UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CASE NO.: **CV 17-01229 SJO (JCx)** **DATE: April 5, 2017**

TITLE: **Cox v. R.J. Reynolds Tobacco Co., Inc. et al.**

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PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

Victor Paul Cruz
Courtroom Clerk

Not Present
Court Reporter

COUNSEL PRESENT FOR PLAINTIFF:

Not Present

COUNSEL PRESENT FOR DEFENDANTS:

Not Present

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PROCEEDINGS (in chambers): ORDER DENYING PLAINTIFF'S MOTION FOR AN ORDER TO REMAND THIS CASE TO STATE COURT [Docket No. 31]

This matter is before the Court on Plaintiff Timothy Cox's ("Plaintiff") Motion for an Order to Remand this Case to State Court ("Motion"), filed March 13, 2017. Defendants R.J. Reynolds Tobacco Company ("RJRT"), Reynolds American, Inc. ("RAI"), Staci Meyer ("Meyer"), and Tasha Kolbe ("Kolbe") (collectively, "Defendants") opposed the Motion ("Opposition") on March 27, 2017, and Plaintiff replied ("Reply") on April 3, 2017. The Court found this matter suitable for disposition without oral argument and vacated the hearing set for April 17, 2017. *See* Fed. R. Civ. P. 78(b). For the following reasons, the Court **DENIES** Plaintiff's Motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

On December 22, 2016, Plaintiff filed a Complaint for Damages, Injunctive Relief, and Restitution ("Complaint") in the Superior Court of the State of California for the County of Los Angeles, asserting twenty (20) causes of action against Defendants. (*See* Notice of Removal, Ex. A-1 at 2, ECF No. 1.) On December 27, 2016, Plaintiff filed a First Amended Complaint for Damages, Injunctive Relief, and Restitution ("FAC") in state court, asserting twenty-one (21) causes of action against Defendants. (*See* Notice of Removal, Ex. A-1 at 60.) Although the majority of these causes of action arise under state law, the sixth, seventh, and eighth arise under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.* (*See* FAC ¶¶ 128-150.)

RAI removed to this Court on February 15, 2017, and RJRT, Meyer, and Kolbe joined in the removal. (*See* Notice of Removal ¶¶ 2-3.) In their Notice of Removal, Defendants make the following averments regarding when they were served with copies of the pleadings: (1) RAI was served with both the Complaint and FAC on January 17, 2017; (2) RJRT was served with the Complaint and FAC on December 28, 2016; (3) Meyer was served with the Complaint and FAC on December 30, 2016; and (4) Kolbe was served with the Complaint and FAC on January 24, 2017. (Notice of Removal ¶ 2.) Defendants also submit that they filed a Joint Answer to the FAC on January 27, 2017. (Notice of Removal ¶ 4, Ex. A-2.)

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Attached to the Notice of Removal are a number of exhibits that detail when service of process was effectuated upon Defendants. Exhibit A-2 contains a "Notice of Service of Process" created by Corporation Service Company ("CSC"), which provides that summons and the pleadings were personally served on CSC, on behalf of **RJRT**, on **December 28, 2016**, and further states that service on RJRT was "processed" on December 30, 2016. (*See* Notice of Removal, Ex. A-2 at 13.) Exhibit A-3 contains copies of the summons and pleadings, and provides that **Meyer** was served with these documents on **December 30, 2016**. (*See* Notice of Removal, Ex. A-3 at 2.) Exhibit A-4 likewise contains a "Notice of Service of Process" created by CSC, which provides that summons and the pleadings were personally served on CSC, on behalf of **RAI**, on **January 17, 2017**, and further states that service on RAI was "processed" on January 18, 2017. (*See* Notice of Removal, Ex. A-4 at 2.) This Notice provides that the "Primary Contact" is Martin L. Holton of RJRT, and that electronic copies were provided to, among others, RAI. (Notice of Removal, Ex. A-4 at 2.) Finally, Exhibit A-5 details that an individual defendant received copies of the summons and pleadings on January 24, 2017—presumably this person is **Kolbe**. (*See* Notice of Removal, Ex. A-5 at 2.) Also on February 15, 2017, counsel for Defendants filed (1) a Notice of Interested Parties; (2) a Corporate Disclosure Statement for RJRT; and (3) a Corporate Disclosure Statement for RAI, submitting that RAI is a publicly traded corporation and that RJRT is "an indirect, wholly owned subsidiary of" RAI. (Notice of Interested Parties, ECF No. 3; *see also* Corporate Disclosure Statements, ECF Nos. 4-5.) On March 1, 2017, RAI and Kolbe filed an Amended Notice of Removal, which does not appear to be materially different from Defendants' initial Notice of Removal. (*See* Am. Notice of Removal, ECF No. 12.)

II. DISCUSSION

Perhaps because Plaintiff asserts three causes of action under Title VII in his FAC, he does not challenge whether this Court can properly exercise subject-matter jurisdiction over this action. (*See generally* Mot., ECF No. 31.) Instead, he argues that Defendants' removal was **untimely** for a bevy of reasons. Plaintiff primarily contends that because certain facts suggest that RAI and RJRT "are subject to such a degree of common ownership, control and management, in that each corporation was the agent of each other and each corporation authorized the same agent for service of process," the Court should treat the December 28, 2016 service of process upon CAC as agent for RJRT as tantamount to effectuating proper service upon RAI on this date. (*See* Mot. 7.) Plaintiff raises other challenges regarding the Amended Notice of Removal.

A. Legal Standards

28 U.S.C. § 1441(a) provides that, subject to certain exceptions not applicable here, "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a). Section 1446, which governs the procedure for removal of civil actions, provides that "[t]he notice of removal of a civil action or proceeding shall be **filed within 30 days** after the

receipt by the defendant, **through service or otherwise**, of a **copy of the initial pleading** setting forth the claim for relief upon which such action or proceeding is based, **or within 30 days after the service of summons** upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter." 28 U.S.C. § 1446(b)(1) (emphasis added). Section 1446 further provides that "[e]ach defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal." 28 U.S.C. § 1446(b)(2)(B). Moreover, "[i]f defendants are **served at different times**, and a **later-served defendant files** a notice of removal, any **earlier-served defendant may consent** to the removal even though that earlier-served defendant did not previously initiate or consent to removal." 28 U.S.C. § 1446(b)(2)(C) (emphasis added).

"A motion to remand challenges the propriety of an action's removal to federal court." *Viriyapanthu v. Am. Airlines*, No. CV 16-05761-AB (GJSx), 2016 WL 5842181, at *2 (C.D. Cal. Oct. 3, 2016) (citing 28 U.S.C. § 1447). "The Court may remand an action for lack of subject matter jurisdiction or for any defect in the removal procedure." *Id.* (citing 28 U.S.C. § 1447(c)). "Because federal courts are courts of limited jurisdiction, removal statutes are strictly construed, with any doubts resolved in favor of remand." *Id.* (citing *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941)). The removing party bears the burden of proving that removal was proper. *United Comput. Sys. v. AT&T Corp.*, 298 F.3d 756, 763 (9th Cir. 2002). Where a plaintiff asserts there are defects in the removal procedure, the defendant must establish that it followed the proper procedure for removal under Section 1446. *See* 28 U.S.C. §§ 1446(b)(1), (3).

B. Analysis

Plaintiff's Motion is predicated on a mistaken belief that because RJRT and RAI are related entities that use the same agent for service of process, the Court should treat RAI as being "served" on December 28, 2016, the day RJRT was served with copies of summons and the complaints. This theory finds no support in either law or logic, and as such, it must be rejected.

Before turning to the merits of the parties contentions, however, the Court cautions Plaintiff not to file pleadings in the future that either run afoul of the page limitations specified in this Court's Initial Standing Order ("ISO") or only comply with such limitations as a result of modification of either the font size or the margins. *See* L.R. 11-3.1.1 (detailing rules regarding font size). Plaintiff's Motion spans **twenty-four pages**, in direct violation of paragraph 24 of the ISO. (*See* ISO ¶ 24 ["All pleadings must comply with L.R. 11, except that no memorandum or points and authorities or opposition may exceed twenty pages, excluding indices and exhibits, unless permitted by the Court."], ECF No. 10.) Moreover, Plaintiff's Motion is difficult to read in light of the minuscule text used, in particular the text found in the myriad footnotes. Future failures to comply with this Court's procedural requirements may result in sanctions.

Turning to the merits, the Court concludes that Defendants have met their burden of demonstrating that service was effectuated upon RAI on January 17, 2017, and therefore RAI's removal is timely. "Service of process, under longstanding tradition in our system of justice, is fundamental to any procedural imposition on a named defendant." *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). Indeed, it is a "bedrock principal" that "[a]n individual or entity named as a defendant is not obliged to engage in litigation unless notified of the action, and brought under a court's authority, by formal process." *Id.* at 347. Accordingly, "a named defendant's **time to remove is triggered by simultaneous service** of the summons and complaint, or receipt of the complaint, 'through service or otherwise,' after and apart from service of the summons, but not by mere receipt of the complaint unattended by any formal service." *Id.* at 347-48 (emphasis added).

California law, which applies in this case, provides that "[a] summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served. Service of a summons in this manner is **deemed complete at the time of such delivery**." Cal. Code Civ. Proc. § 415.10 (emphasis added). This section goes on to provide that "[t]he **date** upon which personal delivery is made shall be **entered on or affixed to the face of the copy of the summons** at the time of its delivery. However, service of a summons without such date shall be valid and effective." *Id.* (emphasis added). California law also provides that "[i]n an action against a corporation . . ., the copy of the summons that is served shall contain a notice stating," among other things, "the name of the corporation" that is a party to the action. Cal. Code Civ. Proc. § 412.30. Finally, section 416.10 of the California Code of Civil Procedure details a list of methods for service on a corporation. *See* Cal. Code Civ. Proc. § 416.10 (providing that, among other things, service on a corporation can be accomplished by "delivering a copy of the summons and the complaint" to the "person designated as agent for service of process").

Here, Defendants have submitted uncontroverted evidence that on January 17, 2017, Plaintiff's attorney, Natalie Mirzayan, effectuated personal service upon "Reynolds American, Inc." pursuant to California Code of Civil Procedure section 416.10 by way of its agent for service of process, CSC. (*See* Notice of Removal, Ex. A-4 at 2-3.) Indeed, Plaintiff admits as much in his Motion. (*See* Mot. 3-4 ["[S]ervice was effectuated once gain on January 17, 2017 on CSC because it is the authorized designated agent for service of process for RAI . . ."].)[1] Although it is true that CSC's Notice of Service of Process indicates both that the "entity" is "R. J. Reynolds Tobacco

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[1] Plaintiff's references to RAI Trade Marketing Services Company are not only confusing, but irrelevant. RAI Trade Marketing Services Company is not and has never been a defendant in this action, and Plaintiff admits that this entity "is not the parent corporation" of RJRT. (Mot. 6.) Moreover, even if it were true that RAI is not registered to business in California, Plaintiff has failed to explain why such a fact would be of any consequence to the resolution of his Motion.

Company" and that the "primary contact" is Martin L. Holton of "R. J. Reynolds Tobacco Company," these similarities are of no moment. First, the fact that two related entities might share the same "primary contact" for the purpose of responding to litigation has no legal consequence, and Plaintiff cites to no authority indicating otherwise. Second, the "R. J. Reynolds Tobacco Company" listed as the "entity" in this Notice of Service of Process has a different Entity ID Number than the one listed in the December 30, 2016 Notice of Service of Process indicating that RJRT was served with process on December 28, 2016. (*Compare* Notice of Removal, Ex. A-4 at 2 [ID number 2270705]; *with See* Decl. Liat L. Yamini in Supp. Opp'n ("Yamini Decl."), Ex. A [ID number 0218032].) Given these unique Entity ID Numbers, the Court finds Plaintiff's argument that RAI and RJRT "cannot be properly considered different 'defendant[s]' within the meaning of Section 1446(b)(2)(B)" to be a weak one. (*Cf.* Mot. 10-11.)

The lone case Plaintiff cites on this point, *RCM International, LLC v. Alpental Energy Partners, LLC*, is inapposite. In that case, Alpental, after the thirty-day window to remove had closed, "transferred its ownership" of the relevant project "to its then-wholly-owned subsidiary, Blue Mountain Biogas LLC." No. 14-CV-04788 SC, 2014 WL 6844944, at *1 (N.D. Cal. Dec. 4, 2014). "[D]iscovery issues were significant" in the state court action, "and at first, RCM was unaware of the transfer of ownership or the existence of Blue Mountain Biogas **LLC**." *Id.* (emphasis in original). "Nonetheless, after learning of the transfer, RCM amended its complaint on October 7, 2014 to substitute Blue Mountain Biogas for one of the Doe entities named in the initial complaint." *Id.* Twenty-one days after the filing of this amended pleading, "Blue Mountain Biogas filed notice of removal on the grounds of diversity of citizenship." *Id.*

The district court determined that Blue Mountain Biogas lacked an independent right of removal "[b]ecause of Alpental's litigation conduct and Blue Mountain Biogas' close affiliation with Alpental[.]" *Id.* at *2. Indeed, the court found remand to be appropriate for three reasons, only one of which is partially at play here:

> First, because of Alpental's **litigation behavior** and its **close relationship** with Blue Mountain Biogas, construing Section 1446(b)(2)(B) to grant Blue Mountain Biogas an independent right of removal would be incompatible with any of the statute's underlying purposes and the Ninth Circuit's directive to construe the removal statutes strictly against removal. . . . Second, construing removal as timely despite these connections would also undermine the purpose of Section 1446(b)(1), by granting "the defendant of the **undeserved tactical advantage** . . . [of] wait[ing] [to] see how he was faring in state court before deciding whether to remove the case to another court. . . ." **Third**, denying remand would ignore the **advanced state of the Underlying Action**, and circumvent, if not fully undermine a **pending sanctions motion** in state court.

Id. at *4 (emphasis added) (citations omitted). Tellingly, Plaintiff fails to cite either the half of the first of these reasons concerning litigation conduct or the second or third reasons. (*Cf.* Mot. 11.)

Here, Plaintiff has failed to adduce any evidence that RAI attempted to evade service. Rather, Plaintiff's own pleadings make clear that he knew one or more Reynolds entities was organized under the laws of the State of North Carolina at the time he filed his initial Complaint, but did not discover that RAI was a North Carolina company until shortly before filing his FAC. (*Compare* Compl. ¶ 8; *with* FAC ¶ 8.) Perhaps this explains why Plaintiff's earlier attempts to serve RAI and Kolbe failed. (*Cf.* Mot. 3.) Furthermore, Plaintiff has not suggested, much less shown, that the underlying state court action had proceeded in any meaningful manner or that RAI's removal efforts were designed to "wait and see" how it was faring in state court before deciding whether to remove to another forum. As such, the Court finds the reasoning of *RCM* to be inapplicable in this case and concludes that RAI has an independent right to remove that triggered the date it was formally served with process.

In conclusion, RAI removed the instant action within thirty (30) days of being served with summons and the pleadings, and therefore its removal was timely under Section 1446(b).[2] The Court **DENIES** Plaintiff's Motion.

III. RULING

For the foregoing reasons, the Court **DENIES** Plaintiff Timothy Cox's Motion for an Order to Remand this Case to State Court.

IT IS SO ORDERED.

[2] Because the Court concludes that RAI's removal was timely, it need not address the remainder of Plaintiff's arguments concerning Kolbe and the Amended Notice of Removal. Furthermore, because the Court denies Plaintiff's Motion, it need not consider his request for attorneys' fees.