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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD STAFFORD,

Plaintiff,

v.

DOLLAR TREE STORES, INC., and
DOES 1–50, inclusive,

Defendants.

No. 2:14-cv-01465-KJM-CKD

ORDER

This matter is before the court on plaintiff Richard Stafford’s (“plaintiff”) Motion to Remand this case to the Solano County Superior Court. (Pl.’s Mot. Remand (“Mot.”), ECF No. 16-1.) Defendant Dollar Tree Stores, Inc. (“defendant”) opposes the motion. (Def.’s Opp’n (“Opp’n”), ECF No. 23.) The motion was submitted without argument, and the court now GRANTS the motion.

I. BACKGROUND

On May 7, 2014, plaintiff filed a putative wage and hour class action in the Solano County Superior Court. (Norton Decl. Ex. A, Complaint, ECF No. 2-1.) On May 19, 2014, plaintiff, using a professional process server, served the complaint on defendant through defendant’s agent for service of process. (July 14 Declaration of Brian Short (“Short July Decl.”) Ex. A, Proof of Service of Summons, ECF No. 16-2.) The process server indicated service was effected by “substitute service” on the proof of service of summons form. (*Id.*) Notwithstanding

1 the process server's characterization, defendant acknowledged personal service in a July 3, 2014
2 letter to plaintiff's counsel. (Sept. 19 Declaration of Brian Short ("Short Sept. Decl.") Ex. 5,
3 Def.'s July 3, 2014 Letter to Pl.'s Counsel, ECF No. 28-1 ("Dollar Tree's agent for service of
4 process notified Dollar Tree that personal service had been effected the day before Dollar
5 Tree may rely on the date its agent provided notice that the summons and complaint had been
6 personally served.")).

7 Defendant removed the action to this court on June 19, 2014, invoking the court's
8 diversity jurisdiction under 28 U.S.C. § 1332(d). (Def.'s Notice of Removal, ECF No. 1.) In
9 notifying defendant of plaintiff's complaint, defendant's agent for service erroneously indicated
10 service occurred on May 20, 2014, with an answer deadline of June 19, 2014. (Norton Decl. Ex.
11 A, Service of Process Notice, ECF No. 2-1.) The service of process notice explicitly stated that it
12 was defendant's sole responsibility to verify the accuracy of the information in the notice. (*Id.*)

13 On July 14, 2014, plaintiff filed the instant motion to remand. (Mot., ECF No. 16-
14 1.) Defendant filed its opposition on September 11, 2014 (Opp'n, ECF No. 23), and plaintiff
15 replied on September 19, 2014 (Pl.'s Reply, ECF No. 28). In addition, on September 19, 2014,
16 plaintiff filed an amended proof of summons of service with the Solano County Superior Court,
17 clarifying that delivery of the complaint to defendant's agent on May 19, 2014 constituted
18 personal service. (Short Sept. Decl. Ex. 1, Am. Proof of Service of Summons, ECF No. 28-1.)
19 The court takes judicial notice of the docket filings and the amended proof of service filed with
20 the Solano County Superior Court. *See* Fed. R. Evid. 201; *Harris v. Cnty. of Orange*, 682 F.3d
21 1126, 1132 (9th Cir. 2012) ("We may take judicial notice of undisputed matters of public record,
22 including documents on file in federal or state courts." (internal quotations omitted)). The
23 amended proof of service provides defendant was served on May 19, 2014, and the manner of
24 service was personal.

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1 II. LEGAL STANDARD

2 Title 28 U.S.C. § 1446(b) governs the time period within which a civil action may
3 be removed. Section 1446(b)(1) provides, in pertinent part, as follows:

4 The notice of removal of a civil action or proceeding shall be filed
5 within 30 days after the receipt by the defendant, through service or
6 otherwise, of a copy of the initial pleading setting forth the claim
7 for relief upon which such action or proceeding is based, or within
8 30 days after the service of summons upon the defendant if such
9 initial pleading has then been filed in court and is not required to be
10 served on the defendant, whichever period is shorter.

11 The Supreme Court has explained that “a named defendant’s time to remove is
12 triggered by . . . receipt of the complaint, ‘through service or otherwise,’ after and apart from
13 service of the summons, but not by mere receipt of the complaint unattended by any formal
14 service.” *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347–48 (1999).
15 “Consequently, actual notice of the action is insufficient; rather, the defendant must be notified of
16 the action, and brought under a court’s authority, by formal process, before the removal period
17 begins to run.” *Quality Loan Serv. Corp. v. 24702 Pallas Way, Mission Viejo, CA 92691*, 635
18 F.3d 1128, 1133 (9th Cir. 2011) (citing *Murphy Bros.*, 526 U.S. at 347). Federal courts in this
19 circuit look to California state law to determine the sufficiency of service prior to removal. *Lee v.*
20 *City of Beaumont*, 12 F.3d 933, 937–38 (9th Cir. 1993), *overruled on other grounds by Cal. Dep’t*
21 *of Water Resources v. Powerex Corp.*, 533 F.3d 1087 (9th Cir. 2008); *see also Anderson v.*
22 *Allstate Ins. Co.*, 630 F.2d 677, 682 (9th Cir. 1980).

23 III. DISCUSSION

24 Plaintiff makes two principal arguments: first, plaintiff argues defendant’s removal
25 was untimely; and second, plaintiff argues the court does not have jurisdiction under the Class
26 Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1332(d). (*See generally* Mot., ECF No. 16-1.)
27 Because the court finds defendant’s removal untimely, the court need not address the parties’
28 CAFA arguments.

 The California Code of Civil Procedure provides multiple methods for a plaintiff
to serve a defendant corporation with a complaint. *See* Cal. Civ. Proc. Code § 416.10.
Depending on which method of service is used, a different event triggers the thirty-day timeline

1 for a defendant to remove the case to a federal court. If a plaintiff personally serves a defendant
2 corporation through its agent authorized to receive service of process, then the thirty-day
3 countdown begins when the complaint is delivered. *See id.* On the other hand, if service is
4 substitute service as defendant contends here, service of summons is not complete until ten days
5 after plaintiff mails the complaint to defendant. *Id.* § 415.20.

6 Section 416.10 of the California Code of Civil Procedure provides, in pertinent
7 part, “A summons may be served on a corporation by delivering a copy of the summons and the
8 complaint . . . (a) To the person designated as agent for service of process” Under California
9 law, “the provisions of § 416.10 are to be liberally construed.” *Pasadena Medi-Center Assocs. v.*
10 *Superior Court*, 9 Cal. 3d 773, 778 (1973). Further, “harmless deficiencies, such as the failure to
11 identify the person served, will not defeat service.” *Bein v. Brechtel-Jochim Group, Inc.*, 6 Cal.
12 App. 4th 1387, 1394 (1992).

13 Here, the court finds personal service occurred on May 19, 2014; thirty days after
14 this date expired on June 18, 2014. Defendant’s removal on June 19, 2014, was untimely.
15 Defendant contends personal service did not occur on May 19, 2014, and directs the court to the
16 Solano County Superior Court docket as evidence service was incomplete. (Opp’n at 6 n.9.) The
17 Solano County docket states only that substitute service was incomplete on May 19, 2014 because
18 the complaint was not mailed. (Def.’s Sept. 11 Req. for Judicial Notice, Ex. 5 Certified Copy of
19 Solano County Court Docket in Case Number FCS043461, ECF No. 24.) However, the Solano
20 County Court later updated the docket on September 19, 2014, to expressly state defendant was
21 personally served on May 19, 2014. (*See* the Solano County Court Docket in Case Number
22 FCS043461.)

23 In addition to the clarification in the Solano County docket, the circumstances also
24 support finding personal service occurred on May 19, 2014. On May 19, 2014, plaintiff’s process
25 server hand-delivered a copy of the complaint and summons to defendant’s designated agent in
26 accordance with section 416.10. (Short July Decl. Ex. A, Proof of Service of Summons, ECF No.
27 16-2.) Defendant acknowledged service was personal and not substituted in its July 3, 2014 letter
28 to plaintiff’s counsel. (Short Sept. Decl. Ex. 5, Def.’s July 3, 2014 Letter to Pl.’s Counsel, ECF

1 No. 28-1.) And it was defendant's responsibility to review the service of process to verify the
2 date and answer deadline indicated by defendant's agent.

3 Because defendant's time to remove expired on June 18, 2014, but defendant did
4 not remove the case until June 19, 2014, the removal is untimely. As noted above, the federal
5 statute provides for removal within the shortest time period applicable. 28 U.S.C. § 1446(b)(1).
6 There is no exception to the 30-day rule applicable to the instant case. While the statute does
7 provide if an original pleading is not removable, a subsequent amended pleading may be removed
8 within 30 days of receipt of the amendment, 28 U.S.C. § 1446(b)(3), this provision is inapplicable
9 because defendant does not identify any amended pleading that would have triggered this
10 exception. *See Parisi v. Mazzaferro*, No. 14-0759, 2014 WL 1230889, at *1 (N.D. Cal. Mar. 21,
11 2014); *Posey v. McKesson Corp.*, No. 12-05939, 2013 WL 361168, at *4 (N.D. Cal. Jan. 29,
12 2013) (exception to initial 30-day rule inapplicable because notice of removal did not "identify
13 any factual change . . . in the 30 days preceding the filing of [the] notice of removal . . .").

14 IV. CONCLUSION

15 For the foregoing reasons, plaintiff's motion to remand is GRANTED and the case
16 is remanded to the Solano County Superior Court.

17 IT IS SO ORDERED.

18 Dated: December 18, 2014.

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UNITED STATES DISTRICT JUDGE