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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ALLSTATE PROPERTY AND
CASUALTY INSURANCE
COMPANY,

Plaintiff,

v.

MICHELLE K. STAATS, et al.,

Defendants.

NO: 2:16-CV-0016-TOR

ORDER GRANTING PLAINTIFF’S
MOTION TO REMAND

BEFORE THE COURT are Plaintiff’s Motion and Memorandum to Remand
Due to Forum Defendant Rule Pursuant to 28 U.S.C. § 1441 (ECF No. 5) and
Defendants’ Motion for Leave to File Amended Notice of Removal to Federal
Court (ECF No. 8). These matters were heard without oral argument. The Court
has reviewed the briefing, the record, and files therein, and is fully informed.

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1 **BACKGROUND**

2 In January 2016, Plaintiff Allstate Property and Casualty Insurance
3 Company (“Allstate”) filed and served its Complaint in Grant County Superior
4 Court against Defendants, seeking declaratory judgment pursuant to Washington’s
5 Uniform Declaratory Judgments Act, RCW chapter 7.24. ECF No. 1-1.
6 Specifically, Allstate seeks a ruling that the insurance contracts issued by Allstate
7 do not obligate it to provide coverage or defend Defendants in a current
8 proceeding, *Staats v. State of Washington*, No. 2:15-cv-0208-TOR (E.D. Wash.
9 removed Aug. 11, 2015).

10 Shortly thereafter, on January 19, 2016, Defendants removed this case to this
11 Court. In their notice of removal, Defendants asserted removal jurisdiction on the
12 basis of federal diversity jurisdiction pursuant to 28 U.S.C. § 1332: Allstate is a
13 foreign corporation, Defendants are all citizens of the State of Washington. ECF
14 No. 1 at 2.

15 In the instant motion, Allstate moves to remand this case. ECF No. 5.
16 Because Defendants are all citizens of Washington, Allstate asserts that the forum
17 defendant rule applies and thus removal solely on the basis of diversity jurisdiction
18 is improper. *Id.*

19 In response, Defendants move to amend their notice of removal to indicate
20 removal was also based on this Court’s supplemental jurisdiction, their reasoning

1 being that this Court has supplemental jurisdiction over this matter because it has
2 original jurisdiction over the underlying *Staats* matter. ECF Nos. 7, 8, 9.

3 DISCUSSION

4 Title 28 United States Code Section 1441 governs removal of cases from
5 state court to federal court. Generally, a defendant may remove a case to federal
6 court if the federal court would have subject-matter jurisdiction over one or more
7 of the plaintiff's claims pursuant to 28 U.S.C. §§ 1331 (federal question) or 1332
8 (diversity of citizenship).¹ See 28 U.S.C. § 1441(a), (b). "The defendant bears the
9 burden of establishing that removal is proper." *Provincial Gov't of Marinduque v.*
10 *Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009).

11 There is an important limitation on removal based on diversity jurisdiction.
12 Coined the "forum defendant rule," "[a] civil action otherwise removable solely on
13 the basis of the jurisdiction under [28 U.S.C. § 1332(a)] . . . may not be removed if
14 any of the parties in interest properly joined and served as defendants is a citizen of
15 the State in which such action is brought." 28 U.S.C. § 1441(b)(2); *Spencer v. U.S.*
16 *Dist. Court for N. Dist. of Cal.*, 393 F.3d 867, 870 (9th Cir. 2004) ("[T]he presence
17 of a local defendant at the time removal is sought bars removal."). Thus, "[section]

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19 _____
20 ¹ There is no dispute here that Plaintiff timely moved to remand pursuant to the 30-
day period provided for in 28 U.S.C. § 1447(c).

1 1441(b) confines removal on the basis of diversity jurisdiction to instances where
2 no defendant is a citizen of the forum state.” *Lively v. Wild Oats Markets, Inc.*, 456
3 F.3d 933, 939 (9th Cir. 2006) (explaining that the rationale behind removal based
4 on diversity jurisdiction—protecting out-of-state defendants from possible
5 prejudices in state court—is not present where the defendant is a citizen of the state
6 in which the case is brought).

7 Defendants do not dispute that they are all citizens of Washington. Instead,
8 they assert that diversity jurisdiction is not the sole basis for removal here and have
9 moved to amend their notice of removal to clarify that they have removed this case
10 based on this Court’s supplemental jurisdiction. ECF No. 8. According to
11 Defendants, this Court has supplemental jurisdiction over this matter because it has
12 original jurisdiction in the underlying *Staats* case. *See* ECF No. 7 at 2-4.

13 The supplemental jurisdiction statute, 28 U.S.C. § 1367(a), does not save
14 this action from remand pursuant to the forum-defendant rule. “Supplemental
15 jurisdiction must be exercised *in the same action* that furnishes the basis for
16 exercise of supplemental jurisdiction.” *Ortolf v. Silver Bar Mines, Inc.*, 111 F.3d
17 85, 86 (9th Cir. 1997) (emphasis added); *see Brummer v. Iasis Healthcare of Ariz,*
18 *Inc.*, No. CV-07-1223-PHX-DGC, 2007 WL 2462174, at *1 (D. Ariz. Aug. 24,
19 2007). As the Ninth Circuit explained in *Ortolf*, “[t]he phrases ‘in any civil action’
20 and ‘in the action,’” as used in section 1367(a), “require that supplemental

1 jurisdiction be exercised in the *same case, not a separate or subsequent case.*” *Id.*
2 at 87; *see Peacock v. Thomas*, 516 U.S. 349, 116 S. Ct. 862, 857 (1996) (“In a
3 subsequent lawsuit involving claims with no independent basis for jurisdiction, a
4 federal court lacks the threshold jurisdictional power that exists when ancillary
5 claims are asserted in the same proceeding as the claims conferring federal
6 jurisdiction.”). Thus, *Staats* cannot form the basis for the exercise of this Court’s
7 supplemental jurisdiction in this separate, subsequent action.

8 Accordingly, pursuant to 28 U.S.C. § 1441(b), this Court lacks jurisdiction
9 over this matter. Plaintiff’s motion to remand (ECF No. 5) is granted. Defendants’
10 proposed amended notice of removal, ECF No. 7, does not cure this issue, and thus
11 their motion for leave to file an amended notice is denied as futile.

12 **ACCORDINGLY, IT IS ORDERED:**

- 13 1. Plaintiff’s Motion and Memorandum to Remand Due to Forum Defendant
14 Rule Pursuant to 28 U.S.C. § 1441 (ECF No. 5) is **GRANTED**.
- 15 2. Defendants’ Motion for Leave to File Amended Notice of Removal to
16 Federal Court (ECF No. 8) is **DENIED** as moot.
- 17 3. This matter is **REMANDED** to the Grant County Superior Court, State of
18 Washington, for all remaining proceedings.

1 The District Court Executive is directed to enter this Order, provide copies
2 to counsel, mail **a certified copy of this Order** to the Clerk of the Grant County
3 Superior Court, and **CLOSE** the file.

4 **DATED** this March 3, 2016



Thomas O. Rice
7 **THOMAS O. RICE**
8 Chief United States District Judge
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