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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

LaWanda Denise Long and Dennis Alan
Long, husband and wife,

Plaintiffs,

v.

Medcath Incorporated,

Defendant.

No. CV12-8034-PCT-JAT

ORDER

Currently pending before the Court are Defendant’s Motion to Dismiss (Doc. 5) and Plaintiffs’ Motion to Remand (Doc. 6). Because the Court is granting the Motion to Remand, it will not reach the merits of the Motion to Dismiss.

I. BACKGROUND

On September 24, 2009, Plaintiff LaWanda Long began working at a hospital¹ in Kingman, Arizona as an Emergency Room Registration Clerk. Mrs. Long worked in that position until she was terminated on February 5, 2010. (Doc. 1-1 ¶V.) The termination forms that Mrs. Long received indicate that she was terminated for HIPPA and other policy violations. Mrs. Long alleges that she did not violate HIPPA or any other policies of the hospital.

¹ In their Complaint, Plaintiffs alternately refer to the hospital as Medcath and Hualapai Mountain Medical Center. It appears that the hospital where Mrs. Long worked was called Hualapai Mountain Medical Center or, sometimes, Doctors Community Hospital, but Plaintiffs have clarified that MedCath Inc. is the only Defendant in this action.

1 Plaintiff filed a Complaint in Mohave County Superior Court on February 1, 2012.
2 (Doc. 1-1.) The Complaint alleges five cause of action for: wrongful termination;
3 negligence; fraud; slander/libel; and malpractice.

4 Defendant removed to this Court on February 22, 2012. (Doc. 1.) The Notice of
5 Removal alleges that the Court has both federal question and diversity jurisdiction.

6 Defendant filed a Motion to Dismiss (Doc. 5) on February 29, 2012. Plaintiffs
7 never filed a response to that Motion. But Plaintiffs did file a Motion to Remand² on
8 March 12, 2012. (Doc. 6.)

9 II. MOTION TO REMAND

10 Because if the Court does not have jurisdiction over this action, it cannot rule on
11 the Motion to Dismiss, the Court will address the Motion to Remand first. Defendant
12 removed on the basis of federal subject matter and diversity jurisdiction. Plaintiffs claim
13 that neither exists.

14 28 U.S.C. §1331 gives federal district courts original jurisdiction over all civil
15 actions arising under the Constitution, laws, or treaties of the United States. And §1332
16 gives federal district courts “original jurisdiction of all civil actions where the matter in
17 controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is
18 between . . . citizens of different States[.]” 28 U.S.C. §1332(a)(1). The removal statute,
19 28 U.S.C. § 1441, provides, in pertinent part: “[A]ny civil action brought in a State court
20 of which the district courts of the United States have original jurisdiction, may be
21 removed by the defendant . . . to the district court of the United States for the district and
22 division embracing the place where such action is pending.” 28 U.S.C. § 1441(a); *see*
23 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987) (“Only . . . actions that originally
24 could have been filed in federal court may be removed to federal court by the
25 defendant.”).

26 Courts strictly construe the removal statute against removal jurisdiction. *See, e.g.,*

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28 ² The Motion to Remand is actually captioned “Plaintiffs Response/Opposition to
Removal.” (Doc. 6.)

1 *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus v. Miles, Inc.*,
2 980 F.2d 564, 566 (9th Cir. 1992). There is a “strong presumption” against removal, and
3 “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in
4 the first instance.” *Gaus*, 980 F.2d at 566 (internal citations omitted). “The ‘strong
5 presumption’ against removal jurisdiction means that the defendant always has the
6 burden of establishing that removal is proper.” *Id.* If at any time it appears that the
7 district court lacks subject matter jurisdiction, the case must be remanded. 28 U.S.C.
8 §1447(c).

9 As the proponent of the Court’s jurisdiction, the removing Defendant bears the
10 burden of establishing jurisdiction. *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676,
11 685 (9th Cir. 2006). In responding to the Motion to Remand, Defendant argues that
12 removal was proper because it appeared from the face of the Complaint that the lawsuit
13 had claims arising under federal law and because diversity jurisdiction existed.

14 **A. Federal Question Jurisdiction**

15 Federal question jurisdiction exists only if the complaint establishes that the case
16 arises under federal law. *Franchise Tax Bd. of State of California v. Constr. Laborers*
17 *Vacation Trust*, 463 U.S. 1, 10 (1983). A review of Plaintiffs’ Complaint reveals that
18 they allege only state law causes of action. Although Plaintiffs mention the Health
19 Insurance Portability and Accountability Act (“HIPAA”), a federal statute, they only
20 mention HIPAA when discussing their state law claims. Plaintiffs do not make any
21 claims under HIPAA in the pending litigation. Defendant’s failure to move to dismiss
22 any alleged HIPAA claim supports the conclusion that Plaintiffs were not attempting to
23 make a HIPAA claim.

24 Other than HIPAA, the Complaint does not even mention a federal statute or
25 constitutional provision. The Court finds the Complaint devoid of any federal causes of
26 action. The Court therefore does not have federal question jurisdiction pursuant to 28
27 U.S.C. §1331.

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1 **B. Diversity Jurisdiction**

2 For the Court to have diversity jurisdiction, each plaintiff must be a citizen of a
3 different state than each of the defendants. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68
4 (1996). Plaintiffs are citizens of Arizona. They allege in the Complaint that Defendant
5 Medcath Inc. is an Arizona corporation with its principal place of business in Maricopa
6 County. But Defendant asserts that it is in fact a North Carolina corporation with its
7 principal place of business in North Carolina and therefore is a citizen of North Carolina.

8 For diversity jurisdiction purposes, a corporation is a citizen of: 1) the state of its
9 incorporation and 2) the state of its principal place of business. *Davis v. HSBC Bank*
10 *Nevada, N.A.*, 557 F.3d 1026, 1028 (9th Cir. 2009)(citing 28 U.S.C. 1332(c)(1)). The
11 Supreme Court has interpreted the phrase “principal place of business” to mean the place
12 where a corporation’s high level officers direct, control, and coordinate the corporation’s
13 activities, *i.e.*, the corporation’s nerve center. *Hertz Corp. v. Friend*, 130 S.Ct. 1181,
14 1186 (2010). A corporation’s “nerve center” typically will be the place where the
15 corporation maintains its headquarters, “provided the headquarters is the actual center of
16 direction, control, and coordination, *i.e.*, the ‘nerve center,’ and not simply an office
17 where the corporation holds its board meetings (for example, attended by directors and
18 officers who have traveled there for the occasion).” *Id.* at 1192.

19 Defendant, as the party asserting jurisdiction, has the burden of establishing
20 diversity jurisdiction. *Hertz Corp.*, 130 S.Ct. at 1194. When challenged on allegations of
21 jurisdictional facts, a party must support their allegations by competent proof. *Id.* Proof
22 of jurisdiction cannot be satisfied by mere allegation. *McNutt v. Gen. Motors Acceptance*
23 *Corp.*, 298 U.S. 178, 189 (1936).

24 The Complaint alleges that Defendant has its principal place of business in
25 Maricopa County, which is in Arizona. Plaintiffs in their Motion to Remand contend that
26 Defendant does substantial business in Arizona and argue that diversity jurisdiction does
27 not exist. As the party seeking jurisdiction of this Court, Defendant has the burden of
28 establishing by competent proof that its principal place of business is outside Arizona.

1 Defense counsel states in the Response to the Motion to Remand that Medcath Inc.
2 is incorporated in North Carolina and has its headquarters and principal place of business
3 in Charlotte, North Carolina. But Defendant does not attach a single exhibit
4 demonstrating that Medcath Inc.'s nerve center is in North Carolina, not even a
5 declaration of a corporate officer or employee. Defense counsel cannot satisfy
6 Defendant's burden of proving diversity of citizenship with a mere statement in a
7 response. Without out any sort of evidence, not even a declaration, Defendant has not
8 offered sufficient proof to overcome the strong presumption against removal jurisdiction.

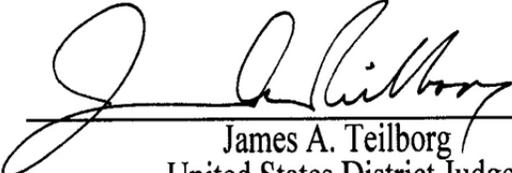
9 Defendant has not met its burden of proving that the Court has either federal
10 question or diversity jurisdiction. The Court therefore must remand this action to state
11 court. 28 U.S.C. §1447(c)(If at any time it appears that the district court lacks subject
12 matter jurisdiction, the case must be remanded). Because the Court lacks jurisdiction
13 over this case, it cannot decide Defendant's Motion to Dismiss.

14 Accordingly,

15 **IT IS ORDERED** Granting Plaintiffs' Motion to Remand (Doc. 6.)

16 **IT IS FURTHER ORDERED** that Defendant's Motion to Dismiss (Doc. 5) shall
17 remain pending for decision by the state court.

18 Dated this 21st day of May, 2012.

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23 James A. Teilborg
24 United States District Judge
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