

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARIYA GOMELSKAYA,	:	
Individually and as Administratrix of	:	
the Estate of ROMAN NESHIN,	:	
DECEASED,	:	
Plaintiff,	:	CIVIL ACTION
	:	No. 24-6610
v.	:	
	:	
SIG SAUER, INC., and	:	
GERSH GROUP, INC. d/b/a	:	
SPOT4GUNS,	:	
Defendants.	:	

**EXPLANATION AND ORDER**

Plaintiff Mariya Gomelskaya filed this action in the Philadelphia Court of Common Pleas against Defendants Sig Sauer, Inc. and Gersh Group, Inc., d/b/a Spot4Guns, seeking to hold them liable for her husband’s tragic passing. Although Gomelskaya and Spot4Guns are both Pennsylvania citizens, Sig Sauer—a citizen of New Hampshire and Delaware—removed the case to this Court on the grounds that Spot4Guns was fraudulently joined. Gomelskaya now moves for remand. For the following reasons, the Court grants Gomelskaya’s motion and remands the case.

**I. BACKGROUND**

Plaintiff Mariya Gomelskaya, a resident of Feasterville, PA, brings suit on behalf of herself and her late husband Roman Neshin’s estate. Compl. ¶¶ 17-18, ECF No. 1-1. Defendant Sig Sauer—a corporation with a principal place of business in New Hampshire and incorporated in Delaware—designs, manufactures, and sells firearms. *Id.* ¶¶ 20, 27, ECF No. 1-1. One such firearm is the Sig Sauer P320 (“P320”), a pistol that is allegedly “susceptible to unintended

discharges” due to “defective components and/or the lack of necessary safety features . . .” *Id.* ¶¶ 26, 29, 36. Defendant Spot4Guns is a federally licensed firearms broker and dealer located in Feasterville, PA. *Id.* ¶ 21. As a federal firearms licensee (“FFL”), Spot4Guns facilitates the lawful transfer of firearms between out-of-state sellers and in-state purchasers. Resp. 1-2, ECF No. 13; *see also* 18 U.S.C. § 922(a)(1)(A) (only licensees may “ship, transport, or receive” firearms in interstate commerce); 18 Pa.C.S.A. § 6111 (outlining requirements for firearms transfers).

In February 2022, Neshin purchased a P320 online from a dealer in Texas and had it shipped to Spot4Guns. *Id.* ¶ 82; Shnay Decl. Ex. A, ECF No. 13-1 (copy of record evidencing FFL transfer from Texas dealer to Spot4Guns). After Neshin filled out the requisite paperwork and passed a background check, Spot4Guns “completed the [FFL] transfer and sale” of the P320 to Neshin. Compl. ¶ 83; *see also* Shnay Decl. ¶¶ 4-9 (describing FFL transfer effected by Spot4Guns). On October 1, 2024, while Neshin was home alone, the P320 “unintendedly and unexpectedly discharged” inside his waistband holster. *Id.* ¶¶ 88-89. Neshin was later found dead “with a single gunshot wound to right groin” and “plastic shrapnel from the holster . . . inside his pants.” *Id.* ¶¶ 97-98.

On December 3, 2024, Gomelskaya sued Sig Sauer and Spot4Guns in the Philadelphia County Court of Common Pleas. Her complaint asserts claims of negligence, strict product liability, wrongful death, and survival against both defendants. *See id.* ¶¶ 101-137. On December 11, 2024—before either defendant had been served—Sig Sauer removed the case to the Eastern

District on diversity grounds.<sup>1</sup> Notice of Removal, ECF No. 1; *see also* Mot. to Remand Ex. D, ECF No. 9-6 (December 12, 2024 proof of service on Spot4Guns). On January 3, 2025, Sig Sauer timely amended its notice, claiming that Spot4Guns “was fraudulently joined . . . solely for purposes of defeating diversity jurisdiction.” Am. Notice of Removal ¶ 10, ECF No. 6.<sup>2</sup> Gomelskaya now moves for remand.

## II. LEGAL STANDARD

A defendant may remove a case filed in state court to federal court if the federal court has original jurisdiction. 28 U.S.C. § 1441(a). “For a removal predicated upon diversity of citizenship, a proper exercise of federal jurisdiction requires satisfaction of the amount in controversy requirement as well as complete diversity between the parties . . .” *In re Briscoe*, 448 F.3d 201, 215 (3d Cir. 2006) (internal citation omitted); 28 U.S.C. § 1332(a). However,

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<sup>1</sup> Sig Sauer initially sought to “snap remove” the case before the diversity-defeating forum defendant (Spot4Guns) had been served. *See* Notice of Removal ¶¶ 3, 8, ECF No. 1 (noting that neither defendant had been served and that complete diversity existed between Gomelskaya and Sig Sauer); *see also* Mot. to Remand Ex. C, ECF No. 9-5 (December 16, 2024 email from Sig Sauer’s counsel setting forth “two bases for removal: (1) snap removal before the co-defendant was served and (2) the co-defendant was fraudulently joined because it is not a seller under 402A.”). That was improper, as Sig Sauer appears to have recognized since filing that first notice of removal. *See* Mot. to Remand Ex. C (“Given that the co-defendant . . . is not diverse with plaintiff, we are proceeding with the second basis for removal.”); *Hampton v. Willow Grove Park Mall*, 2020 WL 6200298, at \*2 (E.D. Pa. Oct. 22, 2020) (to determine whether diversity jurisdiction exists, a court looks to the citizenship of *all* named defendants, not just those that have been served); *Dillard v. TD BANK*, 2021 WL 1085461, at \*3 (D.N.J. Mar. 22, 2021); *Hampton v. Speedway, LLC*, 2021 WL 1339953, at \*2 (E.D. Pa. Apr. 9, 2021).

<sup>2</sup> To remove a case, a defendant must file a notice of removal “within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading . . .” 28 U.S.C. § 1446(b). During that 30-day period, a defendant may likewise “freely” amend the notice of removal. *USX Corp. v. Adriatic Ins. Co.*, 345 F.3d 190, 206 n.13 (3d Cir. 2003). It is unclear when “the receipt . . . of the initial pleading” occurred in this case. The record shows that (1) on December 4, 2024, Gomelskaya’s counsel emailed Sig Sauer’s counsel a copy of the complaint; and (2) on December 6, 2024, Sig Sauer’s counsel responded, acknowledging receipt. *See* Mot. to Remand Ex. B, ECF No. 9-4. However, even assuming that Sig Sauer “received” the complaint on the earlier of those two dates, Sig Sauer’s amended notice was still filed within the 30-day window and is thus timely.

“when a suit involves named defendants who are not of diverse citizenship from the plaintiff, the diverse defendant may still remove the action if it can establish that the non-diverse defendants were ‘fraudulently’ named or joined solely to defeat diversity jurisdiction.” *Id.* at 216. A removing party alleging fraudulent joinder bears a “heavy burden of persuasion.” *Steel Valley Auth. v. Union Switch & Signal Div.*, 809 F.2d 1006, 1012 n.6 (3d Cir. 1987). The removing party must show that (1) “there is no reasonable basis in fact or colorable ground supporting the claim against” the non-diverse defendant, or (2) plaintiff has “no real intention in good faith to prosecute the action against” the non-diverse defendant. *Boyer v. Snap-on Tools Corp.*, 913 F.2d 108, 111 (3d Cir. 1990).

In evaluating allegedly fraudulent joinder, a court must “focus on the plaintiff’s complaint at the time the petition for removal was filed,” assuming all factual allegations are true and “resolv[ing] any uncertainties as to the current state of controlling substantive law in favor of the plaintiff.” *Batoff v. State Farm Ins. Co.*, 977 F.2d 848, 851-52 (3d Cir. 1992) (internal citations omitted). A court may also consider evidence outside the pleadings “to identify indicia of fraudulent joinder,” but must refrain from “crossing the line between a proper threshold jurisdictional inquiry and an improper decision on the merits.” *In re Briscoe*, 448 F.3d at 219-20. Ultimately, if “there is even a possibility that a state court would find that the complaint states a cause of action against one of the resident defendants,” a court “must find that joinder was proper and remand the case[.]” *Boyer*, 913 F.2d at 111 (internal citation omitted).

### **III. DISCUSSION**

Sig Sauer contends that Spot4Guns was fraudulently joined to defeat diversity jurisdiction because “there is no reasonable basis in fact or colorable ground” supporting Gomelskaya’s claims against Spot4Guns. Resp. 5, 10-11. The Court disagrees. As outlined in greater detail

below, the Court finds that at least one of Gomelskaya’s claims against Spot4Guns is viable—namely, her strict liability claim—and joinder was therefore proper.<sup>3</sup>

Pennsylvania has adopted the strict liability standard set forth in Section 402A of the Restatement (Second) of Torts. *Webb v. Zern*, 220 A.2d 853 (1966). Section 402A provides:

- (1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if
  - (a) the seller is engaged in the business of selling such a product, and
  - (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.
- (2) The rule stated in Subsection (1) applies although
  - (a) the seller has exercised all possible care in the preparation and sale of his product, and
  - (b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

Pennsylvania courts “have given the term ‘seller’ broad application and extended its conventional meaning . . .” *Musser v. Vilsmeier Auction Co., Inc.*, 562 A.2d 279, 281 (Pa. 1989).

To determine whether Section 402A applies to particular party, courts consider four factors:

- (1) whether the defendant is the only member of the marketing chain available to the injured plaintiff for redress;
- (2) whether the imposition of strict liability upon the defendant serves as an incentive to safety;
- (3) whether the defendant will be in a better position than the consumer to prevent the circulation of defective products; and
- (4) whether the defendant can distribute the cost of compensating for injuries resulting from defects by charging for it in his business.

*See Francioni v. Gibsonia Truck Corp.*, 372 A.2d 736, 740 (citing four factors in support of extending § 402A liability to lessor of defective tractor); *Musser*, 562 A.2d at 282 (declining to hold auctioneer of defective tractor liable under § 402A); *Cafazzo v. Cent. Med. Health Servs.*,

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<sup>3</sup> Because the Court finds that Gomelskaya’s strict liability claim against Spot4Guns is viable, the Court need not address the viability of her negligence claim against Spot4Guns. *Chaborek v. Allstate Fin. Servs., LLC*, 254 F. Supp. 3d 748, 751 n.1 (E.D. Pa. 2017).

*Inc.*, 668 A.2d 521, 525-27 (Pa. 1995) (declining to hold physician and hospital liable under § 402A for defective prosthesis).

Sig Sauer argues that Spot4Guns cannot be held liable as a “seller” under § 402A because Spot4Guns did not design, manufacture, market, or sell the P320 to Neshin; rather, it “merely provided a federally required service incidental to” Neshin’s purchase. Resp. 1; Am. Notice of Removal ¶ 19. Gomelskaya’s response is twofold: (1) she contends that, as a threshold matter, the “level of analysis Sig Sauer demands of [the] Court . . . warrants strongly against” a finding of fraudulent joinder; and (2) even if Spot4Guns did not “sell” the P320 to Neshin, it could still be held liable under § 402A for having “facilitated” the sale and transfer of the P320. Mot. to Remand 11.

The Court agrees with Gomelskaya on both points. Parsing Sig Sauer’s arguments would require the Court to cross into forbidden territory: “an improper decision on the merits” of Gomelskaya’s strict liability claim against Spot4Guns. *Batoff*, 977 F.2d at 853; *see also id.* (“A claim which can be dismissed only after an intricate analysis of state law is not so wholly insubstantial and frivolous that it may be disregarded for purposes of diversity jurisdiction.”). To Sig Sauer’s credit, some of the cases it cites suggest that a Pennsylvania court *could* find that Spot4Guns is not a “seller” and cannot be held liable under §402A. Even still, a Pennsylvania court could likewise find the opposite, given how the definition of “seller” has been broadened beyond its “conventional meaning[.]” *Musser*, 562 A.2d at 281; *see also Francioni*, 372 A.2d at 739 (Section 402A applies to “to anyone ‘who enters into the business of supplying human beings with products which may endanger the safety of their persons and property.’”) (quoting Restatement (Second) of Torts § 402A, Comment f.).

Because there is “a possibility” that Gomelskaya’s complaint states a cause of action

against Spot4Guns, the Court has no choice but to find that joinder was proper. *Boyer*, 913 F.2d at 111. As a result, diversity jurisdiction does not exist, and the Court must therefore remand the case.

#### IV. CONCLUSION

**AND NOW**, this 7th day of July, 2025, upon consideration of Defendant Sig Sauer, Inc.'s Amended Notice of Removal (ECF No. 6), Plaintiff's Motion to Remand (ECF No. 9), Defendant Sig Sauer, Inc.'s Response in Opposition (ECF No. 13), and Plaintiff's Reply (ECF No. 14), it is **ORDERED** that:

1. Plaintiff's Motion to Remand (ECF No. 9) is **GRANTED**. The case is **REMANDED** to the Court of Common Pleas, Philadelphia County.
2. Defendant Sig Sauer, Inc.'s Motion to Dismiss (ECF No. 5) and Defendant Gersh Group, Inc.'s Motion to Dismiss (ECF No. 16) are accordingly **DENIED AS MOOT**.

The Clerk of Court is directed to close the case.

s/ANITA B. BRODY, J.  
ANITA B. BRODY, J.