

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF  
CALIFORNIA

Judith Mendoza v. Costco Wholesale Corporation, et al.

Mendoza v. Costco · No. 8:24-cv-00845-AJR · Decided November 19, 2025

SUMMARY

The United States District Court for the Central District of California denied Judith Mendoza’s second renewed motion to remand her premises-liability action to state court. The court held that Russell Follmer was not a properly joined defendant because Mendoza had not obtained leave to amend after entry of the scheduling order, and therefore his citizenship did not defeat diversity jurisdiction. The court also rejected Mendoza’s equitable-estoppel and attorney’s-fee arguments.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                      |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Central District of California                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Joel Richlin                                                                                                                                                                                                                                                                                         |
| JURISDICTION          | United States District Court for the Central District of California                                                                                                                                                                                                                                  |
| DECIDED               | November 19, 2025                                                                                                                                                                                                                                                                                    |
| DOCKET                | 8:24-cv-00845-AJR                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Plaintiff moved for a second renewed remand of a removed personal-injury action to state court. The federal district court denied the motion.                                                                                                                                                        |
| STANDARD OF REVIEW    | Removal jurisdiction is strictly construed in favor of remand, and the party seeking removal bears the burden of establishing federal jurisdiction. The court also applied the standards governing reconsideration under Central District of California Local Rule 7-18 and Ninth Circuit precedent. |
| PRECEDENTIAL VALUE    | unpublished district court memorandum decision; persuasive authority only                                                                                                                                                                                                                            |
| PARTIES               | Judith Mendoza v. Costco Wholesale Corporation, Jimmy Johnson, Does 1 through 50                                                                                                                                                                                                                     |

TOPICS

subject matter jurisdiction

civil procedure

attorney fees

federalism

## PRACTICE AREAS

civil procedure

removal and remand

diversity jurisdiction

premises liability

## QUESTIONS PRESENTED

1. Whether Plaintiff's second renewed motion to remand should be granted based on the alleged addition of Russell Follmer as a nondiverse defendant.
2. Whether the court should reconsider the district judge's prior rulings concerning Follmer's joinder and diversity jurisdiction.
3. Whether Defendant's email referring to remand equitably estopped Defendant from opposing remand.
4. Whether Plaintiff was entitled to attorney's fees and costs under 28 U.S.C. § 1447(c) despite denial of the motion to remand.

## HOLDINGS

1. Only properly joined defendants may be considered in determining whether complete diversity exists. Because Plaintiff did not obtain leave of court to amend the Complaint after entry of the scheduling order, Follmer was not a defendant in the action and his citizenship did not defeat diversity jurisdiction.
2. Even if construed as a motion for reconsideration, the second renewed motion failed because Plaintiff did not identify newly discovered material facts, an intervening change in law, clear error, or a manifest failure to consider material facts.
3. Defendant's isolated email statement did not equitably estop Defendant from opposing remand and did not constitute a binding agreement to remand the action.
4. Plaintiff was not entitled to attorney's fees or costs because § 1447(c) authorizes such an award when a court grants a motion to remand, and the court denied Plaintiff's motion.

## KEY QUOTATIONS

*"This Court need not reconsider issues already decided by the District Judge multiple times"* (at 5)

*"Only the citizenship of properly joined defendants may be considered in determining whether diversity of citizenship exists."* (at 7-8)

*"the Court does not believe it is appropriate to enforce a one-off comment in an email as a binding agreement to remand the entire case."* (at 9-10)

*"Here, the Court has determined that it must deny Plaintiff's Second Renewed Motion to Remand. Accordingly, no fees or costs are authorized."* (at 12-13)

## FACTUAL BACKGROUND

Judith Mendoza alleged that she slipped and fell while shopping at a Costco store in La Habra, California, in May 2022. She sued Costco, Jimmy Johnson, and Doe defendants in California state court, and Costco removed the action based on diversity jurisdiction. During jurisdictional discovery, Plaintiff identified a possible Costco employee, Russell Follmer, and attempted to add him as a Doe defendant, but she did not obtain the required court permission to amend after entry of the scheduling order. The court determined that Follmer was not a properly joined defendant and that diversity jurisdiction therefore remained intact.

**PROCEDURAL HISTORY**

Plaintiff filed negligence and premises-liability claims in Orange County Superior Court after allegedly slipping and falling at a Costco store. Costco removed the action based on diversity jurisdiction. The district judge denied Plaintiff's first motion to remand after finding Jimmy Johnson fraudulently joined, and later denied a renewed motion after Plaintiff attempted to add Russell Follmer without obtaining leave under Federal Rule of Civil Procedure 16. After the parties consented to magistrate-judge jurisdiction, Plaintiff filed the second renewed motion to remand, which the court denied.

**DISPOSITION**

other

**CASES CITED**

- Harris v. Bankers Life and Cas. Co., 425 F.3d 689, 698 (9th Cir. 2005)
- Abrego Abrego v. Dow Chem. Co., 443 F.3d 676, 684 (9th Cir. 2006)
- Ethridge v. Harbor House Rest., 861 F.2d 1389, 1393 (9th Cir. 1988)
- United States v. Rezzonico, 32 F. Supp. 2d 1112, 1116 (D. Ariz. 1998)
- Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009)

**OPINION**

Judith Mendoza v. Costco Wholesale Corporation, et al.

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 11 JUDITH MENDOZA, an individual, No. 8:24-cv-00845-AJR 12 Plaintiff,

MEMORANDUM DECISION

v.

13 AND ORDER DENYING

PLAINTIFF’S SECOND

14 COSTCO WHOLESALE RENEWED MOTION TO

CORPORATION, a Washington REMAND (DKT. 62) 15 Corporation, ET AL., 16 Defendants. 17

I. 18

## INTRODUCTION & BACKGROUND

19 On March 19, 2024, Plaintiff Judith Mendoza (“Plaintiff”) filed a complaint 20 (the “Complaint”) alleging claims for negligence and premises liability in the 21 Orange County Superior Court against Defendants Costco Wholesale Corporation, 22 Jimmy Johnson, and DOES 1 through 50 after she allegedly slipped and fell while 23 shopping at a Costco store in La Habra, California, in May of 2022. (Dkt. 2-2 at 3- 24 8.)<sup>1</sup> On March 26, 2024, Plaintiff effectuated service of the Complaint on 25 26 1 The Court notes that Plaintiff’s Complaint, filed herein as an attachment to 27 Defendant’s Notice of Removal does not contain consecutive page numbers. (Dkt. 28 (cont’d . . .)) 1 18, 2024, Defendant filed a Notice of Removal of the action to the U.S. District 2 Court for the Central District of California (the “Notice of Removal”). (Dkt. 1.) 3 On May 20, 2024, Plaintiff filed a Motion to Remand (the “First Motion to 4 Remand”) this action to the Orange County Superior Court on the grounds that 5 Defendant Jimmy Johnson was the owner or manager of the La Habra Costco 6 location and was a properly joined California citizen. (Dkt. 13.) On June 7, 2024, 7 Defendant filed an Opposition to the First Motion to Remand. (Dkt. 18.) On June 8 14, 2024, Plaintiff filed a Reply in support of the First Motion to Remand. (Dkt. 9 21.) On July 2, 2024, the District Judge granted leave for the parties to engage in 10 jurisdictional discovery, including but not limited to, narrowly tailored 11 interrogatories and requests for admission with respect to the true name of “Jimmy 12 Johnson,” his citizenship, and his role in the allegations. (Dkt. 23.) The District 13 Judge also ordered the parties to file supplemental briefing on the issue of diversity 14 15 of citizenship and subject matter jurisdiction no later than August 30, 2024. (Id.) 16 On August 30, 2024, Plaintiff and Defendant filed supplemental briefs. 17 (Dkts. 24 & 25.) Plaintiff’s supplemental brief noted that she also “recalled the 18 name of the individual store manager who filled out the incident report and may 19 have been name ‘Russ’ or Russell.” (Dkt. 24 at 2.) Defendant’s supplemental brief 20 relied on evidence filed in support of its Opposition which “confirmed that no 21 individual by the name of ‘Jimmy Johnson’ or any variation, including ‘James,’ had 22 ever worked at the La Habra warehouse.” (Dkt. 25 at 3.) 23 On January 7, 2025, the District Judge denied Plaintiff’s First Motion to 24 Remand on the grounds that Jimmy Johnson was fraudulently joined and that 25 Plaintiff could not state any viable claim against him. (Dkt. 27 at 7.) The District 26 27 2-2.) Thus, the Court uses the CM/ECF page numbers when referencing specific 28 pages of the Complaint. 1 the existence of a possible Costco employee named “Russ” when that individual was 2 not named as a defendant, and where his existence, identity, and role in this action 3 were entirely speculative and unsupported by evidence. (Id.) The District Judge 4 emphasized that he “ordered the parties to conduct jurisdictional discovery related to 5 the citizenship and identity of Jimmy Johnson, not for [Plaintiff] to perform a 6 fishing expedition into the possible existence of other persons.” (Id.) 7 On August 1, 2025, Plaintiff filed a Renewed Motion to Remand (the 8 “Renewed Motion to Remand”). (Dkt. 36.) Plaintiff’s Renewed Motion to Remand 9 asserted that Costco’s April 7, 2025 discovery responses identified an employee 10 named Russell “Russ” Follmer (“Follmer”),

who she believed to be the store 11 manager or employee responsible for supervising or maintaining the area of the 12 incident. (Id. at 5.) Based on this information, Plaintiff noted that she had filed and 13 served an amendment to the Complaint, naming/substituting Follmer as Doe 2. (Id.) 14 15 Plaintiff contended that the inclusion of Follmer as Doe 2 defeated complete 16 diversity of jurisdiction and warranted the remanding of the action from federal 17 jurisdiction to state court. (Id.) On August 8, 2025, Defendant filed an Opposition 18 to the Renewed Motion to Remand. (Dkt. 40.) On August 15, 2025, Plaintiff filed a 19 Reply in support of her Renewed Motion to Remand. (Dkt. 41.) 20 On August 20, 2025, the District Judge denied Plaintiff's Renewed Motion to 21 Remand on the grounds that Plaintiff had not sought the Court's consent to amend 22 her Complaint pursuant to Federal Rule of Civil Procedure 16, after a Scheduling 23 Order had been entered in the case, rendering Plaintiff's amendment improper. 24 (Dkt. 48 at 6.) The District Judge also explained that he would not have permitted 25 Plaintiff to amend her Complaint to add Follmer even if Plaintiff had sought 26 permission from the Court because: (1) Plaintiff's claims could be fully satisfied by 27 Defendant; (2) Plaintiff could still pursue her claims against Follmer in state court; 28 (3) Plaintiff's inability to add Follmer did not result in any injustice; (4) "the Court 1 desire to avoid federal jurisdiction, rather than Follmer's indispensability; and (5) 2 the Court was "unpersuaded that Follmer [was] the Doe previously identified as 3 Jimmy Johnson." (See id. at 6-8.) The District Judge concluded that "[Plaintiff's] 4 attempt to manufacture a non-diverse defendant out of any available Costco 5 employee remains, as it was in her First Motion, unavailing." (Id. at 8.) 6 On September 10, 2025, the parties consented to the jurisdiction of the 7 undersigned U.S. Magistrate Judge. (Dkt. 59.) Thereafter, on September 15, 2025, 8 Plaintiff filed the instant Second Renewed Motion to Remand Case To State Court 9 (the "Second Renewed Motion to Remand"). (Dkt. 62.) On October 8, 2025, 10 Defendant filed an Opposition to the Second Renewed Motion to Remand (the 11 "Opposition"). (Dkt. 67.) On October 15, 2025, Plaintiff filed a Reply in support of 12 the Second Renewed Motion to Remand (the "Reply"). (Dkt. 68.) 13 For the reasons stated below, the Court DENIES Plaintiff's Second Renewed 14 15 Motion to Remand. (Dkt. 59.) Because the Court has determined that the Second 16 Renewed Motion to Remand must be denied, the Court will also issue a separate 17 scheduling order. 18 19 II.

## 20 LEGAL STANDARD

21 Removal of a case from state court to federal court is governed by 28 U.S.C. 22 § 1441, which provides in relevant part that "any civil action brought in a State court 23 of which the district courts of the United States have original jurisdiction, may be 24 removed . . . to the district court of the United States for the district and division 25 embracing the place where such action is pending." 28 U.S.C. § 1441(a). Federal 26 courts have original subject matter jurisdiction where an action presents either a 27 federal question under 28 U.S.C. § 1331 or diversity of citizenship under 28 U.S.C. 28 § 1332. Generally, a court has diversity jurisdiction only when there is complete 1 exceeds \$75,000. See 28 U.S.C. § 1332(a). Remand to state court may be ordered 2 for

lack of subject matter jurisdiction or any defect in the removal procedure. See 28 U.S.C. § 1447(c). To protect the jurisdiction of state courts, removal jurisdiction is strictly construed in favor of remand. See *Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689, 698 (9th Cir. 2005); see also *Abrego v. Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006) (“It is to be presumed that a cause lies outside the limited jurisdiction of the federal courts and the burden of establishing the contrary rests upon the party asserting jurisdiction.” (internal quotation marks and brackets omitted)). If there is any doubt as to whether removal is proper, remand must be ordered. *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1393 (9th Cir. 1988). “The party seeking removal bears the burden of establishing federal jurisdiction.” *Id.* III.

#### DEFENDANT’S NOTICE OF REMOVAL

Defendant removed the action based on diversity jurisdiction under 28 U.S.C. § 1332 and 1446. (Dkt. 2 at 2-3.) Defendant contends that Plaintiff was and is a resident and citizen of the State of California based on: “(i) Plaintiff’s medical records and billing reflecting a California address; (ii) a Westlaw People Search that revealed Plaintiff has owned the property listed in her medical records since at least 2020; (iii) a Westlaw People Search that revealed the home listed in Plaintiff’s medical records is ‘Owner Occupied’; (iv) a Westlaw People Search that revealed Plaintiff has a California Social Security Number issued in 1984-1985; and (v) a Westlaw People Search that revealed Plaintiff has lived at various addresses in California since 2004.” (Dkt. 2-1 at 2.) Defendant further states that it is a 12 therefore is a citizen of Washington. (Dkt. 2 at 3.) With regard to the amount in controversy, Defendant points to Plaintiff’s filing of the unlimited civil Complaint which seeks monetary damages in excess of \$35,000.2 (Dkt. 2 at 2, 3; Dkt. 2-2 at 3, 9.) Defendant also points to the “claims file” it received on March 26, 2025, that included medical bills from thirteen providers totaling charges over \$130,000. (Dkt. 2 at 4.) Additionally, Defendant notes that on October 26, 2023, Plaintiff sent a demand letter outlining her medical specials to date in the amount of \$147,209.30. (*Id.*) Thus, Defendant states that “the amount in controversy, exclusive of interest and costs, is in the excess of \$75,000.” (*Id.*) V.

#### DISCUSSION

Plaintiff again contends that the Court must remand this action to Orange County Superior Court because her addition of Follmer as a party defendant “defeats complete diversity jurisdiction, warranting the remanding of the action . . . .” (Dkt. 18 62 at 5.) However, Plaintiff’s Second Renewed Motion to Remand (Dkt. 62) is virtually identical to her Renewed Motion to Remand (Dkt. 36), and does not provide the Court with new evidence that would compel this Court to deviate from the District Judge’s previous ruling. This Court need not reconsider issues already decided by the District Judge multiple times, especially when Plaintiff has not brought a motion for reconsideration or even addressed how the Second Renewed Complaint and civil case coversheet state that the action is an unlimited civil case seeking damages in excess of \$35,000. (Dkt 2-2 at 3, 9.) Thus, the Court assumes Defendant’s

statement in its Notice of Removal that “Plaintiff filed an 27 unlimited complaint seeking monetary damages in excess of \$25,000” was a clerical error. (Dkt. 2 at 2.) 28 1 2 District Judge. 3 Even if this Court were to interpret Plaintiff’s Second Renewed Motion to 4 Remand as a motion for reconsideration, the motion would be denied because 5 motions for reconsideration “should not be used to ask the court to rethink what the 6 court had already thought through—rightly or wrongly.” *United States v. 7 Rezzonico*, 32 F. Supp. 2d 1112, 1116 (D. Ariz. 1998) (internal quotation marks 8 omitted). The Ninth Circuit has explained that a motion for reconsideration “should 9 not be granted, absent highly unusual circumstances, unless the district court is 10 presented with newly discovered evidence, committed clear error, or if there is an 11 intervening change in the controlling law.” *Marlyn Nutraceuticals, Inc. v. Mucos 12 Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (internal quotation marks 13 omitted). These principles are codified in Central District Local Rule 7-18, which 14 states as follows: 15 A motion for reconsideration of an Order on any motion or application 16 may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court that, in the exercise of reasonable 17 diligence, could not have been known to the party moving for 18 reconsideration at the time the Order was entered, or (b) the emergence of new material facts or a change of law occurring after the Order was 19 entered, or (c) a manifest showing of a failure to consider material facts 20 presented to the Court before the Order was entered. No motion for reconsideration may in any manner repeat any oral or written argument 21 made in support of, or in opposition to, the original motion. Absent 22 good cause shown, any motion for reconsideration must be filed no later than 14 days after entry of the Order that is the subject of the 23 motion or application. 24 C.D. Cal. L.R. 7-18. 25 Here, Plaintiff’s Second Renewed Motion to Remand fails to demonstrate that 26 a newly discovered material fact or change in the law occurred after the District 27 Judge’s prior ruling nor does Plaintiff argue that the District Judge failed to consider 28 1 2 Judge, Follmer is not a defendant in this action because Plaintiff did not seek leave 3 of court to amend her Complaint. (Dkt. 48 at 6.) Only the citizenship of properly 4 joined defendants may be considered in determining whether diversity of citizenship 5 exists. See 28 U.S.C. § 1441. While Plaintiff argues that this Court should consider 6 Follmer’s citizenship as a “Doe Employee,” this exact argument was rejected by the 7 District Judge. (Dkt. 48 at 7-8.) Accordingly, the Court DENIES Plaintiff’s Second 8 Renewed Motion to Remand as diversity of citizenship exists. 9 Next, Plaintiff states that on July 31, 2025, defense “counsel sent an email 10 stating, in relevant part, ‘With the case being remanded, we are no longer bound 11 by the deadline the Federal Court gave us to mediate.’” (Dkt. 62 at 9.) Plaintiff 12 contends that this correspondence should equitably estop Defendant from 13 subsequently changing its position and opposing the remand. (Id. at 10.) However, 14 the Court interprets Defendant’s email correspondence as a misunderstanding at 15 best, rather than a concession to remand the case. Regardless, the Court does not 16 believe it is appropriate to enforce a one-off comment in an email as a binding 17 agreement to remand the entire case. Moreover, Plaintiff previously raised

this 18 exact argument in her Renewed Motion to Remand. (Dkt. 36 at 9.) 19 Lastly, Plaintiff requests that this Court retain jurisdiction solely for the 20 purpose of entertaining Plaintiff's anticipated motion for reasonable attorney's fees 21 for improper removal pursuant to 28 U.S.C. § 1447(c). (Dkt. 62 at 12-13.) 22 However, 28 U.S.C. § 1447(c) only authorizes an award of fees and costs where a 23 court grants a motion to remand. See 28 U.S.C. § 1447(c) ("An order remanding the 24 case may require payment of just costs and any actual expenses, including attorney 25 fees, incurred as a result of the removal."). Here, the Court has determined that it 26 must deny Plaintiff's Second Renewed Motion to Remand. Accordingly, no fees or 27 costs are authorized. 28 1 VI.

2 ORDER

3 Consistent with the foregoing, Plaintiff's Second Renewed Motion to Remand 4 || is DENIED. (Dkt. 62.) The Court will also issue a separate scheduling order. 5 6 IT IS SO ORDERED. 8 ||

DATED: November 19, 2025

9 HO . JOEL RICHLIN

0 UNITED STATES MAGISTRATE JUDGE

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