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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 PATRICIA ANDERSON and MARK
12 JACKSON,
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14 Plaintiffs,
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16 v.
17 SERENITY GATHERING, LLC;
18 SOLTRIBE CUISINE, LLC; and DOES 1
19 to 10, Inclusive,
20
21 Defendants.

Case No.: 3:16-cv-02802-GPC-KSC

**ORDER DENYING PLAINTIFFS’
MOTION TO REMAND**

[ECF No. 3.]

19 Before the Court is Plaintiffs Patricia Anderson and Mark Jackson’s (collectively,
20 “Plaintiffs”) motion to remand the instant case to state court. (Dkt. No. 3.) Defendant
21 Serenity Gathering, LLC (“Defendant” or “Serenity”) opposed the motion. (Dkt. No. 5.)

22 The Court deems Plaintiff’s motion suitable for disposition without oral argument
23 pursuant to Civil Local Rule 7.1(d)(1). Having reviewed the parties’ briefing and the
24 applicable law, and for the reasons set forth below, the Court **DENIES** Plaintiffs’ motion
25 to remand.

26 **BACKGROUND**

27 On September 15, 2016, Plaintiffs Patricia Anderson and Mark Jackson filed a
28 Complaint against Serenity and Soltribe Cuisine, LLC (“Defendant” or “Soltribe”) in the

1 Superior Court of the State of California, County of San Diego. (Dkt. No. 1 at 1–2.¹)
2 Plaintiffs’ Complaint alleged state law causes of action. (Dkt. No. 1-2.) On November
3 15, 2016, Serenity removed the case to federal court on the basis of diversity jurisdiction.
4 (Dkt. No. 1 at 1–4.) In its Notice of Removal, Serenity stated that removal was proper, as
5 complete diversity of citizenship existed between Plaintiffs and Defendants, and the
6 amount in controversy was satisfied. (*Id.*) Rather than listing the citizenship of each
7 member of the limited liability companies, Serenity stated: (1) “Defendant SERENITY
8 GATHERING, LLC is a Limited Liability Company that was organized and formed in
9 Nevada and maintains its principal place of business in Las Vegas, Nevada,” and (2)
10 “Defendant SOL TRIBE CUISINE, LLC is a Limited Liability Company that was
11 organized in Colorado and maintains its principal place of business in Colorado.” (*Id.* at
12 2.)

13 Plaintiffs filed the instant motion to remand on December 5, 2016. (Dkt. No. 3.)

14 **LEGAL STANDARD**

15 Pursuant to 28 U.S.C. § 1441(a), a defendant may remove to federal court a claim
16 filed in state court that could have initially been brought in federal court. 28 U.S.C. §
17 1441(a); *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). A district court must
18 remand a case to state court “if at any time before the final judgment it appears that the
19 district court lacks subject matter jurisdiction.” 28 U.S.C. § 1447(c). As federal courts
20 have limited jurisdiction, they are presumed to lack jurisdiction unless the contrary is
21 established. *Gen. Atomic Co. v. United Nuclear Corp.*, 655 F.2d 968, 968–69 (9th Cir.
22 1981). A motion to remand is the procedure to challenge removal of an action to federal
23 court. 28 U.S.C. § 1447(c). There is a presumption against removal, and the defendant
24 has the burden to demonstrate that removal was proper. *Moore-Thomas v. Alaska*
25 *Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009).

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28 ¹ All citations to the record are based upon the pagination generated by the CM/ECF system.

1 **DISCUSSION**

2 **I. Motion to Remand**

3 Plaintiffs allege several grounds for remanding the instant action back to state
4 court. First, Plaintiffs assert that alleging citizenship “on information and belief” is
5 insufficient to establish diversity jurisdiction. (Dkt. No. 3-1 at 3 (citing *Bradford v.*
6 *Mitchell Bros. Truck Lines*, 217 F. Supp. 525, 526–27 (N.D. Cal. 1963).) Specifically,
7 Plaintiffs reference ¶ 6 of the Declaration of Andrew B. Kleiner, filed concurrently with
8 Serenity’s Notice of Removal:

9 Based upon information and belief, SOL TRIBE CUISINE, LLC is now, and was
10 at the time of the filing of this action, a citizen of a State other than California
11 within the meaning of 28 U.S.C. § 1332(c)(1), because it is a business entity
12 organized under the laws of the State of Colorado, with its principal place of
13 business also in Colorado. On November 11, 2016, I performed internet research
14 on the Colorado Secretary of State’s website where it listed SOL TRIBE
CUISINE, LLC as an active limited liability company legally operating as a
business in Colorado.

15 (Dkt. No. 1-2 at 1–2, ¶ 6.) Second, Plaintiffs contend that Serenity relied upon an
16 incorrect legal test to determine the citizenship of Defendants, both of which are limited
17 liability companies. (Dkt. No. 3-1 at 3–4.) Third, Plaintiffs dispute Serenity’s argument
18 that removal was proper because it was unaware of whether Soltribe Cuisine had been
19 served. (*Id.* at 4.) Finally, Plaintiffs contend that Serenity may not belatedly seek to
20 correct the deficiencies in its Notice of Removal. (*Id.* at 5.)

21 Serenity opposes Plaintiffs’ motion to remand on several grounds. First, Serenity
22 asserts that there is and has always been complete diversity of citizenship between
23 Plaintiffs and Defendants. (Dkt. No. 5 at 2–4.) Second, Serenity acknowledges that its
24 allegations of Defendants’ citizenship fall short of establishing diversity in its original
25 Notice of Removal, but asserts that Serenity is not precluded from perfecting its
26 allegations now. (*Id.* at 5–9.) Specifically, Serenity states that it did not receive a
27 pleading that triggered the thirty-day removal period, and that even assuming the thirty-
28 day removal period were triggered, amendment of the defects in its removal notice is

1 permissible under Ninth Circuit law. (*Id.*) Serenity additionally notes that Plaintiffs’
2 failure to deny the facts alleged in Serenity’s Notice of Removal constitutes admission of
3 those facts. (*Id.* at 9.)

4 Serenity has established in its opposition brief that complete diversity of
5 citizenship exists between Plaintiffs and Defendants. For purposes of diversity
6 jurisdiction, “an LLC is a citizen of every state of which its owners/members are
7 citizens.” *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir.
8 2006). At all relevant times, Serenity has consisted of two members: Mimi McGee and
9 Brandon Beebe. (Dkt. No. 5 at 2; Dkt. No. 5-1 at 1, ¶ 2.) Ms. McGee is domiciled in
10 Utah, (Dkt. No. 5 at 3; Dkt. No. 5-1 at 2, ¶ 5), and Mr. Beebe is domiciled in Nevada
11 (Dkt. No. 5 at 3; Dkt. No. 5-1 at 2, ¶ 6). As for Soltribe, Serenity has confirmed that at
12 all relevant times, Soltribe has consisted of a single member—Keshava Rossi—who is
13 domiciled in Colorado. (Dkt. No. 5 at 4; Dkt. No. 5-1 at 2–3, ¶ 8.) Complete diversity of
14 citizenship thus existed at the time of removal between Plaintiffs, who are citizens of
15 California, and Defendants, who are citizens of Utah, Nevada, and Colorado.

16 In addition, Serenity correctly asserts that it timely removed the case. 28 U.S.C. §
17 1446(b)

18 provides two thirty-day windows during which a case may be removed—during
19 the first thirty days after the defendant receives the initial pleading or during the
20 first thirty days after the defendant receives a paper “from which it may first be
21 ascertained that the case is one which is or has become removable” if “the case
stated by the initial pleading is not removable.”

22 *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 692 (9th Cir. 2005) (quoting 28 U.S.C.
23 § 1446(b)). In the case of an “indeterminate pleading,” from which “it is unclear from
24 the complaint whether the case is removable, i.e., the citizenship of the parties is unstated
25 or ambiguous,” the “thirty day time period for removal starts to run from defendant’s
26 receipt of the initial pleading only when that pleading affirmatively reveals on its face the
27 facts necessary for federal court jurisdiction.” *Harris*, 425 F.3d at 690–93 (internal
28 citation, quotation marks, and alteration omitted). Moreover, a defendant may “remove

1 outside the two thirty-day periods on the basis of its own information, provided that it has
2 not run afoul of either of the thirty-day deadlines.” *Roth v. CHA Hollywood Med. Ctr.,*
3 *L.P.*, 720 F.3d 1121, 1125 (9th Cir. 2013).

4 Here, neither of the thirty-day periods for removal has expired or begun to run
5 under 28 U.S.C. § 1446(b). Plaintiffs’ Complaint is an “indeterminate pleading,” as
6 nothing within the four corners of the Complaint indicates Defendants’ citizenship. As
7 such, the first thirty-day window did not begin to run upon Serenity’s receipt of the initial
8 pleading. For this reason, *Barnhill v. Ins. Co. of N. Am.*, 130 F.R.D. 46, 52 (D.S.C. 1990)
9 (denying defendant leave to amend its removal petition after the statutory period for
10 removal under 28 U.S.C. § 1446(b) had expired), which Plaintiffs cite to argue that
11 Serenity may not amend its removal allegations, is distinguishable. Furthermore,
12 Serenity has not received “an amended pleading, motion, order or other paper from which
13 it may first be ascertained that the case is one which is or has become removable.” 28
14 U.S.C. § 1446(b)(3). Rather, Serenity removed the instant case on the basis of its own
15 information and its investigation of Soltribe’s citizenship. (Dkt. No. 5 at 6.)
16 Accordingly, the second thirty-day removal window has also not begun to run.

17 Where “the requisite jurisdictional allegations are not omitted entirely, but rather
18 are merely defective in form,” the Ninth Circuit has allowed for the amendment of
19 removal petitions. *Kacludis v. GTE Sprint Commc’ns Corp.*, 806 F. Supp. 866, 869
20 (N.D. Cal. 1992); *accord Geerlof v. C & S Wholesale Grocers, Inc.*, No. 2:13-CV-02175-
21 MCE-KJ, 2014 WL 1415974, at *2 (E.D. Cal. Apr. 14, 2014) (“The majority of courts ...
22 allow defendants to amend defective allegations of jurisdiction in their notice as long as
23 the initial notice of removal was timely filed and sets forth the same legal grounds for
24 removal.” (internal citation and quotation marks omitted)). The Ninth Circuit has
25 permitted defendants to amend their removal allegations to cure defects similar to the
26 ones in the instant case. *See, e.g., Luehrs v. Utah Home Fire Ins. Co.*, 450 F.2d 452, 454
27 (9th Cir. 1971) (granting leave to amend removal petition, where defendant corporation
28 removed on the basis of diversity jurisdiction, but failed to state plaintiff’s state of

1 citizenship and failed to list its own principal place of business); *Barrow Dev. Co. v.*
2 *Fulton Ins. Co.*, 418 F.2d 316, 318 (9th Cir. 1969) (allowing amendment where defendant
3 corporation removed on the basis of diversity jurisdiction and merely stated that it was a
4 citizen of New York, rather than disclosing its state of incorporation and principal place
5 of business); *London v. Standard Oil Co. of California*, 417 F.2d 820, 822 (9th Cir. 1969)
6 (permitting amendment of removal petition to cure inadequate allegation of the
7 citizenship of the defendant corporation). Here, as discussed *supra*, Serenity timely
8 removed the instant action and alleged, albeit imperfectly, that complete diversity of
9 citizenship existed between the parties. (*See* Dkt. No. 1 at 2–3; Dkt. No. 1-2 at 1–2, ¶¶
10 5–6.) Now, it maintains the same legal grounds for removal—diversity jurisdiction—and
11 seeks to amend its imperfect allegations of citizenship in a manner consistent with Ninth
12 Circuit precedent. *See Geerlof*, 2014 WL 1415974, at *5. As such, the Court **DENIES**
13 Plaintiffs’ motion to remand and **GRANTS** Serenity leave to amend its Notice of
14 Removal. *See* 28 U.S.C. § 1653 (“Defective allegations of jurisdiction may be amended,
15 upon terms, in the trial . . . courts.”).

16 **II. Attorney’s Fees**

17 Plaintiffs move the Court to order Serenity to pay attorney’s fees in the amount of
18 \$4,550.00, arguing that Defendant lacked any objectively reasonable basis for removal.
19 (Dkt. No. 3-1 at 5.) Serenity opposes Plaintiffs’ demand. (Dkt. No. 5 at 9–11.) In light
20 of the Court’s denial of Plaintiffs’ motion, the Court **DENIES AS MOOT** Plaintiffs’
21 request for attorney’s fees.

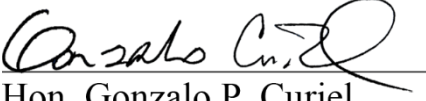
22 **CONCLUSION**

23 For the foregoing reasons, the Court **DENIES** Plaintiffs’ motion to remand and
24 **DENIES AS MOOT** Plaintiffs’ request for attorney’s fees. (Dkt. No. 3.) Serenity may
25 amend its Notice of Removal to perfect its defective allegations by February 3, 2017.

26 **IT IS SO ORDERED.**

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1 Dated: January 18, 2017


2 Hon. Gonzalo P. Curiel
3 United States District Judge
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