

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

OFELIA EGUIA, <i>et al.</i> ,)	Case No. 13-cv-501-L(PCL)
Plaintiffs,)	ORDER GRANTING PLAINTIFFS’ MOTION TO REMAND [DOC. 10]
v.)	
ARC IMPERIAL VALLEY, <i>et al.</i> ,)	
Defendants.)	

On March 4, 2013, Defendants ARC Imperial Valley, Arturo Santos, Martha Carillo, Hector Gutierrez, and Carmen Agundez removed this action from the Imperial County Superior Court. The Notice of Removal is based on federal-question jurisdiction under 28 U.S.C. §§ 1331 and 1441(a). (Removal Notice ¶ 8.) Plaintiffs Ofelia Eguia and Rosalinda Magallanes now move to remand. Defendants oppose.

The Court found this motion suitable for determination on the papers submitted and without oral argument. *See* Civ. L.R. 7.1(d.1). (Doc. 16.) For the following reasons, the Court **GRANTS** Plaintiff’s motion. (Doc. 10.)

//

1 **I. PROCEDURAL HISTORY¹**

2 On January 31, 2012, Plaintiffs filed their First Amended Complaint (“FAC”) in the
3 Imperial County Superior Court, asserting only state-law causes of action including wrongful
4 termination, harassment, discrimination, and infliction of emotional distress. (Removal Notice ¶
5 1.) Plaintiffs based these causes of action on public-policy grounds, violations of the California
6 Government Code §§ 12940(h) and 12653, and violations of California Labor Code § 1102(f).
7 (Removal Notice Ex. 1 at 37–65.) On March 1, 2012, Defendants filed an answer to the FAC,
8 and on March 9, 2012, filed an amended answer asserting an affirmative defense under the
9 federal-enclave doctrine. (Removal Notice Ex. 1 at 88, para. 15.)

10 On May 9, 2012, Defendants filed their first Notice of Removal, premised on the
11 applicability of the federal-enclave doctrine. This Court denied the motion without prejudice
12 because Defendants’ documents did not qualify under 28 U.S.C. § 1446(b) as “other papers”
13 because the documents originated from their own records. *See Eguia v. ARC Imperial Valley*,
14 12-CV-1132-L(PCL), 2012 WL 6061323, at *3-4 (S.D. Cal. Dec. 6, 2012).

15 The subsequent Notice of Removal, filed on March 4, 2013, is once again premised on
16 the applicability of the federal-enclave doctrine. (Doc. 1.) Defendants offer documents that they
17 contend establish that the actions Plaintiffs allege occurred at the West Port of Entry, a federal
18 enclave. Defendants also allege that certain documents constitute “a copy of an amended
19 pleading, motion, order or other paper” from which it can be first determined that the case is
20 removable. (Removal Notice ¶ 11.)

21 On April 5, 2013, Plaintiffs filed a motion to remand this action to the Imperial County
22 Superior Court. (Doc. 10.) Plaintiffs also request attorney’s fees and costs. Defendants oppose.

23
24 **II. LEGAL STANDARD**

25 The Court addresses the issue of subject matter jurisdiction first as “[t]he requirement that
26 jurisdiction be established as a threshold matter ‘spring[s] from the nature and limits of the

27 _____
28 ¹ Francisco Javier Martinez is a named defendant but is not involved in this motion to remand.

1 judicial power of the United States’ and is ‘inflexible and without exception.’” *Steel Co. v.*
2 *Citizens for a Better Env’t*, 523 U.S. 83, 94-94 (1998) (quoting *Mansfield, C & L. M. Ry. Co. v.*
3 *Swan*, 111 U.S. 379, 382 (1884)).

4 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of*
5 *Am.*, 511 U.S. 375, 377 (1994). “They possess only that power authorized by Constitution or
6 statute, which is not to be expanded by judicial decree.” *Id.* (internal citations omitted). “It is to
7 be presumed that a cause lies outside this limited jurisdiction and the burden of establishing the
8 contrary rests upon the party asserting jurisdiction.” *Id.* (internal citations omitted); *see also*
9 *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006).

10 Consistent with the limited jurisdiction of federal courts, the removal statute is strictly
11 construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992);
12 *see also Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002); *O’Halloran v. University*
13 *of Wash.*, 856 F.2d 1375, 1380 (9th Cir. 1988). “The strong presumption against removal
14 jurisdiction means that the defendant always has the burden of establishing that removal is
15 proper.” *Gaus*, 980 F.2d at 566; *see also Nishimoto v. Federman-Bachrach & Assoc.*, 903 F.2d
16 709, 712 n.3 (9th Cir. 1990); *O’Halloran*, 856 F.2d at 1380.

17 “The propriety of removal . . . depends on whether the case originally could have been
18 filed in federal court.” *Chicago v. Int’l Coll. of Surgeons*, 522 U.S. 156, 163 (1997). “Federal
19 jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.”
20 *Gaus*, 980 F.2d at 566. The court’s removal jurisdiction must be analyzed on the basis of the
21 pleadings at the time of removal. *See Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc.*,
22 159 F.3d 1209, 1213 (9th Cir. 1998).

23 Defendants may remove any action filed in state court over which federal district courts
24 have original jurisdiction. *See* 28 U.S.C. § 1441(a). Generally speaking, a party may bring a case
25 within the jurisdiction of the federal courts by demonstrating the existence of either: (1) diversity
26 of citizenship, under 28 U.S.C. § 1332; or (2) a federal question, under 28 U.S.C. § 1331.
27 Defendants removed this action based on federal question jurisdiction under 28 U.S.C. § 1331.
28 Pursuant to the statute, federal courts have subject matter jurisdiction of “all civil actions arising

1 under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

2 Under 28 U.S.C. § 1446(b), a defendant must file a notice of removal either (1) “within
3 thirty days after the receipt by the defendant . . . of a copy of the initial pleading,” or (2) “if the
4 case stated by the initial pleading is not removable, a notice of removal may be filed within thirty
5 days after receipt by the defendant, through service or otherwise, of a copy of an amended
6 pleading, motion, order or other paper from which it may first be ascertained that the case is one
7 which is or has become removable.” 28 U.S.C. § 1446(b).

8 Notice of removability under § 1446(b) is determined through examination of the four
9 corners of the applicable pleadings, not through the subjective knowledge or a duty to make
10 further inquiry. *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005). Section
11 1446(b)’s first thirty-day requirement, thus, is triggered by the defendant’s receipt of an “initial
12 pleading” that reveals a basis for removal. *Id.* If no ground for removal is evident in the initial
13 pleadings, the case is “not removable” at that stage. *Id.* In this circumstance, the notice of
14 removal may be filed within thirty days after the defendant receives “an amended pleading,
15 motion, order or other paper from which it can be ascertained from the face of the document that
16 removal is proper.” *Id.*

17 In cases where the action may be removable despite defendant never having “received”
18 any pleading or “other paper” demonstrating removability, § 1446(b)’s “other paper” language is
19 read so as to not include a defendant’s own records. *B.C. v. Blue Cross of Cal.*, No. CV 11-
20 08961, 2012 WL 12782, at *5 (C.D. Cal. Jan. 3, 2012) (“We now conclude that notice of
21 removability under § 1446(b) is determined through examination of the four corners of the
22 applicable pleadings, not through subjective knowledge or a duty to make further inquiry.”). The
23 rationale behind this reading is that when the evidence suggests that a defendant is or should be
24 on notice of an action’s removability despite it not being “plain” on the face of the complaint,
25 defendants are effectively granted permanent removal power. *Kohan Prods. Ltd. v. Comerica*
26 *Bank*, No. CV 10-0034, 2010 WL 956402, at *4 (C.D. Cal. Mar. 11, 2010). As such, a removal
27 filed before a plaintiff has served a paper on the defendant demonstrating removability is
28 premature. *B.C.*, 2012 WL 12782, at *7.

1 **III. DISCUSSION**

2 Under 28 U.S.C. § 1446(b), a defendant must file a notice of removal either (1) “within
3 thirty days after the receipt by the defendant . . . of a copy of the initial pleading.” Because the
4 parties agree that the FAC, served on January 31, 2012, does not disclose the grounds for
5 removal (Pls.’ Mot 2; Defs.’ Opp’n 3), the Court must analyze the language in any “amended
6 pleading, motion, order or other paper from which it may first be ascertained that the case is one
7 which is or has become removable” to determine whether removal is proper. 28 U.S.C. §
8 1446(b).

9 Plaintiffs base their motion on the untimeliness of Defendants’ removal. They contend
10 that Defendants filed their removal at least 69 days late because they possessed documentation
11 of federal-question jurisdiction on December 27, 2012. Defendants respond that there are no
12 defects in the removal and that their removal is based on the California Department of Fair
13 Employment and Housing (“DFEC”) Charge (Defs.’ RJN Ex. 4 at 141), initially provided to
14 Defendants’ counsel prior to their first removal.

15 Defendants contend that the DFEC Charge establishes that the alleged sexual harassment
16 occurred at the West Port, thereby invoking federal-question jurisdiction through the federal-
17 enclave doctrine. (Defs.’ Opp’n 4.) Defendants provide the DFEC Charge in order to establish
18 jurisdiction, and do not dispute that they received this document at the very latest on December
19 27, 2012, 69 days prior to their removal. (*Id.*) Further, Defendants were in possession of the
20 Charge a full ten months prior to Plaintiffs filing the lawsuit, and should have been on notice
21 that there was federal jurisdiction at that time. The Court accepts Defendants’ contention that the
22 document demonstrates federal jurisdiction, establishing December 27, 2012 as the latest
23 possible date Defendants could have received the Charge. Consequently, Defendants filed their
24 notice of removal 69 days after Plaintiffs demonstrated removability, which is 39 days later than
25 the 30-day period permitted for removal under 28 U.S.C. § 1446(b).²

26
27 ² Defendants also argue that Plaintiffs were untimely in filing the motion to remand.
28 Plaintiffs filed their motion on April 5, 2013, which is 32 days after Defendants filed their notice
of removal. However, the filing of Plaintiffs’ motion is dependent on Defendants properly

1 **IV. CONCLUSION & ORDER**

2 In light of the foregoing, the Court must remand the case to the state court because
3 Defendants did not timely remove this action. *See* 28 U.S.C. § 1446(b)(3) (“[T]he notice of
4 removal of a civil action or proceeding shall be filed within 30 days after the receipt by the
5 defendant . . . of a copy of an amended pleading, motion, order or other paper from which it may
6 first be ascertained that the case is one which is or has become removable.”).

7 Plaintiffs also seek attorney’s fees and costs under 28 U.S.C. § 1447(c). Courts may
8 require costs and actual expenses, including attorneys’ fees, incurred as a result of removal when
9 removal is objectively unreasonable. 28 U.S.C. § 1447(c); *Martin v. Franklin Capital Corp.*, 546
10 U.S. 132, 140-41 (2005). Here, Defendants’ untimeliness does not rise to the level of
11 objectively unreasonable. *See Martin*, 546 U.S. at 140-41.

12 In light of the foregoing, the Court **GRANTS** Plaintiffs’ motion to remand, and **DENIES**
13 Plaintiffs’ request for attorneys’ fees and costs. The Clerk of the Court is directed to remand this
14 action to the Imperial County Superior Court.

15 **IT IS SO ORDERED.**

16
17 DATED: August 22, 2013

18 
19 M. James Lorenz
United States District Court Judge

20 COPY TO:

21 HON. PETER C. LEWIS
22 UNITED STATES MAGISTRATE JUDGE

23 ALL PARTIES/COUNSEL
24
25
26
27 _____

28 removing to this court; as discussed above, Defendants’ removal is defective. Therefore,
Defendants’ untimeliness argument is moot.