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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ATALIE DANIEL,

Plaintiff,

v.

M-I, LLC, a.k.a. M-I SWACO, A
SCHLUMBERGER COMPANY; TIM
O'NEIL; FREEPORT-MCMORAN,
INC, formerly known as PXP
OIL; KENAI DRILLING LTD.;
OCCIDENTAL PETROLEUM
CORPORATION; CALIFORNIA
RESOURCES CORPORATION,

Defendants.

No. 1:15-cv-00746-GEB-JLT

REMAND ORDER

16 Plaintiff moves to remand this action to the state
17 court from which Defendant M-I LLC ("M-I") removed it, arguing,
18 *inter alia*, "Plaintiff filed a First Amended Complaint [(the
19 "FAC")] naming four new parties prior to [M-I]'s Notice of
20 Removal [{"NOR"}]" (Pl.'s Remand Mot. ("Mot.") 2:10-11,
21 ECF No. 31.)¹ However, Plaintiff conversely asserts she filed the
22 FAC in state court *after* M-I filed its NOR. (Mot. 7:15-21.) The
23 filing date is significant, because complete diversity must exist
24 both when the action is filed in state court and when it is
25 removed. Strotek Corp. v. Air Transp. Ass'n of Am., 300 F.3d
26 1129, 1131 (9th Cir. 2002) (citations omitted).

27 ¹ The four new parties are Freeport-McMoRan Inc., Kenai Drilling Limited,
28 Occidental Petroleum Corporation, and California Resources Corporation
(collectively, the "new Defendants"). (FAC 1, ECF No. 6.)

1 (2010). Moreover, “[t]he removal statute is strictly construed,
2 and any doubt about the right of removal requires resolution in
3 favor of remand.” Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d
4 1241, 1244 (9th Cir. 2009) (citing Gaus, 980 F.2d at 566); see
5 also 28 U.S.C. § 1447(c) (“If at any time before final judgment
6 it appears that the district court lacks subject matter
7 jurisdiction, the case shall be remanded.”).

8 II. DISCUSSION

9 The parties assume the original Complaint, filed in
10 state court on March 30, 2015, (NOR Ex. A-1, ECF No. 1-2), is the
11 operative complaint. In her Motion to Remand, Plaintiff discusses
12 the procedural timeline in state court and asserts she filed the
13 FAC in state court on May 20, 2015, after M-I filed its NOR on
14 May 14, 2015. (Mot. 7:15-21.) Unsurprisingly, M-I responds “it is
15 undisputed that only one [c]omplaint had been filed in state
16 court [and] [i]t was not until after M-I removed the case
17 that Plaintiff filed the [FAC].” (Def.’s Opp’n to Mot. (“Opp’n”)
18 4:13-24, ECF No. 37.)

19 To determine whether the original Complaint or the FAC
20 controls in this motion, the Court *sua sponte* takes judicial
21 notice of the FAC filed in state court, (Mot. Ex. C, ECF No. 31-
22 3), and the amended proof of service of summons (the “Amended
23 Summons”), (Mot. Ex. G, ECF No. 31-7), which Plaintiff has
24 attached as exhibits to her Motion to Remand. The Court may take
25 judicial notice of these exhibits, since the FAC filed in state
26 court and the Amended Summons are publicly filed documents in
27 another court. See Reyn’s Pasta Bella, LLC v. Visa USA, Inc., 442
28 F.3d 741, 746 (9th Cir. 2006) (“We may take judicial notice of

1 court filings and other matters of public record."); see also
2 Bank of New York Mellon v. Hong Xuan Vo, No. 14-CV-05110-LHK,
3 2015 WL 662221, at *1 n.1 (N.D. Cal. Feb. 12, 2015) (taking
4 judicial notice of plaintiff's state court complaint and the
5 proofs of service of the summons and complaint, on a motion to
6 remand).

7 These exhibits establish that the FAC controls in this
8 motion, since Plaintiff filed the FAC in state court before M-I
9 filed its NOR. Specifically, the FAC filed in state court is
10 filed-stamped in the Superior Court of California, County of
11 Kern, on May 8, 2015. (Mot. Ex. C.) Although Plaintiff asserts
12 she filed the FAC in state court on May 20, 2015, (Mot. 7:20-21),
13 the record shows that the state court received the Amended
14 Summons, and not the FAC, on that date. (Mot. Ex. G.) Since
15 Plaintiff filed the FAC in state court on May 8, 2015, before M-I
16 filed its NOR on May 14, 2015, the FAC is the operative
17 complaint. Thus, as pertinent here, it must be determined whether
18 complete diversity existed when Plaintiff filed the FAC in state
19 court and when M-I removed the case to federal court. See
20 Strotek, 300 F.3d at 1131.

21 Title 28 U.S.C. § 1446(a) requires, *inter alia*, that a
22 notice of removal "contain[] a short and plain statement of the
23 grounds for removal" which entitle the petitioning party to
24 remove the case. Here, M-I's NOR is deficient because it has not
25 alleged or addressed the citizenship of the new Defendants.
26 Instead, its NOR is based on an inoperative complaint, the
27 original Complaint. Therefore, M-I has not met its burden of
28 establishing complete diversity exists in this case.

1 The court may construe a removing party's "opposition
2 as an amendment to its notice of removal." Cohn v. Petsmart,
3 Inc., 281 F.3d 837, 840 n.1 (9th Cir. 2002) (citing Willingham v.
4 Morgan, 395 U.S. 402, 407 n.3 (1969) ("[I]t is proper to treat
5 the removal petition as if it had been amended to include the
6 relevant information contained in the later-filed affidavits.");
7 28 U.S.C. § 1653); Nat'l Union Fire Ins. Co. of Pittsburgh, PA v.
8 Tokio Marine & Nichido Fire Ins. Co., Ltd (U.S. Branch), No.
9 10CV1733 JLS CAB, 2010 WL 4072466, at *1 (S.D. Cal. Oct. 18,
10 2010) (citations omitted) ("The Court takes this proof [of
11 jurisdictional facts] from the notice of removal and may
12 also . . . construe the brief in opposition to the Motion to
13 Remand as an amendment to the Notice of Removal.").

14 But even if the court construes M-I's opposition as an
15 amendment to its NOR, no information in the opposition cures the
16 deficient NOR. In opposition, M-I acknowledges Defendants Kenai
17 Drilling Limited and California Resources Corporation are
18 possibly California citizens, but does not allege the citizenship
19 of the other two defendants. (Opp'n 13:1-4.) M-I further argues
20 this Court "should exercise its discretion under 28 U.S.C.
21 § 1447(e) to deny joinder." (Opp'n 12:21-24.) However, M-I's
22 argument is misplaced, since § 1447(e) applies when a plaintiff
23 seeks to join additional, non-diverse defendants *after* removal.
24 In contrast, the Plaintiff here joined the new Defendants before
25 removal. Therefore, M-I's opposition contains no additional,
26 relevant information needed to support diversity jurisdiction.

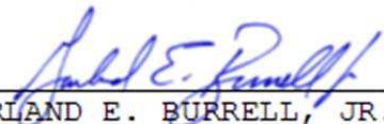
27 Moreover, in her Motion to Remand, Plaintiff argues,
28 *inter alia*, that Defendants Kenai Drilling Limited and California

1 Resources Corporation are both California citizens, and thus,
2 removal is improper. (Mot. 2:23-25.)² For purposes of diversity
3 jurisdiction, a corporation is a citizen of the state in which it
4 is incorporated and the state where it has its principal place of
5 business. 28 U.S.C. § 1332(c)(1). Further, a corporation's
6 principal place of business is the corporation's nerve center,
7 which is "usually its main headquarters" Hertz Corp., 559
8 U.S. at 93. Here, Plaintiff alleges in the FAC that Defendants
9 Kenai Drilling Limited and California Resources Corporation are
10 corporations headquartered in California (FAC ¶¶ 10-11);
11 therefore, Plaintiff alleges both defendants are, in part,
12 citizens of California. Plaintiff also alleges she is a citizen
13 of California. (FAC ¶ 4.) Thus, it appears from the face of the
14 FAC that complete diversity does not exist.

15 **III. CONCLUSION**

16 For the stated reasons, Plaintiff's Motion to Remand is
17 GRANTED, and this case is remanded to the Superior Court of
18 California, County of Kern.

19 Dated: September 30, 2015

20
21 
22 _____
23 GARIAND E. BURRELL, JR.
24 Senior United States District Judge
25

26 _____
27 ² Defendant Tim O'Neil also appears to be non-diverse, but in its NOR, M-I
28 argued that Plaintiff fraudulently joined Defendant O'Neil. (NOR ¶ 7.) The
court will not address this argument, since the presence of two other non-
diverse defendants shows this case lacks complete diversity.