

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ROBERT ANSARA, as Executor of the Estate)
on behalf of Nancy Quon,)

Plaintiff,)

vs.)

STATE FARM FIRE AND CASUALTY)
COMPANY; JOHN YEAGER; and JOE)
SLADEK, II,)

Defendants.)

Case No.: 2:15-cv-00365-GMN-NJK

ORDER

Pending before the Court is the Motion to Dismiss (ECF No. 6) filed by Defendants State Farm Fire and Casualty Company (“State Farm”), John Yeager (“Yeager”), and Joe Sladek, II (“Sladek”) (collectively, “Defendants”). Plaintiff Robert Ansara, as Executor of the Estate on behalf of Nancy Quon, (“Plaintiff”) filed a Response in Opposition (ECF No. 11), and Defendants filed a Reply in Support (ECF No. 13). Also pending before the Court is the Motion to Remand (ECF No. 10) filed by Plaintiff. Defendants filed a Response in Opposition (ECF No. 12), and Plaintiff filed a Reply in Support (ECF No. 16). Defendants have also filed a Motion for Leave to File Supplemental Response to the Motion to Remand (ECF No. 20). Plaintiff has filed a Response in Opposition (ECF No. 23), and Defendants have filed a Reply in Support (ECF No. 25).

Because the Court finds that the Motion to Remand should be granted, Defendants’ Motion to Dismiss is moot. Likewise, because the arguments raised in the proposed supplemental response do not alter the determination of the Motion to Remand, Defendants’ Motion for Leave to File Supplemental Response is also moot.

1 **I. BACKGROUND**

2 This case arises out of State Farm’s denial of a claim presented by Nancy Quon
3 (“Quon”) for damages reported to have occurred on or about October 28, 2010 as a result of a
4 fire at her residence. (Compl., Ex. A to Not. of Removal, ECF No. 1). Quon passed away on
5 March 20, 2012. (Id. ¶ 28). Approximately fifteen months later, on August 2, 2013, State Farm
6 denied coverage for Quon’s claim. (Id. ¶ 30). On October 24, 2014, Plaintiff subsequently filed
7 the current action in Nevada state court, alleging eight causes of action: (1) breach of contract;
8 (2) breach of the covenant of good faith and fair dealing; (3) intentional misrepresentation; (4)
9 negligent misrepresentation; (5) fraud-by-omission; (6) violations of the Nevada Unfair Claims
10 Practices Act; (7) unjust enrichment; and (8) intentional infliction of emotional distress. (Id. ¶¶
11 34–89). Plaintiff alleges these causes of action against both State Farm as well as its
12 employees, Yeager and Sladek, whom Plaintiff alleges committed and then concealed the
13 fraudulent acts that gave rise to several of the claims and were thereby unjustly enriched. (Id. ¶¶
14 47–49, 58–59, 67–68, 80–81).

15 On March 2, 2015, Defendants removed the case to this Court. (Not. of Removal, ECF
16 No. 1). In their Notice of Removal, Defendants assert that this Court possesses diversity
17 jurisdiction over the present action because the amount in controversy exceeds \$75,000 and
18 there is complete diversity between Plaintiff and State Farm while Yeager and Sladek have
19 been fraudulently joined. (Id.). Plaintiff then filed the Motion to Remand arguing that because
20 Plaintiff, Yeager, and Sladek are all residents of Nevada and Yeager and Sladek are properly
21 joined defendants, this Court lacks jurisdiction. (Mot. to Remand 5:1–22, ECF No. 10).

22 **II. LEGAL STANDARD**

23 “Federal courts are courts of limited jurisdiction,” and “possess only that power
24 authorized by Constitution and statute, which is not to be expanded by judicial decree.”
25 *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994) (internal citations

1 omitted). “It is to be presumed that a cause lies outside this limited jurisdiction, and the burden
2 of establishing the contrary rests upon the party asserting jurisdiction.” Id. (internal citations
3 omitted).

4 The federal removal statute provides that a defendant may remove an action to federal
5 court based on federal question jurisdiction or diversity jurisdiction. 28 U.S.C. § 1441. “The
6 ‘strong presumption against removal jurisdiction means that the defendant always has the
7 burden of establishing that removal is proper,’ and that the court resolves all ambiguity in favor
8 of remand to state court.” Hunter v. Philip Morris USA, 582 F.3d 1039, 1042 (9th Cir. 2009)
9 (quoting Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (per curiam)). “If at any time
10 before final judgment it appears that the district court lacks subject matter jurisdiction, the case
11 shall be remanded.” 28 U.S.C. § 1447(c).

12 To remove a state law civil action to federal court on the basis of diversity jurisdiction, a
13 removing defendant must show that the parties are completely diverse and that the matter in
14 controversy exceeds the sum or value of \$75,000. 28 U.S.C. § 1332(a). Complete diversity of
15 citizenship under 28 U.S.C. § 1332 requires that each plaintiff must be a citizen of a different
16 state than each defendant. Morris v. Princess Cruises, Inc., 236 F.3d 1061, 1067 (9th Cir.
17 2001). “Nevertheless, one exception to the requirement for complete diversity is where a non-
18 diverse defendant has been ‘fraudulently joined.’” Id. “Although there is a general presumption
19 against fraudulent joinder, if the plaintiff fails to state a cause of action against a resident
20 defendant, and the failure is obvious according to the settled rules of the state, the joinder of the
21 resident defendant is fraudulent.” Hamilton Materials, Inc. v. Dow Chemical Corp., 494 F.3d
22 1203, 1206 (9th Cir. 2007) (internal citation and quotation marks omitted).

23 **III. DISCUSSION**

24 The parties do not dispute that the amount in controversy exceeds \$75,000 or that
25 Plaintiff and Defendants Yeager and Sladek are Nevada residents. Accordingly, the sole issue

1 for determining this Court’s jurisdiction is whether Yeager and Sladek have been fraudulently
2 joined.

3 “Fraudulent joinder is a term of art.” *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339
4 (9th Cir. 1987). “Joinder of a non-diverse defendant is deemed fraudulent, and the defendant’s
5 presence in the lawsuit is ignored for purposes of determining diversity, if the plaintiff fails to
6 state a cause of action against a resident defendant, and the failure is obvious according to the
7 settled rules of the state.” *Morris*, 236 F.3d at 1067. Accordingly, “rather than focusing on the
8 ‘mental state’ of the plaintiff, the fraudulent joinder inquiry focuses on the validity of the legal
9 theory being asserted against the non-diverse defendant.” *Davis v. Prentiss Properties Ltd.,*
10 *Inc.*, 66 F. Supp. 2d 1112, 1114 (C.D. Cal. 1999).

11 The problem with the fraudulent joinder inquiry lies in the fact that in order to determine
12 if it possesses jurisdiction over claims against an allegedly fraudulent party, the Court must to
13 some degree determine the validity of those same claims over which the Court may not have
14 jurisdiction. Therefore, the Court must walk a very fine line: “it must consider the merits of a
15 matter without assuming jurisdiction over it.” See *id.*; see also *B., Inc. v. Miller Brewing Co.*,
16 663 F.2d 545, 554 (5th Cir. 1981) (stating the Court must not “lose sight of the important
17 questions of federal jurisdiction” implicated in fraudulent joinder cases).

18 In fraudulent joinder determinations, “[d]efendants alleging a fraudulent joinder are
19 permitted to make a showing of facts indicating fraudulent joinder.” *Knutson v. Allis-Chalmers*
20 *Corp.*, 358 F. Supp. 2d 983, 996 (D. Nev. 2005) (citing *Ritchey v. Upjohn Drug Co.*, 139 F.3d
21 1313, 1318 (9th Cir. 1998)); see also *Morris*, 236 F.3d at 1068 (citing a 5th Circuit opinion for
22 the principle that “[f]raudulent joinder claims may be resolved by ‘piercing the pleadings’ and
23 considering summary judgment-type evidence”). However, though courts may look to a
24 showing of facts in conducting a fraudulent joinder analysis, the burden on the defendant to
25 prove fraudulent joinder is higher than the burden required for Rule 56 summary judgment or

1 even Rule 12(b)(6) dismissal. See *Morris*, 236 F.3d at 1067 (“Joinder of a non-diverse
2 defendant is deemed fraudulent . . . if the plaintiff fails to state a cause of action against a
3 resident defendant, and the failure is obvious according to the settled rules of the state.”);
4 *Davis*, 66 F. Supp. 2d at 1115 (“[S]ome room must exist between the standard for dismissal
5 under Rule 12(b)(6) . . . and a finding of fraudulent joinder. A court’s Rule 12(b)(6) inquiry is
6 whether the complaint states a cognizable legal theory. To constitute fraudulent joinder, the
7 non-diverse claim must not only be unsuccessful, it must be untenable ab initio.”) (citations
8 omitted). Some district courts in the Ninth Circuit have compared the standard for fraudulent
9 joinder to the one under Rule 11, where joinder would not be fraudulent unless the claim is
10 shown to be frivolous. See, e.g., *Davis*, 66 F.Supp.2d at 1114. Still others have articulated a
11 standard of mere possibility that the plaintiff will be able to establish a cause of action against
12 the party in question. See, e.g., *Soo v. United Parcel Servs., Inc.*, 73 F.Supp.2d 1126, 1128
13 (N.D. Cal. 1999) (A defendant will be deemed to be fraudulently joined only if “after all
14 disputed questions of fact and all ambiguities in the controlling state law are resolved in the
15 plaintiff’s favor, the plaintiff could not possibly recover against the party whose joinder is
16 questioned.”) (citation omitted). Accordingly, regardless of the exact standard language used,
17 the party seeking removal bears “a very heavy burden of proving that the joinder of the in-state
18 party was improper.” *Hunter*, 582 F.3d at 1044.

19 Here, Defendants have filed a 31-page Response in Opposition to the Motion to Remand
20 with 280 pages of exhibits. See (Resp. to Mot. to Remand, ECF No. 12). In their opposition,
21 Defendants assert that the exhibits attached to their Response show several of Plaintiff’s factual
22 allegations are false and that Plaintiff’s claims based on those false allegations must therefore
23 fail.¹ (Id. 13:25–25:18). Additionally, Defendants argue that Plaintiff’s fraud claims are

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25 ¹ Defendants’ Proposed Supplemental Response seeks to also show that a factual issue raised by Plaintiff in the Reply is also untrue and was only raised for the first time in the Reply. See (Mot. for Leave to File Supp., ECF No. 20).

1 insufficiently pled because they fail to contain the necessary specificity. (Id. 25:19–29:27).
2 Defendants conclude by asserting that because all the claims against Yeager and Sladek will
3 fail, they have been fraudulently joined. The Court disagrees.

4 In essence, Defendants have attempted to show that because they will win on all claims
5 against Yeager and Sladek on either a motion for dismissal or a motion for summary judgment,
6 Yeager and Sladek have been fraudulently joined. However, as noted above, the standard for
7 fraudulent joinder is higher than Rule 56 summary judgment or Rule 12(b)(6) dismissal; the
8 standard is not whether Plaintiff will succeed on the merits of the claims but whether the failure
9 of the claims is “obvious according to the settled rules of the state.” *Morris*, 236 F.3d at 1067;
10 see also *Brazina v. Paul Revere Life Ins. Co.*, 271 F. Supp. 2d 1163, 1169 (N.D. Cal. 2003) (“In
11 considering fraudulent joinder, the court does not review the merits of [the] claim but only
12 determines whether a cause of action exists under [state] law.”) (citing *McCabe*, 811 F.2d at
13 1339). In order to find in favor of Defendants on all of Plaintiff’s claims against Yeager and
14 Sladek, the Court would need to decide several disputed issues of fact in favor of Defendants
15 by conducting an extensive review of the evidence and a thorough analysis of Plaintiff’s claims.
16 Such a review, however, is not only inappropriate for a fraudulent joinder determination, but
17 the need for such a review itself reveals that the failure of Plaintiff’s claims is not “obvious.”
18 See *Hunter*, 582 F.3d at 1044 (“[A] summary inquiry is appropriate only to identify the
19 presence of discrete and undisputed facts that would preclude plaintiff’s recovery against the
20 in-state defendant and . . . the inability to make the requisite decision in a summary manner
21 itself points to an inability of the removing party to carry its burden.”) (quoting *Smallwood v.*
22 *Illinois Cent. R. Co.*, 385 F.3d 568, 573–74 (5th Cir. 2004)). Accordingly, the Court cannot say
23 that all of Plaintiff’s claims against Yeager and Sladek will obviously fail, and Defendants have
24 failed to meet their heavy burden of proving Yeager and Sladek to be fraudulent defendants.

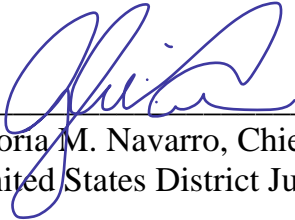
1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that the Motion to Remand (ECF No. 10) is **GRANTED**.

3 This case is remanded to the Eighth Judicial District Court in Clark County, Nevada. The
4 Clerk of the Court shall remand this case back to state court and thereafter close this Court's
5 case.

6 **IT IS FURTHER ORDERED** that Defendants' Motion to Dismiss (ECF No. 6) and
7 Motion for Leave to File Supplemental Response to the Motion to Remand (ECF No. 20) are
8 **DENIED as moot**.

9 **DATED** this ²⁴ _____ day of November, 2015.

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13 Gloria M. Navarro, Chief Judge
14 United States District Judge
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