

1 HONORABLE RONALD B. LEIGHTON

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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 CASEY K CLINE,

Plaintiff,

10 v.

11 SAFEWAY INC, et al.,

Defendants.

CASE NO. C17-5828 RBL

ORDER DENYING MOTION FOR  
LEAVE TO AMEND

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14 THIS MATTER is before the Court on Plaintiff Cline's Motion to Amend his complaint.  
15 [Dkt. # 16].

16 The case involves a slip and fall at a Safeway store. Cline initially named as Doe  
17 Defendants (1) an "Employee" who should have seen the spill that caused the accident, and the  
18 "Manager" who had a duty to exercise reasonable care in supervising employees, including the  
19 one who did not see or clean up the spilled soap that led to Cline's fall. Safeway removed the  
20 case on diversity grounds. Cline sought remand, arguing that the employees were Washington  
21 citizens. The Court denied the motion because the citizenship of Doe defendants is disregarded  
22 for diversity purposes. It invited Cline to re-visit the issue when he identified the employee(s).

1 Cline now seeks to name as a defendant Karen Ballard, the “Manager” (she is actually the  
2 “Assistant Store Director”) who assisted him after he fell.

3 Safeway argues that the deadline for adding parties passed February 1, and that Cline  
4 knew of Ballard’s identity for a month before that. It argues that she is a “sham” defendant added  
5 only to destroy diversity, emphasizing that the only factual allegations against Ballard are that  
6 she was a manager, and she saw the soap when she helped Cline.

7 Leave to amend a complaint under Fed. R. Civ. P. 15(a) “shall be freely given when  
8 justice so requires.” *Carvalho v. Equifax Info. Services, LLC*, 629 F.3d 876, 892 (9th Cir. 2010)  
9 (citing *Forman v. Davis*, 371 U.S. 178, 182 (1962)). This policy is “to be applied with extreme  
10 liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003)  
11 (citations omitted). In determining whether to grant leave under Rule 15, courts consider five  
12 factors: “bad faith, undue delay, prejudice to the opposing party, futility of amendment, and  
13 whether the plaintiff has previously amended the complaint.” *United States v. Corinthian*  
14 *Colleges*, 655 F.3d 984, 995 (9th Cir. 2011) (emphasis added). Among these factors, prejudice to  
15 the opposing party carries the greatest weight. *Eminence Capital*, 316 F.3d at 1052.

16 A proposed amendment is futile “if no set of facts can be proved under the amendment to  
17 the pleadings that would constitute a valid and sufficient claim or defense.” *Gaskill v. Travelers*  
18 *Ins. Co.*, No. 11-cv-05847-RJB, 2012 WL 1605221, at \*2 (W.D. Wash. May 8, 2012) (citing  
19 *Sweaney v. Ada County, Idaho*, 119 F.3d 1385, 1393 (9th Cir.1997)).

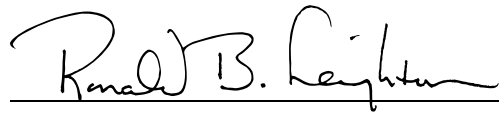
20 A non-diverse defendant that has been “fraudulently joined,” may be ignored when the  
21 court determines the existence of diversity. *United Computer Systems, Inc. v. AT & T Corp.*, 298  
22 F.3d 756, 761 (9th Cir. 2002) (citing *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th  
23 Cir. 2001)).

1           “Fraudulent Joinder” is a term of art. *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067  
2 (9th Cir. 2001)(citing *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987)). The  
3 non-diverse defendant has been fraudulently joined if the plaintiff fails to state a cause of action  
4 against that defendant and that failure is obvious according to the settled laws of the state. *McCabe*,  
5 811 F.2d at 1339. The removing defendant is entitled to present facts outside of the complaint to  
6 establish that a party has been fraudulently joined. *Id.* Doubt concerning whether the complaint  
7 states a cause of action is resolved in favor of remanding the case to state court. *Albi v. Street &*  
8 *Smith Publications*, 140 F.2d 310, 312 (9th Cir. 1944).

9           Cline has not alleged any facts which plausibly state a claim against Ballard, and he has  
10 failed to explain the delay in naming her. For both reasons, the Motion to Amend to add Ballard  
11 as a defendant is DENIED.

12           IT IS SO ORDERED.

13           Dated this 15<sup>th</sup> day of May, 2018.

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16           Ronald B. Leighton  
17           United States District Judge