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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

AMIR HOSSEIN SHEIKHAN,)
Individually, and as Next Friend for N.S.,)
a Minor; and TINA SIKYING)
LEUNG, individually,)
)
Plaintiffs,)
)
v.)
)
HAWAIIAN ELECTRIC INDUSTRIES,)
INC., et al.,)
)
Defendants)

NOTICE OF REMOVAL

Case No. 1:23-cv-460

Hawaii State Court Case No.
2CCV-23-0000260

NOTICE OF REMOVAL

Defendants Charter Communications, Inc. (“Charter”) and Time Warner Cable Information Services (Hawaii), LLC (“TWH”),¹ by and through their counsel, hereby gives notice of removal of this action, pursuant to 28 U.S.C. §§ 1369, 1441(e), and 1446, from the Circuit Court of the Second Circuit, State of Hawaii, to the United States District Court for the District of Hawaii.²

On November 13, 2023, the parties filed a stipulation and proposed order in state court substituting Spectrum Oceanic, LLC (“Spectrum”) in place of Charter and TWH, which were incorrectly named, and providing for the dismissal of Charter and TWH from this action. That proposed dismissal order is still pending. Thus, although Spectrum is the corrected Defendant, out of an abundance of caution, this removal notice also addresses Charter and TWH.

PRELIMINARY STATEMENT

1. Plaintiffs allege that they are victims of the Lahaina fire on August 8, 2023. Second Am. Compl. ¶ 2 (“SAC,” Ex. B); *see id.* ¶ 21 (“Plaintiffs are a family of three who suffered varying types of injuries, damages, losses, and/or harm as a result of the Lahaina Fire.”) (hereinafter, as defined by Plaintiffs, the “Lahaina Fire”).

2. Federal court jurisdiction over this action is proper pursuant to the Multiparty, Multiforum, Trial Jurisdiction Act (“MMTJA”), 28 U.S.C. §§ 1369, 1441(e). MMTJA provides federal district courts with “original jurisdiction of any civil action involving minimal diversity between adverse parties that arises from a single accident, where at least 75 natural persons have died in the accident at a discrete location.” 28 U.S.C. § 1369(a). MMTJA also provides “piggyback” jurisdiction and allows a defendant to remove an action to federal court

¹ Incorrectly named by Plaintiffs as “Time Warner Cable Information Services, LLC (Hawaii) dba Oceanic Time Warner.”

² 28 U.S.C. § 1446(a) requires only that Spectrum plausibly allege the requirements for federal jurisdiction; a removal notice “need not [offer] evidentiary submissions.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 84 (2014).

if it is a party to another action that “arises from the same accident” that is or could have been brought in federal court under § 1369. *Id.* § 1441(e)(1)(B).

BACKGROUND

3. Plaintiffs originally filed this action on September 8, 2023 in the Circuit Court of the Second Circuit, State of Hawaii, bearing Case No. 2CCV-23-0000260. Plaintiffs filed a First Amended Complaint on October 13, 2023 and a Second Amended Complaint on October 19, 2023. Plaintiffs first asserted claims against Spectrum in their First Amended Complaint (at the time, by incorrectly naming Charter and TWH as Defendants).

4. Plaintiffs allege that the Lahaina Fire began near Lahainaluna Road. SAC ¶ 57. According to Plaintiffs, around 6:30 a.m. on August 8, 2023, “a brush fire” was reported near electrical equipment. *Id.* First responders initially reported that “this blaze” was contained, but around 3:30 p.m., “the Lahaina Fire broke containment and spread rapidly toward the town of Lahaina.” *Id.* ¶ 61. By 3:50 p.m., Plaintiffs allege that “the Lahaina Fire had crossed the bypass and residences in Lahaina were burning.” *Id.* ¶ 63.

5. Plaintiffs allege that Defendants played various roles in purportedly causing the Lahaina Fire. In particular, Plaintiffs allege that: (i) the “Utility Defendants” failed to replace old wooden power poles that were unable to withstand high winds and failed to deenergize power lines despite high-wind warnings (SAC ¶¶ 73-113)³; (ii) the “Telecom Defendants” either used their own poles or shared third-party poles and purportedly overloaded the poles with excess equipment, causing them to fall in high winds (*id.* ¶¶ 114-32)⁴; (iii) the “Landowner Defendants” failed to clear or manage ignitable vegetation on their properties, which allowed

³ Plaintiffs define the “Utility Defendants” as Hawaiian Electric Industries, Inc., Hawaiian Electric Company, Inc., Hawai’i Electric Light Company, Inc., and Maui Electric Company, Limited. SAC ¶¶ 4-5.

⁴ Plaintiffs define the “Telecom Defendants” as Spectrum, Cincinnati Bell, Inc., and Hawaiian Telecom, Inc. *Id.* ¶¶ 6-8; Stipulation for Substitution at 2 (“Spectrum Oceanic, LLC shall be considered a ‘Telecom Defendant’ as alleged and defined by Plaintiffs”).

the fire to spread (*id.* ¶¶ 133-42)⁵; and (iv) the “Public Entity Defendants” and Herman Andaya failed to clear or manage ignitable vegetation and also failed to issue appropriate warnings or sound alarms concerning the Lahaina Fire (*id.* ¶¶ 143-79).⁶

6. Plaintiffs assert claims for negligence (Counts I-VI, against all Defendants), negligent infliction of emotional distress (Count VII, against all Defendants), premises liability (Count VIII, against all Defendants), public nuisance (Count IX, against all Defendants), private nuisance (Count X, against all Defendants), trespass (Count XI, against all Defendants), and inverse condemnation (Counts XII-XIV, against the County, State, and Utility Defendants).

7. Three putative class actions also arising out the Lahaina Fire were recently removed to the United States District Court for the District of Hawaii. *See Naki v. State of Hawaii*, Case No. 1:23-cv-00435-JAO-WRP (D. Hawaii); *Burnes v. Hawaiian Elec. Co., Inc.*, Case No. 1:23-cv-00452-LEK-RT (D. Hawaii); *Eder v. Maui Electric Company, Ltd.*, Case No. 1:23-cv-00459 (D. Hawaii).

**REMOVAL IS PROPER UNDER THE MULTIPARTY, MULTIFORM, TRIAL
JURISDICTION ACT**

8. Removal of this action is proper pursuant to MMTJA because, based on Plaintiffs’ allegations in the SAC, this action involves “minimal diversity between adverse parties that arises from a single accident, where at least 75 natural persons have died in the accident at a discrete location.” 28 U.S.C. § 1369(a).

9. Minimal diversity exists. *See* 28 U.S.C. § 1369(c)(1) (“minimal diversity exists between adverse parties if any party is a citizen of a State and any adverse party is a citizen of

⁵ Plaintiffs define the “Landowner Defendants” as the trustees of the Estate of Bernice Pauahi Bishop, Hope Builders, LLC, and Wainee Land & Homes, LLC. SAC ¶¶ 9-12.

⁶ Plaintiffs define the “Public Entity Defendants” as the State of Hawaii and the County of Maui. *Id.* ¶¶ 13-14. Herman Andaya is the Administrator of the County of Maui’s Emergency Management Agency. *Id.* ¶ 15.

another State”); *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (“an LLC is a citizen of every state of which its owners/members are citizens”).

10. Plaintiffs are domiciled in Hawaii and are therefore Hawaii citizens. SAC ¶ 3; *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (citizenship is determined by “state of domicile”). Spectrum is a Delaware limited liability company with its principal place of business in Missouri, and its owners/members are citizens of Delaware, Connecticut, and New York. *See* Rule 7.1 Disclosure Statement. Because Plaintiffs and Spectrum are citizens of different States, minimal diversity exists. Minimal diversity also exists between Plaintiffs and Charter/TWH. Charter is a Delaware corporation with its principal place of business in Connecticut. TWH is a Delaware limited liability company with its principal place of business in Missouri, and its owners/members are citizens of Delaware, Connecticut, and New York. *Id.*

11. As alleged by Plaintiffs, Plaintiffs’ claims arise from a single accident—the Lahaina Fire on August 8, 2023. SAC ¶¶ 2, 21. Plaintiffs allege that the Lahaina Fire began as a brush fire near Lahainaluna Road around 6:30 a.m., and that after the brush fire was initially reported as contained, the fire “broke containment and spread rapidly toward the town of Lahaina” and quickly engulfed the town. *Id.* ¶¶ 54-66.

12. Plaintiffs allege that at least 75 natural persons died in the Lahaina Fire. SAC ¶ 66 (alleging that the Lahaina Fire “killed at least 115 people”).

13. As alleged by Plaintiffs, the Lahaina Fire occurred at a discrete location—Lahaina, a small town on the Island of Maui.

14. MMTJA applies because “a defendant resides in a State and a substantial part of the accident took place in another State or location, regardless of whether that defendant is also a resident of the State where a substantial part of the accident took place.” 28 U.S.C. § 1369(a)(1). The accident—the Lahaina Fire—took place in Hawaii, and Spectrum, Charter

and TWH reside in another State. *See, e.g., id.* § 1369(c)(2) (“a corporation ... is deemed to be a resident of any State in which it is incorporated or licensed to do business or is doing business”).

15. MMTJA also applies because “any two defendants reside in different States, regardless of whether such defendants are also residents of the same State or States.” 28 U.S.C. § 1369(a)(2). Like Charter and TWH, Spectrum resides in a different State (Missouri, where Spectrum has its principal place of business) than other Defendants who are Hawaii citizens and have their principal places of business in Hawaii. *See, e.g., SAC ¶¶* 4-5, 9-11.

16. Nor is this a case where “the substantial majority of all plaintiffs are citizens of a single State of which the primary defendants are also citizens.” 28 U.S.C. § 1369(a); *see Passa v. Derderian*, 308 F. Supp. 2d 43, 60 (D.R.I. 2004) (“all plaintiffs” encompasses “all those who have died or suffered injury as a result of the tragedy at issue,” not merely the plaintiffs who have filed claims in a particular case).

17. Indeed, the vast majority of potential plaintiffs who may claim to have been injured by the Lahaina Fire are *not* Hawaii citizens—due in large part to Maui’s status as one of the most popular vacation destinations in the United States and the world. This is readily illustrated by the broad, worldwide classes in *Naki* and *Eder*, which include non-U.S. citizens, tourists, longer-term visitors domiciled in other states, out-of-state owners of vacation homes or rental properties, and out-of-state businesses that owned land or operated in and around Lahaina or otherwise claim to have suffered an economic loss because of the Lahaina Fire.

18. Moreover, the alleged primary defendants are not all Hawaii citizens. According to Plaintiffs, Charter and TWH (and the corrected substituted entity, Spectrum) are each a primary defendant and none of them are Hawaii citizens. Plaintiffs are suing Charter and TWH (and the corrected, substituted entity Spectrum) directly, as opposed to alleging

vicarious or secondary liability. *See Singh v. Am. Honda Fin. Corp.*, 925 F.3d 1053, 1068 (9th Cir. 2019) (defining primary defendants).

19. Alternatively, removal of this action is independently proper pursuant to 28 U.S.C. § 1441(e) because Spectrum “is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident [as this case], even if the action to be removed could not have been brought in a district court as an original matter.” 28 U.S.C. § 1441(e).

20. Spectrum is a party in the *Eder* case—which could have been brought in federal district court under 42 U.S.C. § 1369 and has now been removed to federal district court under § 1369 (as well as the Class Action Fairness Act, 28 U.S.C. § 1332(d)).

* * *

21. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1441(a) & (e) because the Circuit Court of the Second Circuit is located within the District of Hawaii.

22. Under 28 U.S.C. § 1446(d), this Notice of Removal must be filed within 30 days of service upon Spectrum. Plaintiffs served Charter and TWH on October 16, 2023. The parties subsequently agreed to substitute Spectrum as the corrected Defendant and to dismiss Charter and TWH. Although Plaintiffs have not separately served Spectrum, Spectrum has agreed that the October 16, 2023 service is sufficient. Accordingly, removal is timely.

23. Spectrum is not required to notify or obtain the consent of any other Defendant in this action to remove Plaintiffs’ action as a whole under MMTJA. *See Pettitt v. Boeing Co.*, 606 F.3d 340, 343 (7th Cir. 2010).

24. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon all parties to this action, and a copy is being filed with the Clerk of the Circuit Court of the Second Circuit, State of Hawaii.

25. By filing a Notice of Removal, Spectrum (and Charter and TWH) do not waive the rights of any Defendant to object to service of process, the sufficiency of process, jurisdiction over the person, or venue; and they reserve the rights of all Defendants to assert any defenses or objections to which they may be entitled.

26. Spectrum (and Charter and TWH) reserve the right to amend or supplement this Notice of Removal.

WHEREFORE, pursuant to MMTJA, Spectrum (and Charter and TWH) hereby remove this action from the Circuit Court of the Second Circuit, State of Hawaii, to the United States District Court for the District of Hawaii.

Dated: November 14, 2023

CHEE MARKHAM & KATO

By: /s/ Gregory K. Markham

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