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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

KARIN CUMMING,
Plaintiff,

v.

HARSHAD CHERUVATHUR
MOHAMED, et al.,
Defendants.

Case No. 14-cv-03455-BLF

**ORDER DENYING MOTION TO
REMAND TO STATE COURT**

[Re: ECF 18]

For the reasons discussed below, Plaintiff's motion to remand this action to state court is DENIED. The hearing scheduled for October 2, 2014, is VACATED. *See* Civ. L.R. 7-1(b).

I. BACKGROUND

Plaintiff filed the present action in state court on December 23, 2013, and served the complaint on Defendant Infosys on April 11, 2014. On May 29, Defendant Infosys served on Plaintiff three Requests for Admission aimed at establishing Federal jurisdiction under 28 U.S.C. § 1332(a). Defendant Infosys received Responses to its Requests for Admission on July 3 and removed the action to this court on July 30.

Plaintiff now moves this court to remand the action on the following bases:

- A. the citizenship of Defendants Mohamed, Dharan, Thekkiniyath, Gopinath, and Prem place the action outside this court's § 1332(a) jurisdiction;
- B. the citizenship of Defendant Infosys places the action outside this court's § 1332(a) jurisdiction; and
- C. the removal was not timely under 28 U.S.C. § 1446(b).

(ECF 18-2 pp. 4-5)

1 **II. LEGAL STANDARD**

2 **A. Removal Jurisdiction Under § 1441**

3 Generally, “any civil action brought in a State court of which the district courts of the
4 United States have original jurisdiction, may be removed by the defendant or the defendants, to
5 the district court of the United States for the district and division embracing the place where such
6 action is pending.” 28 U.S.C. § 1441. When seeking removal, a defendant “has the burden of
7 establishing that removal is proper.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). This
8 means, in the first instance, alleging facts adequate to support removal jurisdiction. *Id.* Where
9 those facts are properly challenged, or where the court has independent cause to doubt their
10 veracity, “the defendant bears the burden of actually proving the facts to support jurisdiction,” *id.*
11 at 567, and must do so by a preponderance of the evidence, *McNutt v. Gen. Motors Acceptance*
12 *Corp. of Indiana*, 298 U.S. 178, 189 (1936).

13 Defendant here is claiming jurisdiction under 28 U.S.C. § 1332(a)(3), which grants U.S.
14 district courts “original jurisdiction of all civil actions where the matter in controversy exceeds the
15 sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different
16 States and in which citizens or subjects of a foreign state are additional parties.” So Defendant
17 bears the burden of establishing that each of these requirements is met by a preponderance of the
18 evidence.

19 **B. Diversity Jurisdiction Under § 1332(a)(3)**

20 A U.S. citizen is a citizen of her state of domicile, *Gilbert v. David*, 235 U.S. 561, 569
21 (1915), while a corporation is a citizen of every State and foreign state by which it has been
22 incorporated and of the State or foreign state where it has its principal place of business. 28 U.S.C.
23 § 1332(c)(1). Until 1988, under § 1332(a), “in order to be a citizen of a state, it [was] elementary
24 law that one must first be a citizen of the United States.” *Kantor v. Wellesley Galleries, Ltd.*, 704
25 F.2d 1088, 1091 (9th Cir. 1983). In 1988, Congress amended § 1332(a), by adding what has been
26 called the “deeming clause”:

27 For the purposes of this section, section 1335, and section 1441, an
28 alien admitted to the United States for permanent residence shall be
 deemed a citizen of the State in which such alien is domiciled.
 PL 100–702 (HR 4807), November 19, 1988, 102 Stat 4642.

1 This clause had the effect of making some foreign nationals “citizens” of a state for purposes of
2 diversity jurisdiction. But in 2011, Congress once again amended § 1332(a), repealing the
3 deeming clause. Federal Courts Jurisdiction and Venue Clarification Act of 2011, PL 112-63,
4 December 7, 2011, 125 Stat 758. Thus, under current law, the domicile of a foreign national is
5 irrelevant for purposes of determining her citizenship under § 1332(a)(3).

6 **C. Removal Procedure Under § 1446**

7 “The notice of removal of a civil action or proceeding shall be filed within 30 days after
8 the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting
9 forth the claim for relief upon which such action or proceeding is based.” 28 U.S.C. § 1446(b)(1).
10 However, “if the case stated by the initial pleading is not removable, a notice of removal may be
11 filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an
12 amended pleading, motion, order or other paper from which it may first be ascertained that the
13 case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3).

14 **III. DISCUSSION**

15 **A. Original Jurisdiction**

16 The court understands the following facts to be undisputed:

- 17 • Plaintiff is a United States citizen domiciled in California, and is therefore a
18 California citizen for purposes of § 1332(a)(3) jurisdiction.
- 19 • Defendant Hertz is a corporation incorporated in the state of Delaware with its
20 principal place of business in Florida, and is therefore a Delaware citizen and a
21 Florida citizen for purposes of § 1332(a)(3) jurisdiction.

22 It is only the citizenship of Defendants Mohamed, Namboodiri, Dharan, Thekkiniyath,
23 Gopinath, and Prem and of Defendant Infosys that is in dispute.

24 With respect to Defendants Mohamed, Namboodiri, Dharan, Thekkiniyath, Gopinath, and
25 Prem, Infosys has presented competent evidence that all six defendants are Indian nationals. *See*
26 ECF 20, 24. Plaintiff does not contest the accuracy of this evidence, but rather objects that more
27 compelling evidence should have been produced instead. *See, e.g.*, ECF 23 ¶ 7 (faulting Infosys
28 for relying on its human resource files to establish the citizenship of its employees rather than on

1 sworn statements of the employees themselves).

2 While Defendant Infosys bears the burden of proving the factual assertions supporting
3 removal jurisdiction, it only must prove this assertion by a preponderance of the evidence. Not
4 only has Plaintiff failed to produce any evidence to discredit Infosys’s human resources files,
5 Plaintiff has bolstered Defendant Infosys’s evidence with her own allegations. *See, e.g.*, ECF 1-1
6 Ex. A (First Amended Complaint) (alleging that Defendants Mohamed, Namboodiri, Dharan,
7 Thekkiniyath, Gopinath, and Prem are “domiciliaries of the Republic of India, and were temporary
8 residents of Santa Clara County”). While sworn statements from each individual defendant might
9 have been more compelling evidence, this court is disinclined to dictate to parties what evidence
10 must be used to support various jurisdictional allegations so long as the proffered evidence is
11 admissible. Defendant Infosys has met its burden of showing by a preponderance of the evidence
12 that Defendants Mohamed, Namboodiri, Dharan, Thekkiniyath, Gopinath, and Prem are Indian
13 nationals. Therefore, for purposes of § 1332(a)(3), they are “citizens or subjects of a foreign state.”

14 With respect to the citizenship of Defendant Infosys, Infosys has presented competent
15 evidence that it is an Indian corporation. *See, e.g.*, ECF 1-2. Plaintiff does not contest this, but
16 rather invites this court to speculate that Infosys might have its principal place of business in
17 California, which would render Infosys non-diverse. In the absence of any evidence accompanying
18 this invitation, the court declines to so speculate. The only support provided by Plaintiff for this
19 allegation is the fact that, of Infosys’s many worldwide offices, at least one is in California. While
20 this may be enough to make Plaintiff’s allegations possible, it does not make them plausible, let
21 alone probable. Defendant Infosys is entitled to the reasonable inference that, as an Indian
22 corporation, it is no more likely to have its principal place of business in California than anywhere
23 else it has offices. While the evidence necessary to rebut such an inference is not great, it requires
24 more than mere speculation; Plaintiff has proffered none. Defendant Infosys has met its burden of
25 showing by a preponderance of the evidence that it is not a citizen of California and that it is a
26 citizen of India, making it a “citizen[] or subject[] of a foreign state” for purposes of jurisdiction
27 under § 1332(a)(3).

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1 **B. Timeliness of Removal**

2 Plaintiff argues that Defendant Infosys failed to comply with the timing requirements of
3 § 1446(b) because it noticed its removal of this action more than 30 days after it was served with
4 the complaint. Defendant Infosys responds that it had no basis for removal upon initially receiving
5 the complaint, because the complaint does not allege damages with enough specificity to establish
6 the amount in controversy. Defendant Infosys contends that it could not establish the amount in
7 controversy until receiving Plaintiff’s Responses to its First Set of Requests for Admission, which
8 was aimed at establishing federal jurisdiction, and that it noticed removal within 30 days of receipt
9 of those Responses, as required by § 1446(b)(3), making its notice timely under § 1446. The court
10 agrees.

11 In sharp contrast to Plaintiff’s position with respect to the citizenship of the parties, where
12 Plaintiff faults Defendant Infosys for failing to bring forth sufficiently compelling evidence, even
13 with respect to facts that don’t appear to be legitimately in dispute, Plaintiff’s position here is that
14 Defendant Infosys should have guessed or inferred from the description of Plaintiff’s injuries that
15 the damages would ultimately amount to more than the \$75,000 jurisdictional minimum. The
16 Ninth Circuit has expressly rejected such arguments:

17 The jurisdictional and procedural interests served by a bright-line
18 approach are obvious. First and foremost, objective analysis of the
19 pleadings brings certainty and predictability to the process and
20 avoids gamesmanship in pleading. Just as important, an objective
21 baseline rule avoids the spectre of inevitable collateral litigation
22 over whether the pleadings contained a sufficient “clue,” whether
23 defendant had subjective knowledge, or whether defendant
24 conducted sufficient inquiry.

25 *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 697 (9th Cir.
26 2005) (citing *Chapman v. Powermatic, Inc.*, 969 F.2d 160, 163 (5th
27 Cir. 1992) (“[Imposing a duty to investigate when a defendant
28 receives an indeterminate complaint as to removability] would
needlessly inject uncertainty into a court’s inquiry as to whether a
defendant has timely removed a case, and as a result would require
courts to expend needlessly their resources trying to determine what
the defendant knew at the time it receive the initial pleading and
what the defendant would have known had it exercised due
diligence.”)).

29 Because the amount in controversy was not revealed until Plaintiff responded to Defendant
30 Infosys’s Requests for Admission, and because Infosys noticed removal within 30 days of receipt

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of those Responses, Infosys's removal was timely.


IV. ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that:

Plaintiff's Motion to Remand is DENIED.

The hearing scheduled for October 2, 2014, is VACATED. *See* Civ. L.R. 7-1(b).

Dated: September 26, 2014


BETH LABSON FREEMAN
United States District Judge