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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DIANA LOPEZ,
Plaintiff,

No. C-11-5421 EMC

v.

**ORDER GRANTING DEFENDANT
AMCO'S APPLICATION FOR A
TEMPORARY RESTRAINING ORDER**

WHIRLPOOL CORPORATION, *et al.*,
Defendants.

(Docket No. 35)

I. INTRODUCTION

Defendant Amco seeks a temporary restraining order ("TRO") enjoining the Alameda Superior Court from proceeding with Plaintiff's case in state court. Defendant argues that the state court has allowed Plaintiff to proceed with her case, despite the fact that the case has been removed to federal court in this action. Plaintiff filed an amended complaint in state court on July 13, 2012, adding 911 Remediation and Servpro (parties this Court had previously denied leave to add in federal court), and also adding Amco to the state court action. Amco has already answered Plaintiff's complaint in federal court as of July 20, 2012, before it was served with Plaintiff's state court complaints on August 2, 2012.¹ There is no dispute that the amended state court complaint is in the *same action* as the case that has been removed to this Court (State Court Case No. RG11600794); Plaintiff did not file a new action.

¹ As the Court indicated on the record, the Court's prior order denying Plaintiff leave to amend her complaint in this action neglected to grant her request to substitute Defendant Amco for Defendant Nationwide. The Court now grants Plaintiff's request *nunc pro tunc*, and Defendant Amco is deemed properly named in this action in place of Defendant Nationwide.

1 Defendant states that the state court clerk, while acknowledging the removal, indicated that
2 the court would proceed with the case in light of Plaintiff’s amended complaint unless instructed
3 otherwise. Defendant therefore seeks a TRO because its responsive pleading is due in state court on
4 August 31, 2012. Plaintiff has received notice of the application, has filed a response, and appeared
5 at the hearing on the application.

6 Having considered the parties’ briefing and oral argument, and for the reasons set forth
7 below, the Court **GRANTS** Defendant Amco’s application for a TRO.

8 **II. DISCUSSION**

9 A. Legal Standard

10 The standard for issuing a temporary restraining order is essentially the same as that for
11 issuing a preliminary injunction. *See Beaty v. Brewer*, 649 F.3d 1071, 1072 (9th Cir. 2011), *cert.*
12 *denied*, 131 S. Ct. 2929 (2011). The moving party must demonstrate: (1) the moving party’s likely
13 success on the merits; (2) likely irreparable harm to the moving party in the absence of preliminary
14 relief; (3) the balance of equity tips in the moving party’s favor; and (4) that the injunction is in the
15 public interest. *Id.* (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). The
16 moving party bears the burden of persuasion, and must make a clear showing. *Winter*, 555 U.S. at
17 22.

18 B. Application

19 The Court finds that Amco has made a sufficient showing to justify entry of a TRO. First,
20 “the Supreme Court has held that the statute governing removal procedures, 28 U.S.C. § 1446,
21 provides express authorization to enjoin state proceedings in removed cases.” *Quackenbush v.*
22 *Allstate Ins. Co.*, 121 F.3d at 1378 (citing *Mitchum v. Foster*, 407 U.S. 225, 234 & n. 12 (1972)).

23 Section 1446(d) provides:

24 Promptly after the filing of such notice of removal of a civil action the
25 defendant or defendants shall give written notice thereof to all adverse
26 parties and shall file a copy of the notice with the clerk of such State
court, which shall effect the removal and the State court shall proceed
no further unless and until the case is remanded.

27 28 U.S.C. § 1446(d). Thus, “after removal, the jurisdiction of the state court absolutely ceases and
28 the state court has a duty not to proceed any further in the case. . . . Any subsequent proceedings in

1 Amco upon Plaintiff and the California Superior Court for the County of Alameda, Hon. Gail
2 Bereola. For good cause shown, the Court extends this TRO for 28 days. Fed. R. Civ. P. 65.

3 If the parties are unable to stipulate to the entry of a preliminary injunction, Plaintiff is
4 directed and required to appear before the Court, the undersigned Judge presiding, in the San
5 Francisco Courthouse, Courtroom 5, 17th Floor, located at 450 Golden Gate Avenue, San Francisco,
6 California on Friday, September 28, 2012, at 1:30 p.m., to show cause why the Superior Court
7 should not be subjected to a preliminary injunction enjoining it as prayed by AMCO's Motion for a
8 Preliminary Injunction. Docket No. 35, Ex. 3. Any opposition to the motion must be filed no later
9 than September 21, 2012. If the parties stipulate to the entry of a preliminary injunction, said
10 stipulation shall be filed no later than September 21, 2012.

11 This Order is without prejudice to Plaintiff's ability to file a separate action in state court
12 against 911 Remediation, Servpro, and/or Amco. If Plaintiff chooses to file an action against Amco
13 in state court, and if the parties are unable to stipulate to Amco's dismissal from this action as
14 Plaintiff has requested, Plaintiff may file a motion to dismiss Amco from the complaint and Amco's
15 counterclaims herein no later than 30 days from the date of this order.

16 As indicated at the hearing, there does not appear to be any reason why Plaintiff cannot elect
17 to prosecute the tort action against Whirlpool in federal court and pursue its claim regarding
18 insurance coverage and bad faith against Amco (and the failure to properly remediate by 911
19 Remediation and Servpro) in state court.

20 This order disposes of Docket No. 35.

21


22 IT IS SO ORDERED.

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Dated: September 4, 2012

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EDWARD M. CHEN
United States District Judge

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