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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SKYLER BISHIL,

Plaintiff,

v.

LBF TRAVEL INC., et al.,

Defendants.

Case No.: 2:22-cv-06059-MEMF-ASx

**ORDER GRANTING MOTION TO
REMAND [ECF NO. 9]**

Before the Court is the Motion to Remand filed by Plaintiff Skyler Bishil. ECF No. 9. For the reasons stated herein, the Court hereby GRANTS the Motion to Remand. The Court deems this matter appropriate for resolution without oral argument and vacates the hearing set for December 1, 2022. *See also* C.D. Cal. L.R. 7-15.

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1 **I. Background**

2 **A. Factual Background¹**

3 Defendants LBF Travel, Inc. (“LBF Travel”), LBF Travel Management Corp. (“LBF Travel
4 Management”), and Mondee, Inc. (“Mondee”) (collectively referred to as “Defendants”) do business
5 as SmartFares, a travel reservation service. Compl. ¶¶ 1, 4. On November 1, 2021, Plaintiff Skyler
6 Bishil (“Bishil”) called SmartFares and booked airline tickets for himself and a companion to
7 Mexico City. *Id.* ¶ 8. Later that day, Bishil’s companion received a confirmation email for their
8 reservation. *Id.* ¶ 9. On November 2, 2021, however, Bishil received an email noting that his flight
9 reservation could not be confirmed. *Id.* ¶ 10. That day, SmartFares charged Bishil’s Visa Debit Card
10 \$884.57. *Id.* ¶ 11. Bishil contacted SmartFares’s customer service by telephone within SmartFare’s
11 24-hour cancellation period and requested a cancellation of his reservation and a refund for the
12 reservation that SmartFares was unable to confirm. *Id.* ¶ 12. A SmartFares representative informed
13 Bishil that a full refund would be issued within fifteen business days. *Id.* However, Bishil did not
14 receive any refund within fifteen business days. *Id.* Bishil has made further attempts to obtain a
15 refund and was again told that he would receive a refund within fifteen business days but has not yet
16 done so. *Id.* ¶ 13.

17 **B. Procedural History**

18 On June 21, 2021, Bishil filed a complaint against Defendants, alleging: (1) violation of the
19 Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961, *et seq.*; (2)
20 violation of unfair competition law, CAL. BUS. & PROF. CODE § 17200, *et seq.*; (3) violation of false
21 advertising law, CAL. BUS. & PROF. CODE § 17500, *et seq.*; (4) violation of Consumer Legal
22 Remedies Act, CAL. CIV. CODE § 1770(a)(3)(5)(9); and (5) unjust enrichment. *See generally* Compl.
23 On June 22, 2022, LBF Travel and Mondee were served via personal service. ECF Nos. 1-12, 1-16.
24 That same day, service of the summons and complaint was originally attempted on LBF Travel
25 Management by process server but was unsuccessful. ECF No. 9-1 (“Stevens Decl.”) ¶ 9.

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¹ Unless otherwise indicated, the following factual background is derived from the Complaint. Complaint, ECF No. 1-1 (“Compl.”).

1 On July 6, 2022, Timothy K. Branson, counsel for Defendants, informed counsel for Bishil
2 that he had been retained to represent LBF Travel in this matter. *Id.* ¶ 10. On July 12, 2022, Branson
3 informed counsel for Bishil that he had been retained to represent LBF Travel *and* LBF Travel
4 Management but that whether he would also represent Mondee was still to be decided. *Id.* ¶ 12. On
5 July 13, 2022, Bishil mailed and emailed a Notice and Acknowledgment of Receipt of Summons and
6 Complaint for LBF Travel Management to Branson and requested he execute and return the Notice
7 and Acknowledgment. *Id.* ¶ 13. On July 14, 2022, Bishil again attempted to personally serve LBF
8 Travel Management by process server. *Id.* ¶ 14. On July 15, 2022, he received a proof of service on
9 LBF Travel Management, which noted that it had been served to “Michael H. Thomas—person
10 authorized to accept service of process,” via substituted service to “Linda Taylor – Agent – Person in
11 Charge of Office” on July 14, 2022. *Id.* ¶ 15. The service of the summons and complaint were served
12 at LBF Travel Management’s registered “Principal Address” in San Diego, CA. *Id.* Also on July 15,
13 2022, Bishil mailed copies of the summons and complaint to Michael H. Thomas. *Id.* On July 18,
14 2022, Bishil filed and served the proof of service on LBF Travel management. *Id.* ¶ 16.

15 On August 5, 2022, Branson returned the Notice and Acknowledgment of Receipt of
16 Summons and Complaint, with an executed date of August 2, 2022. *Id.* ¶ 19. Branson added LBF
17 Travel and Mondee to the Notice and Acknowledgment. *Id.*

18 On August 26, 2022, LBF Travel Management removed this case to federal court. ECF No.
19 1. On September 8, 2022, Bishil filed the instant Motion to Remand. ECF No. 9 (“Motion” or
20 “Mot.”). The Motion was fully briefed on September 22, 2022. ECF Nos. 10 (“Opp’n”), 11
21 (“Reply”). On December 1, 2022, the Court held oral argument on this matter.

22 **II. Applicable Law**

23 **A. Motion to Remand**

24 The “[f]ederal courts are courts of limited jurisdiction.” *Corral v. Select Portfolio Servicing,*
25 *Inc.*, 878 F.3d 770, 773 (9th Cir. 2017) (internal quotation marks omitted). Civil actions may be
26 removed from state court if the federal court has original jurisdiction. *See Syngenta Crop Prot., Inc.*
27 *v. Henson*, 537 U.S. 28, 33 (2002) (“Under the plain terms of § 1441(a), in order properly to remove
28 an action pursuant to that provision, . . . original subject-matter jurisdiction must lie in the federal

1 courts.” (cleaned up)). Under 28 U.S.C. § 1446(b), “[t]he notice of removal of a civil action or
2 proceeding shall be filed within 30 days after the receipt by the defendant, through service or
3 otherwise, of a copy of the initial pleading.” 28 U.S.C. § 1446(b). The time to remove is not
4 triggered until the effective date of legally valid service. *Murphy Bros., Inc. v. Michetti Pipe*
5 *Stringing, Inc.*, 526 U.S. 344, 347–48 (1999). The Ninth Circuit has recognized this statutory
6 removal deadline as “imperative and mandatory, must be strictly complied with, and is to be
7 narrowly construed.” *United States ex rel. Walker v. Gunn*, 511 F.2d 1024, 1026 (9th Cir. 1975).

8 **B. Service of Process**

9 The Federal Rules allow for service of process by “following state law for serving a
10 summons . . . in the state where the district court is located or where service is made.” FED. R. CIV.
11 P. 4(e)(1). Under California law, a corporation may be served by delivering a copy of the summons
12 and the complaint to, among others, the person designated as agent for service of process. CAL. CIV.
13 PROC. CODE § 416.10(a). However, the California Code of Civil Procedure authorizes substitute
14 service of process in lieu of personal delivery. *Hearn v. Howard*, 99 Cal. Rptr. 3d 642, 650 (Ct. App.
15 2009) (quoting *Ellard v. Conway*, 114 Cal. Rptr. 2d 399 (Ct. App. 2001)). “Statutes governing
16 substitute service shall be ‘liberally construed to effectuate service and uphold jurisdiction if actual
17 notice has been received by the defendant.’” *Id.* California Code of Civil Procedure § 415.20 governs
18 substituted service. This section provides:

19 **In lieu of personal delivery of a copy of the summons and complaint to the person**
20 **to be served as specified in Section 416.10, 416.20, 416.30, 416.40, or 416.50, a**
21 **summons may be served by leaving a copy of the summons and complaint during**
22 **usual office hours in his or her office or, if no physical address is known, at his or her**
23 **usual mailing address, other than a United States Postal Service post office box, with**
24 **the person who is apparently in charge thereof, and by thereafter mailing a copy**
25 **of the summons and complaint by first-class mail, postage prepaid to the person**
26 **to be served at the place where a copy of the summons and complaint were left.**

27 CAL. CIV. PROC. CODE § 415.20(a). If a defendant is served by substitute service, “[s]ervice of a
28 summons in this manner is deemed complete on the 10th day after the mailing.” *Id.*

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1 **III. Discussion**

2 Bishil requests that the Court grant his Motion to Remand because LBF’s removal was
3 untimely, as service on LBF Management was effective as of July 15, 2022, and the deadline to
4 remove—August 24, 2022—lapsed before LBF Management filed for removal. Mot. at 4–6. LBF
5 Management contends the Court should deny the Motion to Remand because: (1) Bishil’s attempted
6 substitute service was defective; and (2) LBF Management’s removal was timely. Opp’n at 2–5.

7 **A. Bishil’s attempted substitute service was proper.**

8 Bishil argues that service on LBF Management was effective as of July 15, 2022, through
9 service to Michael H. Thomas, the person authorized to accept service of process, via substituted
10 service to Linda Taylor (“Taylor”), the person in charge of the office that day. Mot. at 4–5.
11 Defendants argue that Bishil’s attempted substitute service was defective because Bishil provided no
12 evidence of diligent attempts of personal service prior to substituted service in his motion. Opp’n at
13 5.

14 As an initial matter, both parties appear to agree that Thomas was the person authorized to
15 accept service of process on behalf of LBF Management. According to Bishil, he effected substitute
16 service via Taylor, the individual in charge of the office that day, during usual office hours at
17 Thomas’s office. The next day, Bishil mailed copies of the summons and complaint to Thomas. As a
18 result, Bishil’s attempted substitute service appears to be proper and in compliance with CAL. CIV.
19 PROC. CODE § 415.20(a). Contrary to LBF Management’s insistence that failure to demonstrate
20 “reasonable diligence” in attempting personal service prior to substitute service renders Bishil’s
21 service defective, no such requirement exists for effecting service on corporate entities.

22 Although CAL. CIV. PROC. CODE § 415.20(b) allows for substituted service “[i]f a copy of the
23 summons and complaint cannot with *reasonable diligence* be personally delivered to the person to
24 be served,” this provision is limited only to individual defendants who are natural persons. CAL. CIV.
25 PROC. CODE § 415.20(b) (citing CAL. CIV. PROC. CODE §§ 416.60 (minors), 416.70 (wards and
26 conservatees), 416.80 (political candidates), 416.90 (persons not otherwise specified)). Indeed, the
27 California Court of Appeal has distinguished Section 415.20(b) from 415.20(a), explicitly noting
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1 that subdivision (a) is “applicable to corporations and . . . does *not* require due diligence.” *Earl W.*
2 *Schott, Inc. v. Kalar*, 24 Cal. Rptr. 2d 580, 581 (Ct. App. 1993).

3 The Court therefore finds that substituted service on LBF Management under CAL. CIV.
4 PROC. CODE § 415.20 was proper and effective as of July 15, 2022.²

5 **B. LBF Management’s removal was untimely.**

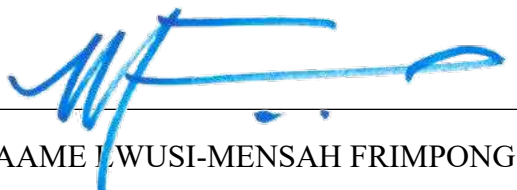
6 As discussed previously, substitute service of a summons is deemed complete on the *tenth*
7 *day* after the plaintiff mails a copy of the summons and complaint, by first-class mail, postage
8 prepaid to the person to be served at the place where a copy of the summons and complaint were left.
9 CAL. CIV. PROC. CODE § 415.20. A case must then be removed within thirty days of the date service
10 is completed. 28 U.S.C. § 1446(b). Here, Bishil mailed a copy of the summons and complaint to
11 Thomas, the person to be served, at his office on July 15, 2022. As a result, service was deemed
12 complete on July 25, 2022. LBF Management’s deadline to remove the case was therefore August
13 24, 2022—thirty days after service was deemed complete. However, LBF Management waited until
14 August 26, 2022, to remove the case—missing the deadline by two days. As a result, the Court finds
15 that LBF Management’s removal was untimely. Because the statutory removal deadline is
16 “imperative and mandatory, must be strictly complied with, and is to be narrowly construed,” *Gunn*,
17 511 F.2d at 1026, the Court hereby GRANTS the Motion to Remand.

18 **IV. Conclusion**

19 For the foregoing reasons, the Court hereby GRANTS the Motion to Remand.

20 IT IS SO ORDERED.

21 Dated: November 28, 2022

22 
23 MAAME J. WUSI-MENSAH FRIMPONG
24 United States District Judge

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27 ² Because the Court finds that Bishil’s substitute service was effective, the Court need not consider LBF
28 Management’s additional arguments that Bishil made several attempts to personally serve LBF Management
prior to substitute service, that LBF Management had constructive notice of the action 65 days before
removal, or that the matter qualifies for the local controversy and homestate exception. Mot. at 6–8.