

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

**Tim McVay v. Target; Target Corporation; and Does 1 to 100,
inclusive**

McVay · No. 2:25-cv-00168-TLN-CSK · Decided September 26, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 TIM MCVAY, 12 Plaintiff, No. 2:25-cv-00168-TLN-CSK 13 14 v. ORDER
TARGET; TARGET CORPORATION; 15 and DOES 1 to 100, inclusive, 16 Defendants. 17 18
This matter is before the Court on Plaintiff Tim McVay’s (“Plaintiff”) Motion to Remand. 19
(ECF No. 10.) Defendant Target Corporation (“Defendant”) filed an opposition.

(ECF No. 14.) 20 Plaintiff did not file a reply. Also before the Court is Plaintiff’s Application for
Leave to File an 21 Amended Complaint. (ECF No. 11.) Defendant filed an opposition. (ECF No.
15.) Plaintiff did 22 not file a reply.

For the reasons set forth below, Plaintiff’s Motion to Remand and Application 23 for Leave to File
an Amended Complaint are DENIED. 24 /// 25 /// 26 /// 27 28 1 I. FACTUAL AND
PROCEDURAL BACKGROUND 2 This is a premises liability case in which Plaintiff alleges he
sustained injuries from a slip 3 and fall incident (“the Subject Incident”) at Defendant’s store
located in Elk Grove, California on 4 January 19, 2022.

(ECF No. 1 at 7.) On January 18, 2024, Plaintiff filed a complaint in 5 Sacramento Superior Court
alleging: (1) general negligence and (2) premises liability. (Id. at 6.) 6 Plaintiff alleges he suffered:
(1) loss of wages; (2) hospital and medical expenses; (3) general 7 damages; (4) loss of earning
capacity; and (5) other damages according to proof. (Id.)

On 8 January 13, 2025, Defendant removed the action to this Court based on diversity jurisdiction.
9 (ECF No. 1.) On February 12, 2025, Plaintiff filed the instant Motion to Remand and
Application 10 for Leave to File an Amended Complaint. (ECF Nos. 10, 11.) 11 II. STANDARD
OF LAW 12 A civil action brought in state court, over which the district court has original
jurisdiction, 13 may be removed by the defendant to federal court in the judicial district and
division in which the 14 state court action is pending.

28 U.S.C. § 1441(a). The district court has original jurisdiction 15 over civil actions between
citizens of different states in which the alleged damages exceed 16 \$75,000. 28 U.S.C. § 1332(a)
(1). The party asserting federal jurisdiction bears the burden of 17 proving diversity. *Lew v. Moss*,

797 F.2d 747, 749 (9th Cir. 1986) (citing *Resnik v. La Paz Guest 18 Ranch*, 289 F.2d 814, 819 (9th Cir.

1961)). Diversity is determined as of the time the complaint is filed and removal effected. *Strotek Corp. v. Air Transp. Ass'n of Am.*, 300 F.3d 1129, 1131 (9th Cir. 2002). Removal statutes are to be strictly construed against removal. *Gaus v. Miles, 21 Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (overruled on other grounds in *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 87–89 (2014)).

23 The amount in controversy is determined by reference to the complaint itself and includes 24 the amount of damages in dispute, as well as attorney's fees, if authorized by statute or contract. 25 *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005). Where the complaint does not 26 pray for damages in a specific amount, the defendant must prove by a preponderance of the 27 evidence that the amount in controversy exceeds \$75,000.

Singer v. State Farm Mut. Auto. Ins. Co., 116 F.3d 373, 376 (9th Cir. 1997) (citing *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 1 398, 404 (9th Cir. 1996)). If the amount is not facially apparent from the complaint, the Court may "require parties to submit summary-judgment-type evidence relevant to the amount in controversy at the time of removal." *Id.* (citing *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 4 1335–36 (5th Cir.

1995)). 5 Removal based on diversity requires that the citizenship of each plaintiff be diverse from 6 the citizenship of each defendant (i.e., complete diversity). *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 7 68 (1996). A corporation is a citizen of any state in which it is incorporated and any state in 8 which it maintains its principal place of business. 28 U.S.C. § 1332(c)(1).

An individual 9 defendant's citizenship is determined by the state in which they are domiciled. *Weight v. Active 10 Network, Inc.*, 29 F. Supp. 3d 1289, 1292 (S.D. Cal. 2014). The citizenship of defendants sued 11 under fictitious names shall be disregarded when determining removal based on federal diversity 12 jurisdiction. 28 U.S.C. § 1441(b)(1). 13 III. ANALYSIS 14 Plaintiff argues this action should be remanded because complete diversity does not exist 15 as Defendant's employees "potentially responsible" for causing the Subject Incident — Doe 16 Defendants — are California residents.

(ECF No. 10 at 5.) Plaintiff further argues Defendant 17 failed to provide any admissible evidence in support of its contention that the amount in 18 controversy exceeds \$75,000. (*Id.*) The Court considers each argument in turn. 19 A. Diversity of Citizenship 20 Plaintiff contends he is a citizen of California as are Doe Defendants. (*Id.* at 7.) Plaintiff 21 argues courts should consider Doe Defendants' citizenship especially "when a named defendant 22 knew or should have known the fictitious defendant's identity because that defendant employed 23 the fictitiously named

defendant.” (Id. at 8 (citing *Sandoval v. Republic Servs., Inc.*, No. 2:18– 24 CV–01224–ODW(KSX), 2018 WL 1989528, at *3 (C.D.

Cal. Apr. 24, 2018)).) 25 In opposition, Defendant argues, for the purposes of removal jurisdiction, “the citizenship 26 of defendants sued under fictitious names shall be disregarded.” (ECF No. 14 at 4 (citing 28 27 U.S.C. § 1441 (b)).) Further, Defendant argues even when courts have considered the citizenship 28 of a Doe defendant on a motion to remand, the Doe defendant was specifically identified.

(Id. at 1 5.) Defendant contends Plaintiff has not taken any action to even attempt to identify the alleged 2 Doe Defendants, let alone provide any physical description or other information to identify the 3 Doe Defendants. (Id. at 6.) 4 “In determining whether a civil action is removable on the basis of the jurisdiction under 5 section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be 6 disregarded.” 28 U.S.C § 1441(b)(1).

The Court, however, recognizes some district courts have 7 considered the citizenship of fictitious defendants in instances where a complaint identifies a Doe 8 defendant with sufficient detail to give a definitive clue as to their identity. See *Collins v. 9 Garfield Beach CVS, LLC*, Case No. CV 17–3375 FMO (GJSx), 2017 WL 2734708, at *2 (C.D. 10 Cal. 2017) (quoting *Brown v. TranSouth Fin.*

Corp., 897 F. Supp. 1398, 1401 (M.D. Ala. 1995)). 11 Here, even if the Court were persuaded to follow the approach that considers the 12 citizenship of fictitious defendants where Plaintiff has plausibly alleged facts to identity them, 13 Plaintiff’s allegations regarding the identity of the Doe Defendants are insufficient. See 14 *Mazariego v. Walmart*, No. 1:24-CV-00612-KES-SAB, 2024 WL 3594596, at *3 (E.D.

Cal. July 15 30, 2024) (denying Plaintiff’s motion to remand because Plaintiff’s allegations failed to give any 16 definite clue about the alleged Doe employees’ identities, how they were involved in the 17 underlying slip and fall, or any inclination that they were California citizens). Plaintiff does not 18 allege facts to identity a particular Target employee who was involved in the Subject Incident.

19 Instead, Plaintiff merely alleges the Doe Defendants are “Target employees potentially 20 responsible for causing the Subject Incident.” (ECF No. 10 at 5.) This is not sufficient detail to 21 give a definitive clue as to the identities of the Doe Defendants.

Therefore, the Court disregards 22 the citizenship of Doe Defendants for jurisdictional purposes. 23 Accordingly, diversity of citizenship exists because Plaintiff is a citizen of California and 24 Defendant is a citizen of Minnesota. (ECF No. 10 at 7; ECF No. 14 at 3.) 25 B. Amount in Controversy 26 Plaintiff also contends this action should be remanded because Defendant failed to prove 27 by a preponderance of evidence that the amount in controversy exceeds \$75,000.

(ECF No. 6 at 28 11.) In opposition, Defendant contends Plaintiff's own allegations confirm the amount in 1 || controversy exceeds the jurisdictional minimum of \$75,000. (ECF No. 14 at 8.) Specifically, 2 | Plaintiff's Statement of Damages filed with the Complaint in state court alleged \$5,000,000 in 3 | damages, thus far exceeding the jurisdictional minimum. (/d.)

4 In assessing the amount in controversy, courts may consider allegations in the complaint 5 | and in the notice of removal, as well as summary-judgment-type evidence relevant to the amount 6 | in controversy. Kroske, 432 F.3d at 980. Evidence establishing the amount is required by 28 7 | U.S.C § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant's 8 | allegations in its notice of removal.

See Owens, 574 U.S. at 89. 9 Here, Plaintiff's Statement of Damages states Plaintiff suffered \$5,000,000 in damages as 10 | a result of the Subject Incident. (ECF No. 14-1 at 15.) Therefore, based on Plaintiff's allegations 11 in his Complaint, the Court finds the amount in controversy far exceeds \$75,000. 12 In sum, the Court finds diversity of citizenship between the parties exists and the amount 13 | in controversy exceeds \$75,000.

Accordingly, Plaintiff's Motion to Remand is DENIED. 14 C. Plaintiff's Application for Leave 15 Plaintiff requests leave to file a First Amended Complaint "at a later time" to substitute 16 | the full and correct names of Doe Defendants. (ECF No. 11 at 3.) While Plaintiff cites to Federal 17 | Rule of Civil Procedure ("Rule") 15, the Application for Leave is devoid of any discussion of 18 | Rule 15 or why it would be appropriate to grant Plaintiff's prospective request at this juncture.

19 | (See generally id.) At this time, Plaintiff has not identified an individual person which it seeks to 20 | add to the Complaint. Without more, the Court DENIES Plaintiff's Application for Leave. 21 IV. CONCLUSION 22 For the foregoing reasons, the Court DENIES Plaintiff's Motion to Remand (ECF No. 10) 23 | and Application for Leave to File an Amended Complaint (ECF No. 11).

24 IT IS SO ORDERED. 25 | Date: September 25, 2025 26 7, 27 28 TROY L. NUNLEY CHIEF UNITED STATES DISTRICT JUDGE