

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

STEPHEN L. GILBERT, Special Administrator :
of the Estate of Edwin O. Gilbert :

Plaintiff, :

v. :

ELLEN HEINE, RUTHANN HUGHES, :
RICHARD HOLLER, EVELYN ROBERTS, :
and ANDREW TUSCANO, :

Defendants. :

Civil Action No. 13-4756 (ES) (JAD)

**MEMORANDUM
OPINION & ORDER**

SALAS, DISTRICT JUDGE

Pending before the Court is Plaintiff Stephen L. Gilbert’s motion to remand this action to the Superior Court of New Jersey, Bergen County, Chancery Division, pursuant to 28 U.S.C. § 1446. (D.E. No. 7). This Court referred Plaintiff’s motion to the Magistrate Judge for a Report and Recommendation, pursuant to 28 U.S.C. § 636(b)(1)(B). On November 15, 2013, Magistrate Judge Dickson issued a Report and Recommendation (the “R&R”) that the undersigned grant Plaintiff’s motion and remand this matter accordingly. (D.E. No. 12). Judge Dickson advised the parties that they had until December 2, 2013 to file and serve any objections to the R&R pursuant to Local Civil Rule 72.1(c)(2). (*See* D.E. No. 12).

On December 2, 2013, *pro se* Defendant Ellen Heine filed a one-page letter, objecting to the R&R. (D.E. No. 26 (“Heine Obj.”)). No other Defendant has joined Defendant Heine in her opposition or has filed a separate opposition. For the reasons set forth below, the Court adopts Magistrate Judge Dickson’s R&R.

The Court provides the background of this action in summary fashion because Judge Dickson provided the relevant factual and procedural background in the R&R. (D.E. No. 12). On May 30, 2013, Plaintiff filed a Complaint in state court. (D.E. No. 1, Ex. 1). On August 8, 2013, Defendants removed the case to federal court, asserting that removal was proper based upon diversity of citizenship. (D.E. No. 1). Plaintiff moved to remand, arguing that the Notice of Removal was untimely and because the “forum defendant rule” barred removal. Judge Dickson issued an R&R, finding that the Notice of Removal was timely because Defendant Andrew Tuscano properly removed the case within the thirty-day period, but that the “forum defendant rule” precluded removal because three Defendants are citizens of New Jersey. (R&R at 4-5). Accordingly, Judge Dickson recommended that the motion to remand be granted and that this matter be remanded. (*Id.* at 5).

“When a litigant files an objection to a Report and Recommendation, the district court must make a *de novo* determination of those portions to which the litigant objects.” *Leonard Parness Trucking Corp. v. Omnipoint Commc’ns, Inc.*, No. 13-4148, 2013 WL 6002900, at *2 (D.N.J. Nov. 12, 2013) (citing 28 U.S.C. § 636(b)(1)(A), Fed. R. Civ. P. 72(b), and L. Civ. R. 72.1(c)(2)).

In her objection to the R&R, Defendant Heine appears to be arguing that this Court has federal question subject matter jurisdiction over this matter because there is “case law [that] is not relevant in the New Jersey state courts.” (Heine Obj. at 1). But, Judge Dickson properly found that no such federal claims currently exist and, therefore, this Court does not have federal question subject matter jurisdiction. Additionally, this Court finds that diversity jurisdiction pursuant to 28 U.S. C. § 1332 also does not exist because three Defendants are also citizens of New Jersey. *See Richards v. I-Flow Corp.*, No. 09-4002, 2010 WL 2516808, at *1 (D.N.J. June 11, 2010) (finding

that the “forum defendant rule” precludes removal where “an action brought against more than one defendant in New Jersey state court is removed under Section 1332, and . . . one of those defendants is deemed to be a New Jersey citizen, then that action—even if jurisdiction under Section 1332 exists—is nonetheless subject to remand”).

Defendant Heine also raises potential issues and claims in another action. (Heine Obj. at 1). Those statements do not bear on the instant motion and need to be addressed in this matter.

The Court has reviewed Defendant Heine’s Objection and Magistrate Judge Dickson’s R&R, and for the reasons stated above and in Judge Dickson’s R&R,

IT IS on this 13th day of January, 2014,

ORDERED that this Court adopts Magistrate Judge Dickson’s R&R, (D.E. No. 12), as the Opinion of this Court; and it is further

ORDERED that Plaintiff’s motion to remand, (D.E. No. 7), is **GRANTED**; and it is further

ORDERED that this matter is hereby **REMANDED** to the Superior Court of New Jersey, Bergen County, Chancery Division; and it is further

ORDERED that the pending motion to consolidate, (D.E. No. 11), is denied without prejudice as moot; and it is further

ORDERED that the Clerk of Court shall terminate motions at D.E. Nos. 7 and 11, and mark this case **CLOSED**.

s/Esther Salas
Esther Salas, U.S.D.J.