UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

CHRISTY DAUZAT **Plaintiff**	*	**CASE NO. 1:25-cv-01440**
	*	**JUDGE TERRY A. DOUGHTY**
VERSUS	*	
	*	**MAGISTRATE JUDGE**
GPS HOSPITALITY PARTNERS IV, LLC **AND TRAVELERS INDEMNITY COMPANY**	*	**JOSEPH H L PEREZ-MONTES**
Defendants	*	**A JURY IS DEMANDED**

* *

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OBJECTIONS TO REPORT AND RECOMMENDATIONS

NOW INTO COURT, through undersigned counsel, comes Defendant, GPS Hospitality Partners IV, LLC ("GPS") who submits these Objections to the Report and Recommendations issued by Magistrate Judge Joseph Perez-Montes on April 27, 2026 (R. Doc. 28).

I. Background

a. Overview

In this lawsuit, Plaintiff alleges that she tripped and fell at a Burger King restaurant in Marksville, Louisiana, in 2017.[1] In her Petition, which she filed on February 12, 2018, Plaintiff alleged that "[t]he defendants are indebted unto petitioner for damages as are reasonable in the premises, including general and special damages, in an amount less than $50,000.00."[2] In its Answer to Plaintiff's Petition, GPS stated as follows: "Defendant reserves its right to pray for a trial by jury and/or remove this case to a United States District Court in the event that Plaintiff later amends her Petition to state that her damages exceed $50,000 and/or $75,000."[3] Despite this,

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[1] R. Doc. 1-1 at 3.
[2] *Id.*
[3] Ex. A, GPS's Answer to Plaintiff's Original Petition for Damages.

Plaintiff amended her Petition in 2025, and Magistrate Judge Joseph Perez-Montes is recommending that this Court remand the case to the Tunica-Biloxi Tribal Court in Marksville.[4]

b. The Elusive Amount in Controversy

Until Plaintiff amended her Petition in 2025, GPS was consistently led to believe that Plaintiff's damages were below $75,000. As litigation progressed, nothing established otherwise. First, in responding to discovery in 2019, Plaintiff provided that her medical bills totaled $13,380.54.[5] Then, at her deposition on October 7, 2020, Plaintiff mentioned that she struggled with carpal tunnel, but she did not connect this injury to her fall at Burger King.[6] Instead, she offered the following testimony identifying only injuries to her lower extremities and back:

> Q: So what injuries are you claiming that you sustained as a result of the incident in February 2017?
>
> A: I twisted my foot, and that affected my foot in my front part of my leg and my back, my lower back. Left side to be exact.
>
> Q: All right.
>
> A: When I was getting out the truck, my foot rolled, like, my foot turned in -- inward, and I grabbed the side of the truck and the door to brace my fall.
>
> […]
>
> Q: All right. So I'm just going to take a step back real quick. So as a result of the incident at Burger King, you claim you injured your left lower back, your left ankle, and your left foot; is that correct?
>
> A: My left foot and the front of my left leg.
>
> Q: The front of your left leg. Okay.
>
> A: Yeah, like, the shin. The shin.[7]

[4] R. Doc. 28.
[5] R. Doc. 1 at 2; R. Doc. 1-2 at 5.
[6] R. Doc. 26-3 at 6, 11, 24.
[7] R. Doc. 26-3 at 11–12.

Further, Dr. Jeffrey Traina testified at his deposition on September 25, 2024, that he treated Plaintiff for arm, neck, and cervical pain and performed a carpal tunnel surgery on her.[8] Consistent with Plaintiff's testimony, Dr. Traina said that Plaintiff never reported to him that a fall caused these injuries.[9] In fact, Dr. Traina showed up to his deposition with "no idea" what it was about.[10] He said, "I know it's a slip-and-fall, but I didn't know that until before a couple minutes ago."[11] Dr. Traina even indicated that if Plaintiff had presented to him with an injury related to litigation, he would have refused to treat that injury as he does not treat patients in ongoing litigation.[12]

Finally, Dr. Gabriel Tender testified at his deposition on May 6, 2024, that he performed cervical surgery on Plaintiff and like Dr. Traina, he was unaware of Plaintiff's lawsuit.[13] Dr. Tender gave no indication that Plaintiff reported her fall to him but testified that Plaintiff "just came to [his] clinic" complaining of cervical pain that began following "an insidious onset" years earlier.[14]

c. The Removal and the Recommendation to Remand

In 2025, with thirty days to go before trial and more than two months after the deadline for amending pleadings, Plaintiff's counsel filed a Motion for Leave to Amend Petition on the morning of pre-trial conference with the Tunica-Biloxi Tribal Court.[15] The Motion was granted, allowing Plaintiff to allege that her damages exceed $75,000 and that Tunica-Biloxi Indians of Louisiana, as owner of the property where Plaintiff's fall occurred, is liable for her injuries. It is noteworthy that Plaintiff raised her amount in controversy above the threshold for federal jurisdiction while at the same time adding a non-diverse party that would defeat federal jurisdiction.

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[8] R. Doc. 26-4 at 4, 8, 10.
[9] R. Doc. 26-4 at 6.
[10] R. Doc. 26-4 at 4.
[11] R. Doc. 26-4 at 4.
[12] R. Doc. 26-4 at 4–5.
[13] R. Doc. 26-5 at 5.
[14] R. Doc. 26-5 at 3–4.
[15] Ex. B, Motion for Leave to File First Supplemental and Amended Petition.

GPS then filed a Notice of Removal, setting forth why Tunica-Biloxi Indians of Louisiana have been fraudulently joined to this suit. Plaintiff filed a Motion to Remand, and not only did she fail to explain her years-long delay in adding Tunica-Biloxi Indians of Louisiana to this suit; she argued that on July 25, 2023, defense counsel received medical records and bills indicating cervical surgical intervention on April 7, 2022.[16] These records and bills referred to the cervical surgery performed by Dr. Gabriel Tender.[17] Plaintiff argued that Defendant's removal was untimely because these records showed in 2023 that the amount in controversy exceeded $75,000.[18]

Judge Perez-Montes accepted Plaintiff's argument, finding that even though Plaintiff alleged in her Petition that her damages did not exceed $50,000, Defendant could have submitted summary-judgment-type evidence to show otherwise, and Defendant did not.[19] Yet there was (and still is) no summary-judgment-type evidence connecting Plaintiff's cervical injuries and treatment to her fall. Neither Plaintiff, Dr. Traina, nor Dr. Tender connected these injuries to Plaintiff's fall, which left Defendant unable to submit evidence as Judge Perez-Montes suggested.

Against this backdrop, Defendant now objects to the Report and Recommendation issued by Judge Perez-Montes. This Court should find that Defendant was unable to file its removal sooner because of the misleading actions of Plaintiff, and the doctrine of equitable estoppel, therefore, permits the removal of this case beyond the timeline established in 28 U.S.C. § 1446(b).

II. Law and Argument

In his Report and Recommendation, Judge Perez-Montes made two errors: (1) he found that Plaintiff's original allegation that her damages would not exceed $50,000 was not binding, and (2) he found that Plaintiff did not omit pertinent information to conceal the total amount in

[16] R. Doc. 19-1 at 3.
[17] R. Doc. 19-4.
[18] R. Doc. 19-1 at 4.
[19] R. Doc. 28 at 7.

controversy. In fact, Plaintiff's allegation was binding, and Plaintiff did omit pertinent information to conceal the total amount in controversy – indeed, she did this more than once.

a. Plaintiff's Judicial Confession that Her Damages Do Not Exceed $50,000

In her Motion to Remand, Plaintiff argued that the stipulation contained in her Petition was ineffective in preventing removal.[20] Plaintiff argues that because she did not stipulate that she would not accept more than a certain amount, the state court was not bound by her allegation and Defendant could have removed the case. In other words, per Plaintiff, Defendant could have ignored Plaintiff's allegation and pursued removal anyway. Plaintiff insists that on July 25, 2023, Defendant received medical records showing that the case had become removable and that Defendant should have sought to remove the case despite what Plaintiff alleged in her Petition.[21]

The jurisprudence establishes that an admission by a party in a pleading constitutes a judicial confession and is full proof against the party making it.[22] Per the Fifth Circuit, if a plaintiff pleads damages less than the jurisdictional amount, this figure will generally control and bar removal.[23] Generally, the amount of damages sought in the petition constitutes the amount in controversy, so long as the pleading was made in good faith; and, in the typical diversity case, the plaintiff remains the master of his complaint.[24] Therefore, as the courts of this state have long held, if a plaintiff wishes to avoid federal court, he may sue for less than the jurisdictional amount, and though he would be justly entitled to more, the defendant cannot remove.[25]

In *Bowers v. Mountain Laurel Assurance Co.*, this Court found that remand was appropriate where a petition stipulated the amount in controversy did not exceed $74,999.99 and the defendant

[20] R. Doc. 19-1 at 2.
[21] R. Doc. 19-1 at 3.
[22] *C.T. Traina, Inc. v. Sunshine Plaza, Inc.*, 2003-1003 (La. 12/3/03), 861 So.2d 156.
[23] *Gnawlins, LLC v. Great Am. Ins. Co.*, No. CV 23-5666, 2023 WL 6938164, at *1 (E.D. La. Oct. 20, 2023).
[24] *Powell v. Cadieu*, No. CV 15-4839, 2016 WL 1042351 (E.D. La. Mar. 16, 2016).
[25] *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283 (1938).

could not prove otherwise.[26] In reaching this conclusion, the Court stated that the allegation was "presumptively correct" when made.[27] This Court similarly found in *Lavespere v. Terminix* that the plaintiff's stipulation that the amount in controversy did not exceed $50,000 was a judicial confession that limited the plaintiff's relief and that such a judicial confession cannot be revoked except as to an error of fact.[28] This Court additionally held in *Blood v. Interstate Brands Corp.* that the plaintiffs' stipulation in their complaint that their individual damages did not exceed $50,000 was a "valid and binding judicial confession under Louisiana law," which deprived this Court of subject matter jurisdiction and necessitated remand.[29]

In her Motion, Plaintiff relied on a case from the Southern District of Texas, *List v. PlazAmericas Mall Tex., LLC*.[30] In that case, the plaintiff alleged in her complaint that the amount in controversy did not exceed $75,000.00.[31] She also alleged, however, that she sustained severe injuries and was seeking exemplary damages. The Southern District of Texas noted that under Texas law, "[e]xemplary damages awarded against a defendant may not exceed an amount equal to the greater of ... two times the amount of economic damages; plus ... an amount equal to any noneconomic damages ... not to exceed $750,000; or ... $200,000."[32] The court noted, too, that the plaintiff requested "Level 3 discovery," which in Texas is "used in complicated cases involving a larger amount in controversy and requiring relatively extensive discovery."[33] Based on this, the

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[26] *Bowers v. Mountain Laurel Assurance Co*., No. 1:24-CV-00041, 2024 WL 5495299 (W.D. La. July 26, 2024).
[27] *Id.* at *3.
[28] *Lavespere v. Terminix Int'l Co. Ltd. P'ship*, No. 1:20-CV-00056, 2020 WL 7250591 (W.D. La. Nov. 19, 2020), *report and recommendation adopted sub nom. Lavespere v. Terminix Int'l Co*. L.P., No. 1:20-CV-00056, 2020 WL 7249314 (W.D. La. Dec. 9, 2020).
[29] *Blood v. Interstate Brands Corp.*, No. CIV.A. 10-1325, 2011 WL 902001, at *4 (W.D. La. Mar. 10, 2011).
[30] *List v. PlazAmericas Mall Tex., LLC*., No. H-18-4810, 2019 WL 480130 (S.D. Tex. Feb. 7, 2019).
[31] *Id.* at *2.
[32] *Id.*
[33] *Id.* at *3.

court found that the amount in controversy was more than $75,000. Discussing the plaintiff's allegation that the amount in controversy did not exceed $75,000, the court noted that it was not a "clear and unambiguous stipulation showing her intent to waive the right to recover more than $75,000."[34] For these reasons, the court denied her motion to remand.

Similarly, in *In re 1994 Exxon Chemical Fire*, which Plaintiff and Judge Perez-Montes cited, the plaintiffs were not reneging on an allegation like Plaintiff is here; instead, the plaintiffs were clinging to their allegations and arguing that they were precluded from recovering more than $50,000, and the case, therefore, should have been remanded to state court.[35] The Fifth Circuit found that, despite the plaintiffs' allegations pleading below the jurisdictional amount, Exxon met its burden of proving the amount in controversy exceeded the jurisdictional limit.[36] The court noted that plaintiffs were claiming physical and mental damages, economic and financial harm, punitive damages, and more.[37] Because the plaintiffs did not deny that they would *accept* more than $50,000 and because nothing suggested the claims were necessarily less than $50,000, the Fifth Circuit found that the district court was correct to refuse remand.[38]

Here, Judge Perez-Montes has found, based on *Exxon Chemical Fire*, that a plaintiff can use certain language to make an amount-in-controversy allegation revocable and then proceed to revoke the allegation after the expiration of the one-year timeline set forth in 28 U.S.C. § 1446(b). This is an alarming and unjustified extension of *Exxon Chemical Fire*, which did not involve any untimely amendments revoking allegations about the amount in controversy.

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[34] *Id.*
[35] *In re 1994 Exxon Chemical Fire*, 558 F.3d 378 (5th Cir. 2009).
[36] *Id.* at 387–88.
[37] *Id.* at 388.
[38] *Id.* at 388–90.

Indeed, the Report and Recommendations does not cite any case where a plaintiff reneged on an amount-in-controversy allegation after years of litigation. Rather, for example, the Report and Recommendation cites *Lawrence on behalf of SL v. Denka Performance Elastomer LLC*, for this proposition: "To determine whether a proffered stipulation renders it legally certain that a plaintiff's recovery will not exceed the jurisdictional threshold, the key consideration is whether the stipulation is 'legally binding on all plaintiffs.'"[39] In *Lawrence*, the Eastern District found that a stipulation was legally binding where it stated that no plaintiff would accept or seek to recover any portion of a judgment or award in excess of $50,000.00 per plaintiff.[40] The stipulation stated, too, that the plaintiffs would not amend the petition to plead an amount in controversy in excess of $50,000.[41] The court, therefore, granted the plaintiffs' motion to remand, clearly satisfied that the plaintiffs would not later change their position and seek more than $50,000, as Plaintiff has done in this case. In *Levith v. State Farm Fire & Casualty Co.*, also cited in the Report and Recommendations, the Eastern District found that the plaintiffs could not avoid federal jurisdiction by producing a post-removal stipulation saying that the amount in dispute was less than $75,000.[42] The court emphasized that the plaintiffs never filed a pre-removal stipulation renouncing the right to enforce a judgment in an amount greater than $75,000.[43] It is apparent that in both *Levith* and *Lawrence*, the court was considering whether it could trust what the plaintiff was saying.[44]

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[39] *Lawrence on behalf of SL v. Denka Performance Elastomer LLC*, No. 20-CV-0798, 2020 WL 4199915, at *4 (E.D. La. July 21, 2020).
[40] *Id.* at *1.
[41] *Id.*
[42] *Levith v. State Farm Fire & Cas. Co.*, No. 06-2785, 2006 WL 2947906, at *3 (E.D. La. Oct. 11, 2006).
[43] *Id.*
[44] Similarly, in *De Aguilar v. Boeing Co.*, relied on in the Report and Recommendations, the Fifth Circuit indicated that to avoid federal jurisdiction, a plaintiff has to show his "commitment" to recovery below the federal threshold. 47 F.3d 1404, 1412 n.10 (5th Cir. 1995). The court did not find, as Judge Perez-Montes did here, that a plaintiff can use certain non-committal language in an amount-in-controversy allegation that allows the plaintiff himself to later dispose of the allegation. Finally, in *Standard Fire Ins. Co. v. Knowles*, the U.S. Supreme Court found that a stipulation must be binding for a federal court to

Unlike in the cases cited in the Report and Recommendations, Plaintiff is not embracing the amount-in-controversy statement she made at the start of this litigation; she is arguing that she herself can disregard it. Yet neither Plaintiff nor Judge Perez-Montes identified any case allowing such gamesmanship. Instead, the applicable law in this case is the law establishing that a judicial confession constitutes full proof against the party who made it.[45] It is this law that should govern here and preclude Plaintiff from treating her original allegation as a throwaway. Otherwise, plaintiffs in the future can manipulate defendants into believing removal is not appropriate and then, once the one-year timeline expires, amend their strategic allegations on the eve of trial.

b. Plaintiff's Bad Faith Actions Preventing the Timely Removal of This Case

In his second error, Judge Perez-Montes found that nothing in the record suggested Plaintiff manipulated her damages disclosures or omitted information to conceal the total amount in controversy.[46] To the contrary, the record reveals that Plaintiff repeatedly manipulated Defendant, starting with her allegation about the amount in controversy and continuing with her puzzling deposition testimony and her refusal to clarify whether her cervical injuries were allegedly caused by her fall. For these reasons, this Court should find that Plaintiff acted in bad faith, which permits the removal of this case after the one-year timeline set forth in 28 U.S.C. § 1446(b).

As Judge Perez-Montes recognized, under 28 U.S.C. § 1446(c)(1), a case may not be removed more than one year after commencement of the action, "unless the district court finds that the plaintiff has acted in bad faith to prevent a defendant from removing the action." To determine whether a plaintiff has acted in bad faith to prevent removal, "the question is what motivated the plaintiff *in the past*—that is, whether the plaintiff's litigation conduct meant 'to prevent a defendant

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remand a case where the damages appear to exceed the jurisdictional threshold. 568 U.S. 588, 592 (2013). These cases, therefore, are not aligned with the Report and Recommendations at issue here.

[45] La. Civ. Code art. 1853.

[46] R. Doc. 28 at 7.

from removing the action.'" *Hoyt v. Lane Constr. Corp.*, 927 F.3d 287, 293 (5th Cir. 2019) (emphasis in original) (citing 28 U.S.C. § 1446(c)(1)) (finding plaintiffs acted in bad faith to prevent removal where they improperly joined a party, half-heartedly pursued their claims against this party, then dismissed the party two days after the one-year removal deadline). "'[B]ad faith' requires looking for willfully obstructive behavior on the plaintiff's part."[47]

In *Jalbert v. Raymond James & Associates, Inc.*, Judge Perez-Montes recommended denying a motion to remand upon finding that a plaintiff acted in bad faith to prevent removal. There, a plaintiff joined a certain individual defendant claiming she was the Chief Accounting Officer of one of the defendant companies.[48] The individual maintained that she was a "senior accountant," not an officer or director of the company.[49] Judge Perez-Montes noted that in determining bad faith, courts often look to the way plaintiffs pursued the claims against the non-diverse defendant.[50] He wrote that indicators of bad faith include only minimally pursuing the claim against the forum defendant and not including any fact witnesses from the forum defendant in the witness list for trial.[51] Consistent with this, he found that in the case before him, the plaintiff failed to build a case against the non-diverse defendant in five years of litigation.[52] He emphasized that the defendant was served with only two interrogatories and nine requests for production and she was listed only as a "may call" witness for trial.[53] Given these facts, Judge Perez-Montes believed that the plaintiff was misusing the removal statute by including the defendant in the suit.[54]

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[47] *Jalbert v. Raymond James & Associates, Inc.*, No. 1:23-CV-00505, 2024 WL 1742246, at *4 (W.D. La. Jan. 3, 2024), *report and recommendations adopted*, No. 23-CV-00505, 2024 WL 3843064 (W.D. La. May 6, 2024) (quoting *Brueckner v. The Hertz Corp.*, 2023 WL 7130865, at *3 (S.D. Tex. 2023)).
[48] *Id.* at *5.
[49] *Id.*
[50] *Id.* at *4.
[51] *Id.*
[52] *Id.* at 5.
[53] *Id.* at *6.
[54] *Id.*

Here, Plaintiff's willfully obstructive behavior is more obvious than the behavior at issue in *Jalbert*. As discussed, Plaintiff included an allegation in her Petition that her damages amounted to less than $50,000.[55] Then, in 2019, she provided that her medical bills totaled $13,380.54.[56] On July 25, 2023, Plaintiff's counsel sent GPS medical bills for Plaintiff's cervical surgery, and following this disclosure, defense counsel spoke with Plaintiff's counsel seeking clarification of the records and whether Plaintiff was alleging that such medical treatment was causally related to her fall. Plaintiff's counsel did not provide any substantive response but stated vaguely that he would speak to Plaintiff's doctors. With no clarity from Plaintiff's counsel, GPS then deposed Plaintiff's doctors, who made clear that Plaintiff's cervical injuries were unrelated to her fall.

Now, Plaintiff claims that the disclosure on July 25, 2023, put GPS on notice that Plaintiff's claims exceeded the jurisdictional threshold. This ignores the fact that in her Petition Plaintiff alleged that her damages did not exceed $75,000; the fact that Plaintiff's counsel evaded the question of whether Plaintiff's cervical treatment was related to her fall; and the fact that Plaintiff and her doctors later gave testimony establishing that Plaintiff has **never** attributed her cervical injuries to her fall. It came as a surprise to Defendant, then, when Plaintiff amended her Petition to revise her amount-in-controversy allegation and argued that the opaque disclosure on July 23, 2023, triggered a thirty-day clock for Defendant to remove the case.

Significantly, at the same time she revised her amount-in-controversy allegation, Plaintiff shielded her Petition from removal by adding Tunica-Biloxi Indians of Louisiana as a defendant. She added this party **three years** after discovering the group's status as a landlord and after nearly **seven years** of litigation. It is apparent that she only added this party to discourage GPS from removing the case based on the change to her amount-in-controversy allegation. To compare to

[55] R. Doc. 1-1 at 3.
[56] R. Doc. 1 at 2; R. Doc. 1-2 at 5.

Jalbert, Plaintiff has felt no need to conduct discovery regarding the Tunica-Biloxi Indians of Louisiana in seven years of litigation, and she has done nothing to build her case against the group. Indeed, she never felt the need to add the group as a party to this suit until she revised her amount-in-controversy allegation and believed she was at risk of removal. These facts establish that Plaintiff was no better than the *Jalbert* plaintiff, and remand, therefore, is not appropriate here.

c. Plaintiff's Improper Joinder of Tunica-Biloxi Indians of Louisiana

Not only did Plaintiff fail to pursue claims against the Tunica-Biloxi Indians of Louisiana (the "Tunica-Biloxi Indians") during seven years of litigation; the jurisprudence, in fact, forecloses any possibility that Plaintiff will recover against the group, which should lead this Court to find that the group has been improperly joined. "The improper joinder doctrine allows a court to dismiss a non-diverse defendant from a removed state case and disregard that defendant's citizenship for purposes of diversity jurisdiction when a defendant has demonstrated there is no possibility of recovery by the plaintiff against the non-diverse defendant."[57] "Since the purpose of the improper joinder inquiry is to determine whether or not the in-state defendant was properly joined, the focus of the inquiry must be on joinder, not the merits of the plaintiff's case."[58]

In *Smallwood v. Illinois Cent. R. Co*., the Fifth Circuit set forth the two ways to establish improper joinder: "(1) actual fraud in the pleading of jurisdictional facts; or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court."[59]

> The inquiry into a plaintiff's ability to establish a cause of action against a defendant in the context of improper joinder focuses upon whether 'there is no possibility of recovery by the plaintiff against an in-state defendant, which stated differently means ***that there is***

[57] *Yarco Trading Co., Inc. v. United Fire & Casualty Co.*, 18-155 (S.D. Tex. July 11, 2019) 397 F.Supp.3d 939, 947 (citing *Flagg v. Stryker Corp*., 819 F.3d 132, 136 (5th Cir. 2016)).
[58] *Smallwood v. Illinois Cent. R. Co*., 385 F.3d 568, 572 (5th Cir. 2004).
[59] *Id.* at 573.

> ***no reasonable basis for the district court to predict that the plaintiff might be able to recover against an in-state defendant***.'[60]

Elaborating, the *Smallwood* court established guidelines for determining if the plaintiff has a reasonable basis for recovery against the non-diverse defendant under state law:

> A court may resolve the issue in one of two ways. The court may conduct a Rule 12(b)(6)-type analysis, looking initially at the allegations of the complaint to determine whether the complaint states a claim under state law against the in-state defendant. Ordinarily, if a plaintiff can survive a Rule 12(b)(6) challenge, there is no improper joinder. That said, there are cases … in which a plaintiff has stated a claim, but has misstated or omitted discrete facts that would determine the propriety of joinder. In such cases, the district court may, in its discretion, pierce the pleadings and conduct a summary inquiry.[61]

For the plaintiff to overcome this, he cannot simply state a hypothetical claim against the non-diverse defendant. To find that the non-diverse defendant is properly joined to a claim, the court must find that the plaintiff's cause of action against that defendant establishes "***a reasonable possibility of recovery, not merely a theoretical one.***"[62]

GPS removed this case under the improper joinder doctrine alleging that Plaintiff named the Tunica-Biloxi Indians in this litigation for the sole purpose of confounding diversity jurisdiction. As explained in the Notice of Removal, the property was leased for several years prior to Plaintiff's fall, and the lease was assigned to GPS on December 19, 2016.[63] This lease gave exclusive control of the property to GPS, stating as follows: "Tenant, during the term of this Lease, shall have exclusive use and control of the Leased Premises, and Landlord shall take no action

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[60] *Marin v. Lopez*, No. 23-00041, 2024 WL 5411359, at *2 (W.D. Tex. February 22, 2024) (emphasis added) (citing *Smallwood*, 385 F.3d at 573).
[61] *Smallwood*, 385 F.3d at 573.
[62] *Marin*, 2024 WL 5411359 at *2 (citing *Campbell v. Stone, Ins., Inc*., 509 F.3d 665, 669 (5th Cir. 2007)). *Accord Kling Realty Co. v. Chevron U.S., Inc*., 575 F.3d 510, 513 (5th Cir. 2009) (emphasis added).
[63] R. Doc. 26-8. The "Assignment and Assumption of Lease" was attached to Defendant's Opposition to Plaintiff's Motion to Remand.

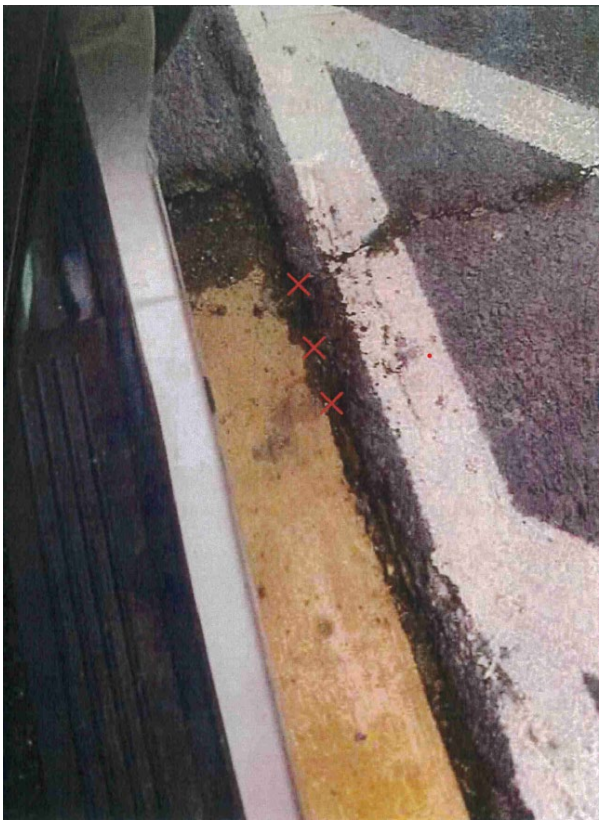
pertaining to the Leased Premises without prior written consent of the Tenant … ."[64] Moreover, the lease stated that "Tenant assumes complete and sole responsibility for the condition of the leased premises."[65] Further, the lease established that GPS would maintain the property, saying: "Tenant shall, at its own expense, maintain the entire Leased Premises (including, without limitation, any and all structural elements of the Building, including the roof, foundation, exterior walls, and load bearing column and supports, the exterior parking and drive lane areas, all landscaping and any irrigation systems, the HVAC System and other utility systems exclusively service the Leased Premises) in good condition and repair (including replacements when necessary)…"[66] The lease made clear that the Tunica-Biloxi Indians had no duty to maintain or repair the property while it was being leased by GPS: "Tenant acknowledges and agrees that Landlord shall have no obligation to maintain, repair and/or replace the Leased Premises or any portion thereof or any component or mechanical feature thereof."[67]

Given this, Plaintiff has no cause of action against the Tunica-Biloxi Indians for her fall as the group retained no custody over the subject premises. The law recognizes that a landlord generally is not liable when he gives control of the property to a tenant. *See* La. Rev. Stat. § 9:3221 ("[T]he owner of premises leased under a contract whereby the lessee assumes responsibility for their condition is not liable for injury caused by any defect therein to the lessee or anyone on the premises who derives his right to be thereon from the lessee, unless the owner knew or should have known of the defect or had received notice thereof and failed to remedy it within a reasonable time."); *Guillory v. Foster*, 634 So.2d 1372, 1373 (La. App. 3 Cir. 1994) (granting summary

[64] R. Doc. 29-9 (par. 2). The lease was attached to Defendant's Opposition to Plaintiff's Motion to Remand.
[65] R. Doc. 29-9 (par. 10).
[66] R. Doc. 29-9 (par. 17).
[67] R. Doc. 29-9 (par. 17).

judgment in favor of building owner where property was being leased by tenant, noting that an owner and lessee cannot both have custody of a thing at the same time).

In her Motion to Remand, Plaintiff argued that the Tunica-Biloxi Indians knew or should have known of the defect because the defect was present for two years prior to Plaintiff's fall.[68] In support of this assertion, Plaintiff submitted an affidavit from an engineer who opined that there was cracking or breaking in the asphalt of the parking and that it likely occurred over several years.[69] However, at Plaintiff's deposition, she testified unequivocally that she stepped "[w]here the concrete meets the asphalt," and some deviation in this area caused her to trip and fall.[70] She instructed defense counsel to mark X's on the alleged deviation as shown below:

 [71]

[68] R. Doc. 19-1 at 4.
[69] R. Doc. 19-6 at 1–2.
[70] R. Doc. 26-3 at 30 (p. 115–16 of deposition).
[71] R. Doc. 26-3 at 30 (p. 116–17 of deposition); R. Doc. 26-7 (which was Ex. B of deposition).

This is not what Plaintiff's engineer describes in his affidavit. He describes "the condition of the asphalt" and opines that there was cracking or breaking in the asphalt itself.[72]

Further, though the engineer believes the cracking or breaking took years to develop, Plaintiff has no evidence to establish that the property owner should have been aware of this. Plaintiff herself testified that, before the incident, she had gone to the subject Burger King location about ten times a month for the prior five years, had parked in the same spot she parked in on the day of this accident many times before, and had never noticed the alleged condition before.[73] Plaintiff testified, too, that she has no information as to how the deviation was created, that Burger King was aware of the deviation, or to confirm how long the deviation was present before this incident.[74] Plaintiff, therefore, has absolutely no evidence to show that Burger King or the Tunica-Biloxi Indians knew or should have known of this alleged defect. Indeed, Plaintiff has done no discovery to determine what the Tunica-Biloxi Indians knew.

III. Conclusion

In his Report and Recommendations, Judge Perez-Montes relied on inapposite case law to find that Plaintiff's original amount-in-controversy allegation was not binding. If his reasoning is adopted, it will set a dangerous precedent that allows for easy manipulation of the removal statute. Further, Judge Perez-Montes failed to recognize that Plaintiff has acted in bad faith here. Indeed, the Report and Recommendations does not consider whether Plaintiff has pursued her claim against the Tunica-Biloxi Indians or whether the group was improperly joined three years after Plaintiff obtained the lease and after seven years of litigation.

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[72] R. Doc. 19-6 at 1–2.
[73] R. Doc. 26-3 at 26 (p. 100–01 of deposition), 27–28 (p. 105–08 of deposition), 29 (p. 112 of deposition), p. 31 (p. 119 of deposition).
[74] R. Doc. 26-3 at 34 (p. 131–32 of deposition).

In his assessment of bad faith, Judge Perez-Montes found only that Plaintiff did not omit pertinent information to conceal the amount in controversy, but the record refutes this. The record establishes that Plaintiff has engaged in gamesmanship by being evasive about the amount in controversy and by adding the Tunica-Biloxi Indians at the same time that she revised her amount-in-controversy allegation. She should not be permitted to anchor her case in tribal court using such tactics, and this Court, therefore, should decline to adopt the Magistrate Judge's Report and Recommendations, finding that Plaintiff's Motion to Remand must be denied.

Respectfully submitted,

/s/ Seth M. Pohlmann

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record via e-mail this 11th day of May, 2026.

/s/ Seth M. Pohlmann