

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA

**Trevino v. The Lubrizol Corporation**

Trevino · No. 1:23-CV-01005-KES-CDB · Decided March 24, 2025

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**OPINION**

1 2 3 4 5 6 7 8 9 10 11 UNITED STATES DISTRICT COURT 12 EASTERN DISTRICT OF  
CALIFORNIA 13 14 VINCENT TREVINO, No. 1:23-CV-01005-KES-CDB 15 Plaintiff, ORDER  
GRANTING PLAINTIFF’S MOTION TO REMAND AND DENYING 16 v. DEFENDANTS’  
MOTION FOR JUDGMENT ON THE PLEADINGS 17 THE LUBRIZOL CORPORATION, et  
al., Docs. 9, 16 18 Defendants. 19 20 Plaintiff Vincent Trevino (“plaintiff”) moves to remand this  
action to Kern County 21 Superior Court.

Doc. 9 (“MTR”). Separately, defendants The Lubrizol Corporation (“Lubrizol”), 22 Chemtool  
Incorporated (“Chemtool”), and Kevin Oakley (“Oakley”), move for judgment on the 23  
pleadings. Doc. 16 (“MJP”). The parties filed oppositions and replies to both motions. Docs. 13,  
24 14, 18, 19.

The Court took the motions under submission. Doc. 17. For the reasons set forth 25 below,  
plaintiff’s motion to remand is granted and defendants’ motion for judgment on the 26 pleadings is  
denied as moot. 27 /// 28 /// 1 I. Background 2 On June 2, 2023, plaintiff brought this action  
against defendants in Kern County Superior 3 Court, alleging that defendants harassed,  
discriminated against, and retaliated against plaintiff in 4 response to his reports of hazardous  
conditions in the workplace and his seeking reasonable 5 accommodations for a medical condition  
or disability, ultimately leading to his wrongful 6 termination.

Doc. 1-2 (“Compl.”). In his complaint, plaintiff alleges several causes of action 7 arising under  
state law, including the Fair Employment and Housing Act (“FEHA”), California 8 Labor Code §§  
98.6 and 1102.5, and intentional infliction of emotional distress (“IIED”), among 9 others. 10  
Lubrizol removed the action to this Court on June 30, 2023. Doc. 1 (“Notice of 11 Removal”).

In its notice of removal, Lubrizol asserts that this Court has subject matter 12 jurisdiction under 28  
U.S.C. § 1332 because the parties are of diverse citizenship and the amount 13 in controversy  
exceeds the \$75,000 threshold. Id. at 2. Lubrizol argues that defendants Oakley 14 and Preston are  
fraudulently joined defendants and therefore their citizenship must be disregarded 15 for purposes  
of determining diversity jurisdiction.<sup>1</sup> Id. ¶ 14.

In their motion for judgment on the 16 pleadings, filed October 24, 2023, defendants move to  
dismiss the IIED claim in its entirety, 17 arguing plaintiff’s IIED claim fails to allege specific facts

sufficient to support such a claim. MJP 18 at 9. 19 Plaintiff moves to remand the action to Kern County Superior Court, arguing that his 20 complaint states sufficient facts to support an IIED claim against defendants Oakley and Preston, 21 whom plaintiff alleges are citizens of California.

MTR at 2, 8. Therefore, plaintiff argues 22 diversity jurisdiction does not exist and the Court lacks jurisdiction over the action. Id. at 8. 23 /// 24 /// 25 /// 26 27 1 Plaintiff does not dispute that the amount-in-controversy exceeds \$75,000. MTR at 4. Defendants do not dispute that Oakley and Preston are citizens of California.

The dispute on the 28 motion to remand is whether the nondiverse parties were fraudulently joined. 1 II. Legal Standard 2 A suit filed in state court may be removed to federal court if the federal court would have 3 had original jurisdiction over the suit. 28 U.S.C. § 1441(a). Removal is proper when a case 4 originally filed in state court presents a federal question or where there is diversity of citizenship 5 among the parties and the amount in controversy exceeds \$75,000.

See 28 U.S.C. §§ 1331, 6 1332(a). 7 “If at any time before final judgment it appears that the district court lacks subject matter 8 jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). Section 1447(c) “is strictly 9 construed against removal jurisdiction, and the burden of establishing federal jurisdiction falls to 10 the party invoking the statute.” Acad.

Of Country Music v. Cont’l Cas. Co., 991 F.3d 1059, 1061 11 (9th Cir. 2021) (quoting Cal. ex rel. Lockyer v. Dynegy, Inc., 375 F.3d 831, 838 (9th Cir. 2004); 12 see also Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1091 (9th Cir. 2003) 13 (holding that the defendant must prove, by a preponderance of the evidence, that removal is 14 proper).

As such, a federal court must reject jurisdiction and remand the case to state court if 15 there is any doubt as to the right of removal. Matheson, 319 F.3d at 1090. 16 A court may exercise diversity jurisdiction over a matter when there is diversity of 17 citizenship among the parties and the amount in controversy exceeds \$75,000. See 28 U.S.C. 18 § 1332(a).

An action may be removed to federal court based on diversity jurisdiction only where 19 there is complete diversity of citizenship between the parties. Hunter v. Phillip Morris USA, 582 20 F.3d 1039, 1043 (9th Cir. 2009) (citing 28 U.S.C. §§ 1332(a), 1441(b)).

For diversity purposes, a 21 person is a citizen of a state if he or she is: (1) a citizen of the United States and (2) domiciled in 22 that state. Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088, 1090 (9th Cir. 1983). An LLC is a 23 citizen of the state of which its owners or members are citizens. Johnson v. Columbia Props. 24 Anchorage, LP, 437 F.3d 894, 899 (9th Cir.

2006). A corporation is a citizen of the state in which 25 it is incorporated and the state in which its principal place of business is located. See, e.g., id. 26 (citing 28 U.S.C. § 1332(c)(1)). “In determining whether a civil action is removable on the basis 27 of [diversity jurisdiction], the

citizenship of defendants sued under fictitious names shall be 28 disregarded.” 28 U.S.C. § 1441(b)(1).

1 Similarly, “district courts may disregard the citizenship of a non-diverse defendant who 2 has been fraudulently joined.” *Grancare, LLC v. Thrower*, 889 F.3d 543, 548 (9th Cir. 2018). A 3 defendant seeking to make out a claim of “fraudulent joinder bears a ‘heavy burden’ since there is 4 a ‘general presumption against finding fraudulent joinder.’” *Id.* (quoting *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1046 (9th Cir.

2009)). To meet this “heavy burden,” a defendant must show 6 either “(1) actual fraud in the pleading of jurisdictional facts, or (2) [an] inability of the plaintiff 7 to establish a cause of action against the non-diverse party in state court.” *Id.* Fraudulent joinder 8 can be “established the second way if a defendant shows that an ‘individual joined in the action 9 cannot be liable on any theory.’” *Id.* (quoting *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 10 (9th Cir.

1998)). 11 If there is even a “possibility that a state court would find that the complaint states a cause 12 of action against any of the resident defendants, the federal court must find that the joinder was 13 proper and remand the case to the state court.” *Id.* (quoting *Hunter*, 582 F.3d at 1046) (emphasis 14 in original). “A claim against a defendant may fail under Rule 12(b)(6), but that defendant has 15 not necessarily been fraudulently joined.” *Id.* at 549.

Indeed, fraudulent joinder may be shown 16 when “a defendant presents extraordinarily strong evidence or arguments that a plaintiff could not 17 possibly prevail on her claims,” but not when a deficiency in the complaint could “possibly be 18 cured by granting the plaintiff leave to amend.” *Id.* at 549–50. 19 III. Discussion 20 Plaintiff pursues a cause of action for intentional infliction of emotional distress (“IIED”) 21 against two nondiverse defendants, Oakley and Preston, who supervised plaintiff.

Under 22 California law, a cause of action for IIED exists when there is “(1) extreme and outrageous 23 conduct by the defendant with the intention of causing... emotional distress; (2) the plaintiff’s 24 suffering severe or extreme emotional distress; and (3) actual and proximate causation of the 25 emotional distress by the defendant’s outrageous conduct.” *Hughes v. Pair*, 95 Cal. Rptr.

3d 636, 26 651 (Cal. 2009) (internal citations omitted). Liability for IIED “does not extend to mere insults, 27 indignities, threats, annoyances, petty oppressions, or other trivialities.” *Haley v. Cohen & Steers Capital Mgmt., Inc.*, 871 F. Supp. 2d 944, 960 (N.D. Cal. 2012).

In the employer-employee 1 context, the Worker’s Compensation Act (“WCA”) generally provides the exclusive remedy for 2 IIED claims, subject to two exceptions. *Langevin v. Federal Exp. Corp.*, No. CV 14-08105 3 MMM (FFMx), 2015 WL 1006367, at \*9 (C.D. Cal. Mar. 6, 2015).

As long as the employer's conduct neither (1) "contravenes fundamental public policy," nor (2) "exceeds the risk inherent in the employment relationship," "an employee's emotional distress injuries are subsumed under the exclusive remedy provisions of workers' compensation." *Livitsanos v. Superior Court*, 7 Cal. 7 Rptr. 2d 808, 815 (1992). Plaintiff argues that the alleged conduct by defendants violates fundamental public policy, and therefore the WCA's exclusive remedy does not apply.

However, the California Supreme Court has held that "[t]he exception for conduct that 'contravenes fundamental public policy' is aimed at permitting a Tameny action to proceed despite the workers' compensation exclusive remedy rule." *Miklosy v. Regents of Univ. of California*, 44 Cal. 4th 876, 902–03 (2008).

In other words, this public policy exception does not apply, as the "Livitsanos public policy exception operates only to permit Tameny actions for wrongful termination in violation of public policy, not IIED claims." *Langevin*, 2015 WL 1006367, at \*10 15 (citing *Miklosy*, 44 Cal. 4th at 902–03). As for the second exception, conduct that exceeds the risk inherent in the employment relationship, courts have established "no bright line test in determining what behavior is part of the employment relationship." *Calero v. Unisys Corp.*, 271 F. Supp. 2d 1172, 1181 (N.D.

Cal. 2003). Accordingly, "gauging whether an IIED claim arises from actions within the normal part of the employment relationship... is a heavily fact intensive inquiry into the nature of the defendants' conduct." *Hassler v. Talbots, Inc.*, No. CV-19-5793-DMG (FFMx), 2019 WL 22 4221390, at \*3 (C.D. Cal. Sep. 5, 2019) (citing *Calero*, 271 F. Supp. 2d at 1181) (internal quotations omitted).

Plaintiff alleges in his initial complaint, and intends to amend his complaint to further allege, several instances in which defendants Oakley and Preston acted to inflict emotional distress on him. From approximately August 2021 to November 2021, plaintiff suspected the air quality was unsafe for employees at the worksite and reported the unsafe condition to his superiors and the Head of Safety, Randy Stephanie.

Compl. ¶ 18. Plaintiff alleges that Stephanie 1 took no action to address the issue.<sup>2</sup> Id. Plaintiff intends to amend his complaint to specifically 2 allege that Oakley would "regularly berate and make false accusations" against plaintiff in 3 retaliation for his reporting of unsafe conditions. MTR at 8. 4 Even if such allegations rise to the level of extreme and outrageous conduct, any IIED 5 claim before plaintiff was injured is barred by the WCA.

Plaintiff alleges discriminatory 6 treatment based on his medical condition or disability after he was injured. Any alleged conduct 7 prior to plaintiff's injury would be rooted in whistleblower

retaliation, but the California Supreme Court has rejected the contention that whistleblower retaliation is outside the scope of risk inherent to the employment relationship.

See *Miklosy*, 44 Cal. 4th at 903; *Langevin*, 2015 WL 10 1006367, at \*12 (“The retaliatory acts alleged... writing [plaintiff] up for pretextual and fabricated reasons; yelling and screaming at him; seeking ‘dirt’ on [plaintiff] that could be used to discipline or demote him; being hostile to him... fall[] within the normal risks inherent in the employment relationship.”).

Accordingly, any IIED claim based on conduct preceding plaintiff’s injury fails as a matter of law. On November 4, 2021, immediately after plaintiff inhaled a caustic substance at work, plaintiff reported his injury to Oakley and sought medical care. Oakley allegedly took no action to assist plaintiff, and nonchalantly responded to plaintiff’s request to seek medical care by saying “you can do what you want to do.” Compl. ¶ 19.

Oakley’s alleged “nonchalant” remarks do not rise to the level of extreme and outrageous conduct necessary to support an IIED claim. See *Haley*, 871 F. Supp. 2d at 960; *Schneider v. TRW, Inc.*, 938 F.2d 986, 992–93 (9th Cir. 1991) (granting summary judgment in favor of employer where employee alleged supervisor “screamed and yelled in the process of criticizing her performance, threatened to throw her out of the department and made gestures she interpreted as threatening.”).

Plaintiff does not allege any While plaintiff does not explicitly name his superiors in the factual background of his complaint, Compl. ¶ 18, in his specific cause of action for IIED, plaintiff alleges Oakley and Preston retaliated against him for his reporting of unsafe conditions. *Id.* ¶ 79. Resolving all ambiguities in favor of plaintiff, plaintiff’s “superiors” will be construed to include Oakley and Preston.

See *Manguno v. Prudential Prop & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002) (“Any ambiguities are construed against removal because the removal statute should be strictly construed in favor of remand.”). 1 other conduct by Oakley or Preston on the day of plaintiff’s injury. Nor does he argue that he 2 would allege in an amended complaint any additional conduct that day sufficient to state an IIED 3 claim.

Therefore, any IIED claim based on conduct by Oakley when plaintiff reported his injury and sought medical care on November 4, 2021 similarly fails as a matter of law. 5 Following his injury on November 4, 2021, until his termination on November 4, 2022, 6 plaintiff alleges Oakley and Preston “actively retaliated against plaintiff by working to ensure he 7 not return to work,” and in doing so discriminated against him due to his medical condition and 8 disability resulting from the incident.

Compl. ¶¶ 22–25. While, as currently stated, these 9 conclusory allegations do not support a viable IIED claim, plaintiff states that he intends to 10 amend his complaint to allege that Oakley

used false allegations against plaintiff as a pretextual basis to terminate plaintiff's employment for discriminatory reasons. MTR at 8; see *Grancare*, 12 889 F.3d at 550.

Defendants argue that any such amendment would lack evidentiary support and be frivolous. Doc. 13 at 20. Specifically, defendants contend that plaintiff was on leave and therefore was never in the presence of Oakley and Preston from the time he was injured to his termination on November 4, 2022. *Id.* Therefore, any conduct would have to have been by written communication between the parties, and plaintiff would have either supplied evidence of such communication in his initial complaint or in his motion to remand.

Additionally, defendants contend that Oakley and Preston were not employed at the time of plaintiff's termination, so they could not have made the decision to terminate him. *Id.* Finally, defendants argue that as plaintiff's leave was managed by a third party, any requests to extend plaintiff's medical leave and decision to terminate plaintiff would have been made by the third party, not defendants.

*Id.* Defendants' argument is unavailing, as such factual disputes cannot serve as the basis of a finding of fraudulent joinder. See *Grancare*, 889 F.3d at 549 ("We have declined to uphold fraudulent joinder rulings where a defendant raises a defense that requires a searching inquiry into the merits of the plaintiff's case, even if that defense, if successful, would prove fatal."); but see *id.* at 548 (collecting cases in the limited instances where the Ninth Circuit has upheld rulings of fraudulent joinder, such as claims barred by statutes of limitations, conduct that was privileged under state law, or claims predicated on contracts to which the defendant was not a party).

Plaintiff intends to amend his complaint to allege that Oakley and Preston "concocted a plan of retaliation against plaintiff for seeking an accommodation for his disability." MTR at 8. In an amended complaint, plaintiff could dispute defendant's assertions that plaintiff did not communicate with Oakley and Preston during his medical leave, or that Oakley and Preston did not communicate discriminatory statements to the third party in support of the third party's decision to terminate plaintiff's employment.

Such allegations that Oakley and Preston caused plaintiff severe emotional distress in terminating him based on his medical condition or disability could support a colorable IIED claim. *Martinez v. Costco Wholesale Corp.*, 481 F. Supp. 3d 1076, 1102 (S.D. Cal. 2020) 10 ("Where there remains a claim for disability discrimination, courts have held that an IIED claim is not preempted by the WCA.") (collecting cases); *Light v. Dept. of Parks & Rec.*, 221 Cal. Rptr.

3d 668, 687 (Cal. Ct. App. 2017) ("A number of California authorities have concluded claims for IIED in the employment context may be asserted where the actionable conduct also forms

the 14 basis for a FEHA violation.”) (collecting cases).

Therefore, defendants have not met their heavy 15 burden of demonstrating that there is not any “non-fanciful possibility” that plaintiff could amend 16 his complaint to make out a colorable IIED claim against Oakley or Preston based on 17 discriminatory conduct following plaintiff’s injury on November 4, 2021. See *Grancare*, 889 18 F.3d at 548.

Accordingly, Oakley and Preston were not fraudulently joined, and their California 19 citizenship destroys complete diversity, depriving this Court of jurisdiction. 20 /// 21 /// 22 /// 23 /// 24 /// 25 /// 26 /// 27 /// 28 /// 1 | IV. Conclusion and Order 2 Accordingly: 3 1. Plaintiffs motion to remand, Doc. 9, is GRANTED; 4 2. Defendants’ motion for judgment on the pleadings, Doc.

16, is DENIED as moot; 5 3. This action is REMANDED to Kern County Superior Court for lack of subject matter 6 jurisdiction; 7 4. The Clerk of Court shall mail a copy of this order to the clerk of Kern County Superior 8 Court; and 9 5.

The Clerk of Court is directed to close this case. 10 11 12 | TIS SO ORDERED. \_ 13 Dated: \_ March 21, 2025 4h 4 UNITED STATES DISTRICT JUDGE 15 16 17 18 19 20 21 22 23 24 25 26 27 28