a  
14 host of factors" including the following:

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16 commingling of funds and other assets, failure to segregate funds of the separate  
17 entities, and the unauthorized diversion of corporate funds or assets to other than  
18 corporate uses...; the treatment by an individual of the assets of the corporation as  
19 his own...; the holding out by an individual that he is personally liable for the  
20 debts of the corporation...; confusion of the records of the separate entities...; the  
21 identical equitable ownership in the two entities; the identification of the equitable  
22 owners thereof with the domination and control of the two entities; identification  
23 of the directors and officers of the two entities in the responsible supervision and  
24 management...; the use of a corporation as a mere shell, instrumentality or conduit  
25 for a single venture or the business of an individual or another corporation...; the  
26 concealment and misrepresentation of the identity of the responsible ownership,  
27 management and financial interest, or concealment of personal business  
28 activities...; the disregard of legal formalities and the failure to maintain arm's  
length relationships among related entities...; the use of the corporate entity to  
procure labor, services or merchandise for another person or entity...; the  
diversion of assets from a corporation by or to a stockholder or other person or  
entity, to the detriment of creditors, or the manipulation of assets and liabilities  
between entities so as to concentrate the assets in one and the liabilities in  
another...; the contracting with another with intent to avoid performance by use of  
a corporate entity as a shield against personal liability...; and the formation and  
use of a corporation to transfer to it the existing liability of another person or  
entity.

1 *Zoran Corp. v. Chen*, 185 Cal. App. 4th 799, 811–12 (2010) (internal quotations omitted). Even  
2 “[t]his long list” is “not exhaustive”; the facts to be considered by a court depend on the  
3 “particular circumstances of each case.” *Id.*

4 As this is usually a fact-intensive inquiry, any determination at this point would be  
5 preliminary as limited discovery has occurred. Regardless, the pleadings in this case allege  
6 incestuous business arrangements between continuously shifting shell companies, possibly  
7 effectuated to minimize tax liability and/or contractual obligations. The Amended Complaint, its  
8 attachments, and the exhibits attached to the briefing relating to the motion to dismiss establish  
9 the following:  
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- 11 - When Marks was hired, Fujita was majority-owned by a company named South  
12 North Guam, LLC. Pl.’s Am. Complaint ¶ 15, ECF No. 20.
- 13 - South North Guam, LLC, consisted of several members, including a company  
14 named South North Guam Management, LLC. *Id.* ¶ 16; Def’s Req. for Judicial  
15 Notice Ex. B, ECF No. 39.
- 16 - South North Guam Management, LLC, itself was made up of at least one  
17 member: Defendant Lars Hellmont. Pl.’s Am. Complaint ¶ 16, ECF No. 20.
- 18 - In 2016, South North Guam, LLC, sold all its interest in Fujita to Prospector  
19 Properties. Def’s Req. for Judicial Notice Ex. C, ECF No. 39.

20 Consequently, it would be difficult for the court to say, as a matter of law, that Marks’s  
21 alter ego argument would obviously fail. Furthermore, the purported distinction between  
22 Fujita and Lars is not as clear as Fujita contends - Lars signed many documents  
23 representing himself as the Co-Owner, Managing Partner, or Owner of Fujita Property  
24 Guam, Inc. Decl. of Robert Jay Marks Ex. J, ECF No. 48 at 96-114.

25 The record also contains some evidence that Fujita may have been Marks’s  
26 employer. The Original Agreement is addressed to Marks with “C/O FUJITA  
27 PROPERTY GUAM INC.” named at the top, and Fujita Property Guam, Inc. is listed as  
28 the employer on Marks’s health insurance card. Pl.’s Am. Compl. Ex. A & Ex. E, ECF



1 No. 20; Decl. of Robert Jay Marks Ex. A, ECF No. 48 at 4-5. In 2014, Lars was  
2 consistently emailing Fujita's secretary attempting to facilitate reimbursement to Marks,  
3 and Fujita's financial ledgers indicate that Fujita reimbursed Marks for traveling  
4 expenses. Decl. of Robert Jay Marks Ex. I, ECF No. 48 at 91-95.

5 In sum, the record reflects that Lars and Fujita were closer in practice than they  
6 were on paper. These facts alone make it possible that Lars was using Fujita as his alter  
7 ego, and if he was, it would be an injustice to allow Lars to hide behind the corporate veil  
8 to avoid his contractual obligations.  
9

10 The affidavits and evidence provided in Marks's supplemental motions and Fujita's sur-  
11 reply only further underscore this possibility. Lars acted in Fujita's name in opposing the  
12 renaming of a road nearby the "ITC" building, a building managed by Fujita. Decl. of Pl.'s  
13 Counsel Ex. F, ECF No. 55 at 18-34. Furthermore, Lars exerted a large amount of control over  
14 Fujita's secretary who had access to Fujita's bank accounts. Decl. of Pl.'s Counsel ¶¶ 16-36,  
15 ECF No. 65 at 3-6. Lars currently appears to be the sole member of South North Guam, LLC, the  
16 entity that owned most of Fujita's shares prior to 2016. *Id.* ¶ 60. And despite Lars's problems  
17 complying with the court's discovery orders,<sup>5</sup> Lars provided a lengthy affidavit to Fujita wherein  
18 he admits not only that he previously had an 18 percent interest in Fujita, but that he was paid  
19 \$9,000.00 a month by South North Guam Management, LLC, by way of Fujita Guam. Decl. of  
20 Lars Hellmont ¶¶ 8-9, ECF No. 82 at 17-21.  
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22 Fujita's other arguments are unavailing. For one, Fujita argues the merits of whether  
23 there was a contract at all. The Ninth Circuit has been clear on this point; when the determination  
24 requires the court to reach at the underlying merits, the issue is inappropriate for application of  
25 fraudulent joinder. Fujita also takes issue with the fact that the Amended Complaint does not  
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27 <sup>5</sup> The court granted two of Marks's motions to compel discovery from Lars and warned Lars that continued  
28 discovery delays would result in sanctions. ECF No. 93. Recently, Marks filed a motion seeking to hold Lars in  
contempt of the court's order for continued discovery violations. ECF No. 103.

1 specifically assert any alter ego theory of liability. However, this argument conflates the  
2 standards of fraudulent joinder and a Rule 12(b)(6) motion. The court is not to test the  
3 sufficiency of the complaint, but rather the viability of Marks’s claims. Here, Guam has  
4 recognized the alter ego theory, and the present record indicates that Lars may have been using  
5 Fujita as an alter ego. Even if the Amended Complaint could not withstand a Rule 12(b)(6)  
6 motion, the application of fraudulent joinder is not automatically triggered, as “[t]he district  
7 court must consider [] whether a deficiency in the complaint can possibly be cured by granting  
8 the plaintiff leave to amend.” *Grancare*, 889 F.3d at 550. If an amendment could repair the issue,  
9 remand is appropriate. *Id.* Here, Marks could conceivably seek leave to amend his complaint.

11 Whether Marks’s claims will succeed down the road is irrelevant to the question of  
12 fraudulent joinder. As the court cannot find it “a near certainty” that Fujita is not a party to the  
13 contractual relationships described in the Amended Complaint, the court cannot find that Fujita  
14 was fraudulently joined. *Lewis*, 83 F.R.D. at 466.

## 16 2. Particularity of the Amended Complaint (applicable to Counts IV – VIII)

17 Several claims in the Amended Complaint allege fraud. Fujita argues that under the local  
18 and federal pleading rules, allegations of fraud must be pled with particularity. *See* Guam R. Civ.  
19 P. 9(b) and Fed. R. Civ. P. 9(b). Here, the Amended Complaint fails to do so, and thus Marks has  
20 no possibility of recovery against Fujita for the fraud claims.

21 As stated previously, direct attacks on the sufficiency of the Amended Complaint  
22 conflate the Rule 12(b)(6) standard with the fraudulent joinder standard. “If a defendant cannot  
23 withstand a Rule 12(b)(6) motion, the fraudulent inquiry does not end there. For example, the  
24 district court must consider, as it did in this case, whether a deficiency in the complaint can  
25 possibly be cured by granting the plaintiff leave to amend.” *Grancare*, 889 F.3d at 550. Here,  
26 Marks possibly could seek leave to amend his complaint, making the issue inappropriate for the  
27 application of fraudulent joinder.  
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1           3. Statute of Limitations (applicable to all Counts)

2           Lastly, Fujita asserts that the statute of limitations has run for Marks’s claims. The Guam  
3 statute of limitations for any action based in a written contract is four years, and three years for  
4 an action based in fraud. 7 GUAM CODE ANN. §§ 11303, 11305. Fujita argues the clock began  
5 ticking in May 2016, when Marks’s two-year term of employment allegedly ended. As the  
6 Amended Complaint was not filed until June 19, 2020, the statute of limitations ran by the time  
7 the lawsuit was filed.

8           An affirmative defense, such as the statute of limitations, is normally not a reason to  
9 apply fraudulent joinder. *See Ritchey*, 139 F.3d at 1318. The Ninth Circuit has reasoned there “is  
10 a distinction” between the questions of whether there was a valid cause of action, and whether  
11 there was a defense to a valid cause of action, unless the defense concerns material elements of  
12 the underlying claim. *Id.*

13           Here, the statute of limitations is unrelated to the merits of Marks’s claims, and thus does  
14 not affect the validity of those claims. Furthermore, Marks asserts in his Amended Complaint  
15 that all statutes of limitation should be equitably tolled. Equitable estoppel as applicable to a  
16 statute of limitations is recognized in Guam. *Bautista v. Torres*, 2020 Guam 28, ¶ 24 (Guam Dec.  
17 29, 2020) (holding that a defendant is “estopped from asserting the statute of limitations as a bar  
18 to plaintiff’s action if he has done anything that would tend to lull the plaintiff into inaction and  
19 thereby permit the statutory limitation to run against him.”) (internal quotations omitted). Here,  
20 the record reflects several instances where Lars told Marks to be patient while he attempted to  
21 move funds around or that payment would be shortly forthcoming. Lars also expressly asked  
22 Marks to see if they could “settle without lawyers” which caused Marks to delay filing suit. ECF  
23 No. 20 at ¶ 33.

24           Once again, the court is not tasked today with determining whether the statute of  
25 limitations has run; all the fraudulent joinder analysis requires the court to perform a “summary  
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1 inquiry” to see if it is obvious the statute would prevent Marks from being successful on his  
2 claims. As Guam recognizes equitable tolling, and the record reflects that Lars may have lulled  
3 Marks into inaction, the court cannot conclude that Fujita’s statute of limitations defense is so  
4 obviously applicable that Marks has no possibility of succeeding on his claims.

### 5 **III. Conclusion**

6 The court emphasizes that it does not, and need not, reach the merits of Marks’s claims.  
7 Indeed, any one of Fujita’s arguments could ultimately be correct. Nevertheless, the court  
8 cannot obviously conclude that Marks has no chance of recovery against Fujita. The limited  
9 record, in part a result of the limited discovery that has occurred, eschews any type of  
10 “summary inquiry” or an “obvious” determination appropriate for application of the fraudulent  
11 joinder rule.  
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13 As Fujita is a non-diverse defendant, and the court declines to apply fraudulent joinder,  
14 **IT IS HEREBY ORDERED** that Fujita’s Motion to Dismiss is **DENIED** and this matter be  
15 **REMANDED** to Superior Court of Guam.  
16

17 **SO ORDERED.**



**/s/ Frances M. Tydingco-Gatewood**  
**Chief Judge**  
**Dated: Mar 31, 2021**