

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Judith Mendoza v. Costco Wholesale Corporation, Jimmy Johnson,
and Does 1-50

Mendoza · No. 8:24-cv-00845-JWH-AJR · Decided August 20, 2025

SUMMARY

The United States District Court for the Central District of California denied Judith Mendoza’s renewed motion to remand her premises-liability and negligence action against Costco Wholesale Corporation and other defendants. The court held that Mendoza’s attempted addition of Russell Follmer as a nondiverse defendant was procedurally improper, would be denied under 28 U.S.C. § 1447(e), and did not establish that Follmer was the person previously identified as Jimmy Johnson. The action therefore remained in federal court based on diversity jurisdiction.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	John W. Holcomb
JURISDICTION	United States District Court for the Central District of California
DECIDED	August 20, 2025
DOCKET	8:24-cv-00845-JWH-AJR
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff filed a renewed motion to remand a removed personal-injury action to Orange County Superior Court, arguing that the proposed addition of a nondiverse defendant defeated complete diversity.
STANDARD OF REVIEW	The removing defendant bears the burden of establishing that removal is proper, and doubts regarding subject-matter jurisdiction are resolved in favor of remand. Amendment after entry of a scheduling order is governed by Federal Rule of Civil Procedure 16(b), requiring good cause and the judge's consent.
PRECEDENTIAL VALUE	Unknown; district-court order with no reporter citation or stated precedential designation.
PARTIES	Judith Mendoza v. Costco Wholesale Corporation, Jimmy Johnson, Does 1-50

TOPICS

subject matter jurisdiction

joinder

motion to amend

premises liability

civil procedure

PRACTICE AREAS

civil procedure

removal jurisdiction

personal injury

premises liability

QUESTIONS PRESENTED

1. Whether Mendoza's purported amendment identifying Russell Follmer as the Doe defendant Jimmy Johnson was proper after entry of a scheduling order without compliance with Federal Rule of Civil Procedure 15(a) or consent under Rule 16(b).
2. Whether the Court should permit joinder of Russell Follmer as a nondiverse defendant under 28 U.S.C. § 1447(e) and remand the action.
3. Whether the record established that Russell Follmer was the same person as the previously named defendant Jimmy Johnson.

HOLDINGS

1. Once a scheduling order has been entered, a request to amend a pleading must be treated as a request to amend the scheduling order under Federal Rule of Civil Procedure 16; amendment requires good cause and the judge's consent. Mendoza's purported amendment was improper because she did not seek the Court's consent.
2. The Court would deny joinder of Follmer even if Mendoza had sought permission to amend because Costco could fully satisfy any damages award, Mendoza could pursue claims against Follmer separately in state court, and the circumstances indicated that the proposed joinder was intended to defeat federal jurisdiction rather than to add an indispensable defendant.
3. The record did not establish that Russell Follmer was the Doe defendant previously identified as Jimmy Johnson; Mendoza's attempt to substitute Follmer as a nondiverse defendant was unavailing.

KEY QUOTATIONS

"Federal courts are courts of limited jurisdiction. Accordingly, "[t]hey possess only that power authorized by Constitution and statute." (at 2)

"The strong presumption against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper." (at 2)

FACTUAL BACKGROUND

Mendoza alleged that she slipped and fell while shopping at a Costco store in La Habra, California, in May 2022, asserting negligence and premises-liability claims. Costco removed the action on the basis of diversity jurisdiction and asserted that Jimmy Johnson was an unknown or fictitious defendant because Costco had never employed anyone by that name. After discovery identified an employee named Russell Follmer, Mendoza argued that Follmer was the true identity of Jimmy Johnson and that adding him would defeat complete diversity.

PROCEDURAL HISTORY

Mendoza commenced the negligence and premises-liability action in Orange County Superior Court in March 2024. Costco removed the action in April 2024 based on diversity jurisdiction. After Mendoza filed an initial motion to remand, the Court ordered jurisdictional discovery and supplemental briefing regarding the identity and citizenship of the alleged defendant Jimmy Johnson, denied the initial motion in January 2025, and denied the renewed motion in this order.

DISPOSITION

other

CASES CITED

- Kokkonen v. Guardian Life Insurance Co. of America, 511 U.S. 375, 377 (1994)
- DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 342 n.3 (2006)
- Syngenta Crop Protection, Inc. v. Henson, 537 U.S. 28, 32-33 (2002)
- In re Digimarc Corp. Derivative Litigation, 549 F.3d 1223, 1234 (9th Cir. 2008)
- Carden v. Arkoma Associates, 494 U.S. 185, 195-96 (1990)
- Johnson v. Columbia Properties Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006)
- Abrego Abrego v. Dow Chemical Co., 443 F.3d 676, 684 (9th Cir. 2006)
- Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)
- Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607-08 (9th Cir. 1992)
- Newcombe v. Adolf Coors Co., 157 F.3d 686, 691 (9th Cir. 1998)
- 3WL, LLC v. Master Protection, LP, 851 F. App'x 4, 7 (9th Cir. 2021)

OPINION

Judith Mendoza v. Costco Wholesale Corporation
PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 11 JUDITH MENDOZA, Case No. 8:24-cv-00845-JWH-AJR 12 Plaintiff,
ORDER DENYING PLAINTIFF’S

13 v. RENEWED MOTION TO
REMAND [ECF No. 36]

14 COSTCO WHOLESALE
CORPORATION,

15 JIMMY JOHNSON, and DOES 1-50, inclusive, 16 Defendants. 17 18 19 20 21 22 23 24 25 26
27 1 Before the Court is the renewed motion of Plaintiff Judith Mendoza to 2 remand this action to

state court.¹ The Court concludes that this matter is ³ appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. ⁴ After considering the papers filed in support and opposition,² the Court orders ⁵ that the Renewed Motion is DENIED.

6 I. BACKGROUND

⁷ The parties are familiar with the history of this case. As relevant here, in

⁸ March 2024, Mendoza commenced this action in Orange County Superior

⁹ Court against Defendants Costco Wholesale Corporation and Jimmy Johnson.³ ¹⁰ Mendoza alleged that she slipped and fell while she was shopping at a Costco ¹¹ store in La Habra, California, in May 2022, and she asserted two claims for ¹² relief: (1) negligence; and (2) premises liability.⁴ ¹³ In April 2024, Costco removed the action to this Court on the basis of ¹⁴ diversity jurisdiction.⁵ In its Notice of Removal, Costco asserted that Jimmy ¹⁵ ¹ See Pl.'s Mot. to Remand (the "Renewed Motion") [ECF No. 36]. ¹⁶ ² Specifically, the Court considered the documents of record in this matter, ¹⁷ including the following papers: (1) Def.'s Notice of Removal (the "Notice of ¹⁸ Removal") (including its attachments) [ECF No. 2]; (2) Compl. (the "Complaint") [ECF No. 2-2]; (3) Pl.'s Mot. to Remand (the "First Motion") ¹⁹ [ECF No. 13]; (4) Def.'s Opp'n to the First Motion (the "First Opposition") ²⁰ (including its attachments) [ECF No. 18]; (5) Pl.'s Reply in Supp. of the First ²¹ Motion [ECF No. 21]; (6) Order to Show Cause re Subject Matter Jurisdiction (the "Order to Show Cause") [ECF No. 23]; (7) Pl.'s Supplement to the First ²² Motion ("Mendoza's Supplemental Brief") (including its attachments) [ECF

²³ No. 24]; (8) Def.'s Supplement to the First Opposition ("Costco's

Supplemental Brief") [ECF No. 25]; (9) Renewed Motion; (10) Def.'s Opp'n to ²⁴ the Renewed Motion (the "Opposition") [ECF No. 40]; and (11) Pl.'s Reply in ²⁵ Supp. of the Renewed Motion (the "Reply") [ECF No. 41]. ²⁶ ³ See generally Complaint. ²⁷ ⁴ Id. ¹ Johnson is an unknown and apparently fictitious defendant.⁶ To support that ² assertion, Costco provided a declaration from a payroll clerk, Natalie Trejo, in ³ which Trejo testified that "[t]he La Habra Costco warehouse has never ⁴ employed any individual by the name of Jimmy Johnson."⁷ ⁵ Mendoza filed the First Motion in May 2024.⁸ In that motion, Mendoza ⁶ argued that removal was improper because Jimmy Johnson was the manager of ⁷ the La Habra Costco, and she maintained that Jimmy Johnson was a properly ⁸ joined California citizen.⁹ Mendoza asked the Court to award her costs and fees ⁹ in connection with the improper removal.¹⁰ ¹⁰ Based upon the dispute over Jimmy Johnson's identity, the Court ordered ¹¹ the parties to conduct jurisdictional discovery regarding the "true name of ¹² 'Jimmy Johnson,' his citizenship, and his role in the allegations."¹¹ The Court ¹³ also directed the parties to file supplemental briefing on the issues of citizenship ¹⁴ and diversity jurisdiction.¹² The Court received that supplemental briefing in

¹⁵ August 2024,¹³ and, in January 2025, the Court denied the First Motion.¹⁴

¹⁶ Mendoza filed the instant Renewed Motion in August 2025.¹⁵ In the ¹⁷ Renewed Motion, Mendoza asserts that in discovery Costco has identified an ¹⁸ ¹⁹ ⁶ See id. at ¶ 10. ²⁰ ⁷ See Notice of Removal, Ex. D [ECF No. 2-2] ¶ 8. ²¹ ⁸ See First Motion. ²² ⁹ See id.; see also Reply. ²³ ¹⁰

See Reply. 24 11 Order to Show Cause 3:11–14. 25 12 Id. at 3:21–26. 26 13 See Mendoza’s Supplemental Brief; Costco’s Supplemental Brief. 27 14 See Order Denying the First Motion (the “Order”) [ECF No. 27]. 1 employee named Russell Follmer, and Mendoza believes that Follmer was the 2 store manager or employee responsible for supervising the area when Mendoza 3 fell.¹⁶ Mendoza further contends that she amended her Complaint¹⁷ to reflect 4 that Russell Follmer was the true identity of Jimmy Johnson, and she asserts that 5 such amendments prove that Jimmy Johnson was not fraudulently joined.¹⁸ 6 Costco opposes the Renewed Motion.¹⁹

7 II. LEGAL STANDARD

8 Federal courts are courts of limited jurisdiction. Accordingly, “[t]hey 9 possess only that power authorized by Constitution and statute.” *Kokkonen v. 10 Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). In every federal case, the 11 basis for federal jurisdiction must appear affirmatively from the record. See 12 *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006). “The right of 13 removal is entirely a creature of statute and a suit commenced in a state court 14 must remain there until cause is shown for its transfer under some act of 15 Congress.” *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002) (internal 16 quotation marks omitted). When Congress has acted to create a right of 17 removal, those statutes, unless otherwise stated, are strictly construed against 18 removal jurisdiction. See *id.* 19 To remove an action to federal court under 28 U.S.C. § 1441, the 20 removing defendant “must demonstrate that original subject-matter jurisdiction 21 22 16 See *id.* at 5:3–12. 23 17 It does not appear that Mendoza succeeded in amending her pleading. 24 Mendoza served on Costco an “Amendment to Complaint” purporting to name Russell Follmer as DOE 2, see *id.*, Ex. 3, but she did not comply with Rule 15(a) 25 of the Federal Rules of Civil Procedure, which establishes the requirements for a 26 plaintiff to amend her Complaint. 27 18 See Renewed Motion. 1 lies in the federal courts.” *Syngenta*, 537 U.S. at 33. As such, a defendant may 2 remove a civil action in which either (1) a federal question exists; or 3 (2) complete diversity of citizenship between the parties exists and the amount 4 in controversy exceeds \$75,000. See 28 U.S.C. §§ 1331 & 1332. “Complete 5 diversity” means that “each defendant must be a citizen of a different state from 6 each plaintiff.” *In re Digimarc Corp. Derivative Litigation*, 549 F.3d 1223, 1234 7 (9th Cir. 2008). When the litigants are entities, diversity jurisdiction depends 8 on the form of the entity. See, e.g., *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195– 9 96 (1990) (finding that an unincorporated association such as a partnership has 10 “the citizenships of all of its members”). Similarly, a limited liability company 11 is a “citizen of every state of which its owners/members are citizens.” *Johnson 12 v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). In 13 contrast, a corporation is a citizen only of (1) the state where its principal place 14 of business is located; and (2) the state in which it is incorporated. See 28 15 U.S.C. § 1332(c)(1). 16 The right to remove is not absolute, even when original jurisdiction exists. 17 In other words, the removing defendant bears the burden of establishing that 18 removal is proper. See *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 684 (9th

19 Cir. 2006) (noting the “longstanding, near-canonical rule that the burden on
20 removal rests with the removing defendant”); *Gaus v. Miles, Inc.*, 980 F.2d 564, 21 566 (9th
Cir. 1992) (“The strong presumption against removal jurisdiction 22 means that the defendant
always has the burden of establishing that removal is 23 proper.” (quotation marks omitted)). Any
doubts regarding the existence of 24 subject matter jurisdiction must be resolved in favor of
remand. See *id.* 25 (“Federal jurisdiction must be rejected if there is any doubt as to the right of 26
removal in the first instance.”). 27

1 III. ANALYSIS

2 Mendoza argues that the Court must remand this action to Orange 3 County Superior Court
because her addition of Russell Follmer as a party 4 defendant “defeats complete diversity.”²⁰ The
Court disagrees. 5 First, because a Scheduling Order has been entered in this case, any 6 request to
amend a pleading must be treated as a request to amend the 7 Scheduling Order under Rule 16.
See *Johnson v. Mammoth Recreations, Inc.*, 975 8 F.2d 604, 607–08 (9th Cir. 1992). Under Rule
16(b), amendment is appropriate 9 “only for good cause and with the judge’s consent.” Fed. R.
Civ. P. 16(b). 10 Because Mendoza did not seek the Court’s consent to amend her Complaint, 11
her amendment is improper. 12 Second, even if Mendoza had sought permission to amend her
Complaint, 13 the Court would not have permitted her to add Follmer as a defendant. When a 14
plaintiff seeks to add a non-diverse defendant after a case has been removed to 15 federal court,
the court “may deny joinder, or permit joinder and remand the 16 action to the State court.” 28
U.S.C. § 1447(e). In general, a court should deny 17 joinder when the plaintiff’s damages “could
be fully satisfied by the other 18 defendants” and when the plaintiff “could still proceed separately
against [the 19 non-diverse defendant] in state court,” such that “no injustice would occur” if 20
joinder is denied. *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 691 (9th Cir. 1998). 21 A court
should also deny joinder when the circumstances of the desired joinder 22 suggest that the plaintiff
merely seeks to destroy diversity, which may occur in 23 cases in which the plaintiff knew of the
non-diverse defendant’s identity when 24 the plaintiff commenced the action yet declined to add
the defendant until after 25 the action was removed to federal court. See, e.g., *3WL, LLC v.*
Master 26 27 1 Protection, LP, 851 F. App’x 4, 7 (9th Cir. 2021) (discussing such a belated 2
attempt to add a non-diverse defendant). 3 Because Mendoza’s claims against Follmer are
premised entirely upon his 4 role as a supervisor for Costco, if Mendoza prevails in this case, she
can recover 5 all of her money damages from Costco without adding Follmer as a defendant. 6
Mendoza may also pursue her claims against Follmer in state court, if she 7 desires. Thus, the
Court could preclude Mendoza from adding Follmer as a 8 defendant without causing any
injustice. See *Newcombe*, 157 F.3d at 691. 9 Moreover, in view of the history of this action and
Mendoza’s admission that 10 she knew Follmer’s identity before she commenced this action, the
Court has 11 little doubt that Mendoza’s attempt to add Follmer is motivated by her desire to 12
avoid federal jurisdiction, rather than Follmer’s indispensability. As such, the 13 request to add
Follmer as a defendant—had Mendoza made it—would be 14 denied. 15 Finally, the Court is

unpersuaded that Russell Follmer is the Doe 16 defendant who Mendoza incorrectly sued as Jimmy Johnson. As the Court 17 noted in its prior Order, Mendoza argued that Jimmy Johnson was the owner or 18 manager of the La Habra Costco location until it became clear that no person 19 named Jimmy Johnson, or any variation thereof, has ever worked at that Costco 20 location.21 Then, Mendoza proposed that the Costco manager may have instead 21 been named “Russ.”22 Now that Costco has confirmed that a person named 22 Russ did work at that Costco location, Mendoza asserts that her hunch was 23 confirmed: “Russ” Follmer and Jimmy Johnson are one and the same. 24 The Court is unconvinced. As Mendoza concedes, she knew Follmer’s 25 identity before she filed the First Motion, yet she remained steadfast in her belief 26 27 21 See Order. 1 that Jimmy Johnson was a separate and distinct person until it became clear that 2 Jimmy Johnson was not a viable non-diverse defendant.23 Only at that time— 3 and apparently in response to Costco’s initial disclosures, which identified 4 “Russ” as “the store employee believed to have taken the incident report” 24— 5 did Mendoza decide that Jimmy Johnson may have actually been named 6 “Russ.”25 But while “Russ” exists, he has little in common with the warehouse 7 manager previously identified as Jimmy Johnson.26 Indeed, although Mendoza 8 attempts to point out similarities between the two Costco employees, those 9 similarities relate entirely to characteristics and actions that Mendoza first 10 ascribed to Jimmy Johnson after Costco ascribed those characteristics and 11 actions to Follmer.27 For those reasons, the Court is unpersuaded that Follmer 12 is the Doe defendant previously identified as Jimmy Johnson, and Mendoza’s 13 attempt to manufacture a non-diverse defendant out of any available Costco 14 employee remains, as it was in her First Motion, unavailing. 15 Accordingly, Mendoza’s Renewed Motion is DENIED. 16 17 18 23 See generally First Motion; see also Joint Rule 26(f) Report (the “Rule 26(f) Report”) [ECF No. 22] (listing “Russ” as the “store employee 19 believed to have taken the incident report”). 20 24 See Rule 26(f) Report. 21 25 See generally Mendoza’s Supplemental Brief. 22 26 See generally Opposition (explaining that Follmer was not a warehouse manager, that he lacked actual knowledge of the alleged condition of the 23 warehouse prior to Mendoza’s fall, that he learned of the spill because Mendoza 24 reported it to him, and that he arrived at the scene after the spill had been 25 cleaned). 26 27 Compare Rule 26(f) Report (listing “Russ” as the “store employee believed to have taken the incident report”) with Mendoza’s Supplemental Brief 27 2:5-9 (suggesting for the first time that the store manager identified as Jimmy

1 IV. DISPOSITION

2 For the foregoing reasons, the Court hereby ORDERS that Mendoza’s 3|| instant Renewed Motion [ECF No. 36] is DENIED. 4 IT ISSO ORDERED. 6|| Dated: _August 20,2025 _ MOM
7 SNITED STATES DISTRICT JUDGE

9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

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