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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

RONALD CIOFFI,

Plaintiff,

vs.

ALEX AND MARVALYN JAN SOLOMON,  
both individuals,  
SOLOMON TECHNOLOGIES SOLUTIONS,  
INC., a corporation,

Defendants.

Case No. C-14-04139-RMW

**ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND**

Re: Docket No. 10

Plaintiff Ronald Cioffi moves to remand this case to Santa Clara County Superior Court pursuant to 28 U.S.C. § 1447(c) and for an award of attorneys' fees for defendants' failure to comply with 28 U.S.C. § 1446(b). Defendants Alex Solomon, Marvalyn Solomon, and Solomon Technologies Inc., (collectively, "defendants") filed a motion to change venue and an opposition to plaintiff's motion to remand. For the reasons stated below, the court GRANTS plaintiff's motion to remand and DENIES the request for fees. Defendant's motion for change of venue is DENIED as moot.

**I. Analysis**

**A. Motion to Remand**

Plaintiff moves to remand this action to state court because he contends defendants’ removal was untimely. Plaintiff argues that four different events triggered the thirty-day window for removal under 28 U.S.C § 1446(b): (1) the initial complaint, filed April 1, 2014; (2) the first amended complaint, filed April 14, 2014; (3) plaintiff’s June 20, 2014, declaration; and (4) plaintiff’s July 25, 2014, opposition. Dkt. No. 10, at 5. Defendants’ removal was filed on September 12, 2014. Dkt. No. 1. Because defendants removed the case more than thirty days after at least one of these events triggered the thirty-day window for removal, Plaintiff contends defendants’ removal was untimely.

Defendants argue that none of these four documents sufficiently revealed plaintiff’s citizenship. Dkt. No. 14, at 6. Defendants also assert they “should not be penalized for their abundance of caution” in waiting for plaintiff’s express written confirmation of his citizenship through responses to discovery, which they received on September 11, 2014, the day before they filed their notice of removal based on diversity of citizenship. *Id.* at 6.

A defendant may remove to federal court those civil actions filed in state court which could have been filed in federal court in the first instance. 28 U.S.C § 1441. Accordingly, an action between diverse parties may be removed to federal court on the basis of diversity jurisdiction under 28 U.S.C § 1332(a).

The removal statute provides defendants with two thirty-day windows in which to remove a case. *See* 28 U.S.C. § 1446(b)(1), (3). First, a defendant may remove a case to federal court for thirty days after the defendant receives the initial pleading. 28 U.S.C. § 1446(b)(1). Second, if the initial pleading does not reveal a basis for removal, then a case may be removed within thirty days of a defendant’s receipt of a paper “from which it may first be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3). In the Ninth Circuit, “notice of removability under § 1446(b) is determined through examination of the four corners of the applicable proceedings, not through subjective knowledge or a duty to make further inquiry.” *Harris v. Bankers Life and Casualty Co.*, 425 F.3d 689, 694 (9th Cir. 2005). The court adopted this bright-line approach to avoid collateral litigation over defendants’ subjective knowledge and the sufficiency of

1 defendants' inquiry. *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 886 (9th Cir. 2010)  
2 (citing *Harris*, 425 F.3d at 697).

3 If the district court does not have subject matter jurisdiction over a removed case, or the case  
4 was improperly removed, the court may remand the case back to state court. *Flatwire Solutions,*  
5 *LLC v. Sexton*, Case No. 09-07479, 2009 WL 5215757, at \*1 (C.D. Cal., Dec.29, 2009) ("Remand  
6 may be ordered either for lack of subject matter jurisdiction or for any defect in removal  
7 procedure."); *see also* 28 U.S.C. § 1447(c). The courts apply a strong presumption against removal,  
8 and all doubts respecting jurisdiction are resolved in favor of remand. *See Gaus v. Miles*, 980 F.2d  
9 564, 566 (9th Cir. 1992); *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979).

10 Plaintiff's initial complaint did not trigger the first thirty-day window for removal because it  
11 only disclosed plaintiff's residency, not his citizenship. Dkt. No. 11-1, at ¶ 1. Diversity jurisdiction  
12 is based on parties' citizenship, not residency. 28 U.S.C. 1332. The first thirty-day period only  
13 begins to run if the case stated by the initial pleading affirmatively reveals on its face the grounds  
14 for removal—in this case, complete diversity of citizenship. *Harris*, 425 F.3d at 695. Because the  
15 initial complaint in this case did not reveal plaintiff's citizenship, defendants were not obligated to  
16 remove the case within the first thirty-day window. *See Kanter v. Warner-Lambert Co.*, 265 F.3d  
17 853, 857 (9th Cir. 2001) (complaint and notice of removal which stated plaintiffs' residence were  
18 insufficient to establish diversity jurisdiction, and did not reveal grounds for removal).

19 If a case is not initially removable based on the face of the complaint, defendant may remove  
20 the case within thirty days from the filing of an amended pleading, motion, order, or other paper  
21 which reveals the case is removable. *Harris*, 425 F.3d at 694. This second thirty-day window to  
22 remove may result from either a change in the parties or other circumstance which renders the case  
23 removable, *see, e.g., Owen v. L'Occitane, Inc.*, Case No. 12-09841, 2013 WL 941967, at \*4 (C.D.  
24 Cal., Mar. 8, 2013), or when the actual facts supporting federal jurisdiction remain unaltered from  
25 the initial pleading, but their existence is revealed for the first time in later papers. *Harris*, 425 F.3d  
26 at 695.

27 Here, the second window for removal began on July 25, 2014 when plaintiff filed an  
28 opposition in state court admitting plaintiff's California citizenship. Dkt. No. 11-6, at 2.

1 Specifically, plaintiff stated that: “Plaintiff Ronald Cioffi’s citizenship of California has been  
2 disclosed since Plaintiff’s first Complaint” and that “Plaintiff’s California citizenship is already  
3 disclosed in Plaintiff’s initial pleading.” *Id.* This admission provided defendants notice that the  
4 parties were diverse and that the case was therefore removable. Defendants filed a notice of removal  
5 in this case on September 12, 2014. Because this removal occurred more than thirty days after July  
6 25, 2014, removal was untimely.<sup>1</sup>

7 Defendants argue that plaintiff’s refusal to admit his California residency in other contexts  
8 and at other times called into question whether he was in fact a California resident, and prompted  
9 their further efforts to confirm his residency. Dkt. No. 14, at 6, 9–11. The court finds these  
10 arguments unpersuasive. Plaintiff stated in their July 25 opposition that: “Plaintiff Ronald Cioffi’s  
11 citizenship of California has been disclosed since Plaintiff’s first Complaint.” Dkt. No. 11-6, at 2.  
12 While the fact that his citizenship had been disclosed since the filing of the original complaint may  
13 not be strictly true, the statement itself affirmatively indicates that plaintiff is a citizen of California.  
14 *See In re Citizens Auto. Fin.*, Case No. 10-05345, 2011 WL 724778, at \*5 (N.D. Cal., Feb. 22,  
15 2011) (where plaintiffs did not directly respond to defendants’ discovery request, which asked  
16 plaintiffs to admit to figures quoted by the defendants, but instead sent defendants an email stating  
17 that the discovery requests were “improper inasmuch as [they] ostensibly [sought] to ‘confirm’ what  
18 was already in the Complaint,” and had been known to defendants for months, the court held that  
19 notice of removability resulted from the “objectively reasonable inference that Plaintiffs were  
20 confirming that the amount in controversy could exceed CAFA’s jurisdictional minimum”).

21 No investigation, “subjective knowledge,” or “further inquiry” was necessary to allege  
22 diversity of citizenship in this case following plaintiff’s statements in the July 25 opposition,  
23 rendering complete diversity ascertainable and the case removable. *Kuxhausen v. BMW Fin. Servs.*  
24 *NA LLC*, 707 F.3d 1136, 1140 (9th Cir. 2013). While defendants need not make extrapolations or  
25 engage in guesswork, the statute “requires a defendant to apply a reasonable amount of intelligence  
26 in ascertaining removability.” *Id.* A plaintiff’s statements and representations, which themselves

27 <sup>1</sup> As the court finds that plaintiff’s July 25 opposition revealed grounds for removal, the court need  
28 not address whether plaintiff’s amended complaint or June 20, 2014 declaration rendered the case  
removable at an earlier date.

1 may not directly address the removability of the case, may nevertheless indirectly reveal grounds for  
2 removal. For example, in *Harris v. Bankers Life and Casualty Co.*, the plaintiff sued two  
3 defendants: Bankers, who was diverse from the plaintiff, and a second, potentially non-diverse,  
4 defendant. 425 F.3d at 691. Bankers sought a continuation of the trial date based on the plaintiff’s  
5 failure to serve or dismiss the second defendant for months after the case was filed and a trial date  
6 was set. *Id.* The plaintiff sent Bankers a letter opposing a continuance of the trial, but the letter was  
7 silent as to the plaintiff’s intentions regarding the absent second defendant. *Id.* at 696. Bankers  
8 sought to confirm whether the plaintiff intended to abandon his claims against the second defendant,  
9 but the plaintiff never responded. *Id.* Bankers concluded that the plaintiff had dropped his claims  
10 against the second defendant and removed the case. *Id.* The Ninth Circuit held removal was proper,  
11 and that the case had become removable at the point the plaintiff sent defendant a letter opposing  
12 any continuance of the trial. *Id.* at 691–92. Although the plaintiff had never expressly dismissed the  
13 non-diverse defendant, plaintiff’s letter indicated that he had abandoned his claims against that  
14 defendant. *Id.* at 696. At that point, complete diversity existed, and the case was removable. *Id.*

15 In sum, the court finds that plaintiff’s July 25 state court filing revealed his California  
16 citizenship. Plaintiff’s filing put defendants on notice that the parties were completely diverse and  
17 that the case was removable. Defendants thus had thirty days from July 25, 2014 to remove the case.  
18 Because defendants’ removal fell outside that thirty-day window, this case was untimely removed  
19 under Section 1446(b)(3). Accordingly, the court GRANTS plaintiff’s motion to remand the case to  
20 state court.

21 **B. Motion for Attorneys’ Fees**

22 A court that remands a case to state court based on improper removal has the discretion to  
23 “award payment of just costs and any actual expenses, including attorney fees, incurred as a result  
24 of the removal.” 28 U.S.C. § 1447(c); *see also Gardner v. UICI*, 508 F.3d 559, 561 (9th Cir. 2007).  
25 “Absent unusual circumstances, courts may award attorney’s fees under section 1447(c) only where  
26 the removing party lacked an objectively reasonable basis for seeking removal. Conversely, when  
27 an objectively reasonable basis exists, fees should be denied.” *Martin v. Franklin Capital Corp.*,

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546 U.S. 132, 141 (2005). The court finds that attorney’s fees are inappropriate in this case, and the court in its discretion DENIES the request for fees.

**II. Order**

For the reasons explained above, plaintiff’s motion to remand is GRANTED and the request for attorneys’ fees is DENIED. Defendants’ motion for change of venue is DENIED as moot.

Dated: November 21, 2014



Ronald M. Whyte  
United States District Judge