IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE: LIPITOR (ATORVASTATIN CALCIUM) MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	**MDL No. 2:14-mn-02502-RMG** **CASE MANAGEMENT ORDER NO. 83** **This Order relates to:** *Hoffman, et. al. v. Pfizer, Inc.*, Case No. 2:14-cv-02253

Motion to Remand

For the reasons stated below, Plaintiffs' Motion to Remand (Case No. 2:14-cv-2253, Dkt. No. 6)[1] is GRANTED.

A. Background

This action was originally filed in the Twentieth Judicial Circuit Court of Illinois, County of St. Clair by Plaintiffs Hoffman, Skinner and Tallmadge. (*See* Dkt. No. 2-1). Each plaintiff alleges that Lipitor caused her to develop Type II diabetes. (*Id.*). Defendant removed the action to the United States District Court for the Southern District of Illinois, and the case was subsequently transferred to this Court by the Judicial Panel on Multidistrict Litigation. (Dkt. Nos. 2, 16). Prior to transfer by the JPML, Plaintiffs filed a motion to remand. (Dkt. No. 6). While the motion was fully briefed prior to transfer, the motion was still pending at the time of transfer to this Court. (*See* Dkt. Nos. 6, 12, 14).

[1] Unless otherwise stated, references to particular docket numbers refer to the docket of Case No. 2:14-cv-02253.

Defendant removed this action to federal court based on diversity jurisdiction. (Dkt. No. 2). The parties agree that both Defendant and Plaintiff Tallmadge are citizens of New York.[2] (Dkt. No. 6 at 1; Dkt. No. 12 at 4). Thus, complete diversity is lacking on the face of the Complaint. However, Defendant claims that Plaintiff Tallmadge was fraudulently misjoined, that her claims should be severed and remanded, and that the Court has subject matter jurisdiction over the claims of Plaintiffs Hoffman and Skinner. (Dkt. No. 2).

This Court referred Plaintiffs' motion to remand to Magistrate Judge Marchant. (Dkt. No. 23). Judge Marchant issued an order granting Plaintiffs' motion for remand. (Dkt. No. 36). However, because it has not been definitively established whether an order of remand is dispositive such that it must be ruled on by a District Judge absent consent of the parties, Judge Marchant ordered that the parties were allowed to file objections to the order of remand and that if any objections were filed, the case be forwarded to this Court for de novo review and final disposition. (*Id.* at 10-11). Defendant objected to the Magistrate Judge's order, Plaintiffs filed a response to those objections, and Defendant filed a reply. (Dkt. Nos. 42, 46, 47). This matter is now before the Court for de novo review of the motion to remand.

B. Fraudulent Misjoinder

Defendants may remove any civil action from state court to federal court if the federal district court would have original jurisdiction over the action. 28 U.S.C. § 1441. The principal federal statute governing diversity jurisdiction, 28 U.S.C. § 1332, gives federal district courts original jurisdiction of all civil actions where the amount in controversy exceeds $75,000 and

[2] Plaintiffs Hoffman and Skinner are citizens of Illinois and diverse from Defendant. (Dkt. No. 2-1 at 5; Dkt. No. 12 at 4).

where there is complete diversity between all plaintiffs and defendants. *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005).

While "[d]iversity jurisdiction is typically determined from the face of the plaintiff's well-pled complaint," two distinct doctrines allow a federal court to disregard the citizenship of improperly joined parties. *Wyatt v. Charleston Area Med. Ctr., Inc.*, 651 F. Supp. 2d 492, 496 (S.D. W.Va. 2009). The doctrine of fraudulent joinder is well established and "occurs when a plaintiff files a frivolous or illegitimate claim against a non-diverse defendant solely to prevent removal." *In re Prempro Products Liab. Litig.*, 591 F.3d 613, 620 (8th Cir. 2010); *see also Marshall v. Manville Sales Corp.*, 6 F.3d 229, 232 (4th Cir. 1993) (holding fraudulent joinder occurs when there "is no possibility that the plaintiff would be able to establish a cause of action against the in-state defendant in state court."). The doctrine allows the court to dismiss the non-diverse defendant and disregard that defendant's citizenship in determining whether diversity jurisdiction exists.

The doctrine of fraudulent misjoinder is a "more recent, somewhat different and novel" doctrine. *In re Prempro*, 591 F.3d at 620. It asserts that while all the claims pled may be viable, the claims of a non-diverse plaintiff (or against a non-diverse defendant) are so unrelated to the remaining causes of action that they cannot be joined in a single suit under Fed. R. Civ. P. 20 or a similar state rule. *Wyatt*, 651 F. Supp. 2d at 496; *see also In re Prempro*, 591 F.3d at 620 (stating that fraudulent misjoinder occurs "when a plaintiff sues a diverse defendant in state court and joins a viable claim involving a nondiverse party . . . even though the plaintiff has no reasonable procedural basis to join them in one action because the claims bear no relation to each other.").

The doctrine asserts that these claims must be severed and only the claims of the non-diverse plaintiff (or against the non-diverse defendant) be remanded. For instance, the doctrine might be asserted if a plaintiff sued both a diverse defendant on claims related to car accident and a non-diverse defendant on wholly unrelated employment contract claims in a single suit. The doctrine would allow a court to sever the car accident claims from the unrelated contract claims and remand the contract claims against the non-diverse defendant to state court while retaining diversity jurisdiction over the car accident claims.

This doctrine was first recognized by a federal court of appeals in 1996 when the doctrine was recognized by the Eleventh Circuit in *Tapscott v. MS Dealer Serv. Corp.*, 77 F.3d 1353, 1360 (11th Cir. 1996).[3] In *Tapscott*, the initial and first amended complaints alleged violations of state law arising from the sale of service contracts on automobiles. *Id.* at 1355. The second amended complaint added claims arising from the sale of extended service contracts in connection with the sale of retail products and added Lowe's as a putative defendant class representative for a "merchant" class. *Id.* The district court found that the joinder of the retail-based claims against Lowe's was an "improper and fraudulent joinder, bordering on a sham," severed the claims against Lowe's, and remanded the remainder of the action to state court. *Id.* at 1360. Plaintiffs did not contend that the claims against Lowe's were properly joined, but argued that a misjoinder, no matter how egregious or frivolous, could not be used to defeat diversity jurisdiction because misjoinder did not fall within the fraudulent joinder doctrine. *Id.* The Eleventh Circuit disagreed finding that "[m]isjoinder may be just as fraudulent as the joinder of a resident defendant against whom a plaintiff has no possibility of a cause of action." *Id.*

[3] *Tapscott* was abrogated on other grounds by *Cohen v. Office Depot, Inc.*, 204 F.3d 1069 (11th Cir. 2000).

The Fifth Circuit also appears to recognize the doctrine. *See Crockett v. R.J. Reynolds Tobacco Co.*, 436 F.3d 529, 533 (5th Cir. 2006) ("A party, however, can be improperly joined without being fraudulently joined. . . If [the requirements of Fed. R. Civ. P. 20 and analogous state rules] are not met, joinder is improper even if there is no fraud in the pleadings and the plaintiff does have the ability to recover against each of the defendants."); *In re Benjamin Moore & Co.*, 309 F.3d 296, 298 (5th Cir. 2002) (denying petition for writ of mandamus without prejudice because the court was "confident that the able district court did not intend to overlook" consideration of the fraudulent misjoinder doctrine, "a feature critical to jurisdictional analysis"), *subsequent mandamus proceeding*, 318 F.3d 626 (5th Cir. 2002) (writ of mandamus denied for lack of jurisdiction). The Eighth and Tenth Circuits have explicitly declined to decide whether to adopt the doctrine, finding the facts of the cases before them would not constitute fraudulent misjoinder even if the doctrine were applied. *See Lafalier v. State Farm Fire & Cas. Co.*, 391 F. App'x 732, 739 (10th Cir. 2010) (noting that "[t]here may be many good reasons to adopt procedural misjoinder, . . . [b]ut we need not decide that issue today."); *In re Prempro*, 591 F.3d at 622. No federal court of appeals has rejected the doctrine, and the Fourth Circuit has not addressed the issue.

District courts have split on whether to adopt the doctrine. *See In re Prempro*, 591 F.3d at 621-22 (listing and discussing district court cases). In the Fourth Circuit, a number of district courts have explicitly adopted the doctrine, *see, e.g., Stephens v. Kaiser Found. Health Plan of the Mid-Atl. States, Inc.*, 807 F. Supp. 2d 375, 380 (D. Md. 2011), *Wyatt v. Charleston Area Med. Ctr., Inc.*, 651 F. Supp. 2d 492, 496-97 (S.D.W. Va. 2009), *Hughes v. Sears, Roebuck & Co.*, No. CIV.A. 2:09-CV-93, 2009 WL 2877424, at *7 (N.D.W. Va. Sept. 3, 2009), while at least one has declined to do so absent explicit direction from the Fourth Circuit. *See Palmetto*

Health All. v. S. Carolina Elec. & Gas Co., No. 3:11-CV-2060-JFA, 2011 WL 5027162, at *2 (D.S.C. Oct. 21, 2011). Others have applied the doctrine without explicitly naming or invoking it. *See Cramer v. Walley*, No. 5:14-CV-03857-JMC, 2015 WL 3968155, at *8 (D.S.C. June 30, 2015) (severing declaratory judgment claim concerning insurance coverage from negligence claims concerning underlying automobile accident and remanding only the negligence claims).

This Court agrees with the Eleventh Circuit and the majority of district courts in this circuit and adopts the fraudulent misjoinder doctrine. The U.S. Supreme Court has held that "right of removal cannot be defeated by a fraudulent joinder of a resident defendant having no real connection with the controversy." *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921); *accord Hugger v. Rutherford Inst.*, 63 F. App'x 683, 687-88 (4th Cir. 2003). This Court finds no reason that this statement should apply to defendants joined by an obviously frivolous claim (fraudulent joinder doctrine) but not to a defendant (or plaintiff) joined by an obviously frivolous misjoinder (fraudulent misjoinder doctrine). *See In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liab. Litig.*, 294 F. Supp. 2d 667, 673 (E.D. Pa. 2003) ("[T]he same principles of fraudulent joinder apply where a plaintiff is improperly joined with another plaintiff so as to defeat diversity jurisdiction."); *see also Greene v. Wyeth*, 344 F. Supp. 2d 674, 684-85 (D. Nev. 2004) ("[T]he rule is a logical extension of the established precedent that a plaintiff may not fraudulently join a defendant in order to defeat diversity jurisdiction in federal court."). In both instances, a party cannot defeat the right of removal by joining a party

"having no real connection with the controversy." *Wilson*, 257 U.S. at 97. The district court's jurisdiction and the right of removal cannot be toppled by such shams and artifices.[4]

C. Legal Standard

Having adopted the fraudulent misjoinder doctrine, the Court must now determine what legal standard applies under the doctrine. In doing so, the Court must resolve two questions: (1) whether it should look to Fed. R. Civ. P. 20 or to state law when determining whether claims and parties are properly joined and (2) whether simple misjoinder is sufficient to invoke the doctrine or whether some heightened standard should apply. In making these determinations, the Court is guided by Fourth Circuit precedence on the closely related fraudulent joinder doctrine. The two doctrines exist for the same purpose. In both instances, the court asks whether all nominal

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[4] Some courts have rejected the fraudulent misjoinder doctrine on the basis that "the last thing the federal courts need is more procedural complexity." *Osborn v. Metro. Life Ins. Co.*, 341 F. Supp. 2d 1123, 1127 (E.D. Cal. 2004). However, the U.S. Supreme Court and the Fourth Circuit adopted the fraudulent joinder doctrine despite the added procedural complexity, and the Court can find no reason that that the added procedural complexity would be warranted in the case of fraudulent joinder but not in the case of fraudulent misjoinder. *See Alabama Great S. Ry. Co. v. Thompson*, 200 U.S. 206, 218 (1906) ("[T]he Federal courts may and should take such action as will defeat attempts to wrongfully deprive parties entitled to sue in the Federal courts of the protection of their rights in those tribunals.").

The *Osborn* court also found that the doctrine was unnecessary because the defendant could move to sever in state court and then remove the case to federal court should the state court sever the claims. *Id.* at 1127. While an attractive and preferable procedure when available, this proposed procedure is problematic for several reasons. First, in some cases the state court may not sever the misjoinded claims until more than one year after the case was filed, and the defendant will be barred from removing the case under 18 U.S.C. § 1446(c). Second, if the defendant asserted an alternative ground for jurisdiction, such as the Class Action Fairness Act (CAFA), the defendant would be required to remove the case within 30 days after receipt of the complaint, making it unlikely that the state court would be able to address severance issues prior to removal. 18 U.S.C. §1446(b).

parties on the face of the complaint should be considered when determining whether complete diversity exists.

Most of the courts that have explicitly addressed whether Fed. R. Civ. P. 20 or the analogous state rule applies hold that state law applies. *See, e.g., In re: Bard Ivc Filters Products Liab. Litig.*, No. 2641, 2016 WL 2956557, at *4 (D. Ariz. May 23, 2016) ("[T]he majority view appears to be that state joinder rules should be utilized."); *Fed. Ins. Co. v. Tyco Int'l Ltd.*, 422 F. Supp. 2d 357, 381 (S.D.N.Y. 2006) ("The majority of cases applying the fraudulent misjoinder doctrine also have held that state law on joinder governs.") (collecting cases). However, some courts have applied the federal rule. *See Flores-Duenas v. Briones*, No. CIV 13-0660 JB/CG, 2013 WL 6503537, at *37 (D.N.M. Dec. 1, 2013). Many, including the federal appellate court decisions, simply avoid the issue by noting the standard for proper joinder is the same under state and federal law. *See, e.g., In re Prempro*, 591 F.3d at 624 n.6 (8th Cir. 2010) ("[T]he standards for joinder under Fed.R.Civ.P. 20 and Minn. R. Civ. P. 20.01 are identical in all significant respects, and application of the state joinder rules does not affect our analysis. Therefore, for purposes of this case only, we apply the federal rules in addressing the misjoinder allegation."); *Stephens v. Kaiser Found. Health Plan of the Mid-Atl. States, Inc.*, 807 F. Supp. 2d 375, 381 (D. Md. 2011) ("Maryland's law governing permissive joinder is substantively identical to its federal counterpart and need not be considered independently."); *Wyatt v. Charleston Area Med. Ctr., Inc.*, 651 F. Supp. 2d 492, 496 (S.D.W. Va. 2009) (citing both the state and federal rule); *see also Tapscott*, 77 F.3d at 1355 n.1 (noting that "Rule 20 of the Federal Rules of Civil Procedure is identical to Rule 20 of the Alabama Rules of Civil Procedure" and then applying the federal rule).

This Court agrees with the majority view that state procedural law applies. As multiple courts have explained,

> For purposes of fraudulent misjoinder, the Court must determine whether a diversity-defeating party was properly joined ***while the case resided in state court and was governed by state procedural rules***. If the party was properly joined there, complete diversity of citizenship is lacking here, and the Court cannot exercise subject matter jurisdiction. Federal Rule of Civil Procedure 20 never applies in such a case.

In re: Bard Ivc Filters Products Liab. Litig., No. 2641, 2016 WL 2956557, at *4 (D. Ariz. May 23, 2016) (emphasis added); *see also NFC Acquisition, LLC v. Comerica Bank*, 640 F. Supp. 2d 964, 972 n.7 (N.D. Ohio 2009) ("When assessing a claim of fraudulent joinder, I rely on the [state] Rules of Civil Procedure because even though the ultimate question is whether federal jurisdiction exists, the analysis relies on a determination of whether the defendant was a proper party to a state court action."); *Fed. Ins. Co. v. Tyco Int'l Ltd.*, 422 F. Supp. 2d 357, 381 (S.D.N.Y. 2006) ("[T]his appears to be the most rational way to view the propriety of any joinder since the question is one of joinder in the state action before it was removed."); *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liab. Litig.*, 294 F. Supp. 2d 667, 673-74 (E.D. Pa. 2003) ("[W]e do not see how federal joinder rules should apply when the issue is fraudulent misjoinder of non-diverse plaintiffs in a state court action so as to defeat our diversity jurisdiction."). The Court notes that all federal courts—even those that refuse to adopt the fraudulent misjoinder doctrine—agree that removal by a defendant is proper if the state court severs the claims ***under state procedural rules*** prior to the one-year statute in 18 U.S.C. § 1446. *See, e.g., Osborn*, 341 F. Supp. 2d at 1127.

The Court is also cognizant of Fed. R. Civ. P. 82, which admonishes that "[t]hese rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts." If jurisdiction did not exist at the time of removal because all claims were properly

joined in state court, this Court does not believe that it can then create jurisdiction by applying Fed. R. Civ. P. 20 if the standards differ. Furthermore, "[i]t makes little sense to say that the [party's] joinder became fraudulent *only after removal and only under the federal rule*." *Jamison v. Purdue Pharma Co.*, 251 F. Supp. 2d 1315, 1321 n.6 (S.D. Miss. 2003) (emphasis in original).

Finally, the Court is guided by analogy to the fraudulent joinder doctrine. Under the fraudulent joinder doctrine, the defendant must establish that there is "there is no possibility that the plaintiff would be able to establish a cause of action against the in-state defendant ***in state court***." *Johnson v. Am. Towers, LLC*, 781 F.3d 693, 704 (4th Cir. 2015) (emphasis added). "Although procedural rather than substantive laws are at issue here, the Court believes the same principles apply and the Court will apply [the state's] joinder rule." *In re Zoloft (Sertraline Hydrochloride) Products Liab. Litig.*, No. 12-MD-2342, 2014 WL 2526613, at *1 (E.D. Pa. June 3, 2014); *see also Jamison*, 251 F. Supp. 2d at 1321 n.6 ("This approach [of applying the state rule] shares the same conceptual rationale underlying the doctrine of fraudulent joinder.").

Next, the Court must address whether simple misjoinder is sufficient to invoke the doctrine or whether some heightened standard applies. *Tapscott* cautioned that "mere misjoinder" was not fraudulent misjoinder but that the facts of the case at hand were "so egregious as to constitute fraudulent joinder." *Id.* at 1360; *see also In re Prempro*, 591 F.3d at 622 ("[T]he plaintiffs' alleged misjoinder in this case is not so egregious as to constitute fraudulent misjoinder."). Following these two cases, "[m]any courts have required that the misjoinder be 'egregious,' and have held that the doctrine does not apply when the joinder of additional claims and parties is procedurally questionable but not clearly improper." I*n re Propecia (Finasteride) Prod. Liab. Litig.*, No. 12-CV-2049 JG VVP, 2013 WL 3729570, at *5

(E.D.N.Y. May 17, 2013). Other courts, including many district courts in the Fourth Circuit, have held that a finding of egregiousness is not necessary and that a finding of mere misjoinder is sufficient to apply the doctrine. *See Stephens v. Kaiser Found. Health Plan of the Mid-Atl. States, Inc.*, 807 F. Supp. 2d 375, 380 (D. Md. 2011) (listing cases). In this line of cases, courts have reasoned that "[a]dding what would be in essence a state-of-mind element to the procedural misjoinder inquiry would overly complicate what should be a straightforward jurisdictional examination." *Burns v. W. S. Life Ins. Co.*, 298 F. Supp. 2d 401, 403 (S.D.W. Va. 2004).

In determining what standard should apply, this Court is again guided by Fourth Circuit precedence on the fraudulent joinder doctrine. In this circuit, "[t]he party alleging fraudulent joinder bears a heavy burden." *Johnson*, 781 F.3d at 704. The removing party must show either (1) "outright fraud in the plaintiff's pleading of jurisdictional facts" or (2) that "there is no possibility that the plaintiff would be able to establish a cause of action against the in-state defendant in state court." *Id.* (quotations omitted). Under this second prong, the removing party "must show that the plaintiff cannot establish a claim even after resolving all issues of law and fact in the plaintiff's favor." *Id.* Furthermore, this "no possibility" standard "is even more favorable to the plaintiff than the standard for ruling on a motion to dismiss under Fed. R. Civ. P. 12(b)(6)." *Id.* (quotations omitted). Plaintiffs must show "only a slight possibility of a right to relief." *Hughes v. Wells Fargo Bank, N.A.*, 617 F. App'x 261, 264 (4th Cir. 2015) (quoting *Mayes v. Rapoport*, 198 F.3d 457, 466 (4th Cir. 1999)). Stated another way, Plaintiffs need only show a "'glimmer of hope' of succeeding against the non-diverse defendants." *Johnson*, 781 F.3d at 704.

This Court finds it hard to believe that the Fourth Circuit would apply this "no possibility" standard in the fraudulent joinder context, but apply a "mere misjoinder" standard in

the fraudulent misjoinder context.[5] Therefore, this Court adopts a standard analogous to the fraudulent joinder standard in the Fourth Circuit and holds that to establish fraudulent misjoinder, the removing party must show (1) outright fraud or (2) that there is ***no possibility*** that plaintiffs would be able to properly join the claims involving a non-diverse party in state court. *Cf. Weidman v. Exxon Mobil Corp.*, 776 F.3d 214, 218 (4th Cir. 2015) ("[The district court] can retain jurisdiction upon the non-moving party showing either that the plaintiff committed outright fraud in pleading jurisdictional facts, or that 'there is no possibility that the plaintiff would be able to establish a cause of action against the in-state defendant in state court."), *cert. denied*, 135 S. Ct. 2868 (2015); *see also Fed. Ins. Co. v. Tyco Int'l Ltd.*, 422 F. Supp. 2d 357, 379 (S.D.N.Y. 2006) ("One possible means of clarifying the standard is to look at fraudulent misjoinder the same way that courts in this circuit analyze fraudulent joinder: can the defendant show either: (I) that there was there outright fraud, or (ii) that there is no possibility, based on the pleadings, that a plaintiff properly can join the claims brought against the third-party defendant."); *In re Zoloft (Sertraline Hydrochloride) Products Liab. Litig.*, No. 12-MD-2342, 2014 WL 2526613, at *1 (E.D. Pa. June 3, 2014) ("Although procedural rather than substantive laws are at issue here, the Court believes the same principles apply."). This "no possibility standard" is not as vague as the standard articulated by some courts of "so egregious as to constitute fraudulent joinder," does not require a state-of-mind element, and has been long-applied by courts in the fraudulent joinder context.

[5] The Court is also mindful that it is "obliged to construe removal jurisdiction strictly because of the significant federalism concerns implicated." *Dixon v. Coburg Dairy, Inc.*, 369 F.3d 811, 816 (4th Cir. 2004) (internal quotes omitted).

D. Discussion

Under Illinois law,[6] "[a]ll persons may join in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, whenever if those persons had brought separate actions any common question of law or fact would arise." 735 Ill. Comp. Stat. Ann. 5/2-404. "The determining factors are that the claims arise out of closely related 'transactions' and that there is in the case a significant question of law or fact that is common to the parties." *Prime Leasing, Inc. v. Kendig*, 332 Ill. App. 3d 300, 308 (2002) (quotations omitted).

While Defendant concedes that "the 'common question' requirement may in some cases be satisfied by plaintiffs who allege the same injury from ingestion of the same medicine,"[7] it argues that the same transaction or series of transactions requirement cannot be met in such an instance.[8] (Dkt. No. 42 at 14). The Court finds the decision in *Prime Leasing, Inc. v. Kendig*, 773 N.E.2d 84 (2002) instructive.

In *Prime Leasing*, the two plaintiffs were creditors unable to collect their debts from a corporation due to its bankruptcy. *Id.* at 89. One plaintiff had purchased several million dollars in bonds of the corporation, while the other entered into a lease with the corporation. *Id.* The plaintiffs sued the corporation's former credit manager and former directors under various theories, alleging that the corporation altered financial reports by "freshening" the dates of accounts receivable and redating the accounts receivables in misleading ways such that plaintiffs

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[6] This case was initially filed in an Illinois state court.

[7] Indeed, the creation of this MDL was based in part on the JPML's finding that "these actions involve common questions of fact." (*In re Lipitor*, Case No. 2:14-mn-2502, Dkt. No. 1 at 3).

[8] Defendant does not argue that Plaintiffs engaged in outright fraud. (*See generally*, Dkt. Nos. 12, 42, 47).

were not provided a true and accurate picture of the corporation's financial condition. *Id.* at 90. The defendants argued that the plaintiffs were improperly joined because different transactions were at issue—the purchase of bonds versus the execution of a lease. The Illinois appellate court disagreed, holding that

> While they do not arise out of the same transaction, both claims arise from a series of transactions and there exist numerous common questions of law and fact. In particular, [plaintiffs] claims are based on [the corporation's] practice of freshening accounts receivables and both appellants have named the same parties as persons taking part in the allegedly egregious redating of accounts receivables in the transactions. As such, joinder was proper.

Id. at 90.

Here, while Plaintiffs' prescription, purchase and ingestion of Lipitor are separate transactions, Plaintiffs' claims are all based on the same series of Defendant's alleged acts and omissions. The Court finds that in light of *Prime Leasing*, there is at least a possibility that Plaintiffs in this action are properly joined under Illinois law. Thus, Plaintiff Tallmadge was not fraudulently misjoined, and the Court lacks diversity jurisdiction over this matter. Thus, the Court grants Plaintiffs' motion to remand.

E. Conclusion

For the reasons stated above, Plaintiffs' motion to remand (Dkt. No. 6 in Case No. 2:14-cv-002253) is **GRANTED**, and this action is **REMANDED** to the Twentieth Judicial Circuit Court of Illinois, County of St. Clair.

AND IT IS SO ORDERED.

Richard Mark Gergel
United States District Court Judge

October 24, 2016
Charleston, South Carolina