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2 NOT FOR PUBLICATION

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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ARIZONA

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10 Richard E. Cooke,

11 Plaintiff,

12 vs.

13 Masterpharm, LLC; *et al.*,

14 Defendants.

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No. CV-10-845-PHX-GMS

ORDER

17 On April 16, 2010, Defendant Masterpharm, LCC (“Defendant”) removed this case
18 from Maricopa County Superior Court pursuant to 28 U.S.C. § 1441 on the basis of diversity
19 jurisdiction. (Dkt. # 1.) Plaintiff Richard E. Cooke (“Plaintiff”) now moves to remand this
20 action back to State Court. (Dkt. #14.) According to Plaintiff, removal was untimely under
21 28 U.S.C. § 1446(b). (*Id.*) As set forth below, the Court denies the Motion.

22

DISCUSSION

23 Under 28 U.S.C. § 1446(b), any notice of removal “shall be filed within thirty days
24 after the receipt by the defendant, through service or otherwise, of the initial pleading setting
25 forth the claim for relief upon which such action or proceeding is based[.]” A defendant’s
26 receipt of a complaint, however, only triggers 28 U.S.C. § 1446(b)’s removal period if proper
27 service has been effected when the complaint is received. *Murphy Bros., Inc. v. Michetti Pipe*
28 *Stringing, Inc.*, 526 U.S. 344, 347 (1999). In *Murphy*, the defendant acknowledged that he

1 received a faxed copy of the complaint more than thirty days prior to filing its notice of
2 removal; nevertheless, the Court held that the thirty-day removal period did not begin to run
3 because the defendant had not yet been served. *Id.* Instead, the Court required service of
4 process before the removal period could begin. *Id.* According to the Court, “the various state
5 provisions for service of the summons and the filing or service of the complaint fit into one
6 or another of four main categories.” *Id.* at 354. These four possibilities are as follows:

7 First, if the summons and complaint are served together, the
8 30-day period for removal runs at once. Second, if the defendant
9 is served with the summons but the complaint is furnished to the
10 defendant sometime after, the period for removal runs from the
11 defendant’s receipt of the complaint. Third, if the defendant is
12 served with the summons and the complaint is filed in court, but
 under local rules, service of the complaint is not required, the
 removal period runs from the date the complaint is made
 available through filing. Finally, if the complaint is filed in court
 prior to any service, the removal period runs from the service of
 the summons.

13 *Id.* The Supreme Court, therefore, rejected the notion that notice of the complaint prior to
14 service triggers § 1446(b)’s removal period. *Id.*; *see also Cachet Residential Builders, Inc.*
15 *v. Gemini Ins.*, 547 F. Supp.2d 1028, 1031 (D. Ariz. 2007) (holding that “[a]n interpretation
16 of Section 1446(b) that mere notice was sufficient to trigger removal requirements for
17 multiple defendants not actually served runs counter to . . . *Murphy*”).

18 Defendant’s notice of removal was timely under § 1446(b). Here, the complaint was
19 filed in state court on February 4, 2010, sent to Defendants on February 9, 2010, and receipt
20 of the complaint was acknowledged on February 24, 2010. But while Defendants received
21 a copy of the complaint was more than thirty days before they filed their notice of removal,
22 the time period for filing notice of removal did not begin to run until Defendants were
23 properly served. *See Murphy*, 526 U.S. at 354.

24 Under Arizona Law, service of process was not effected in this case until March 26,
25 2010—the date that Defendants officially waived its right to service of process. The Arizona
26 Rules of Civil Procedure provide that “when the plaintiff files a waiver of service with the
27 court, the action shall proceed . . . as if the summons and complaint had been served at the
28 time of filing the waiver[.]” Ariz. R. Civ. P. 4.1(c)(4) (setting forth rules for service of

1 process on parties in Arizona); 4.2(d)(4) (stating rules for service on entities outside of
2 Arizona). Accordingly, when a defendant waives service of process, service is effective from
3 the time that a signed waiver is filed with the court. *Id.*; *see also Lacey v. Malandro*
4 *Comm’n*, 2009 WL 4755399, at *3 (D. Ariz. Dec. 8, 2009) (“[W]here service of the initial
5 complaint is waived, service of process is considered to be effective from the time that
6 service is formally waived.”). In this case, the waiver form was signed and filed on March
7 26, 2010; therefore, service became effective at that time. Because the notice of removal was
8 filed on April 16, 2010, less than thirty days after service, removal was timely under
9 § 1446(b).

10 Plaintiff’s arguments to the contrary are unavailing. According to Plaintiff, Arizona
11 Rule of Civil Procedure 4(f) made service effective from the date that Defendants received
12 the complaint. That Rule, however, provides, in pertinent part:

13 The person to whom a summons or other process is directed
14 may accept service, or waive issuance of service thereof, in
15 writing, signed by that person or that person’s authorized agent
 or attorney Such waiver, acceptance or appearance shall
16 have the same force and effect as if a summons had been issued
 and served.

17 Ariz. R. Civ. P. 4(f). In other words, this provision merely authorizes a party to waive service
18 of process. It does not make service retroactive from the date that the defendant received a
19 copy of a the complaint and the voluntary waiver form. And while the waiver form itself
20 provided that “receipt” of the complaint shall be considered “sufficient service of process,”
21 this too does not make service *effective* from the time that Defendant received the Complaint.
22 Arizona law is clear on this point. When a party waives service, service of process is deemed
23 to be effective from the time that the signed waiver is *filed* with the court. *See Ariz. R. Civ.*
24 *P. 4.1(c)(4); 4.2(d)(4).*

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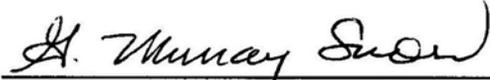
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IT IS THEREFORE ORDERED that Plaintiff's Motion to Remand to State Court
(Dkt. # 14) is **DENIED**.

DATED this 15th day of June 2010.



G. Murray Snow
United States District Judge