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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Daniel B. Scalf,

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No. CV 11-01323-PHX-FJM

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Plaintiff,

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ORDER

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vs.

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Gretchen I. Scalf,

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Defendant.

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The court has before it defendant's motion to amend petition for removal (doc. 6), and the original notice of removal (doc. 1). Plaintiff did not file a response.

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This action concerns the enforcement of a foreign divorce decree. Defendant removed the action here on July 5, 2011. Defendant never alleged the basis for removal. It appears, however, that defendant removed on the basis of diversity jurisdiction because the notice of removal claims that removal is proper because defendant is a citizen of Virginia and plaintiff is a resident of Arizona. Defendant now moves to amend her notice of removal to make note of a related case, Scalf v. Scalf, CV-11-00606, filed in this district. On August 2, 2011, Judge Bolton denied defendant's motion to consolidate the two cases as moot (doc. 8).

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We deny defendant's motion to amend the notice of removal because we lack subject matter jurisdiction over the case. "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. §

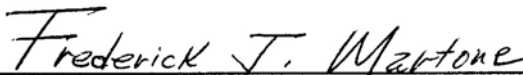
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1 1447(c). Here, defendant removed on the basis of diversity jurisdiction and the complaint
2 seeks enforcement of a foreign divorce decree. 28 U.S.C. § 1332 "divests the federal courts
3 of power to issue divorce, alimony, and child custody decrees." Akenbrandt v. Richards,
4 502 U.S. 689, 703 112 S.Ct. 2206, 2215 (1992); Atwood v. Fort Peck Tribal Court
5 Assiniboine, 513 F.3d 943, 947 (9th Cir. 2008) (holding that the domestic relations exception
6 applies only to the diversity jurisdiction statute). Accordingly, we lack subject matter
7 jurisdiction over this case and must remand it to state court.

8 **THEREFORE IT IS ORDERED DENYING** plaintiff's motion to amend (doc. 6).
9 **IT IS FURTHER ORDERED REMANDING** this action to the Superior Court of Arizona
10 in Maricopa County for lack of subject matter jurisdiction.

11 DATED this 9th day of August, 2011.

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15 Frederick J. Martone
16 United States District Judge
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