

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 14-1165-DOC (VBKx)

Date: October 14, 2014

Title: DONNA L. HOLLOWAY V. WELLS FARGO & COMPANY, ET AL.

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Deborah Goltz
Courtroom Clerk

Not Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:
None Present

ATTORNEYS PRESENT FOR DEFENDANT:
None Present

**PROCEEDINGS (IN CHAMBERS): ORDER GRANTING PLAINTIFF’S
MOTION TO REMAND [19]**

Before the Court is Plaintiff’s Motion to Remand (Dkt. 19). Having considered Non-Party Remover Wells Fargo Bank, N.A.’s Notice of Removal alongside Plaintiff’s Memorandum of Points and Authorities, Declaration, and Exhibits, the opposition, and reply, the Court GRANTS Plaintiff’s Motion to Remand.

I. BACKGROUND

This case involves claims brought by the plaintiff, Donna Holloway (“Plaintiff”) against Wells Fargo & Company (“Defendant”) in the Superior Court of California for the County of Orange. The Complaint asserts claims against Defendant for various violations of California law, including discrimination, failure to pay wages, unfair business practices, and intentional infliction of emotional distress. Compl. (Dkt. No. 1-1).

Defendant is a Delaware corporation with its corporate headquarters and principal place of business in San Francisco, California. Mot. Ex. C-D (Dkt 19-5, -6). On July 25, 2014, a non-party, Wells Fargo Bank, N.A. (“Non-Party Remover”), filed a Notice of Removal in the United States District Court for the Central District of California. It maintained that Plaintiff erroneously listed Wells Fargo & Company as the

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defendant in this matter. Ntc. of Removal (Dkt. 1) at 3. Non-Party Remover Wells Fargo Bank's main office is located in South Dakota. *Id.* Plaintiff now moves to remand this case back to Orange County Superior Court. *See generally* Mot.

II. LEGAL STANDARD

Remand may be ordered for lack of subject matter jurisdiction or any defect in the removal procedure. 28 U.S.C. § 1447(c). Removal of a case from state to federal court is governed by 28 U.S.C. § 1441, which provides in pertinent part that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed . . . to the district court of the United States for the district and division embracing the place where such action is pending.” The removing defendant must file a notice of removal in the appropriate United States District Court, together with all process, pleadings, and orders served upon the defendant. 28 U.S.C. § 1446(a).

If there is any doubt as to the right of removal in the first instance, remand must be ordered. *See 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.*; accord *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936).

Federal diversity jurisdiction requires that the parties be “citizens of different states” and that the amount-in-controversy exceed \$75,000. 28 U.S.C. § 1332. For diversity jurisdiction purposes, a corporation is “deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). The presence of any single plaintiff from the same state as any single defendant destroys “complete diversity” and strips the federal courts of original jurisdiction over the matter. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553 (2005) (citing *Strawbridge v. Curtiss*, 3 Cranch 267, 267 (1806)). Jurisdiction in a diversity case is determined at the time of removal. *Infuturia Global Ltd. v. Sequus Pharm., Inc.*, 631 F.3d 1133, 1137 (9th Cir. 2011).

An exception to the requirement of complete diversity exists where a defendant has been fraudulently joined to defeat diversity. *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001). Joinder of a non-diverse defendant is deemed fraudulent, and the defendant's presence in the lawsuit is ignored for purposes of determining diversity, if the plaintiff fails to state a cause of action against a resident defendant, and the failure is obvious according to the settled rules of the state.” *Id.* at 1067. The defendant “is entitled to present the facts showing the joinder to be fraudulent.” *Id.* Fraudulent joinder must be proven by clear and convincing evidence. *Hamilton Materials, Inc. v. Dow Chemical Corp.*, 494 F.3d 1203, 1206 (9th Cir. 2007).

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III. ANALYSIS

A. Citizenship of Named Parties

i. Plaintiff

There is no question as to the citizenship of the Plaintiff, Donna Holloway. Plaintiff is, and has been at all relevant times, a resident of the County of Orange. Compl. ¶ 12. Plaintiff is a citizen of California.

ii. Defendant Wells Fargo & Company

For diversity jurisdiction purposes, a corporation is “deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). The phrase “principal place of business” refers to the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities. *Hertz Corp. v. Friend*, 559 U.S. 77, 80-81 (2010).

Defendant Wells Fargo & Company maintains its corporate headquarters in San Francisco, California. Mot. Ex. C, SEC Form 10-K (Dkt 19-5) at 2. In addition, Wells Fargo & Company’s bylaws state that San Francisco, California is its principal place of business. Mot. Ex. D, By-laws of Wells Fargo & Company (Dkt 19-6) at 5-6. Therefore, Defendant Wells Fargo & Company is a citizen of California for the purposes of federal diversity jurisdiction.

B. Substitution of Wells Fargo Bank, N.A. for Defendant Wells Fargo & Company

Non-Party Remover Wells Fargo Bank argues that Defendant Wells Fargo & Company’s citizenship “should be disregarded because it is a sham defendant.” Opp. (Dkt. 22) at 4. Rather, it asserts that the citizenship of Wells Fargo Bank is the only citizenship that should be considered for the purposes of assessing complete diversity under Section 1332(a). The Court disagrees.

Wells Fargo Bank is not a party to this action. Plaintiff filed this action on May 14, 2014, naming as a defendant Wells Fargo & Company. While she named additional doe defendants, Wells Fargo Bank was not named as a party to this action. *See generally* Compl. Non-Party Remover, asserting that Defendant was “erroneously sued as Wells Fargo & Company,” filed the removal in this action. Non-Party Remover maintains that it was Plaintiff’s employer during the period in question, and that Defendant “has no connection to this action.” Opp. at 5. Plaintiff disagrees. Plaintiff acknowledges, “it appears likely that [Wells Fargo Bank] correctly believes that Plaintiff has viable claims

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against it.” Mot. at 4. However, Plaintiff maintains that it has viable claims against the parent company, Defendant. *Id.*

In a novel argument, Non-Party Remover Wells Fargo Bank asserts that this Court may use the “sham defendant” or “fraudulent joinder” doctrine to treat Non-Party Remover as a party to this action and dismiss the “erroneous” defendant. While it is true that, under limited circumstances, one entity may be added to a case, dropped, or substituted for another entity – those situations are inapposite here.

Defendants may not, as a general rule, exchange the names on court filings in order to change the status of parties that would like to appear before the court. *See, e.g.*, Fed. R. Civ. P. 25 Substitution of Parties. As the Supreme Court has noted, “One who is not an original party to a lawsuit may of course become a party by intervention, substitution, or third-party practice.” (citing 9 J. Moore, B. Ward, & J. Lucas, Moore's Federal Practice ¶ 203.06 pp. 3–20 (1987)); *see also Gordillio v. States Marine Lines*, 13 F.R.D. 445, 445 (S.D. Cal. 1952) (refusing to enter order substituting parties on stipulation because substitution is limited to narrow circumstances, and parties did not move to amend their pleadings). Generally, substitution of parties occurs in the narrow circumstances identified in Rule 25, or through amendment of the pleadings. Fed. R. Civ. P. 15; *G.F. Co. v. Pan Ocean Shipping Co.*, 23 F.3d 1498, 1503 (9th Cir. 1994) (amendment permitted to correct a mistake concerning the identity of a proper party).

In addition, plaintiffs may request that the court look to the body of the pleadings in order to establish that a party was mistakenly omitted from the caption of the pleadings. In *Brazina v. The Paul Revere Life Insurance Company, et al.*, 271 F.Supp.2d 1163, 1166 (N.D. Cal. 2003) a clerical error led to the omission of non-diverse parties from the caption of its complaint. Plaintiff sought remand, on the grounds that these non-diverse parties were omitted from the caption by virtue of a clerical error. The court agreed, noting that the state court “readily permits amendments to pleadings,” and explaining that the plaintiff had named the parties in the body of his initial complaint. *Id.* at 1172 n. 2. After further analysis on unrelated grounds, the court remanded the case. *Id.* *See also, Rice v. Hamilton Air Force Base Commissary*, 720 F.2d 1082, 1085 (9th Cir. 1983) (where it was undisputed that the improper defendant was named at the top of the plaintiff’s timely filing, the court could review the body of the complaint to establish that the proper party was intended as a defendant). In contrast to this line of cases, the Plaintiff in the present action did not seek to add the Non-Party Remover to this action prior to removal. *See generally* Mot.

Wells Fargo Bank provides only one example of a case in which an entity validly substituted itself, over plaintiff’s objections, in place of a named defendant and effectively removed an action to federal court. In *Rendel v. National City Bank*, 2010

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U.S. Dist. LEXIS 39743 (N.D. Cal. Mar. 26, 2010), the plaintiff mistakenly sued a party that no longer existed in state court. The named defendant's successor by merger then removed the action. The court found that removal was proper, despite the inconsistency in the name, as the successor company was clearly the named defendant's legal successor under state statute. *Id.* Further, in that case neither the original defendant nor its successor was a proper defendant, as neither owned the loan that was the subject of the suit. *Id.* Thus, remanding the case where there was no valid claim against either party would be "a waste of time and judicial resources." *Id.*; see also, *First Am. Sav. Bank, F.S.B. v. Westside Fed. Sav. & Loan Ass'n*, 639 F. Supp. 93, 96 (W.D. Wash. 1986) ("Upon consideration of the circumstances, the Court concludes that FSLIC should be substituted as party defendant for Westside. Even in the absence of formal pleadings, it is apparent that FSLIC, appointed as receiver for Westside by the FHLBB, is already a party to the proceedings.") (citing *North Mississippi Savings & Loan Ass'n v. Hudspeth*, 756 F.2d 1096, 1100 (5th Cir.1985) (intervention in state receivership allowed by statute); *Farina v. Mission Investment Trust*, 615 F.2d 1068, 1074–75 (5th Cir.1980) (formal intervention or joinder of receiver not necessary)). These circumstances are simply not applicable here, where Plaintiff intentionally sued an entity that inarguably still exists.

Non-Party Remover Wells Fargo Bank has not provided a single example where the *fraudulent joinder* doctrine has been used to substitute one party for another. The fraudulent joinder doctrine is an exception to the requirement of complete diversity of citizenship, used to eliminate a party that has been fraudulently added. See, e.g., *Morris*, 236 F.3d at 1067. This Court declines Wells Fargo Bank's invitation to use it as a tool for a corporate family to substitute the party that it considers to be the appropriate defendant for the defendant actually named in the action. Furthermore, jurisdiction in a diversity case is determined at the time of removal. *Infuturia Global Ltd.*, 631 F.3d at 1137. An express or implied intention to substitute one party for another is irrelevant to the jurisdictional analysis. See *Fulford v. Mkt. St. Mortgage Corp.*, 2005 WL 3263884 (M.D. Ala. Dec. 1, 2005) (Plaintiffs' expressed intention to move to substitute one defendant for another was irrelevant to the fraudulent joinder issue in the case, as the party had not been substituted at the time of removal.). As such, Non-Party Remover Wells Fargo Bank has not established that it is a party properly before the Court in this action.

IV. Diversity Jurisdiction

For the purposes of diversity jurisdiction, there must be complete diversity between the parties. 28 U.S.C. § 1332(a). As laid out above, Plaintiff Donna Holloway and Defendant Wells Fargo & Company are both citizens of California. As such, there exists no basis for jurisdiction under Section 1332(a).

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Non-Party Remover Wells Fargo Bank may, in the future, become a party to this action. At that point, the citizenship of Wells Fargo Bank could become relevant to this Court. However, the Court finds that the citizenship of Wells Fargo Bank need not be assessed at this juncture.

V. DISPOSITION

Accordingly, the Court GRANTS Plaintiff's Motion to Remand because it lacks subject matter jurisdiction over this action.

The Court hereby REMANDS this action to the Superior Court of California.

The Clerk shall serve this minute order on the parties.

MINUTES FORM 11
CIVIL-GEN

Initials of Deputy Clerk: djg