

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Cilian Henson v. Costco Wholesale Corporation, et al.

Case No. CV 25-03958-MWF (RAOx) (C.D. Cal. July 2, 2025) · No. CV 25-03958-MWF (RAOx) · Decided
July 2, 2025

SUMMARY

The Central District of California denied Cilian Henson’s motion to remand after concluding that Costco’s removal was timely and that diversity jurisdiction existed. The court found that the individual defendant, James Taef, was fictitious and therefore disregarded for diversity purposes. The court denied without prejudice Henson’s request to add a nondiverse defendant, Eric Sanchez, and ordered her to file a motion to amend addressing the Palestini factors by July 28, 2025.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Michael W. Fitzgerald
JURISDICTION	United States District Court for the Central District of California
DECIDED	July 2, 2025
DOCKET	CV 25-03958-MWF (RAOx)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved to remand a removed California premises-liability and negligence action. The district court denied remand, found removal timely and diversity jurisdiction present, denied without prejudice plaintiff's proposed joinder of a nondiverse defendant, and directed plaintiff to file a motion to amend addressing the Palestini factors.
STANDARD OF REVIEW	The removing defendant bears the burden of establishing that removal is proper, and doubts concerning subject-matter jurisdiction are resolved in favor of remand. Timeliness of removal under 28 U.S.C. § 1446(b) is a mandatory procedural requirement subject to timely objection.
PRECEDENTIAL VALUE	Nonprecedential district-court order
PARTIES	Cilian Henson v. Costco Wholesale Corporation

TOPICS

subject matter jurisdiction

joinder

civil procedure

attorney fees

premises liability

PRACTICE AREAS

civil procedure

federal jurisdiction

removal and remand

premises liability

attorney fees

QUESTIONS PRESENTED

1. Whether Costco's notice of removal was timely under 28 U.S.C. § 1446(b)(3).
2. Whether the district court had diversity jurisdiction based on an amount in controversy exceeding \$75,000 and complete diversity after disregarding the fictitious defendant.
3. Whether plaintiff should be permitted under 28 U.S.C. § 1447(e) to join Eric Sanchez as a nondiverse defendant and thereby require remand.
4. Whether plaintiff was entitled to attorney's fees under 28 U.S.C. § 1447(c) based on the removal.

HOLDINGS

1. Costco's removal was timely because the case did not become unequivocally clear and certain as removable from plaintiff's discovery responses; the payroll declarations provided the information establishing removability, and Costco removed within thirty days of receiving that information.
2. The district court had diversity jurisdiction because the amount in controversy exceeded \$75,000 and there was complete diversity between Henson and Costco after the fictitious defendant was disregarded.
3. Taef was disregarded for jurisdictional purposes because the evidence established that he was fictitious, and plaintiff did not argue that he should remain a defendant.
4. Plaintiff's request to join Eric Sanchez under 28 U.S.C. § 1447(e) was denied without prejudice because neither party addressed the Palestini factors.
5. Plaintiff was not entitled to attorney's fees under 28 U.S.C. § 1447(c) because Costco had an objectively reasonable basis for removal.

KEY QUOTATIONS

“The ‘removal clock does not start until a paper makes a ground for removal ‘unequivocally clear and certain.’” (Section III.B)

“Critically, even if the Court assumed Costco could have guessed Taef’s fictitious status based on the Responses alone, the Ninth Circuit has instructed that ‘defendants need not make extrapolations or engage in guesswork[.]’” (Section III.B)

“Courts generally consider the following factors when deciding whether to allow amendment to add non-diverse defendants under 28 U.S.C. § 1447:” (Section III.E)

FACTUAL BACKGROUND

Henson alleged that she suffered serious injuries after slipping on grapes on the floor of a Costco store in Hawthorne, California, where there were allegedly no warning signs. She asserted premises-liability and

general-negligence claims and sought more than \$4,325,000 in damages. The state-court complaint named Costco and James Taef, but payroll declarations later established that no person by that name had been employed at the relevant Costco locations. After removal, Henson sought to substitute Eric Sanchez, allegedly the front-end manager on duty, as a nondiverse defendant.

PROCEDURAL HISTORY

Henson commenced the action in Los Angeles County Superior Court on August 26, 2024, naming Costco and James Taef. Costco removed the action on May 2, 2025, after obtaining payroll declarations indicating that Taef was fictitious. Henson moved to remand, arguing that removal was untimely and that diversity jurisdiction was lacking. The district court denied the motion, denied without prejudice the requested joinder of Eric Sanchez, and ordered Henson to file a motion to amend by July 28, 2025.

DISPOSITION

other

REMAND INSTRUCTIONS

The motion to remand was denied. The request for joinder under 28 U.S.C. § 1447(e) was denied without prejudice. Plaintiff was ordered to file a motion to amend by July 28, 2025, containing an analysis of the Palestini factors and attaching the proposed amended complaint as an exhibit.

CASES CITED

- Abrego Abrego v. The Dow Chem. Co., 443 F.3d 676, 684 (9th Cir. 2006) (per curiam)
- Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)
- Kelton Arms Condo. Owners Ass'n, Inc. v. Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003)
- Smith v. Mylan Inc., 761 F.3d 1042, 1045 (9th Cir. 2014)
- Fristoe v. Reynolds Metals Co., 615 F.2d 1209, 1212 (9th Cir. 1980)
- Harris v. Bankers Life & Cas. Co., 425 F.3d 689, 690-91, 694 (9th Cir. 2005)
- Dietrich v. Boeing Co., 14 F.4th 1089, 1091, 1094 (9th Cir. 2021)
- Kuxhausen v. BMW Fin. Servs. NA LLC, 707 F.3d 1136, 1140-41 (9th Cir. 2013)
- Roth v. CHA Hollywood Med. Ctr., L.P., 720 F.3d 1121, 1126 (9th Cir. 2013)
- S.W.S. Erectors, Inc. v. Infax, Inc., 72 F.3d 489, 494 (5th Cir. 1996)
- Korn v. Polo Ralph Lauren Corp., 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008)
- Ervin v. Ballard Marine Constr., Inc., 2016 WL 4239710, at *3 (N.D. Cal. Aug. 11, 2016)
- Arellano v. Wal-Mart Stores, Inc., 2017 WL 4083144, at *4 (C.D. Cal. Sept. 14, 2017)
- Lopez v. Nationstar Mortgage LLC, 2015 WL 6478263, at *2 (C.D. Cal. Oct. 26, 2015)
- Soliman v. Philip Morris Inc., 311 F.3d 966, 971 (9th Cir. 2002)
- Fisher v. Paul Revere Ins. Group., 55 Fed. App'x 412, 413 (9th Cir. 2003)
- McCabe v. General Foods Corp., 811 F.2d 1336, 1339 (9th Cir. 1987)

- Grancare, LLC v. Thrower by and through Mills, 889 F.3d 543, 551 (9th Cir. 2018)
- Hunter v. Philip Morris USA, 582 F.3d 1039, 1046 (9th Cir. 2009)
- Hamilton Materials, Inc. v. Dow Chem. Corp., 494 F.3d 1203, 1206 (9th Cir. 2007)
- Desert Empire Bank v. Ins. Co. of N. Am., 623 F.2d 1371, 1376 (9th Cir. 1980)
- Calderon v. Lowe's Home Ctrs., LLC, 2015 WL 3889289, at *3 (C.D. Cal. June 23, 2015)
- Palestini v. Gen. Dynamics Corp., 193 F.R.D. 654, 658 (S.D. Cal. 2000)
- Meggs v. NBCUniversal Media, LLC, 2017 WL 2974916, at *3 (C.D. Cal. July 12, 2017)
- Birdsong v. Apple, Inc., 590 F.3d 955, 959 (9th Cir. 2009)
- Western Radio Servs. Co. v. Qwest Corp., 678 F.3d 970, 979 (9th Cir. 2012)
- Lewis v. Davis, 2020 WL 6694358, at *32 (C.D. Cal. Sept. 14, 2020)
- Martin v. Franklin Cap. Corp., 546 U.S. 132, 141 (2005)
- United States v. Hayes, 763 F. Supp. 3d 1054, 1065, 1071 (E.D. Cal. 2025)
- Mata v. Avianca, Inc., 678 F. Supp. 3d 443, 448-49 (S.D.N.Y. 2023)
- Ibalay v. Clegg, No. CV 12-00291, 2012 WL 12883997, at *3 (C.D. Cal. Apr. 4, 2012)