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9 Xcentric Ventures, LLC and
10 Edward Magedson

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ASIA ECONOMIC INSTITUTE, LLC, et al.,

Plaintiffs,

vs.

XCENTRIC VENTURES, LLC, et al.,

Defendants.

Case No: 2:10-cv-01360-SVW-PJW

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION TO
REMAND**

Hearing Date: April 26, 2010

Time: 1:30 PM

Courtroom: 6 (Hon. Steven Wilson)

Complaint Filed: Jan. 27, 2010

I. INTRODUCTION

At first blush, Plaintiffs' motion seems to imply that removal jurisdiction is a rare privilege to be exercised cautiously, and that removal is a matter of the court's grace. This is incorrect. Although the Ninth Circuit has not yet expressly adopted such strong language, other courts have noted, "A defendant is entitled to have the suit removed to a proper federal court as a matter of right, on complying with the conditions prescribed by statute. If the requirements of the removal statute are met, the right to removal is absolute." *Regis Associates v. Rank Hotels Mgmt. Ltd.*, 894 F.2d 193 (6th Cir. 1990) (citing *White v. Wellington*, 627 F.2d 582, 586 (2nd Cir. 1980)).

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION TO REMAND**

1 For the purposes of this matter, if federal subject matter jurisdiction exists, then
2 Plaintiffs' motion must be denied. As explained *infra*, it is entirely undisputed that
3 federal jurisdiction exists here. For that reason, the motion should be denied.

4 **II. ARGUMENT**

5 Leaving no stone unturned, Plaintiffs' motion presents three separate arguments in
6 favor of remand:

- 7 1.) Diversity jurisdiction is lacking because Ed Magedson lives in California;
- 8 2.) Diversity jurisdiction is lacking because the Complaint seeks less than
9 \$75,000; and
- 10 3.) Federal question jurisdiction is present, but this case contains numerically
11 more state-law claims than federal claims, so state-law predominates
making discretionary remand available under 28 U.S.C. § 1441(c)

12 While Defendants agree they bear the burden of establishing that removal was proper,
13 denial of the motion is not contingent upon Defendants disproving all three of these
14 points. On the contrary, as long as this court has jurisdiction for *any* reason then removal
15 was appropriate and remand is improper:

16 Even if one ground of federal jurisdiction is defective, it should be noted
17 that remand may not be necessary if an adequate alternate ground of
18 jurisdiction is present. For example, a cause removed on grounds of
19 diversity of citizenship and federal question jurisdiction need not be
remanded if the former does not exist, so long as the latter does.

20
21 29A Fed. Proc., L. Ed. § 69:125 (2010 Supp.) (citing *American Brahmental Ass'n v.*
22 *American Simmental Ass'n*, 443 F. Supp. 163 (W.D. Tex. 1977)). This example is
23 particularly apropos because the Notice of Removal (Doc. #1) in this case explained that
24 removal was based on both federal question jurisdiction and diversity jurisdiction. As
25 such, even assuming *arguendo* Plaintiffs are correct and diversity jurisdiction is absent
26 (which Defendants dispute), remand would still be improper because Plaintiffs concede
27 their federal RICO claims create original federal question jurisdiction pursuant to 18
28 U.S.C. § 1964(a) and 28 U.S.C. § 1331.

1 Because removal only requires one statutory basis, and since it is undisputed that at
2 least *one* valid jurisdictional basis existed for removal of this matter, the inquiry should
3 end and the case should not be remanded.

4 **a. The Court Has Diversity Jurisdiction**

5 The court is familiar with the legal parameters of its own jurisdiction and therefore
6 Defendants will only briefly comment on each point. As explained below, Defendants
7 assert that diversity jurisdiction exists pursuant to 28 U.S.C. § 1332(a)(1) making removal
8 appropriate under 28 U.S.C. § 1441(a). This is so because on its face the Complaint
9 alleges that the plaintiff and defendants are citizens of different states and as explained in
10 more detail below, the amount in question certainly exceeds \$75,000.

11 Assuming these two facts are true, then discretionary remand as requested on pages
12 8–9 of Plaintiffs’ motion is simply not an available option; “[T]he exercise of diversity
13 jurisdiction is not discretionary.” *Brockman v. Merabank*, 40 F.3d 1013, 1017 (9th Cir.
14 1994) (citing *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 356, 108 S.Ct. 614,
15 622, 98 L.Ed. 720 (1988)). On the contrary, “With rare exceptions not applicable here
16 [e.g., abstention] where the district court is presented with a case within its original
17 jurisdiction, it has a virtually unflagging obligation to exercise the jurisdiction conferred
18 upon it by the coordinate branches of government and duly invoked by litigants.”
19 *Williams v. Costco Wholesale Corp.*, 471 F.3d 975, 977 (9th Cir. 2006) (holding district
20 court had no discretion to remand removed case where diversity jurisdiction was present)
21 (internal quotation marks omitted) (quoting *United States v. Rubenstein*, 971 F.2d 288,
22 293 (9th Cir. 1992)).

23 The reasons for this are manifest; “Removal based on diversity jurisdiction is
24 intended to protect out-of-state defendants from possible prejudices in state court.” *Lively*
25 *v. Wild Oats Markets, Inc.*, 456 F.3d 933 (9th Cir. 2006) (citing *Tosco Corp. v. Cmtys. for*
26 *a Better Env’t.*, 236 F.3d 495, 502 (9th Cir. 2001) (“The purpose of diversity jurisdiction is
27 to provide a federal forum for out-of-state litigants where they are free from prejudice in
28 favor of a local litigant.”) (internal quotations marks omitted)).

1 Here, Defendants Xcentric and Magedson are both Arizona citizens for diversity
2 purposes (Magedson lives in Arizona and Xcentric is an Arizona-LLC with its principal
3 place of business in Arizona). Further, as explained below the case involves more than
4 \$75,000 and thus both required elements for diversity jurisdiction are present. Nothing
5 more is required for the court to deny the instant motion.

6 **i. Defendants Xcentric And Magedson Are Citizens of Arizona**

7 As a general rule, “the propriety of removal is determined solely on the basis of the
8 pleadings filed in state court.” *Williams*, 471 F.3d at 976 (citing *Sparta Surgical Corp. v.*
9 *Nat'l Ass'n of Sec. Dealers, Inc.*, 159 F.3d 1209, 1213 (9th Cir. 1998); *O'Halloran v. Univ.*
10 *of Wash.*, 856 F.2d 1375, 1379 (9th Cir. 1988). Here, Plaintiffs’ Complaint alleges that
11 Defendant Xcentric “is a limited liability company organized and existing in Arizona with
12 its purported domestic address as P.O. Box 470, Phoenix, Arizona 85280.” Compl. ¶ 6.
13 The Complaint further alleges that “Defendant Ed Magedson ... is a resident of the State
14 of Arizona.” Compl. ¶ 8.¹ Both of those allegations were admitted in the Answer (Doc.
15 #4) filed in this action.

16 Because complete diversity is apparent on the face of the Complaint, the Answer
17 and the Notice of Removal, that part of the inquiry should end. However, Plaintiffs argue
18 that their allegations to the contrary notwithstanding, diversity is lacking here because
19 before this action was filed, Mr. Magedson made a passing remark in an email stating, “I
20 am in California. I live here now.”

21 This issue is, in fact, not an issue at all. Beyond the fact that both the Complaint
22 and Answer agree that Mr. Magedson is *not* a resident or citizen of California, Mr.
23 Magedson also addressed this issue in his affidavit (Doc. #10) filed in support of
24 Defendants’ Anti-SLAPP motion. According to ¶ 1 of his affidavit, Mr. Magedson

25 _____
26 ¹ For the court’s information, the Complaint includes claims against another Defendant—Badbusinessbureau.com,
27 LLC which is alleged to be a d/b/a of RipoffReport.com. Although the Complaint alleges that this defendant is also a
28 citizen and resident of the State of Arizona, this issue is irrelevant here because Badbusinessbureau.com, LLC has
not been served and is therefore not required to consent to the removal. See *Emrich v. Touche Ross & Co.*, 846 F.2d
1190, 1193 n. 1 (9th Cir. 1988) (explaining general rule that “all defendants in a state action must join in the petition
for removal ... [applies] only to defendants properly joined and served in the action.”)

1 testified that he is a resident of the State of Arizona. As explained in ¶ 31 of his affidavit,
2 Mr. Magedson’s comment about living in California was made in response to Mr. Mobrez
3 threaten to “find” Mr. Magedson in Arizona. Whether or not Mr. Magedson should have
4 made this statement, the fact remains that he resides in Arizona and there is no evidence
5 to the contrary.

6 **ii. The Amount At Issue Exceeds \$75,000**

7 Although the Complaint does not contain a demand for a specific dollar
8 amount, the nature of the claims (which seek general damages, special damages,
9 punitive damages, treble damages, and attorney’s fees) clearly shows that the amount
10 at issue exceeds \$75,000. If there was an doubt about the amount in dispute at the
11 time removal, it has been resolved by the Plaintiffs’ clarification that they are seeking
12 damages in excess of \$75,000. See **Exhibit A** to Declaration of David Gingras
13 submitted herewith.

14 Because all plaintiffs and all defendants are citizens of different states and
15 because the amount in dispute exceeds \$75,000, this court has original subject matter
16 jurisdiction under 28 U.S.C. § 1332(a)(1) making removal appropriate under 28 U.S.C. §
17 1441(a). Nothing further is required for remand to be denied.

18 **b. The Court Has Federal Question Jurisdiction**

19 Removal based on federal question jurisdiction is *per se* proper; “A defendant may
20 remove an action to federal court based on federal question jurisdiction” *Hunter v.*
21 *Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009) (citing 28 U.S.C. § 1441). Here,
22 the Complaint contains two federal RICO claims arising under 18 U.S.C. §§ 1962(c) and
23 1962(d). Plaintiffs concede these are federal claims which vest this court with original
24 subject matter jurisdiction. Again, nothing further is needed to deny the motion to
25 remand.

26 **c. State Law Does Not Predominate All Non-Federal Claims**

27 Defendants agree that even where removal is proper, the court always has
28 discretion to remand any matters in which state law “predominates”:

1 Whenever a separate and independent claim or cause of action within the
2 jurisdiction conferred by section 1331 of this title is joined with one or more
3 otherwise non-removable claims or causes of action, the entire case may be
4 removed and the district court may determine all issues therein, or, in its
discretion, may remand all matters in which State law predominates.

5 28 U.S.C. § 1441(c) (emphasis added). This rule was the basis for the court’s ruling in
6 the only case cited by Plaintiffs on this issue—*Felder v. Puthuff*, 1993 U.S. Dist. LEXIS
7 4557 (N.D. Cal. 1993) (finding remand appropriate because the case was predominately a
8 state-law breach of contract matter with numerous state-law claims and a single unrelated
9 federal RICO claim). Relying solely upon *Puthuff*, Plaintiffs argue that even if this court
10 keeps the federal RICO claims, it should remand some or all remaining claims because
11 they contain predominately state-law issues.

12 The problem with this argument is that discretionary remand is simply unavailable
13 as to claims which arise in a case where diversity is the basis for federal jurisdiction. *See*
14 *Williams v. Costco Wholesale Corp.*, 471 F.3d 975, 977 (9th Cir. 2006) (holding district
15 court had no discretion to remand removed case where diversity jurisdiction was present)
16 (internal quotation marks omitted). As explained above, complete diversity is present
17 here making discretionary remand unavailable under 28 U.S.C. § 1441.

18 III. CONCLUSION

19 This court had jurisdiction over this case on the day it was removed, and such
20 jurisdiction exists today. Because the case was properly removed, the Motion to Remand
21 should be denied.

22 DATED this 5th day of April, 2010.

23 **GINGRAS LAW OFFICE, PLLC**
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CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2010 I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing, and for transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Mr. Daniel F. Blackert, Esq.
Asia Economic Institute
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And a courtesy copy of the foregoing delivered to:
Honorable Steven V. Wilson
U.S. District Judge

/s/David S. Gingras

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