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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RIVERWOOD ENERGY, LLC,
Plaintiff,
v.
WESTERN STATES INTERNATIONAL,
INC. and INGRID ALIET-GASS,
Defendants.

No. 1:15-cv-01736-DAD-JLT

ORDER GRANTING MOTION TO REMAND
FOR LACK OF SUBJECT MATTER
JURISDICTION

(Doc. Nos. 15, 17)

WESTERN STATES INTERNATIONAL,
INC.,
Cross-Claimant,
v.
DEREK M. WILLSHEE et al.,
Cross-Defendants.

This matter came before the court on the motion to remand this case to state court filed on behalf of defendants Western States International, Inc. (“WSI”) and Ingrid Aliet-Gass. A hearing on the motion was held February 16, 2016. Anthony Alexander Gorman appeared telephonically on behalf of defendants WSI and Aliet-Gass. Joseph M. Hoats appeared in person on behalf of intervenor Inviron Technologies, Inc. and made a special appearance for attorney Irwin Friedman

1 on behalf of plaintiff Riverwood Energy, LLC. The court has considered the parties' briefs¹ and
2 oral arguments, and for the reasons set forth below, GRANTS defendants' motion to remand.

3 FACTUAL AND PROCEDURAL BACKGROUND

4 On January 7, 2011, plaintiff Riverwood Energy, LLC ("Riverwood") filed this action in
5 the Kern County Superior Court. (*See* Doc. No. 15-1.) Plaintiff's original complaint identified
6 defendants WSI, Ingrid Aliet-Gass, and ten unnamed defendants, and alleged the following five
7 causes of action: (1) anticipatory breach of a contract, (2) breach of a written contract, (3)
8 intentional interference with a prospective economic relationship, (4) declaratory relief, and (5)
9 fraudulent concealment. (*Id.*) According to plaintiff's original complaint, defendant WSI entered
10 into a Letter of Intent agreement ("LOI") with plaintiff Riverwood in or around June 2009
11 pursuant to which plaintiff would acquire a 70% working interest from WSI in certain oil and gas
12 leases located in Kern County, California. (*Id.* at 2–3.) In exchange, plaintiff would invest in
13 certain capital and agree to provide services with respect to these leases. (*Id.* at 3.) In or around
14 July 2009, WSI and Riverwood entered into a Joint Operating Agreement ("JOA") setting forth
15 additional rights and obligations of the parties, with respect to ownership and operation of the oil
16 and gas leases. (*Id.*) Plaintiff alleges that thereafter, WSI (through defendant Aliet-Gass) signed
17 documents designating Riverwood as WSI's agent and as the operator of the oil and gas leases.
18 (*Id.*) Plaintiff's complaint sought damages and declaratory relief for causes of action arising out
19 of the LOI and JOA between it and WSI. (*See id.* at 11–12.)

20 On December 9, 2011, plaintiff Riverwood filed its first amended complaint. Therein
21 plaintiff alleged substantially similar facts and asserted many of the same causes of action,
22 including: (1) anticipatory breach of a contract, (2) breach of a written contract, (3) intentional
23 interference with a contractual relationship, (4) intentional misrepresentation, (5) concealment,
24 (6) non-disclosure, and (7) declaratory relief. (Doc. No. 1 at 5–104.)

25 On March 12, 2012, defendant WSI filed a first amended cross-complaint against plaintiff
26 Riverwood and at least six additional cross-defendants, including Derek M. Willshee, James R.

27
28 ¹ Plaintiff filed no written opposition to the motion to remand.

1 Zadko, Jose Miguel Aguilar, International Holdings Inc., Riverwood Resources Pty. Ltd., and an
2 unnamed partnership. (*Id.* at 106–135.) Defendant WSI set forth ten causes of action in its cross
3 complaint: (1) breach of contract; (2) declaration of default and/or judicial dissolution of the JOA
4 between WSI and Riverwood; (3) unjust enrichment; (4) breach of the covenant of good faith and
5 fair dealing; (5) an accounting; (6) breach of fiduciary duty; (7) conversion; (8) civil conspiracy;
6 (9) negligence; and (10) a dissolution of a previous preliminary injunction issued by the state
7 court. (*Id.*)

8 On October 23, 2015, Inviron Technologies, Inc. (“Inviron”), an intervenor in the instant
9 action, filed a separate complaint for declaratory judgment in this court. *See Inviron Techs., Inc.*
10 *v. Western States Int’l, Inc.*, No. 1:15-cv-01643-DAD-JLT, Doc. No. 1 (E.D. Cal. Oct. 23, 2015).
11 Inviron’s complaint in that action contains allegations similar to many of those in the pleadings
12 filed in this case, and names many of the same parties as defendants.

13 On November 17, 2015, cross-defendant Jose Miguel Aguilar filed a notice of removal of
14 the instant case from the Kern County Superior Court.² (Doc. No. 1.) Cross-defendant Aguilar
15 argues that the contracts at issue in this case relate to property rights affecting oil and gas leases
16 that were granted by the federal government pursuant the Mineral Leasing Act of 1920, 30 U.S.C.
17 § 181 et seq. (*Id.* at 3–4.) Specifically, “[t]he assignment of the operator from Western States
18 International is a ‘property right’ directly affecting the lease and the terms of the lease.” (*Id.* at
19 4.) Accordingly, he argues, this court has removal jurisdiction because the claims in this case
20 arise under federal law pursuant to 28 U.S.C. § 1331. (*Id.*) On November 24, 2015, pursuant to
21 Local Rule 123, this court issued an order relating the *Inviron* case and the instant case. *Inviron*,
22 No. 1:15-cv-01643-DAD-JLT , Doc. No. 18.

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26 ² To the extent cross-defendant Aguilar’s notice of removal includes copies of *all pleadings*
27 served on him, as required by 28 U.S.C. § 1446(a), the court assumes, for purposes of this
28 motion, that (1) plaintiff’s first amended complaint (Doc. No. 1 at 5–104) is the operative
complaint in this case, and (2) WSI’s first amended cross-complaint (*id.* at 106–135) is the
operative cross-complaint in this case.

1 2014); *Kelton Arms Condo. Owners Ass’n, Inc. v. Homestead Ins. Co.*, 346 F.3d 1190, 1192 (9th
2 Cir. 2003).

3 Subject matter jurisdiction, however, cannot be waived. *Kelton Arms*, 346 F.3d at 1192.
4 Under § 1447(c), the district court must remand the case “[i]f at any time before final judgment it
5 appears that the district court lacks subject matter jurisdiction.” *See also Bruns v. NCUA*, 122
6 F.3d 1251, 1257 (9th Cir. 1997) (holding that remand for lack of subject matter jurisdiction “is
7 mandatory, not discretionary”). An order remanding a case based on a lack of subject matter
8 jurisdiction is not appealable. 28 U.S.C. § 1447(d); *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556
9 U.S. 635, 638–39 (2009).

10 DISCUSSION

11 Here, defendants argue that the notice of removal is both procedurally and substantively
12 deficient under the removal statute. Specifically, defendants assert four grounds on which this
13 case should be remanded to state court: (1) cross-defendant Aguilar is not a “defendant” having
14 the power to remove this case under § 1441(a); (2) cross-defendant Aguilar’s notice of removal is
15 untimely and barred by § 1446(b)(1); (3) cross-defendant Aguilar fails to show that all
16 co-defendants or defendants consent to removal; and (4) this court lacks federal subject matter
17 jurisdiction.

18 A. Procedural Defects

19 Cross-defendant Aguilar filed his notice of removal with this court on November 17,
20 2015. Defendants filed their motion to remand this case on January 15, 2016 — twenty-nine days
21 after § 1447(c)’s thirty-day window had closed.⁴ Thus, to the extent defendants’ motion to
22 remand challenges “any defect other than lack of subject matter jurisdiction,” those arguments
23 have been waived. *Kelton Arms*, 346 F.3d at 1192 (holding that § 1447 “consigns procedural
24 formalities to the care of the parties” and “assigns to the court concern for its jurisdictional
25 prerequisites”) (internal quotations omitted). Because defendants’ first three grounds for remand

26 ⁴ Defendants’ erroneously filed motion to remand in the *Inviron* case is insufficient to bring them
27 in compliance with § 1447(c). While it is a related case, *Inviron* was never removed from state
28 court, and defendants’ filing in that case did not adequately put all parties in this action on notice
of defendants’ intent to seek remand of this case back to state court.

1 are based on alleged procedural defects, the court declines to remand this case on those bases.⁵
2 *See, e.g., Parrino v. FHP, Inc.*, 146 F.3d 699, 703 (9th Cir. 1998) (noting the requirement that all
3 defendants join a notice of removal is a procedural one); *Maniar v. FDIC*, 979 F.2d 782, 785 (9th
4 Cir. 1992) (“[U]ntimely removal is a procedural rather than a jurisdictional defect.”).

5 B. Federal Question Jurisdiction

6 Defendants lastly contend that this case should be remanded for lack of federal subject
7 matter jurisdiction. For the reasons that follow, the court finds that cross-defendant Aguilar has
8 failed to show that this court has subject matter jurisdiction.

9 Where the alleged basis for removal to federal court is federal question jurisdiction, the
10 court must determine whether a claim “arises under” federal law using the same “well-pleaded
11 complaint rule” for determining original federal question jurisdiction under 28 U.S.C. § 1331.
12 *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998); *Proctor v. Vishay Intertechnology*
13 *Inc.*, 584 F.3d 1208, 1219 (9th Cir. 2009); *California v. United States*, 215 F.3d 1005, 1014 (9th
14 Cir. 2000). An action “arises under” federal law pursuant to § 1331 if the cause of action (1) is
15 created by federal law, or (2) necessarily requires resolution of a substantial question of federal
16 law. *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.* 545 U.S. 308, 314 (2005); *Empire*
17 *Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 699 (2006); *Cook Inlet Region, Inc. v.*
18 *Rude*, 690 F.3d 1127, 1130 (9th Cir. 2012). Under the “well-pleaded complaint” rule, courts look
19 to what “necessarily appears in the plaintiff’s statement of his own claim in the bill or declaration,
20 unaided by anything in anticipation of avoidance of defenses which it is thought the defendant
21 may interpose.” *California*, 215 F.3d at 1014. Accordingly, “a case may not be removed on the
22 basis of a federal defense . . . even if the defense is anticipated in the plaintiff’s complaint and
23 both parties concede that the federal defense is the only question truly at issue.” *Wayne v. DHL*
24 *Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002) (quoting *Caterpillar*, 482 U.S. at 392).
25 *See also Vaden v. Discover Bank*, 556 U.S. 49, 70 (2009) (“It does not suffice to show that a
26 federal question lurks somewhere inside the parties’ controversy, or that a defense or

27 ⁵ Moreover, this court is barred from *sua sponte* remanding a case to state court on
28 non-jurisdictional grounds. *Kelton Arms*, 346 F.3d at 1193.

1 counterclaim would arise under federal law.”).

2 In his notice of removal, cross-defendant Aguilar alleges:

3 [T]he contract . . . granted “operatorship” to Riverwood which
4 under the Mineral Leasing Act which governs BLM Land Leases is
5 a property right in the Land because the Federal Government has to
6 recognize the new operator under the lease in order to produce oil
7 from the lease. The assignment of the operator from Western States
8 International is a “property right” directly affecting the lease and
9 the terms of the lease.

10 (Doc. No. 1 at 3–4.) Cross-defendant Aguilar’s general assertion — that this case relates to
11 federal oil and gas leases granted pursuant the Mineral Leasing Act — fails to establish that this
12 court has federal question jurisdiction over the pending causes of action. Neither plaintiff
13 Riverwood’s operative complaint nor defendant WSI’s operative cross-complaint, on their face,
14 appears to state a cause of action that is created by federal law. Nor does either pleading identify
15 how a right to relief is otherwise derived from federal law. Each cause of action in those
16 pleadings is squarely rooted in state contract law and describes a dispute between private parties
17 with respect to the LOI and JOA—not the oil and gas leases themselves. (Doc. No. 1 at 6–15,
18 107–32.)

19 Furthermore, to the extent cross-defendant Aguilar suggests that because this case relates
20 to leases under the Mineral Leasing Act it involves a substantial federal question, he must show
21 that the state-law claim necessarily raises a federal issue, the federal issue is actually disputed and
22 substantial, and the exercise of federal jurisdiction would not disturb “any congressionally
23 approved balance of federal and state judicial responsibilities.” *Grable & Sons*, 545 U.S. at 314.
24 However, plaintiff’s operative complaint alleges only that defendant WSI owns certain oil and
25 gas leases in Kern County, California. (Doc. No. 1 at 7.) While the oil and gas leases are granted
26 pursuant to federal statute, neither plaintiff Riverwood’s operative complaint nor defendant
27 WSI’s operative cross-complaint raises a state-law claim — i.e., concerning the parties’ rights
28 and obligations under the LOI and JOA — that depends on resolution of any substantial federal
29 issue. Thus, cross-defendant Aguilar fails to establish a basis sufficient to confer removal
30 jurisdiction on this court.

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CONCLUSION

Because cross-defendant Aguilar has failed to meet his burden of showing this court possesses subject matter jurisdiction over this matter, this court must remand the case to the Kern County Superior Court. *See* 28 U.S.C. § 1447(c); *Bruns*, 122 F.3d at 1257.

Accordingly, for the reasons set forth above:

1. Defendants' motion to remand this case (Doc. Nos. 15, 17) is GRANTED;
2. This action is REMANDED forthwith to the Kern County Superior Court, pursuant to 28 U.S.C. § 1447(c), for lack of subject matter jurisdiction; and
3. The court DIRECTS the Clerk of the Court to close this action.

IT IS SO ORDERED.

Dated: March 4, 2016


UNITED STATES DISTRICT JUDGE