

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

|                           |   |                   |
|---------------------------|---|-------------------|
| PETROLEUM & FRANCHISE     | : |                   |
| CAPITAL, LLC,             | : |                   |
| Plaintiff,                | : | CIVIL ACTION NO.  |
|                           | : |                   |
| v.                        | : | 3:14-CV-00553-VLB |
|                           | : |                   |
| BEDROCK OIL, Inc. ET AL., | : |                   |
| Defendants.               | : | MAY 2, 2014       |
|                           | : |                   |

**ORDER REMANDING CASE TO CONNECTICUT SUPERIOR COURT**

This case was removed to this court from the Connecticut Superior Court, Judicial District of Danbury by defendants Bedrock Oil, Inc., Shahnaz Hirbod, Sam Hirbod, Shereen Hirbod and John Doe as Trustee of the 2001 Hassan Hirbod and Shahnaz Hirbod Revocable Trust (collectively, the “Removing Defendants”). Counsel to the Removing Defendants represents in the Notice of Removal that the Affidavit of Sam Hirbod (Exhibit B to the Notice of Removal) demonstrates that defendants Eileen Hsu, Andy Jyunmin Chiu and Liu Tyng Lin (the “Non-removing Defendants”) consent to the removal of the action. [Dkt. 1 at 2.] However, the Affidavit of Sam Hirbod does not provide sufficient notice of consent by the Non-removing Defendants. Sam Hirbod does not represent that each Non-removing Defendant consents to the removal nor has any Non-removing Defendant filed an affidavit consenting to the removal. Removal on diversity grounds requires unanimous consent of all defendants who have been served at the time of removal. See, e.g., *Edelman v. Page*, 535 F. Supp. 2d 290, 292 (D. Conn. 2008) (quoting *Burr v. Toyota Motor Credit Co.*, 478 F. Supp. 2d 432,

437 (S.D.N.Y. 2006)). “District courts within this Circuit, . . . have consistently interpreted the statute as requiring that all defendants consent to removal within the statutory thirty-day period, a requirement known as the rule of unanimity.” *Pietrangelo v. Alvas Corp.*, 686 F.3d 62, 66 (2d Cir. 2012) (internal quotation marks and citation omitted). Although the Second Circuit “[has] not yet advised what form a consent to removal must take,” the court in *Pietrangelo* “agree[d] . . . that the remaining defendants must independently express their consent to removal.” 686 F.3d at 66 (citations omitted); *cf. Nat’l Waste Assocs, LLC v. TD Bank, N.A.*, No. 3:10-cv-289, 2010 U.S. Dist. LEXIS 46730, at \*15 (D. Conn. May 12, 2010) (“[C]ourts within this District have adhered to strict construction of the removal statute, enforcing the written consent requirement of the unanimity rule when ruling on a motion to remand.”) (citations omitted). This Court has authority to raise the issue of unanimity sua sponte. *See, e.g., Bank of Am. Nat’l Ass’n v. Derisme*, No. 3:10-cv-900, 2010 U.S. Dist. LEXIS 82361, at \*25 (D. Conn. Aug. 13, 2010) (noting that the court has “the authority under 28 U.S.C. § 1447(c) to remand the case sua sponte based upon a procedural defect.”) (citing *Mitskovski v. Buffalo & Fort Erie Pub. Bridge Auth.*, 435 F.3d 127, 131 (2d Cir. 2006)).

Although there are certain exceptions to the requirement of unanimity, *see Edelman*, 535 F. Supp. 2d at 293, none of them apply in this case. The Removing Defendants assert in the Notice of Removal that “The Defendants were served with a copy of the Summons and Complaint on March 25, 2014.” [Dkt. 1 at 2.] The Court also notes that the state court docket indicates that both the Removing Defendants and the Non-removing Defendants were served prior to removal. *See*

