

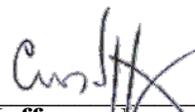
1 amended complaint bearing a state court caption is attached to the notice. (*Id.* at Ex. 1.)

2 Atria now moves to strike the second amended complaint, arguing that Rule 15 of the
3 Federal Rules of Civil Procedure does not allow Plaintiff to amend as a matter of course given the
4 case's procedural posture. Atria further argues it was improper for Plaintiff to file the second
5 amended complaint in state court after removal. Plaintiff responds that he filed the second
6 amended complaint in state court because he did not want to concede that this court had jurisdiction
7 over the case. Plaintiff further responds that the motion to strike is a tactical attempt to keep the
8 case in this court when it belongs in state court. Plaintiff also argues that its first amended
9 complaint and second amended complaint are identical, except for the omission of Ventas as a
10 party in the second amended complaint. Thus, Plaintiff contends that even if the court strikes his
11 second amended complaint, the allegations against Atria remain unchanged.

12 After Atria moved to strike the second amended complaint, the United States district judge
13 assigned to this case denied the motion to remand. (Order (ECF No. 41).) In denying the motion to
14 remand, the court determined that the first amended complaint remains the operative complaint in
15 this case given Plaintiff's explicit representations that the second amended complaint was filed only
16 in state court. (*Id.* at 2.) Given this determination, it appears that the motion to strike is moot.

17 IT IS THEREFORE ORDERED that Defendant Atria Management Company's Rule 12(f)
18 Motion to Strike Second Amended Complaint is DENIED as moot.

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20 DATED: May 23, 2017

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24 **C.W. Hoffman, Jr.**
25 **United States Magistrate Judge**