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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CORE COMMUNICATION, INC., a  
Delaware corporation,  
  
Plaintiff,  
  
v.  
  
HENKELS & MCCOY, INC., a  
Pennsylvania corporation; and DOES 1  
through 50,  
  
Defendants.

No. 2:16-cv-02787-MCE-KJN

**MEMORANDUM AND ORDER**

On August 31, 2016, Plaintiff Core Communication, Inc. (“Plaintiff”) filed this action in state court on grounds that Defendant Henkels & McCoy, Inc. (“Defendant”) breached the terms of a construction subcontract agreement between the parties for work performed in Amador County, California. Defendant subsequently removed the case to this Court on November 23, 2016, citing diversity of citizenship pursuant to 28 U.S.C. § 1332. Plaintiff now moves to remand, arguing that this Court should abstain from exercising jurisdiction since the case presents only issues of state law. For the reasons set forth below, Plaintiff’s Motion is DENIED.<sup>1</sup>

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<sup>1</sup> Having concluded that oral argument was not of material assistance, the Court submitted this matter on the briefs in accordance with Local Rule 230(g).



1 has federal question jurisdiction in “all civil actions arising under the Constitution, laws,  
2 or treaties of the United States.” *Id.* § 1331. A district court has diversity jurisdiction  
3 “where the matter in controversy exceeds the sum or value of \$75,000, . . . and is  
4 between citizens of different states, or citizens of a State and citizens or subjects of a  
5 foreign state . . . .” *Id.* § 1332(a)(1)-(2).

6 A defendant may remove any civil action from state court to federal district court if  
7 the district court has original jurisdiction over the matter. 28 U.S.C. § 1441(a). “The  
8 party invoking the removal statute bears the burden of establishing federal jurisdiction.”  
9 *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1393 (9th Cir. 1988) (citing *Williams v.*  
10 *Caterpillar Tractor Co.*, 786 F.2d 928, 940 (9th Cir. 1986)). Courts “strictly construe the  
11 removal statute against removal jurisdiction.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566  
12 (9th Cir. 1992) (internal citations omitted). “[I]f there is any doubt as to the right of  
13 removal in the first instance,” the motion for remand must be granted. *Id.* Therefore, “[i]f  
14 at any time before final judgment it appears that the district court lacks subject matter  
15 jurisdiction, the case shall be remanded” to state court. 28 U.S.C. § 1447(c).

## 17 ANALYSIS

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19 In moving for remand, Plaintiff urges the Court to abstain from exercising diversity  
20 jurisdiction over this matter on grounds that the instant dispute is over payment for work  
21 that took place in Amador County, and that the dispute should be resolved in California  
22 courts since it involves the interpretation of California law and was initially filed in state  
23 court.<sup>3</sup>

24 Under diversity jurisdiction, however, as indicated above, a defendant is entitled  
25 to remove any case filed against it, provided that the defendant is not a citizen of the

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27 <sup>3</sup> While Plaintiff also ostensibly argues that Defendant is a “California contractor,” the Notice of  
28 Removal makes it clear that Defendant is a corporation formed under the state of Pennsylvania with its  
principal place of business located in Pennsylvania, which Defendant claims makes it a citizen of  
Pennsylvania for diversity purposes. Notice of Removal, ECF No. 1-1, 2:21-27.

1 state in which the action is brought and the amount in controversy exceeds \$75,000.  
2 See 28 U.S.C. § 1441(b)(2); 28 U.S.C. § 1332(a). Neither of these prerequisites for the  
3 exercise of diversity jurisdiction is disputed here.

4 Instead, as Defendant notes, Plaintiff in essence asks the Court to deny  
5 Defendant's right to a federal forum simply because Plaintiff's claims implicate state law  
6 issues and therefore, according to Plaintiff, a state court would consequently be better  
7 suited to adjudicate the parties' dispute. Plaintiff's arguments in favor of abstention on  
8 those grounds, however, lack merit.

9 Plaintiff initially argues, citing Burford v. Sun Oil Co., 319 U.S. 315, 327 (1943),  
10 that exercising federal jurisdiction here would precipitate needless conflict with state  
11 administrative procedures. According to Plaintiff, so-called Burford abstention is  
12 necessary in order to avoid disrupting "state efforts to establish a coherent policy with  
13 respect to a matter of substantial public concern." Colorado River Water Conservation  
14 Dist. v. United States, 424 U.S. 800, 814 (1976). Courts view abstention under this  
15 doctrine as appropriate so as to "avoid resolving difficult state law issues involving  
16 important public policies or avoid interfering with state efforts to maintain a coherent  
17 policy in an area of comprehensive regulation or administration." American Disposal  
18 Services., Inc. v. O'Brien, 839 F.2d 84, 87 (2d Cir. 1988).

19 Plaintiff summarily contends that its subcontract's compliance with state law, with  
20 respect to both its payment and venue provisions, "are issues subject to specific  
21 California statutory and regulatory schemes and involving complex state administrative  
22 processes." Pl.'s Mot., 5:17-22. Plaintiff fails to explain why this is so, and identifies no  
23 state proceeding, determination or order with which this Court could possibly interfere.  
24 Indeed, to the extent this lawsuit involves straightforward breach of contract claims, as  
25 well as a single cause of action involving California Code of Civil Procedure § 410.42, no  
26 difficult questions of state law appear to be present. It is beyond dispute that federal  
27 courts adjudicate such claims by way of their diversity jurisdiction on a routine basis.

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1 Plaintiff's second contention is equally unavailing. In that argument, Plaintiff cites  
2 so-called Younger abstention, which provides that a federal district court should abstain  
3 from hearing a federal case where that case interferes with ongoing state judicial  
4 proceedings. See Younger v. Harris, 401 U.S. 37, 40-41 (1971). Under Younger,  
5 abstention is appropriate when "(1) there are ongoing state proceedings that are judicial  
6 in nature; (2) the state proceedings implicate important state interests; and (3) the state  
7 proceedings afford an adequate opportunity to raise the federal claims." See, e.g.,  
8 Lazaridis v. Wehmer, 591 F.3d 666, 670 (3d Cir. 2010). Plaintiff makes the improbable  
9 argument that the underlying state case as it stood prior to removal satisfies the  
10 "ongoing" state proceeding, and again makes the unsubstantiated claim that "the state  
11 proceedings implicate important state interests with respect to the regulation of out of  
12 state contractors and public policy issues regarding the regulation of out of state  
13 contracts and the application of Code of Civ. Proc. § 410.42." Pl.'s Mot., 6:16-18. As an  
14 initial matter, the original state lawsuit cannot qualify as an ongoing state proceeding  
15 since that action was stayed once Defendant removed the lawsuit here.<sup>4</sup> Additionally,  
16 with respect to the regulation of out of state contractors, or the underlying contractual  
17 claims involved in this matter, Plaintiff has provided no explanation whatsoever as to  
18 why this Court is any less qualified to hear this matter than a state court and has offered  
19 no reason why this Court cannot properly apply California law in doing so, particularly  
20 since the issues here are neither novel nor difficult.

21 Abstention should be invoked only under narrow circumstances, and the Supreme  
22 Court has made it clear that federal courts must exercise their jurisdiction unless  
23 "exceptional" circumstances are present. See Sprint Communications, Inc. v. Jacobs,  
24 134 S. Ct. 584, 588 (2013). Deciding whether to abstain under such circumstances is a  
25 matter relegated to the Court's discretion. See Fireman's Fund Ins. Co. v.

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27 <sup>4</sup> Finding otherwise would invite Younger abstention in virtually any case removed from state court  
28 simply because the lawsuit had initially been commenced in state court. That sweeping contention cannot  
possibly comport with the caution with which abstention should be applied only in the most exceptional  
circumstances. See infra.

1 Quackenbush, 87 F.3d 290, 294 (9th Cir. 1996). Here, no such exceptional  
2 circumstances have been identified, and this Court determines that it must accordingly  
3 exercise the diversity jurisdiction with which it has been conferred. Plaintiff's request for  
4 remand therefore fails.<sup>5</sup>

5  
6 **CONCLUSION**

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8 Based on all the foregoing, Plaintiff's Motion to Remand (ECF No. 4) is DENIED.  
9 IT IS SO ORDERED.

10 Dated: June 29, 2017

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13 MORRISON C. ENGLAND, JR.  
14 UNITED STATES DISTRICT JUDGE

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<sup>5</sup> On a related matter, the Court also rejects any suggestion by Plaintiff that Defendant's very  
26 removal of the case to this Court avoids the venue protections offered by § 410.42. Plaintiff appears to  
27 argue that by so removing, Defendant subverts the provisions of the statute which voids any contract that  
28 purports to prevent a party from commencing "a proceeding or obtaining a judgment or other resolution in  
this state or the courts of this state." Code of Civ. P. § 410.42(a)(2); see Pl.'s Mot., 3: 23-25. First, this  
Court does sit within the State of California, and secondly, it is routinely required to apply California law in  
diversity cases in any event.