

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

8 MARTA D. LYALL,

9 Plaintiff,

10 v.

11 BANK OF AMERICA, et al.,

12 Defendants.

CASE NO. C19-1506RSM

ORDER

13
14 **I. INTRODUCTION**

15 This matter is before the Court on Plaintiff's (1) Notice (to Remand) ("Motion to
16 Remand") and (2) Motion to Strike and Motion to Rernote and Request Hearing ("Motion to
17 Strike"). Dkts. #10 and #28. Defendant First American Title Insurance Company ("First
18 American") opposes the Motion to Remand. Dkt. #25. Plaintiff has not responded to First
19 American's opposition, calling into question the strength of the arguments laid forth in her
20 Motion to Remand. *See* LCR 7(b)(2) ("if a party fails to file papers in opposition to a motion,
21 such failure may be considered by the court as an admission that the motion has merit"). Rather,
22 Plaintiff filed her Motion to Strike, seeking varied relief from the Court. Dkt. #28. First
23 American has responded. Dkt. #31. For the following reasons, the Court denies Plaintiff's
24 Motions.

ORDER – 1

1 **II. BACKGROUND**

2 The relevant background is limited and procedural in nature. First American removed
3 Plaintiff’s state court action to this Court on September 19, 2019. Dkt. #1. First American
4 removed the action based on the Court’s diversity jurisdiction. *Id.* at 2–5. Both Defendant Bank
5 of America, N.A. (“Bank of America”) and Defendants Rushmore Loan Management Services
6 (“Rushmore”) and US Bank NA (“US Bank”) have filed motions to dismiss which are not yet
7 ready for consideration. Dkts. #6 and #12. First American seeks to join in Bank of America’s
8 motion to dismiss. Dkt. #14.

9 For her part, Plaintiff has filed what the Court construes as a motion to remand. Dkt. #10.
10 First American timely responded to Plaintiff’s Motion to Remand. Dkt. #25. Plaintiff did not
11 file a reply in support of her Motion to Remand and instead filed her Motion to Strike. Dkt. #28.
12 First American likewise opposes the Motion to Strike and is joined by the other Defendants.
13 Dkts. #31, #34, and #35. On the noting date of the Motion to Strike, Plaintiff filed a document
14 captioned as “Plaintiff’s Request for the Court to Take Judicial Notice of Substitution of John
15 Doe Defendants. Dkt. #37. Upon the Court’s review, that filing does not appear to be a
16 substantive reply and the Court will not consider it further.¹

17 **III. DISCUSSION**

18 **A. Plaintiff’s Notice to Remand**

19 Plaintiff does not establish any basis for remand in this case. Plaintiff’s Motion to
20 Remand proceeds on misunderstandings of the law and attempts to cast removal in this case as
21

22 ¹ Plaintiff’s Notice requests that the Court “take judicial notice of the substitution of two John
23 Doe Defendants, listed on Plaintiff’s original and First Amended Complaint, filed in King County
24 Superior Court (Case number 19-2-20601-2).” Dkt. #37 at 1. Plaintiff provides further notice of
her intent to file a “second amended Complaint” in this case “shortly.” *Id.* As Plaintiff’s Notice
does not seek affirmative relief, the Court will not consider it.

1 improper. Contrary to the Motion to Remand, the Court finds removal in accordance with the
2 rules and does not find a valid objection in Plaintiff’s Motion to Remand.

3 **1. Legal Standard**

4 Removal jurisdiction is strictly construed in favor of remand, and any doubt as to the right
5 of removal must be resolved in favor of remand. *Harris v. Bankers Life & Cas. Co.*, 425 F.3d
6 689, 698 (9th Cir. 2005). The removing party must carry the burden of establishing jurisdiction
7 not only at the time of removal, but also in opposition to a motion for remand. *See Moore-*
8 *Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009).

9 The Court’s diversity jurisdiction is properly invoked for “a claim between parties of
10 diverse citizenship that exceeds the required jurisdictional amount, currently \$75,000.” *Arbaugh*
11 *v. Y&H Corp.*, 546 U.S. 500, 513 (2006) (citing 28 U.S.C. § 1332). For diversity jurisdiction in
12 a case involving multiple plaintiffs and defendants, each plaintiff must be a citizen of a different
13 state than each defendant. *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001);
14 *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 67 (1996).

15 **2. Remand was Proper**

16 Without legal or factual support,² Plaintiff contends that removal was improper. But each
17 of Plaintiff’s unsupported objections fail. Plaintiff believes that a motion should have been filed
18 in state court, that removal somehow altered the nature of her case,³ and that an upcoming hearing
19 in state court should have precluded removal. Dkt. #10 at 2. But, Plaintiff’s arguments are

21 ² Plaintiff attached several documents to her Motion and filed an “exhibit” in support of her
22 Motion. Dkt. #11. The Court is unable to discern the relevance of the “exhibit” to the issue of
23 removal from state court. The other documents are insufficient to establish the points Plaintiff
cites them for.

24 ³ Plaintiff claims that First American’s notations on the Court’s Civil Cover Sheet misidentify
Plaintiff’s claims. But Plaintiff’s Complaint continues to be the relevant filing.

1 baseless and, as First American correctly notes,⁴ removal does not require a preceding state court
2 order. Dkt. #25 at 3 (citing 28 U.S.C. § 1441(d)).

3 Plaintiff next argues broadly that this case is not properly within the Court’s jurisdiction
4 and is “not a diversity case.”⁵ Dkt. #10 at 4. But Plaintiff’s unsupported allegations do not
5 overcome the record. First American’s notice of removal already demonstrated complete
6 diversity between the parties and satisfaction of the amount-in-controversy requirement.⁶ Dkt.
7 #1. Plaintiff’s unadorned assertions do not alter the calculus.

8 Plaintiff’s other arguments fair no better. Plaintiff argues that the Defendants have
9 litigated other cases in state court. Dkt. #10 at 6. But even if Defendants are subject to state
10 court jurisdiction, this fact does nothing to establish that removal to this Court was improper.
11 Plaintiff asserts that she has the right to choose the venue for her claim. *Id.* at 9. But this would,
12 of course, negate the removal statute completely and finds no legal support. Plaintiff also
13 indicates that she filed an amended complaint in state court, removing First American as a
14 defendant. *Id.* at 7. But Plaintiff again provides no legal support for her position that removal is
15 defeated by filing an amended complaint in state court after the notice of removal has already
16 been filed. Plaintiff next argues that First American failed to attach state court records, violating
17 the statutory procedure for removal. *Id.* at 8 (citing 28 U.S.C. § 1446 (requiring moving party to
18 file “a copy of all process, pleadings, and orders served upon such defendant or defendants in
19

20 ⁴ Plaintiff has requested that the Court strike First American’s response (Dkt. #25) on the basis
21 that she amended her state court complaint to remove First American as a defendant in this action.
22 Dkt. #28 at 1–2. The Court addresses this request below, ultimately rejecting it.

23 ⁵ The Court also notes that Plaintiff appears to incorrectly believe that this Court cannot apply
24 state law. Dkt. #10 at 5.

⁶ *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015) (“In determining the
amount in controversy, courts first look to the complaint.”).

1 such action’’)). But First American filed the entire state court record on the same day the notice
2 of removal was filed. Dkt. #3.

3 Lastly, Plaintiff questions whether First American’s Notice of Removal was timely. Dkt.
4 #10 at 9–12. Plaintiff claims that she attempted service of process by mailing documents to
5 Defendants on August 14, 2019, and that US Bank was served one day later. *Id.* at 10. As such,
6 Plaintiff argues that First American’s Notice of Removal, not filed until September 19, 2019,
7 came too late. But First American asserts it first learned of the state court action “on or about
8 August 20, 2019.” *Id.* at 5. Beyond speculation, Plaintiff gives the Court no reason to doubt
9 First American’s assertion. On the record before the Court, First American’s Notice of Removal
10 appears timely.

11 **B. Plaintiff’s Motion to Strike and Motion to Renote and Request Hearing**

12 Plaintiff’s Motion to Strike seeks various forms of relief, again without adequate legal
13 support. Among them, Plaintiff requests a three-judge court, to strike filings, to pursue new
14 claims against new parties, and to renote her Motion to Remand to be considered with the pending
15 motions to dismiss and to set a date for oral argument. *See generally*, Dkt. #28. First American
16 has opposed Plaintiff’s Motion to Strike. Dkt. #31.⁷ The remaining Defendants seek to join First
17 American’s response. Dkts. #34 and #35. Hampered by Plaintiff’s scattershot approach, the
18 Court attempts to address each issue in turn.

19 Plaintiff requests that the Court change the noting date of her own Motion to Remand to
20 November 15, 2019, the same day as the pending motions to dismiss, and schedule a hearing
21 before the Court. Dkt. #28 at 11. Plaintiff additionally indicates that she wants an opportunity

22 _____
23 ⁷ The Court finds it unnecessary to refer extensively to the arguments advanced by First American
24 in response to Plaintiff’s Motion to Strike. The Court notes, however, that First American’s
response and this Court’s order are generally consistent and that the outcomes of this order are
further supported by First American’s response.

1 to respond to Defendant’s response (Dkt. #25) and “seeks leave to file a new motion.” *Id.*
2 However, the Court notes that Plaintiff did not file a reply to First American’s response. Plaintiff
3 seeks significant deviations from the applicable rules while providing no valid justification. The
4 Court sees no basis for allowing Plaintiff additional time to reply. Plaintiff’s Motions have been
5 fully briefed and are ripe for consideration by the Court at this time.

6 The Court next considers Plaintiff’s request that the Court strike various filings by
7 Defendants. *Id.* at 1–2 (requesting strikes of Dkts. #6, #12, and #25). As an initial matter,
8 Plaintiff invokes Federal Rule of Civil Procedure 12(f) which provides that the Court “may strike
9 from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous
10 matter.” FED. R. CIV. P. 12(f). The Court notes that motions to strike pursuant to Rule 12(f), by
11 their nature, are limited to striking material from pleadings. *Id.*; *Delano Farms Co. v. California*
12 *Table Grape Comm’n*, 623 F. Supp. 2d 1144, 1182 (E.D. Cal. 2009), *affirmed*, 655 F.3d 1337
13 (Fed. Cir. 2011). Plaintiff’s Motion to Strike is not directed at any pleading and does not provide
14 a legal basis for striking the requested filings.^{8,9}

15 Plaintiff also appears to seek leave to pursue additional claims against additional parties.
16 Dkt. #28 at 5–7. Specifically, Plaintiff wishes to pursue claims against the Clerk of this Court,
17 William McCool, and against her Chapter 13 Bankruptcy Trustee, Jason Wilson-Aguilar. *Id.* at
18

19 ⁸ Plaintiff seems to argue that she filed an amended complaint in the state court, thereby removing
20 First American as a Defendant, and necessitating that all of First American’s filings be struck.
21 Dkt. #28 at 2–3. But Plaintiff provides no explanation of why filing an amended complaint in an
already removed state court action affects the proceedings before this Court.

22 ⁹ Plaintiff argues without support that Defendant Bank of America’s motion to dismiss (Dkt. #6)
23 should be struck because it was filed within twenty-four hours of this action being removed. Dkt.
24 #28 at 3. Plaintiff argues only that the quick filing “was an exploitation of the Plaintiff’s lack of
legal knowledge.” *Id.* The Court fails to see any prejudice, especially as the motion to dismiss
was not noted for consideration until almost two months later and Plaintiff still has time to file
an appropriate response. Dkt. #6.

1 2, 4–5, 10. Plaintiff may seek to add additional claims and parties in accordance with the Federal
2 Rules of Civil Procedure. Plaintiff has not done so at this time and the Court accordingly denies
3 such relief.

4 Lastly, the Court need not waste time on Plaintiff’s request for a three-judge court to
5 decide this Motion to Strike. *Id.* at 1, 8–9 (citing LCR 9(i)). Plaintiff is correct that such a
6 procedure is available in appropriate cases but makes no attempt to establish that hers is such a
7 case. *See* 28 U.S.C. § 2284(a) (“A district court of three judges shall be convened when
8 otherwise required by Act of Congress, or when an action is filed challenging the constitutionality
9 of the apportionment of congressional districts or the appointment of any statewide legislative
10 body.”).

11 IV. CONCLUSION

12 Having considered the Plaintiff’s motions, the responsive briefing, and the remainder of
13 the record, the Court finds and ORDERS:

- 14 1. Plaintiff’s Notice (to Remand) (Dkt. #10) is DENIED.
- 15 2. Plaintiff’s Motion to Strike and Motion to Renote and Request Hearing (Dkt. #28) is
16 DENIED.
- 17 3. The motions to dismiss (Dkts. #6 and #12) remain noted for the Court’s consideration on
18 November 15, 2019. All remaining briefing shall take place as provided under the
19 applicable rules.

20 Dated this 30 day of October, 2019.

21 

22 RICARDO S. MARTINEZ
23 CHIEF UNITED STATES DISTRICT JUDGE
24