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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

WILLIAM MCGUINN,  
  
Plaintiff,  
  
v.  
  
CITY OF SACRAMENTO POLICE  
DEPARTMENT; and DOES 1  
through 25, inclusive,  
  
Defendants.

No. 2:13-cv-00740-JAM-EFB

**ORDER DENYING PLAINTIFF'S MOTION  
TO REMAND AND FOR ATTORNEYS'  
FEES**

Pending before the Court is Plaintiff William McGuinn's ("Plaintiff") Motion to Remand and for Attorneys' Fees and Costs (Doc. #10).<sup>1</sup> Defendant City of Sacramento ("Defendant") opposes the motion (Doc. #13).

I. BACKGROUND

This lawsuit was originally filed in Sacramento County Superior Court. Plaintiff sued the City of Sacramento alleging violations of his civil rights under 42 U.S.C. § 1983. Defendant

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<sup>1</sup> The motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was originally scheduled for July 10, 2013.

1 then removed the action pursuant to 28 U.S.C. § 1441(b) claiming  
2 federal jurisdiction under 28 U.S.C. § 1331. Plaintiff now moves  
3 to remand arguing that removal was not timely as required by 28  
4 U.S.C. § 1446(b).

5 The parties do not dispute that on February 15, 2013  
6 Plaintiff delivered a copy of the summons and complaint to an  
7 employee of the Sacramento County District Attorney's Office and  
8 mailed those same documents to the Sacramento Police Department's  
9 Court Liaison Unit. Thurbon Decl. (Doc. #10-3), Ex.1. On March  
10 8, 2013, the City Attorney's Office wrote to Plaintiff's counsel  
11 claiming that service was improper. Thurborn Decl. Ex. 2.  
12 Plaintiff's counsel responded in writing on March 14, 2013  
13 stating that the District Attorney's Office had informed him that  
14 their office was the proper agent for service. Thurborn Decl.  
15 Ex. 4. Plaintiff's counsel stated that on March 14, 2013,  
16 pursuant to the City Attorney's instructions, his process server  
17 attempted to serve a copy of the summons and complaint to the  
18 City Clerk, who would not accept service and directed the process  
19 server to the Police Department. Thurborn Decl. ¶ 5. On March  
20 15, 2013 the City Attorney replied to Plaintiff's request to  
21 waive any alleged defects in service, stating that although  
22 service was improper they would waive their objection. Chapman  
23 Decl. (Doc. #10-3), Ex. 2. Defendant removed the action on April  
24 12, 2013.

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1 II. OPINION

2 A. Legal Standard

3 "Only state court actions that originally could have been  
4 filed in federal court may be removed to federal court by the  
5 defendant." Caterpillar, Inc. v. Williams, 482 U.S. 386, 392  
6 (1987) (citing 28 U.S.C. § 1441). The Ninth Circuit "strictly  
7 construe[s] the removal statute against removal jurisdiction."  
8 Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (citing  
9 Boggs v. Lewis, 863 F.2d 662, 663 (9th Cir. 1988); Takeda v.  
10 Northwestern National Life Insurance Co., 765 F.2d 815, 818 (9th  
11 Cir. 1985)). Thus, "[f]ederal jurisdiction must be rejected if  
12 there is any doubt as to the right of removal in the first  
13 instance." Id. (citing Libhart v. Santa Monica Dairy Co., 592  
14 F.2d 1062, 1064 (9th Cir. 1979)). "The 'strong presumption'  
15 against removal jurisdiction means that the defendant always has  
16 the burden of establishing that removal is proper." Id. (citing  
17 Nishimoto v. Federman-Bachrach & Associates, 903 F.2d 709, 712 n.  
18 3 (9th Cir. 1990); Emrich v. Touche Ross & Co., 846 F.2d 1190,  
19 1195 (9th Cir. 1988)).

20 Parties seeking to remove an action to federal court must  
21 file notice "within 30 days after the receipt by the defendant,  
22 through service or otherwise, of a copy of the initial pleading  
23 setting forth the claim for relief upon which such action or  
24 proceeding is based." 28 U.S.C. § 1446(b). "[A] named  
25 defendant's time to remove is triggered by simultaneous service  
26 of the summons and complaint, or receipt of the complaint,  
27 'through service or otherwise,' after and apart from service of  
28 the summons, but not by mere receipt of the complaint unattended

1 by any formal service.” Murphy Bros., Inc. v. Michetti Pipe  
2 Stringing, Inc., 526 U.S. 344, 348 (1999) (quoting 28 U.S.C.  
3 § 1446(b)). When service is improper the period to remove does  
4 not begin to run, regardless of whether defendant had actual  
5 notice of the action. Quality Loan Service Corp. v. 24702 Pallas  
6 Way, Mission Viejo, CA 92691, 635 F.3d 1128, 1133 (9th Cir.  
7 2011). Thus, “actual notice of the action is insufficient;  
8 rather, the defendant must be notified of the action, and brought  
9 under a court’s authority, by formal process, before the removal  
10 period begins to run.” Id.

11 B. Discussion

12 1. Motion to Remand

13 The parties do not dispute that the Court has subject matter  
14 jurisdiction over this action pursuant to 28 U.S.C. § 1331 by  
15 virtue of Plaintiff’s federal claim. The parties only dispute  
16 whether removal was timely under 28 U.S.C. § 1446(b). As removal  
17 occurred on April 12, 2013, the issue before the Court is whether  
18 service occurred within the 30 day period beginning on March 13,  
19 2013.

20 Plaintiff argues that he properly served Defendant on  
21 February 15, 2013 because the County District Attorney’s Office  
22 was a designated agent of Defendant and was authorized to accept  
23 service on Defendant’s behalf. Plaintiff also argues that even  
24 if the initial service attempt was invalid, valid service  
25 occurred when the District Attorney’s Office forwarded the  
26 complaint and summons to the City Attorney as evidenced by  
27 Defendant’s March 8, 2013 letter to Plaintiff. Finally,  
28 Plaintiff argues service was proper because Defendant waived any

1 defects. Defendant responds by asserting that service was not  
2 proper, and that the 30 day period to remove did not begin to run  
3 until Defendant waived its right to formal service on March 15,  
4 2013. Defendant argues that service was improper because  
5 Plaintiff was statutorily required to serve the City Clerk and  
6 Plaintiff failed to do so.

7 As suit was filed in state court, state law governs when  
8 effective service occurred. Walker v. Armco Steel Corp., 446  
9 U.S. 740, 752 (1980). In California, a court obtains  
10 jurisdiction over a party "from the time the summons is served  
11 upon him . . . ." Cal. Civ. Proc. Code § 410.50. "A summons may  
12 be served on a public entity by delivering a copy of the summons  
13 and of the complaint to the clerk, secretary, president,  
14 presiding officer, or other head of its governing body." Cal.  
15 Civ. Proc. Code § 416.50(a). The City is a public entity. Cal.  
16 Civ. Proc. Code § 416.50(b). A summons may be served by personal  
17 delivery of a copy of the summons and of the complaint to the  
18 party to be served and is deemed complete at the time of such  
19 delivery. Cal. Civ. Proc. Code § 415.10. A summons may be  
20 served by any person over the age of eighteen that is not a party  
21 to the action. Cal. Civ. Proc. Code § 414.10. A summons may  
22 also be served by leaving a copy of the summons and complaint at  
23 the party's office that is to be served, and by thereafter  
24 mailing a copy of the summons and complaint to that party by  
25 first class mail. Cal. Civ. Proc. Code § 415.20. Service in  
26 this manner is deemed complete on the tenth day after mailing.  
27 Cal. Civ. Proc. Code § 415.20.

1 Plaintiff's argument that valid service of process took  
2 place on February 15, 2013 is not persuasive. The District  
3 Attorney's Office is plainly not authorized to receive service on  
4 Defendant's behalf. Cal. Civ. Proc. Code § 416.50(a). As the  
5 County District Attorney's Office was not authorized to receive  
6 service on behalf of Defendant, the 30 day period to remove did  
7 not begin on February 15, 2013. Plaintiff's attempt to serve  
8 Defendant by mailing the summons and complaint to the Sacramento  
9 Police Department is invalid for the same reason; the Police  
10 Department is not authorized to accept service on Defendant's  
11 behalf. Cal. Civ. Proc. Code § 416.50(a).

12 Plaintiff's second argument, that service was complete when  
13 the City Attorney received the summons and complaint at some time  
14 prior to March 8, 2013, is similarly unpersuasive because the  
15 City Attorney is not a city-authorized agent for service of  
16 process. Cal. Civ. Proc. Code § 416.50(a). The City Attorney's  
17 Office is a separate office from the City Clerk's Office and the  
18 fact that the City Attorney's Office eventually possessed the  
19 summons does not establish that Defendant had been properly  
20 served. It is irrelevant in the absence of formal service that  
21 Defendant had notice of the action. Quality Loan, 635 F.3d at  
22 1133.

23 The Court is also not persuaded that removal was untimely  
24 because Defendant eventually waived its right to formal service.  
25 Defendant's waiver does not make Plaintiff's earlier invalid  
26 attempts at service suddenly valid. Those faulty attempts at  
27 service did not bring Defendant under the formal authority of the  
28 state court as is required to begin the 30 day period for

1 removal. Murphy Bros., 526 U.S. at 347. The Court therefore  
2 finds that Defendant was formally served on March 15, 2013 when  
3 it explicitly waived its right to formal service.

4 Defendant was brought under the formal authority of the  
5 state court on March 15, 2013 and removal on April 12, 2013 was  
6 therefore timely. Accordingly, Plaintiff's motion to remand is  
7 denied.

8 2. Plaintiff's Attorneys' Fees

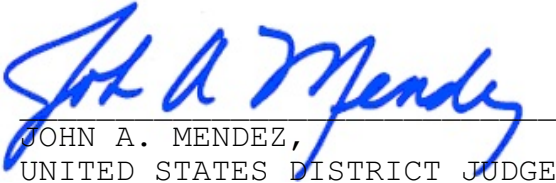
9 Defendant's notice of removal was timely and otherwise  
10 proper. Thus, Plaintiff is not entitled to attorneys' fees under  
11 28 U.S.C. § 1447(c).

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13 III. ORDER

14 For the reasons stated above, Plaintiff's Motion to Remand  
15 and for Attorneys' Fees is DENIED.

16 IT IS SO ORDERED.

17 Dated: July 18, 2013

  
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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE

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