

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KIRKLAND CARR,

Plaintiff,

v.

CROWN EQUIPMENT CORP., et al.,

Defendants.

NO. C10-1607 TEH

ORDER DENYING MOTION
TO REMAND WITHOUT
PREJUDICE

This matter comes before the Court on a motion to remand filed by Plaintiff Kirkland Carr and noticed for hearing on June 21, 2010. Because it is clear from Carr’s moving papers that the motion must be denied, the Court hereby VACATES the briefing and hearing schedule and now DENIES Carr’s motion to remand without prejudice.

Defendant Crown Equipment Corporation (“Crown”) removed this case on the basis of diversity. Carr does not dispute that he is diverse from Crown, nor does he contend that the removal was otherwise improper. Instead, Carr seeks remand because he intends to name a California citizen as one of the sued Doe Defendants as soon as he learns the relevant individual’s name. See Carr Decl. ¶¶ 3-5 (discussing role of an unnamed Crown employee in allegedly causing Carr’s injuries). However, as Carr acknowledges, 28 U.S.C. § 1441 provides that, “[f]or purposes of removal . . . , the citizenship of defendants sued under fictitious names shall be disregarded.” Thus, until a non-diverse defendant is named, the Court has no basis to remand this case.

Once Carr learns the identity of the Crown employee he seeks to sue in this case, either through formal discovery or otherwise, he may file a motion seeking joinder of that individual. This Court has discretion to deny joinder of a diversity-destroying defendant or to grant joinder and remand this action. *Newcombe v. Adolf Coors Co.*, 157 F.3d 686,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

690-91 (9th Cir. 1998); 28 U.S.C. § 1447(e). The Court encourages the parties to meet and confer, prior to the initial case management conference on July 26, 2010, to see if they can reach agreement on whether joinder should be permitted and this case remanded.

IT IS SO ORDERED.

Dated: 05/25/10



THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT