

1 MIHRAN YEZBEKYAN (SBN 322233)
MYezbekyan@btlaw.com

2 ERIN M. GILMORE (SBN 324319)
EGilmore@btlaw.com

3 **BARNES & THORNBURG LLP**
2029 Century Park East, Suite 300
4 Los Angeles, California 90067-2904
Telephone: (310) 284-3880
5 Facsimile: (310) 284-3894

6 ROBYN S. MAGUIRE (appearance *pro hac vice*)
RMaguire@btlaw.com

7 **BARNES & THORNBURG LLP**
One Marina Park Drive, Suite 1530
8 Boston, Massachusetts 02210
Telephone: (617) 316-5310
9 Facsimile: (617) 316-5311

10 Attorneys for Defendants
JOHNSON & JOHNSON; JANSSEN
11 PHARMACEUTICALS, INC.; and JANSSEN
RESEARCH & DEVELOPMENT, LLC

12 [caption continued on next page]

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 BRIDGETT BROWN,

18 Plaintiff,

19 v.

20 JOHNSON & JOHNSON; JANSSEN
21 PHARMACEUTICALS, INC.; JANSSEN
RESEARCH & DEVELOPMENT, LLC; ELI
22 LILLY AND COMPANY; CHEPLAPHARM
ARZNEIMITTEL GMBH; KAISER
23 PERMANENTE; and DOES 1 through 100,
inclusive,

24 Defendants.
25
26
27
28

Case No. 3:25-cv-04318-AMO

**DEFENDANTS JOHNSON & JOHNSON,
JANSSEN PHARMACEUTICALS, INC.,
JANSSEN RESEARCH &
DEVELOPMENT, LLC AND ELI LILLY
AND COMPANY'S JOINT OPPOSITION
TO PLAINTIFF'S MOTION TO REMAND**

Judge: Hon. Araceli Martínez-Olguín
Action Filed: April 21, 2025
Removed: May 20, 2025
Hearing Date: October 30, 2025
Courtroom: 10, 19th Floor

1 Andrew T. Bayman (appearance *pro hac vice*)
TaCara D. Harris (appearance *pro hac vice*)

2 **KING & SPALDING LLP**

1180 Peachtree Street, Suite 1600

3 Atlanta, GA 30309

Telephone: (404) 572-4600

4 Facsimile: (404) 572-5100

Email: abayman@kslaw.com

5 Eric L. White (appearance *pro hac vice*)

6 **KING & SPALDING LLP**

110 North Wacker Drive, Suite 3800

7 Chicago, IL 60606

Telephone: (312) 995-6333

8 Facsimile: (312) 995-6330

Email: ewhite@kslaw.com

9 Matthew J. Blaschke (SBN 281938)

10 **KING & SPALDING LLP**

50 California Street, Suite 3300

11 San Francisco, CA 94111

Telephone: (415) 318-1212

12 Facsimile: (415) 318-1300

Email: mblaschke@kslaw.com

13 Attorneys for Defendant

14 ELI LILLY AND COMPANY

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Page

I.	INTRODUCTION.....	1
II.	BACKGROUND.....	2
A.	Plaintiff Bridgett Brown.....	2
B.	Kaiser Permanente.....	3
III.	LEGAL STANDARD	3
IV.	ARGUMENT	5
A.	California Law Does Not Permit Strict Liability Claims Against Pharmacies.	5
1.	Kaiser Is a Community Pharmacy, as Defined by <i>Murphy</i>	6
2.	Kaiser Is Not A Pharmaceutical Distributor.....	8
B.	Plaintiff Cannot State A Viable Negligence Claim Against Kaiser.	10
1.	Kaiser Cannot Be Liable for General Negligence.....	10
2.	Kaiser Cannot Be Liable for Failure to Warn.	12
V.	CONCLUSION	16

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>Ambriz v. CVS Pharmacy, Inc.</i> , No. 1:19-CV-01391-NONE-SKO, 2020 WL 1660018 (E.D. Cal. Apr. 3, 2020).....	5, 7, 11
<i>Andrews v. Bayer Corp.</i> , CV 09-08762 2010 WL 234808 (C.D. Cal. Jan. 12, 2010).....	9
<i>In re Baycol Prods. Litig.</i> , No. 1431, 2004 WL 1118642 (D. Minn. May 17, 2004)	15
<i>Borreani v. Kaiser Foundation Hospitals</i> , 875 F. Supp. 2d 1050 (N.D. Cal. 2012)	8, 15, 16
<i>Cabral v. Ralphs Grocery Co.</i> , 51 Cal. 4th 764 (2011).....	11
<i>Canesco v. Ford Motor Co.</i> , 570 F. Supp. 3d 872 (S.D. Cal. 2021)	16
<i>Carlin v. Superior Ct.</i> , 13 Cal. 4th 1104 (1996).....	13
<i>Carmichael v. Reitz</i> , 17 Cal. App. 3d 958 (1971).....	13
<i>Chamblin v. K-Mart Corp.</i> , 612 S.E.2d 25 (Ga. Ct. App. 2005)	14
<i>Corcoran v. CVS Health Corp.</i> , 169 F. Supp. 3d 970 (N.D. Cal. 2016)	10, 11, 13
<i>Deed v. Walgreen Co.</i> , No. CV030823651S, 2004 WL 2943271 (Conn. Super. Ct. Nov. 15, 2004).....	13
<i>Dodich v. Pfizer Inc.</i> , No. C 18-02764 WHA, 2018 WL 3584484 (N.D. Cal. July 26, 2018).....	5, 9
<i>Ferrari v. Nat. Partners, Inc.</i> , No. 15-CV-04787-LHK, 2016 WL 4440242 (N.D. Cal. Aug. 23, 2016)	10
<i>Garza v. Endo Pharms.</i> , No. CV 12-1585-CAS, 2012 WL 5267897 (C.D. Cal. Oct. 24, 2012)	5, 11
<i>Gerritsen v. Warner Bros. Ent. Inc.</i> , 112 F. Supp. 3d 1011 (C.D. Cal. 2015).....	3, 9

1	<i>Goldsmith v. CVS Pharmacy, Inc.,</i>	
2	No. CV 20-00750-AB, 2020 WL 3966004 (C.D. Cal. May 5, 2020).....	12
3	<i>Grancare, LLC v. Thrower ex. rel. Mills,</i>	
4	889 F.3d 543 (9th Cir. 2018).....	4
5	<i>Grove v. Bayer Corp.,</i>	
6	No. SACV 09-1509 2010 WL 11595821 (C.D. Cal. Feb. 23, 2010)	6
7	<i>Hensley-Maclean v. Safeway, Inc.,</i>	
8	No. CV 11-01230 RS, 2014 WL 1364906 (N.D. Cal. Apr. 7, 2014).....	11
9	<i>Higley v. Cessna Aircraft Co.,</i>	
10	No. CV 10-3345-GHK, 2010 WL 3184516 (C.D. Cal. July 21, 2010)	4
11	<i>Huggins v. Longs Drug Stores Cal., Inc.,</i>	
12	6 Cal. 4th 124 (1993).....	10
13	<i>Hunter v. Philip Morris USA,</i>	
14	582 F.3d 1039 (9th Cir. 2009).....	3
15	<i>Kampmann v. Mason,</i>	
16	42 So. 3d 411 (La. Ct. App. 2010)	14
17	<i>Lacesa v. Walgreen Co.,</i>	
18	No. 2:22-CV-02558-MCS-JPR, 2022 WL 19240778 (C.D. Cal. Sept. 22, 2022).....	13
19	<i>LAOSD Asbestos Cases,</i>	
20	248 Cal. Rptr. 3d 219 (Cal. Ct. App. 2019)	11
21	<i>Lussier v. Dollar Tree Stores, Inc.,</i>	
22	518 F.3d 1062 (9th Cir. 2008).....	2
23	<i>Mazur v. Merck & Co.,</i>	
24	964 F.2d 1348 (3d Cir. 1992).....	14
25	<i>McCabe v. Gen. Foods Corp.,</i>	
26	811 F.2d 1336 (9th Cir. 1987).....	3, 4
27	<i>Morris v. Sun Pharma Glob.,</i>	
28	No. CV 20-10441 PA, 2021 WL 3206046 (C.D. Cal. Apr. 22, 2021).....	12
	<i>Murphy v. E. R. Squibb & Sons, Inc.,</i>	
	40 Cal. 3d 672 (1985).....	<i>passim</i>
	<i>Nichols v. Cent. Merch., Inc.,</i>	
	817 P.2d 1131 (Kan. Ct. App. 1991).....	14
	<i>Nunn v. Mentor Worldwide, LLC,</i>	
	847 F. App'x 373 (9th Cir. 2021).....	4

1	<i>Patton v. Allergan PLC</i> ,	
2	No. EDCV-17-922-MWF, 2017 WL 3137575 (C.D. Cal. July 24, 2017).....	6
3	<i>In re Rezulin Prods. Liab. Litig.</i> ,	
4	133 F. Supp. 2d 272 (S.D.N.Y. 2001).....	13, 14, 15
5	<i>Ritchey v. Upjohn Drug Co.</i> ,	
6	139 F.3d 1313 (9th Cir. 1998).....	4
7	<i>Rodriguez v. Hall Ambulance</i> ,	
8	No. 1:06-CV-01580-OWW-TAG, 2007 WL 470624 (E.D. Cal. Feb. 9, 2007).....	4
9	<i>In re Roundup Prods. Liab. Litig.</i> ,	
10	No. 16-MD-02741-VC, 2021 WL 4186714 (N.D. Cal. Sept. 15, 2021).....	3, 4
11	<i>In re Roundup Prods. Liab. Litig.</i> ,	
12	No. 16-MD-02741-VC, 2021 WL 5149862 (N.D. Cal. Nov. 5, 2021).....	4
13	<i>S.K. v. CaremarkPCS Pa. Mail Pharmacy, L.L.C.</i> ,	
14	No. 2:21-CV-05154-MCS-GJS, 2022 WL 20273643 (C.D. Cal. Mar. 7, 2022)	5, 12
15	<i>Stephens v. Hook-SuperRx</i> ,	
16	359 F. App'x 648 (7th Cir. 2009).....	14
17	<i>Vandermark v. Ford Motor Co.</i> ,	
18	61 Cal. 2d 256 (1964).....	6
19	<i>Walls v. Alpharma USPD, Inc.</i> ,	
20	887 So. 2d 881 (Ala. 2004)	13
21	<i>Wilson v. Republic Iron & Steel Co.</i> ,	
22	257 U.S. 92 (1921)	3
23	<i>In re Zantac (Ranitidine) Products Liability Litigation</i> ,	
24	No. 20-MD-2924, 2021 WL 650608 (S.D. Fla. Feb. 19, 2021).....	11
25	Statutes	
26	Cal. Bus. & Prof. Code § 4001.....	6
27	Cal. Bus. & Prof. Code § 4029.....	3
28	Cal. Bus. & Prof. Code § 4128.2	3
	Cal. Bus. & Prof. Code § 4127.....	3
	Cal. Bus. & Prof. Code § 4006.....	8
	Cal. Bus. & Prof. Code § 4022.....	8
	Cal. Bus. & Prof. Code § 4054.....	8

1	Cal. Bus. & Prof. Code § 4160.....	8
2	Cal. Civ. Proc. Code § 364(a)	12
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Plaintiff's Motion to Remand (the "Motion") makes obvious that Defendant Kaiser
 3 Permanente ("Kaiser")—the pharmacy that allegedly filled Plaintiff's Risperdal® and Zyprexa®
 4 medications—has been fraudulently joined in this action to defeat diversity jurisdiction, and
 5 Plaintiff's claims against it are grounded in smoke and mirrors. In the Motion, Plaintiff asserts that
 6 the question before the Court is, "whether, under California law, it is possible for plaintiff to bring
 7 a *negligence* claim against a defendant that sold the product that caused plaintiff to develop cancer."
 8 However, throughout her brief she conflates the strict liability standard applicable to pharmacies by
 9 citing retailer and distributor negligence cases—perhaps in an effort to confuse the Court.
 10 Regardless of Plaintiff's motives, none of her claims against Kaiser, whether sounding in strict
 11 liability, general negligence, or negligent failure to warn, are viable. The Motion should be denied,
 12 for three principal reasons.

13 *First*, black letter law provides that California pharmacies such as Kaiser are not subject to
 14 strict liability for their role in dispensing prescription medications, and Plaintiff has not asserted any
 15 facts or cited any cases providing an exception to this longstanding rule. Her novel argument that
 16 Kaiser's size somehow converts it into a pharmaceutical distributor—which is an entirely different
 17 statutory construct under California law—is incorrect and belied by Kaiser's license as a
 18 "community pharmacy" by the California Department of Consumer Affairs.

19 *Second*, Plaintiff has not stated a viable general negligence claim against Kaiser, as a
 20 California pharmacy's sole duty is to fill prescriptions accurately. Plaintiff has not asserted that
 21 Kaiser breached this duty or engaged in any other wrongful conduct that could subject it to liability
 22 under an independent negligence theory. Nor has any California court extended the concept of
 23 retailer liability to a pharmacy performing a health care service, as Plaintiff argues.

24 *Third*, under the learned intermediary doctrine, a California pharmacy has no duty to warn
 25 patients of the risks of prescription medications. Rather, the duty to warn runs first from the
 26 manufacturer to the physician and only then from the physician to the patient. Even if such a duty
 27 existed (which it does not), Plaintiff has not explained, let alone addressed, how Kaiser could have
 28 possibly failed to warn Plaintiff of a risk of breast cancer, when she simultaneously asserts that the

1 Defendant drug manufacturers concealed that risk from the public, including Kaiser, for decades.

2 At bottom, all of Plaintiff's claims against Kaiser fail.¹ The Court should deny Plaintiff's
3 Motion to Remand.

4 **II. BACKGROUND**

5 **A. Plaintiff Bridgett Brown**

6 The thrust of Plaintiff's Amended Complaint is that Defendants, Johnson & Johnson,
7 Janssen Pharmaceuticals, Inc., Janssen Research & Development, LLC, Eli Lilly and Company, and
8 Cheplapharm Arzneimittel GmbH, collectively failed to warn of the risk of breast cancer associated
9 with the use of prescription medications, Risperdal® and Zyprexa®. *See* Am. Compl. ¶¶ 78-79,
10 110-21. Plaintiff claims that these medications have long been known to cause hyperprolactinemia,
11 a condition associated with elevated levels of the hormone prolactin, and that hyperprolactinemia in
12 turn, is causally associated with breast cancer. *Id.* ¶ 4.

13 Despite Plaintiff's assertions in the Motion that "Kaiser is far more than a pharmacy," she
14 pleads just three conclusory paragraphs in the Amended Complaint regarding the purported conduct
15 of the fraudulently joined Defendant, Kaiser. She asserts only that Kaiser "supplied Plaintiff with
16 Defendants' Drugs which caused Plaintiff's injuries." *Id.* ¶¶ 1, 16, 99. She does not allege that
17 Kaiser improperly filled her prescriptions, adulterated the products, subjected them to improper
18 storage or handling, or did anything more than simply comply with her physicians' orders in
19 dispensing the medications those physicians chose for her. *See generally id.*

20 The Amended Complaint contains four causes of action, only three of which are brought
21 against Kaiser: Strict Liability (Count I); General Negligence (Count II); and Negligent Failure to
22 Warn (Count III). *Id.* ¶¶ 110-51. In Count IV, Plaintiff departs from her allegations that Kaiser
23 long knew about scientific research establishing a risk of breast cancer associated with the

24
25 ¹ Plaintiff vaguely states in the introduction of her Motion that Defendants generally "may have to
26 pay the fees and costs associated with bringing the motion [to remand]," should a case be remanded
27 to state court. However, Plaintiff has not moved for fees and costs here, and there is no basis for
28 awarding fees and costs in any event, given that removal was proper. *See Lussier v. Dollar Tree
Stores, Inc.*, 518 F.3d 1062, 1065 (9th Cir. 2008) ("[R]emoval is not objectively unreasonable solely
because the removing party's arguments lack merit, or else attorney's fees would always be awarded
whenever remand is granted.").

1 medications and contends that the drug manufacturers fraudulently concealed those risks from the
 2 public, from Kaiser, and from Plaintiff and her prescribing physicians. *Id.* ¶¶ 152-61. She claims
 3 that the manufacturer Defendants’ “suppression and concealment of such facts caused, contributed
 4 to, and was a substantial factor in the prescribing doctors’ decision to prescribe Defendants’ Drugs
 5 to the Plaintiff and in Plaintiff’s decision to use the Defendants’ Drugs[,]” further alleging that
 6 Plaintiff and her prescribing physicians were “induced by [the manufacturers’] misrepresentations,
 7 omissions, suppression and concealment to agree to use Defendants’ Drugs.” *Id.* ¶¶ 159-60.

8 **B. Kaiser Permanente**

9 Kaiser is a national pharmacy provider. *See* Declaration of Robyn S. Maguire (“Maguire
 10 Decl.”) ¶ 6. Kaiser pharmacies are licensed by the California Department of Consumer Affairs² as
 11 community pharmacies, compounding pharmacies, or hospital pharmacies, as defined under the
 12 California Business and Professions Code §§ 4001, 4029, 4128.2, 4127. In Alameda County, there
 13 are fifteen Kaiser pharmacies actively providing pharmacy services. Maguire Decl. ¶¶ 8-10. There
 14 are no registered Kaiser entities with a distributor license in Alameda County. *Id.* ¶ 11. All Kaiser
 15 pharmacies are located within Kaiser medical centers or Kaiser hospitals. *Id.* ¶ 6.

16 **III. LEGAL STANDARD**

17 Kaiser has been fraudulently joined as a defendant in this case. *McCabe v. Gen. Foods*
 18 *Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987) (finding that joinder of resident defendants was
 19 fraudulent and “did not destroy diversity” where plaintiff “failed to state a cause of action” against
 20 defendants). “Joinder is fraudulent if the plaintiff fails to state a cause of action against a resident
 21 defendant, and the failure is obvious according to the settled rules of the state.” *Hunter v. Philip*
 22 *Morris USA*, 582 F.3d 1039, 1043 (9th Cir. 2009) (internal quotation marks and citations omitted).
 23 Fraudulent joinder “applies when a non-diverse defendant’s joinder is a ‘sham’—that is, when a
 24 party is joined ‘without any reasonable basis in fact and without any purpose to prosecute the action
 25 in good faith.’” *In re Roundup Prods. Liab. Litig.*, No. 16-MD-02741-VC, 2021 WL 4186714, at
 26

27 ² Government websites are subject to judicial notice. Fed. R. Evid. 201; *see also Gerritsen v.*
 28 *Warner Bros. Ent. Inc.*, 112 F. Supp. 3d 1011, 1033 (C.D. Cal. 2015); *see also* fn. 5.

1 *1 (N.D. Cal. Sept. 15, 2021) (“*Roundup I*”) (quoting *Wilson v. Republic Iron & Steel Co.*, 257 U.S.
2 92, 98 (1921)).

3 “While Plaintiffs are in no way required to prove their case, by the same token they cannot
4 avoid a finding of fraudulent joinder by asserting a mere hypothetical possibility of a cause of action
5 against the resident defendant.” *Higley v. Cessna Aircraft Co.*, No. CV 10-3345-GHK (FMOx),
6 2010 WL 3184516, at *2 (C.D. Cal. July 21, 2010) (internal quotation marks and citation omitted);
7 *see also McCabe*, 811 F.2d at 1339 (“If the plaintiff fails to state a cause of action against a resident
8 defendant, and the failure is obvious according to the settled rules of the state, the joinder of the
9 resident defendant is fraudulent.”). A plaintiff must do more than “simply declar[e] that there is a
10 factual dispute” to defeat a claim of fraudulent joinder, and the Court is not forced to “close its eyes
11 to reality” when considering the parties’ arguments. *In re Roundup Prods. Liab. Litig.*, No. 16-MD-
12 02741-VC, 2021 WL 5149862, at *2 (N.D. Cal. Nov. 5, 2021) (“*Roundup II*”) (quoting *Roundup I*,
13 2021 WL 4186714, at *2). The court must disregard the citizenship of the non-diverse defendant
14 where, as here, “a defendant shows that [the] ‘individual[] joined in the action cannot be liable on
15 any theory.’” *Nunn v. Mentor Worldwide, LLC*, 847 F. App’x 373, 375 (9th Cir. 2021) (quoting
16 *Grancare, LLC v. Thrower ex. rel. Mills*, 889 F.3d 543, 548 (9th Cir. 2018)).

17 While the allegations in the Amended Complaint alone satisfy Defendants’ burden of
18 establishing federal jurisdiction, the court may consider the record as a whole when ruling on a
19 remand motion. *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998) (“The defendant
20 seeking removal to the federal court is entitled to present the facts showing the joinder to be
21 fraudulent.” (quoting *McCabe*, 811 F.2d at 1339) (collecting cases)); *see also Rodriguez v. Hall*
22 *Ambulance*, No. 1:06-CV-01580-OWW-TAG, 2007 WL 470624, at *3 (E.D. Cal. Feb. 9, 2007)
23 (explaining that the court may consider “any affidavits or other evidence presented regarding
24 fraudulent joinder” when ruling on a remand motion). Here, the record shows that Kaiser cannot be
25 liable to Plaintiff under the causes of action asserted against it or any other legal theory. As such,
26 Kaiser is fraudulently joined, and the Court should disregard its citizenship in finding that federal
27 subject matter jurisdiction exists.

28 ///

1 **IV. ARGUMENT**

2 Plaintiff's Motion and Amended Complaint demonstrate that Plaintiff cannot assert a viable
3 claim against Kaiser under California law, whether in strict liability or negligence. Her effort to
4 distract from the standard applicable to pharmacies properly dispensing medications (which is all
5 she has pleaded Kaiser did in this case), and instead focus on retailer and distributor liability, cannot
6 save her claims. California law is clear that Plaintiff has not pleaded any proper cause of action
7 against Kaiser.

8 **A. California Law Does Not Permit Strict Liability Claims Against Pharmacies.**

9 Plaintiff cannot assert a strict liability claim (Count I) against Kaiser because California law
10 does not recognize the tort of strict liability against pharmacies. Forty years ago, the California
11 Supreme Court held in *Murphy v. E. R. Squibb & Sons, Inc.* that strict liability for defective
12 pharmaceutical products does not extend to the pharmacies that dispense prescription medications
13 to patients. 40 Cal. 3d 672, 680–81 (1985). The *Murphy* court explained that a pharmacist (and the
14 pharmacy itself) that “fills a prescription is in a different position from the ordinary retailer because
15 [it] cannot offer a prescription for sale except by order of the doctor.” *Id.* at 679. In this respect,
16 the pharmacy “is providing a service to the doctor and acting as an extension of the doctor in the
17 same sense as a technician who takes an X-ray or analyzes a blood sample on a doctor’s order.” *Id.*
18 “[E]ven though a pharmac[y] is paid for the medication [it] dispenses, [its] conduct in filling a
19 prescription is to be deemed a service, and . . . [it] is immune from strict liability.” *Id.* at 680–81
20 (“[T]he policy justifying the grant of immunity from strict liability to the practice of pharmacy
21 would only be effectuated if the pharmacy operation itself is exempted.”).

22 Over the last four decades, California courts have consistently applied *Murphy*’s holding to
23 bar strict liability claims against California pharmacies of all sizes. *See, e.g., Ambriz v. CVS*
24 *Pharmacy, Inc.*, No. 1:19-CV-01391-NONE-SKO, 2020 WL 1660018, at *5 (E.D. Cal. Apr. 3,
25 2020) (“The decision in *Murphy* bars plaintiffs’ claim for strict liability.”); *Garza v. Endo Pharms.*,
26 No. CV 12-1585-CAS (OPx), 2012 WL 5267897, at *2 (C.D. Cal. Oct. 24, 2012) (“[P]laintiffs’
27 breach of warranty claim against CVS is also unavailing. Because under California law pharmacies
28 primarily provide a service, not a product, a breach of warranty claim does not lie.”); *Dodich v.*

1 *Pfizer Inc.*, No. C 18-02764 WHA, 2018 WL 3584484, at *3 (N.D. Cal. July 26, 2018) (“Pharmacists
 2 are not strictly liable for defects of prescription medicines in California.” (citing *Murphy*)); *S.K. v.*
 3 *CaremarkPCS Pa. Mail Pharmacy, L.L.C.*, No. 2:21-CV-05154-MCS-GJS, 2022 WL 20273643, at
 4 *3 (C.D. Cal. Mar. 7, 2022) (dismissing pharmacy defendants from case and holding that “[t]he
 5 clear import of *Murphy* is that pharmacies are not to be named in strict liability product liability
 6 actions involving alleged defective drugs”); *Grove v. Bayer Corp.*, No. SACV 09-1509 AG
 7 (MLGx), 2010 WL 11595821, at *2 (C.D. Cal. Feb. 23, 2010) (“Removing Defendants correctly
 8 assert that pharmacies are shielded from strict liability in California.”). Plaintiff alleges no facts
 9 that merit exempting Kaiser from this longstanding rule.

10 **1. Kaiser Is a Community Pharmacy, as Defined by *Murphy*.**

11 Plaintiff attempts to distinguish *Murphy* by incorrectly arguing that: (1) its holding applies
 12 only to “mom-and-pop” pharmacies, and (2) that Kaiser pharmacies are not the kind envisioned by
 13 the *Murphy* court’s opinion.³ Neither argument is convincing.

14 First, Kaiser’s limited role in filling Plaintiff’s prescriptions falls squarely within the
 15 confines of *Murphy*: “[t]he discussion which follows relates only to the duties in a community
 16 pharmacy of a pharmacist who fills prescriptions for drugs on the order of a physician or other
 17 medical care provider, and who has used due care in compounding and labelling the drug.” 40 Cal.
 18 3d at 676. In the Amended Complaint, Plaintiff merely alleges that Kaiser filled her Risperdal®
 19 and Zyprexa® prescriptions on the orders of her physicians. *See* Am. Compl. ¶¶ 1, 16, 99. Thus,
 20 *Murphy*’s holding is directly applicable to the case at bar, and Plaintiff has not alleged a strict
 21 liability claim against Kaiser, nor could she. *See Patton v. Allergan PLC*, No. EDCV-17-922-MWF
 22 (DTBx), 2017 WL 3137575, at *3 (C.D. Cal. July 24, 2017) (“Neither can a pharmacy or pharmacist
 23 be held strictly liable for giving out a properly prescribed medication that leads to negative side
 24 effects for the patient.” (citing *Murphy*, 40 Cal. 3d at 675)).

25
 26 ³ Plaintiff’s reliance on *Vandermark v. Ford Motor Co.*, 61 Cal. 2d 256 (1964), is misplaced.
 27 *Vandermark* is a seminal California case establishing the viability of strict liability for *retailers*. It
 28 has nothing to do with pharmacies and is wholly inapplicable to the facts of this case, as Plaintiff
 fails to allege or demonstrate that Kaiser is a retailer. *See id.* at 262–64 (holding Ford automobile
 dealer strictly liable for injuries resulting from car accident).

Second, *Murphy* did not confine its holding to “mom-and-pop” pharmacies, as Plaintiff incorrectly asserts. Rather, *Murphy*’s discussion of “community pharmacies” refers to a formal pharmacy license, as defined by the California Business and Professions Code, not some colloquialism without meaning, as Plaintiff would have this Court believe. *See* Cal. Bus. & Prof. Code § 4001 (defining a “chain community pharmacy” as “a chain of 75 or more stores in California under the same ownership,” and an “independent community pharmacy” as “a pharmacy owned by a person or entity who owns no more than four pharmacies in California”). Community pharmacies thus include both independent pharmacies and large pharmacy chains like Kaiser, and the licenses have nothing to do with whether the pharmacies might be considered “mom-and-pops” or larger pharmacy systems—a point aptly illustrated by Plaintiff’s own citations. *See Ambriz*, 2020 WL 1660018, at *5-6 (barring strict liability claims against CVS Pharmacy—one of the largest pharmacy chains in the country—even where the plaintiff alleged that the pharmacist incorrectly mixed her prescription medications).

Third, all of Kaiser’s pharmacy locations in Alameda County are registered as “community” pharmacies or compounding pharmacies.⁴ *See* Maguire Decl. ¶¶ 8-10. Plaintiff’s argument that Kaiser’s role in this case is “readily distinguishable from the ‘community pharmacy’ that *Murphy* described” is therefore baseless. Pl. Mot. to Remand, at 6.

Fourth, the holding of *Murphy* is rooted in public policy considerations that have nothing to do with a pharmacy’s size and apply equally to pharmacies of all kinds, when they are properly dispensing prescription medications:

If pharmacies were held strictly liable for the drugs they dispense, some of them, to avoid liability, might restrict availability by refusing to dispense drugs which pose even a potentially remote risk of harm, although such medications may be essential to the health or even the survival of patients. Furthermore, in order to assure that a pharmacy receives the maximum protection in the event of suit for defects in a drug, the pharmacist may select the more expensive product made by an established manufacturer when he has a choice of several brands of the same drug.

⁴ Neither Risperdal® nor Zyprexa® is a compounded medication, nor does Plaintiff allege that they are. In any event, *Murphy*’s holding encompasses compounding pharmacies as well as community pharmacies. *Murphy*, 40 Cal. 3d at 676.

1 *Murphy*, 40 Cal. 3d at 680–81. In other words, pharmacies deliver an essential public service, and
 2 the California legislature has therefore determined that it is in the public’s best interest to immunize
 3 pharmacies, large or small, from strict liability claims based on the exact conduct Plaintiff alleges
 4 in her Amended Complaint.

5 In short, Plaintiff has pleaded no allegations that would exempt Kaiser from immunity from
 6 strict liability under *Murphy* and its progeny.

7 **2. Kaiser Is Not A Pharmaceutical Distributor.**

8 Plaintiff’s assertion that Kaiser should be treated as a distributor due to its size is similarly
 9 meritless. Pl. Mot. to Remand, at 6. Again, Kaiser is licensed as a community pharmacy, not as a
 10 distributor or wholesaler, which are licenses codified under a separate section of the California
 11 Business and Professions Code. *See* Cal. Bus. & Prof. Code § 4160 (defining the roles of distributors
 12 and wholesalers). Kaiser does not distribute or wholesale Risperdal® or Zyprexa®, nor is it licensed
 13 to do so. Maguire Decl. ¶ 11. Additionally, Plaintiff has not alleged any facts in the Amended
 14 Complaint suggesting that Kaiser satisfies the role of a distributor in the context of the claims at
 15 issue in this case, including those discussed in *Borreani v. Kaiser Foundation Hospitals*, on which
 16 she relies heavily in her Motion. 875 F. Supp. 2d 1050, 1052 (N.D. Cal. 2012); *see* Pl. Mot. to
 17 Remand, at 8.

18 According to the California State Board of Pharmacy, a “Wholesaler License is required
 19 before any firm or organization may distribute, broker or transact the *sale* or return of dangerous
 20 drugs or dangerous devices in California. . . ***Wholesalers are not authorized to sell or distribute***
 21 ***these items directly to patients*** unless the wholesaler is delivering dialysis drugs and devices to
 22 home dialysis patients in case(s) or full shelf package lots (see section 4054 of the California
 23 Business & Professions Code).” *See* Cal. State Bd. of Pharmacy, *Wholesaler/Nonresident*
 24 *Wholesaler License*, <https://pharmacy.ca.gov/applicants/wls.shtml> (last visited June 22, 2025)
 25 (emphasis added).⁵ A “dangerous drug” or “dangerous device,” in turn, means a drug or device that
 26

27 ⁵ The Court is permitted to take Judicial Notice of the cited link, given that it comes from a California
 28 Department of Consumer Affairs Government website. “Under Rule 201, the court can take judicial

1 “by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to
 2 Section 4006”—i.e., a prescription medication such as Risperdal® or Zyprexa®. *See* Cal. Bus. &
 3 Prof. Code § 4022. Here, Plaintiff alleges that she “obtained” her prescription oral medications
 4 directly from Kaiser, refuting any possibility that Kaiser acted as a drug distributor in filling her
 5 prescriptions. *See* Am. Compl. ¶ 99.

6 Although Plaintiff correctly asserts that California courts distinguish between pharmacies
 7 and drug distributors, she incorrectly applies the rule. Pl. Mot to Remand, at 6. None of the cases
 8 Plaintiff cites discuss the potential liability of a pharmacy *filling* a prescription, as she asserts Kaiser
 9 did here. Rather, those cases focus on the role of distributors *selling* the medications to the
 10 pharmacies that ultimately dispense them. Thus, Plaintiff’s cases are entirely irrelevant to this
 11 Court’s analysis. *See id.* (citing *Andrews v. Bayer Corp.*, CV 09-08762 DDP (FFMx), 2010 WL
 12 234808, at *4 (C.D. Cal. Jan. 12, 2010) (holding that distributor McKesson could be held strictly
 13 liable under theory that it distributed and sold prescription birth control pills to California
 14 pharmacies); *Dodich*, 2018 WL 3584484, at *2 (same, as to prescription seizure medication,
 15 Dilantin).

16 In fact, *Dodich* directly contradicts Plaintiff’s argument and explains why pharmacies like
 17 Kaiser are treated differently from distributors:

18 Mere pharmaceutical drug distributors do not provide a direct
 19 service to the public. Similar to any other retailer or distributor, they
 20 are responsible for the product reaching the market. Furthermore, a
 21 pharmacist has no control over whether or not to distribute a drug—
 22 they are merely given the physician-signed prescription. Distributors such as McKesson, on the other hand, have the choice
 23 of whom and whom not to contract with. This order recognizes that
 24 pharmacists are not strictly liable and that *some* policy arguments
 25 for why that standard exists could analogously apply to distributors.

26 2018 WL 3584484, at *3 (emphasis in original). Again, Kaiser is not a drug distributor, and its
 27 pharmacies are licensed by the California Department of Consumer Affairs as community

28 notice of public records and government documents available from reliable sources on the Internet,
 such as websites run by governmental agencies.” *Gerritsen v. Warner Bros. Ent. Inc.*, 112 F. Supp.
 3d 1011, 1033 (C.D. Cal. 2015) (internal quotation marks and citation omitted).

1 pharmacies, not wholesalers or distributors. *See* Maguire Decl. ¶¶ 8-11. Plaintiff’s creative attempt
 2 at redefining Kaiser as a distributor in an effort to evade the jurisdiction of this Court (without having
 3 plausibly pled any facts suggesting that Kaiser is a distributor or satisfied the role of a distributor)
 4 does not make it so—particularly when the facts show otherwise.

5 **B. Plaintiff Cannot State A Viable Negligence Claim Against Kaiser.**

6 Plaintiff also has not pleaded a viable general negligence claim (Count II) or negligent failure
 7 to warn claim (Count III) against Kaiser, nor could she under the facts alleged in the Amended
 8 Complaint.

9 **1. Kaiser Cannot Be Liable for General Negligence.**

10 To attempt to show that Kaiser can be subject to liability under a general negligence theory
 11 (Count II), Plaintiff (1) erroneously analogizes Kaiser to a retail seller; and (2) claims that her
 12 allegations against Kaiser “cover conduct well-beyond that of a typical pharmacist filling a
 13 prescription,” but without pointing to *any* well-pled facts to support her argument. *See* Pl. Mot. to
 14 Remand, at 8.

15 To start, just as Kaiser is not a distributor, it also is not a retailer. Rather, Kaiser’s duty to
 16 fill a prescription “arises out of [its] status as a health care provider.” *Corcoran v. CVS Health Corp.*,
 17 169 F. Supp. 3d 970, 989 (N.D. Cal. 2016). Unlike a retailer, a pharmacy cannot be negligent simply
 18 for dispensing a prescription medication. *See id.*; *see also Huggins v. Longs Drug Stores Cal., Inc.*,
 19 6 Cal. 4th 124, 132 (1993) (“The pharmacist must not only select, measure, and label the prescribed
 20 medication in accordance with the doctor’s orders but also be alert to errors or problems and bring
 21 them to the doctor’s attention.”).⁶ For this reason, the various cases Plaintiff cites regarding
 22 negligence liability for grocery stores and retailers arising out of the sale of *non-prescription* goods,
 23

24 ⁶ Plaintiff’s argument that her “General Negligence claim is brought on the basis that ‘Defendants
 25 were engaged in the business of [...] testing, [...] warnings given, distribution, sale, and/or post-
 26 marketing safety monitoring of Defendants’ Drugs, including a duty to ensure the products did not
 27 cause users to suffer from unreasonable, dangerous side effects when used alone or in foreseeable
 28 combination with other drugs’” is nonsensical, as a pharmacy has no such duties and Plaintiff does
 not assert a single California case to the contrary. Pl. Mot. To Remand, at 9 (citing Am. Compl. ¶
 123); *see Corcoran*, 169 F. Supp. at 989. More to the point, Plaintiff does not plausibly plead that
 Kaiser engaged in any of these activities.

1 such as enzyme supplements (*Ferrari v. Nat. Partners, Inc.*, No. 15-CV-04787-LHK, 2016 WL
 2 4440242 (N.D. Cal. Aug. 23, 2016)), food items (*Hensley-Maclean v. Safeway, Inc.*, No. CV 11-
 3 01230 RS, 2014 WL 1364906 (N.D. Cal. Apr. 7, 2014)), and brake pads (*LAOSD Asbestos Cases*,
 4 248 Cal. Rptr. 3d 219 (Cal. Ct. App. 2019)) are plainly distinguishable.⁷

5 To state a general negligence claim against Kaiser, Plaintiff must allege that Kaiser breached
 6 its sole duty to adequately fill Plaintiff's Risperdal® and Zyprexa® prescriptions, thereby causing
 7 her injury. *See Corcoran*, 169 F. Supp. 3d at 989 (explaining that "[p]harmacists have a duty of
 8 care to *accurately fill* a prescription" and "[t]his duty has been construed narrowly" (emphasis in
 9 original)). She has not done this, not could she. In fact, Plaintiff has not alleged in her Amended
 10 Complaint that Kaiser did *anything* wrong whatsoever in providing pharmacy services to her (i.e.,
 11 dispensing her medication). Unlike in the cases she cites, she has not alleged that Kaiser dispensed
 12 the wrong medication, incorrectly compounded or adulterated her medications, improperly stored
 13 or transported them, or engaged in any other wrongful conduct in filling her prescriptions that could
 14 have caused her breast cancer diagnosis. *See generally* Am. Compl.

15 For example, in *In re Zantac (Ranitidine) Products Liability Litigation*, the plaintiffs alleged
 16 that retailers violated a policy of storing the heartburn medication, Zantac, according to the
 17 temperature requirements on the product label, resulting in the ranitidine molecule breaking down
 18 into a carcinogen and causing cancer. *See* No. 20-MD-2924, 2021 WL 650608, at *2 (S.D. Fla.
 19 Feb. 19, 2021). Similarly, in *Ambriz*, the plaintiff alleged that CVS Pharmacy incorrectly mixed her
 20 prescription amoxicillin and ibuprofen medications, "leaving [them] excessively concentrated" and
 21 causing her to suffer an adverse reaction. 2020 WL 1660018, at *1.⁸ And in *Garza*, the court found
 22 that, while the plaintiff *could* have asserted a negligence cause of action against CVS premised on
 23

24 ⁷ Plaintiff's citation to *Cabral v. Ralphs Grocery Co.*, 51 Cal. 4th 764, 772 (2011), a case involving
 25 liability of a grocery store whose truck driver killed someone while driving a company vehicle, is
 also inapplicable to the facts at hand.

26 ⁸ Additionally, the *Ambriz* court expressly rejected the very argument Plaintiff makes here—that a
 27 pharmacy is subject to liability simply because "a retailer is strictly liable in tort for defects in
 28 products it sells"—citing *Murphy* in support. 2020 WL 1660018, at *5 (finding plaintiff's argument
 that CVS was a retailer to be "unpersuasive and unsupported by California law"); *see supra* Section
 IV.A.(a).

1 the mispackaging or mislabeling of birth control pills, “[n]owhere [did] plaintiff allege any sort of
 2 negligent act, or even a potential negligent act” carried out by CVS. 2012 WL 5267897, at *2 In
 3 other words, the allegations in Plaintiff’s cited cases were that the pharmacies *actively caused* a
 4 defect in the product, leading to the plaintiffs’ various injuries. By contrast, here Plaintiff contends
 5 only that Kaiser dispensed medications that carried an inherent defect (i.e., the risk of breast
 6 cancer)—not that Kaiser affirmatively made the products defective.

7 In any event, California case law is clear that the proper cause of action for asserting that a
 8 pharmacy adulterated a product (which is *not* what Plaintiff alleges here) must be brought as a
 9 “professional negligence” claim under California’s Medical Injury Compensation Reform Act
 10 (“MICRA”), the pre-suit requirements of which Plaintiff plainly has not met. *See Morris v. Sun*
 11 *Pharma Glob.*, No. CV 20-10441 PA (JPRx), 2021 WL 3206046, at *2–3 (C.D. Cal. Apr. 22, 2021)
 12 (explaining that a claim for the improper filling of a prescription medication must be brought under
 13 MICRA); *Goldsmith v. CVS Pharmacy, Inc.*, No. CV 20-00750-AB (JCx), 2020 WL 3966004, at
 14 *7 (C.D. Cal. May 5, 2020) (finding that MICRA explicitly governs “‘professional negligence’
 15 against ‘health care providers,’” including pharmacies); *CaremarkPCS Pa. Mail Pharmacy, L.L.C.*,
 16 2022 WL 20273643, at *3 (“Pursuant to the statutory regime established in MICRA, a proper cause
 17 of action is to sue a defendant pharmacy for its allegedly negligent actions is by way of a professional
 18 negligence theory. . . . [T]he Court declines to entertain the negligent product liability claim against
 19 Caremark as an appropriate avenue for relief.”); Cal. Civ. Proc. Code § 364(a) (“No action based
 20 upon the health care provider’s professional negligence may be commenced unless the defendant
 21 has been given at least 90 days’ prior notice of the intention to commence the action.”). Plaintiff
 22 makes no real attempt to argue that professional negligence even comes within the ambit of her
 23 assertions, as there are is no allegation in the Amended Complaint that Kaiser adulterated or
 24 improperly dispensed or adulterated Plaintiffs’ Risperdal® and Zyprexa® prescriptions.

25 2. Kaiser Cannot Be Liable for Failure to Warn.

26 Plaintiff’s warnings claim (Count III) against Kaiser also fails because a pharmacy has no
 27 duty to warn patients under California law. The gravamen of all of Plaintiff’s claims is that
 28 Defendants, including Kaiser, “knew or by the exercise of reasonable care should have known that

1 Defendants’ Drugs are not accompanied with adequate warnings or instructions concerning the
 2 dangerous characteristics of Defendants’ Drugs.” Pl. Mot. to Remand, at 9 (quoting Am. Compl. ¶
 3 135). She further asserts that Kaiser “breached its duty by concealing or ignoring the dangers of
 4 Defendants’ Drugs from Plaintiff and Kaiser’s own physicians.” *Id.* (citing Am. Compl. ¶¶ 118,
 5 147). However, these allegations are based on a misapprehension of California law.

6 California recognizes the learned intermediary doctrine, which provides that, “in the case of
 7 prescription drugs, the [manufacturer’s] duty to warn runs *to the physician*,” and the physician, in
 8 turn, has a duty to warn the patient. *Carlin v. Superior Ct.*, 13 Cal. 4th 1104, 1116 (1996). The
 9 learned intermediary doctrine is grounded in the premise that the physician possesses the medical
 10 training, experience, and knowledge of the individual patient’s medical condition and history,
 11 putting him or her in the best position to warn about relevant drug risks. *See Carmichael v. Reitz*,
 12 17 Cal. App. 3d 958, 988–90 (1971).

13 By contrast, a pharmacy has no duty to warn patients of the risks of prescription drugs under
 14 California law. *Corcoran*, 169 F. Supp. 3d at 989 (“[A]bsent special circumstances, courts refuse
 15 to extend [a pharmacist’s duty] to encompass a duty to warn or an affirmative duty to counsel
 16 customers on the side effects of prescription drugs.”); *Lacesa v. Walgreen Co.*, No. 2:22-CV-02558-
 17 MCS-JPR, 2022 WL 19240778, at *2 (C.D. Cal. Sept. 22, 2022) (“To the extent Walgreen’s duty
 18 arises from its role as the retail pharmacy that fulfilled Decedent’s prescription, the claim fails under
 19 the learned intermediary doctrine. The doctrine provides that a duty to warn of inherent risks of a
 20 prescription medication runs from the manufacturer to the prescribing physician, not to the end
 21 user.”).

22 The majority of other states similarly hold that pharmacies cannot be liable for failure to
 23 warn under the nearly-universally adopted learned intermediary doctrine. *See, e.g., In re Rezulin*
 24 *Prods. Liab. Litig.*, 133 F. Supp. 2d 272, 289 (S.D.N.Y. 2001) (“Almost every state confronted with
 25 the question has declined to impose on pharmacists a duty to warn of intrinsic dangers of
 26 prescription drugs[.]”); *Walls v. Alpharma USPD, Inc.*, 887 So. 2d 881, 886 (Ala. 2004) (holding
 27 learned intermediary doctrine foreclosed any duty on the part of pharmacists to warn customers
 28 regarding risks or potential side effects of prescription drugs); *Deed v. Walgreen Co.*, No.

CV030823651S, 2004 WL 2943271 (Conn. Super. Ct. Nov. 15, 2004) (recognizing no general duty to warn for pharmacies or pharmacists); *Chamblin v. K-Mart Corp.*, 612 S.E.2d 25, 29 (Ga. Ct. App. 2005) (ruling that pharmacists do not have a duty to warn customers of every potential side effect of a prescription drug); *Stephens v. Hook-SupeRx*, 359 F. App'x 648, 649–50 (7th Cir. 2009) (affirming district court's grant of summary judgment in favor of a pharmacy sued for negligence based, in part, on the learned intermediary doctrine); *Nichols v. Cent. Merch., Inc.*, 817 P.2d 1131, 1133–34 (Kan. Ct. App. 1991) (holding that, absent contraindication or clear error on the face of the prescription, the learned intermediary doctrine dictates that pharmacists have no duty to warn customers of potential adverse drug effects); *Kampmann v. Mason*, 42 So. 3d 411, 419 (La. Ct. App. 2010) (affirming summary judgment in pharmacist's favor on failure to warn claim and holding that, while physicians have a duty to warn, pharmacists have a duty to fill the prescription accurately or to point out clear errors, not to warn of side effects); *Mazur v. Merck & Co.*, 964 F.2d 1348, 1356–57 (3d Cir. 1992) (noting that Pennsylvania law does not impose on pharmacists an independent duty to warn patients of the risks of prescription drugs). Thus, in California and elsewhere, the learned intermediary doctrine provides that a pharmacy that correctly fills a prescription as directed by a physician—which Plaintiff pleads here—has no duty to question that prescription or to warn the patient of dangerous side effects.

Furthermore, Plaintiff has not explained, let alone addressed, how her allegations that Kaiser “knew or should have known about the link between Defendants’ Drugs, hyperprolactinemia, and the resultant risk of breast cancer,” can be squared with her claim that the manufacturers alone “knowingly and intentionally made false and misleading statements regarding the uses, safety, and efficacy of Defendants’ Drugs, and concealed, suppressed, and omitted important information regarding the uses, safety, and efficacy of Defendants’ Drugs, in general and, in treating conditions such as those of Plaintiff’s, to Plaintiff, and to Plaintiff’s prescribing physicians.” *Compare* Pl. Mot. to Remand, at 10 (citing Am. Compl. ¶¶ 53-93), *with* Am. Compl. ¶ 153. Indeed, in Count IV of the Amended Complaint, Plaintiff asserts that the manufacturers, **and not Kaiser**, engaged in fraud by omitting important safety risks from the labeling of the medications. *Id.* ¶¶ 153-62. Courts nationwide have found inconsistencies like these to support a finding of fraudulent joinder, as this

1 Court should also find here. *See, e.g., In re Rezulin*, 133 F. Supp. 2d at 290 (finding “purely
 2 tendentious” the plaintiffs’ failure-to-warn allegations against pharmacists where the plaintiffs’
 3 central theory of liability against defendant-manufacturers was that they “hid the dangers
 4 of Rezulin . . . from everyone”); *In re Baycol Prods. Litig.*, No. 1431 (MJD/JGL), 2004 WL
 5 1118642, at *2 (D. Minn. May 17, 2004) (finding that the plaintiffs fraudulently joined non-diverse
 6 defendants where “[t]he gravamen” of the complaint was “that Bayer and GSK withheld pertinent
 7 information, and sold a dangerous product” and, thus, their failure-to-warn claims against physician
 8 and clinic defendants had “no reasonable basis in fact”).

9 Finally, Plaintiff’s reliance on *Borreani v. Kaiser Foundation Hospitals* in her attempt to
 10 conjure a negligent failure to warn claim against Kaiser is misguided. 875 F. Supp. 2d 1050, 1058
 11 (N.D. Cal. 2012); *see* Pl. Mot. to Remand, at 8. *Borreani* was an ERISA case with facts completely
 12 divorced from those asserted here. In *Borreani*, the plaintiff alleged that Kaiser Foundation
 13 Hospitals and its health plan learned that manufacturer Pfizer had engaged in “illegal strategies to
 14 market Neurontin [and gabapentin] for off-label use.” 875 F. Supp. 2d at 1052. Kaiser then sued
 15 Pfizer, asserting that had Kaiser known of certain side effects of the drugs, it would not have listed
 16 the drugs as unrestricted on its formularies. *See id.* The plaintiff then alleged that, ***following the***
 17 ***Pfizer litigation***, “[Kaiser] employed physicians who committed medical malpractice, the Kaiser
 18 Foundation Hospitals and pharmacies breached their duties of care and disclosure, and the Kaiser
 19 Foundation Health Plan, acting as a *provider* of health care, not as an insurer or administrator,
 20 contributed to the negligent medical decisions made in the course of decedent’s treatment,” causing
 21 the death of the plaintiff’s decedent. *Id.* at 1056 (emphasis in original).

22 These facts have nothing to do with what Plaintiff alleges here—and in fact, they contradict
 23 the allegations in the Amended Complaint. To be sure, in her Motion to Remand, Plaintiff argues
 24 that Kaiser “knew or should have known about the link between the Defendants’ Drugs,
 25 hyperprolactinemia, and the resultant risk of breast cancer” ***because*** those risks were discussed in
 26 peer-reviewed, scientific journals—not because Kaiser found out about an underlying fraud and then
 27 perpetuated that fraud by listing the drugs in its formularies and recommending them to Plaintiff’s
 28 physicians. Pl. Mot. to Remand, at 10. Plaintiff cannot point to *Borreani* to create a legal theory

1 out of thin air, for which there are no remotely well-pleaded facts in the Amended Complaint. *See*
 2 *Canesco v. Ford Motor Co.*, 570 F. Supp. 3d 872, 881 (S.D. Cal. 2021) (“The frame of reference
 3 for ruling on a motion to remand to state court is the four corners of the operative complaint at the
 4 time of removal.”).

5 Regardless, in *Borreani*, the court did not even reach the question of whether the plaintiff’s
 6 creative legal theory gave rise to a viable negligence cause of action against Kaiser. Instead, its
 7 analysis was entirely focused on subject matter jurisdiction and whether the defendant had properly
 8 asserted a federal question that plaintiff’s claims were preempted under ERISA’s civil enforcement
 9 scheme to support removal. As such, *Borreani* does not stand for the proposition that the fraudulent
 10 scheme the plaintiff laid out was actually viable against Kaiser in its role as a pharmacy, and it
 11 likewise cannot prevent a finding of fraudulent joinder here. Nor does *Borreani* allow the Plaintiff
 12 to circumvent the facts she herself pleaded in the Amended Complaint, to support the notion that
 13 Kaiser did anything more than properly fill her prescription medications, pursuant to her own
 14 physician’s orders in this case.

15 Accordingly, Plaintiff has not asserted a viable general negligence or negligent failure to
 16 warn claim against Kaiser, nor could she do so.

17 **V. CONCLUSION**

18 For all the foregoing reasons, Plaintiff’s Motion to Remand should be denied.

19
 20 Dated: June 25, 2025

BARNES & THORNBURG LLP

21
 22 By: /s/ Robyn S. Maguire

23 Robyn S. Maguire (appearance *pro hac vice*)
 24 Mihran Yezbekyan
 Erin M. Gilmore

25 Attorneys for Defendants JOHNSON &
 26 JOHNSON; JANSSEN PHARMACEUTICALS,
 27 INC.; JANSSEN RESEARCH &
 28 DEVELOPMENT, LLC

1 Dated: June 25, 2025

KING & SPALDING LLP

2
3 By: /S/ Matthew J. Blaschke
4 Matthew J. Blaschke (SBN 281938)
5 Andrew T. Bayman (appearance *pro hac vice*)
6 TaCara D. Harris (appearance *pro hac vice*)
7 Eric L. White (appearance *pro hac vice*)

8 Attorneys for Defendant ELI LILLY AND
9 COMPANY
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIGNATURE ATTESTATION

“I hereby attest that I have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/S/) within this e-filed document.”

Dated: June 25, 2025

BARNES & THORNBURG LLP

By: /S/ Robyn S. Maguire

Robyn S. Maguire (appearance *pro hac vice*)

Mihran Yezbekyan

Erin M. Gilmore

Attorneys for Defendant JOHNSON &
JOHNSON; JANSSEN PHARMACEUTICALS,
INC.; JANSSEN RESEARCH &
DEVELOPMENT, LLC