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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

VANESSA MARQUINA,
Plaintiffs,
v.
FERGUSON ENTERPRISES, INC, a
Virginia corporation; and DOES
1-50, inclusive,
Defendants.

Case No. 2:13-cv-07999-ODW (AJWx)

**ORDER REMANDING ACTION TO
LOS ANGELES SUPERIOR COURT
[10]**

I. INTRODUCTION

On October 30, 2013, Ferguson Enterprises removed this action for the second time. The Court remanded this action after the original removal because Ferguson Enterprises failed to sufficiently establish diversity jurisdiction. Ostensibly, Ferguson Enterprises now removes this action on the grounds that it formally discovered that Marquina was a California citizen at her October 1, 2013 deposition. Marquina now moves to remand this action. Because the Court finds that Ferguson Enterprises' second removal is untimely, the Court **GRANTS** Marquina's Motion to Remand.¹

¹ Having evaluated the papers filed in conjunction with Defendant's Notice and Plaintiff's Motion to Remand, **Error! Main Document Only**.the Court finds the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L. R. 7-15.

1 order or other paper from which it may first be ascertained that the case is one which
2 is or has become removable.” 28 U.S.C. § 1446(b); *Harris v. Bankers Life & Cas.*
3 *Co.*, 425 F.3d 689, 692 (9th Cir. 2005). After one year, removal is not permissible
4 regardless of the source of information. *Roth v. CHA Hollywood Med. Ctr., L.P.*, 720
5 F.3d 1121, 1125 (9th Cir. 2013)

6 III. DISCUSSION

7 Marquina contends that Ferguson Enterprises’ second removal of this action is
8 improper. Marquina argues that Ferguson failed to properly allege Marquina’s
9 citizenship in its original removal papers, despite possessing documents from which
10 her California citizenship was ascertainable. In the alternative, Marquina contends
11 that removal is untimely because Ferguson Enterprises did not file removal papers
12 within the 30-day limit after receiving documents from which removability was
13 ascertainable. Ferguson Enterprises argues that its second removal of this action is
14 proper and timely because the “other paper” from which removability was
15 ascertainable was Marquina’s October 1, 2013 deposition—rather than the documents
16 produced in discovery. (Opp’n 9.) The Court addresses each in turn.

17 Marquina argues that Ferguson Enterprises could and should have come
18 forward with additional evidence of her California citizenship at the time of its
19 original removal. She asserts that, as her employer, Ferguson Enterprises knew that
20 she was domiciled in California, lived with family members in California, maintained
21 a California driver’s license and bank account, paid California taxes, and collected
22 unemployment benefits from California. (Mot. 7–8.) Thus, Marquina asserts that
23 Ferguson Enterprises’ assertion that it did not learn that she was a California citizen
24 until October 1, 2013, is false and removal was improper. But this argument has been
25 rejected in this circuit.

26 Referring to § 1446(b), the Ninth Circuit has stated that a defendant cannot
27 remove based on its own investigation: “[T]he first thirty-day [window] is triggered
28 by defendant’s receipt of an ‘initial pleading’ that reveals a basis for removal. If no

1 ground for removal is evident in that pleading, the case is ‘not removable.’” *Harris v.*
2 *Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005). If the case is not
3 removable from the complaint then the defendants must wait until a second 30-day
4 window is triggered by a change in the parties or other circumstances revealed in a
5 newly filed “paper.” *Id.* Thus, Ferguson Enterprises’ knowledge of Marquina’s
6 California citizenship at the time of its original removal is irrelevant.

7 Marquina next argues that even if Ferguson Enterprises’ knowledge of her
8 California citizenship was immaterial, its second removal was untimely. Marquina
9 asserts that on August 2, 2013, she produced numerous documents evidencing her
10 California citizenship in response to Ferguson Enterprises’ June 19, 2013 document
11 request. (Kampf Decl. ¶ 6.) These documents included Marquina’s IRS Form W-2
12 Wage and Tax Statements for the years 2009 through 2012, documents evidencing her
13 receipt of California unemployment benefits, a letter from Defendant addressed to
14 Plaintiff’s California address thanking her for 10 years of service in California, and a
15 letter indicating Plaintiff’s inclusion in a California class action settlement involving
16 Ferguson Enterprises. (Kampf Decl., at ¶¶ 7-8, Ex. B). Marquina contends that
17 Ferguson Enterprises’ receipt of these documents triggered the second 30-day removal
18 window.

19 Ferguson Enterprises contends that Marquina’s document production did not
20 begin this second 30-day window because “the documents in Plaintiff’s production
21 did not contain any new fact that was not previously before the Court in connection
22 with Defendant’s original removal.” (Opp’n 2.) The Court does not agree.

23 Ferguson Enterprises’ original Removal Petition relied solely on the allegations
24 in the Complaint to establish Diversity Jurisdiction. Marquina alleged bare residency
25 and California employment in her Complaint. (Not. Removal Ex. A.) She did not
26 mention any additional citizenship factors, such as that she lived with family in
27 California, paid California taxes, received state unemployment benefits, or
28 participated in a lawsuit in California. Indeed, the Court’s Order remanding the

1 original removal, the Court noted that Ferguson Enterprises could have—but did
2 not—state other facts bearing on citizenship. (Not. Removal Ex. H.)

3 Thus, the documents produced to Ferguson Enterprises on August 1, 2013,
4 contained facts that were not previously before the court. Further, the documents
5 produced established Marquina’s California citizenship—and thus that this action was
6 removable under diversity jurisdiction. *See Lew v. Moss*, 797 F.2d 747, 750 (9th Cir.
7 1986) (delineating factors sufficient to establish citizenship on removal).

8 Accordingly, the last day by which Ferguson Enterprises could have removed
9 this action was September 1, 2013. 28 U.S.C. § 1446(a). Because Ferguson
10 Enterprises failed to file its second Notice of Removal within 30 days of receipt of
11 these documents, the Court finds Ferguson Enterprises’ removal untimely.

12 **IV. CONCLUSION**

13 In light of the foregoing, the Court **REMANDS** this case to the Los Angeles
14 County Superior Court, 111 N. Hill Street, Los Angeles, CA 90012, case number
15 BC507624. The Clerk of Court shall close this case.

16 **IT IS SO ORDERED.**

17
18 December 5, 2013

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21 **HON. OTIS D. WRIGHT, II**
22 **UNITED STATES DISTRICT JUDGE**