The Business Court of Texas,
Fourth Division

TRANSPORTES DE CARGA FEMA S.A. DE C.V.,	§	
	§	
Plaintiff,	§	Cause No. 26-BC04A-0018
	§	
v.	§	
HYUNDAI TRANSLEAD, INC. and W&B SERVICE COMPANY, LLC,	§	
	§	
Defendants.	§	
	§	
	§	

MEMORANDUM OPINION AND ORDER

¶1 Before the court is Defendant W&B Service Company LLC's motion to dismiss Plaintiff's fraud claims and its joint enterprise theories pursuant to rule 91a of the Texas Rules of Civil Procedure. Plaintiff filed a response, objecting to the motion as untimely and opposing the motion on the merits. Defendant W&B Service Company filed a reply, arguing the motion was timely filed because the time period for filing the motion was suspended while the case was removed to federal court.

¶2 On November 12, 2026, the court held a hearing on the motion to dismiss, where counsel for the parties appeared and presented arguments. Plaintiff re-asserted its objection, arguing Defendant W&B Service Corporation's rule 91a motion to dismiss should be summarily denied because it was untimely. For the reasons set out below, the court overrules Plaintiff's objection.

¶3 Texas Rule of Civil Procedure 91a is a state court procedural device. *Paxton v. Annunciation House*, 719 S.W.3d 555, 581 (Tex. 2025); *Fiamma Statler, L.P. v. Challis*, No. 02-18-00374-CV, 2020 WL 6334470, at *7 (Tex. App.—Fort Worth Oct. 29, 2020, pet. denied). It enables a party to move to dismiss a cause of action having no basis in law or fact. TEX. R. CIV. P. 91a.1. A rule 91a dismissal motion "must be filed within 60 days after the first pleading containing the challenged cause of action is served on the movant." *Id*. 91a.3.[1]

¶4 Neither counsel nor the court have found a reported Texas case addressing the effect of federal court removal on rule 91a.3's deadline. In analogous situations, however, Texas appellate courts have held that removal to federal court suspends state time periods and deadlines until the case is remanded to the state court. *Clayton Mountain Dev., LLC v. Ruff*, No. 11-20-00114-CV, 2021 WL 3413644, at *5 (Tex. App.—Eastland Aug. 5, 2021, no

[1]Some Texas intermediate appellate courts have held that "[a] rule 91a motion to dismiss that is not filed within the 60-day period is not timely and is properly denied." *Matthews v. Nalco Co., LLC*, No. 06-23-00038-CV, 2023 WL 6773862, at *3 (Tex. App.—Texarkana Oct. 13, 2023, no pet.); *Serna v. Banks*, No. 13-20-00505-CV, 2022 WL 3724102, at *3 (Tex. App.—Corpus Christi-Edinburg Aug. 30, 2022, no pet.); *Tunad Enters. Inc. v. Palm*a, No. 05-19-00497-CV, 2020 WL 3410633, at *4 n.5 (Tex. App.—Dallas June 22, 2020, no pet.*); but see De La Rosa v. Miracle Farm, Inc.*, No. 01-23-00579-CV, 2025 WL 2832218, at *7 (Tex. App.—Houston [1st Dist.] Oct. 7, 2025, no pet.) (concluding noncompliance with rule 91a.3's 60-day deadline does not result in reversal unless delay is harmful); *Fiamma Statler, LP v. Challis*, No. 02-18-00374-CV, 2020 WL 6334470, at *7 (Tex. App.—Fort Worth Oct. 29, 2020, pet. denied) (same).

pet.) (omitting period of removal to federal court in calculating timeliness of TCPA motion to dismiss); *In re Univ. of the Incarnate Word*, 469 S.W.3d 255, 258-59 (Tex. App.—San Antonio 2015, orig. proceeding) (omitting federal court removal period when calculating timeliness of plea to the jurisdiction). These cases highlight the jurisdictional interchange between state and federal courts during removal and remand. *See Clayton Mountain Dev.*, 2021 WL 3413644, at *5; *In re Univ. of the Incarnate Word*, 469 S.W.3d 258-59.

¶5 Removal to federal court divests the state court of jurisdiction. *See* 28 U.S.C. § 1446(d) (providing upon removal to federal court "the State court shall proceed no further unless and until the case is remanded"); *Meyerland Co. v. F.D.I.C.*, 848 S.W.3d 82, 83 (Tex. 1993) (order) (concluding state court's action taken after removal was void). Thus, from the time a case is removed to federal court until it is remanded to state court, the state court is prohibited from taking any action in the case. *In re Sw. Bell Tel. Co.*, 235 S.W.3d 619, 624 (Tex. 2007) (orig. proceeding). State court jurisdiction revests when the federal court executes the order of remand and mails it to the state court. *Quaestor Inv., Inc. v. State of Chiapas*, 997 S.W.2d 226, 229 (Tex. 1999).

¶6 Here, Plaintiff argues that rule 91a.3's language, which states the motion to dismiss "must be filed" within sixty days of service, is mandatory and absolute. *See* TEX. R. CIV. P. 91a.3. Plaintiff goes on to argue that because Defendant W&B Service Company filed its rule 91a motion more than sixty days after service, the motion is untimely.

¶7 The court disagrees. Again, rule 91a is a state court procedural device. Its language does not override the jurisdictional principles detailed above. Accordingly, the court concludes that the deadline for filing Defendant W&B Service Company's rule 91a motion

to dismiss was suspended while this case was removed to federal court. *See Clayton Mountain Dev.*, 2021 WL 3413644, at *5 (recognizing time period to file TCPA motion to dismiss was suspended while case was removed to federal court); *In re Univ. of the Incarnate Word*, 469 S.W.3d at 259 (recognizing time period to file plea to the jurisdiction was suspended while case was removed to federal court).

¶8 Plaintiff filed its original petition on September 16, 2025, asserting, among other things, claims for fraud and alleging joint enterprise theories against Defendant W&B Service Company. Defendant W&B Service Company was served with the original petition on November 12, 2025. Twenty-six days later, on December 8, 2025, Defendant W&B Service Company removed the case to federal court. The federal court did not remand the case back to state district court until September 9, 2026.[2] Thirty-three days later, on October 12, 2026, Defendant W&B Service Company filed its rule 91a motion to dismiss.

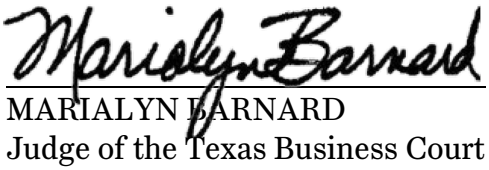
¶9 Excluding the time period this case was removed to federal court, Defendant W&B Service Company's rule 91a motion to dismiss was filed fifty-nine days after Defendant W&B Service Company was served with the petition, meaning it was timely filed under rule 91a.3. *See* TEX. R. CIV. P. 91a.3. Accordingly, Plaintiff's objection to the timeliness of Defendant W&B Service Company's rule 91a motion is OVERRULED.

¶10 Having considered the merits of Defendant W&B Service Company's rule 91a motion to dismiss, Plaintiff's response, Defendant W&B Service Company's reply,

[2]This case was removed to the Texas Business Court on September 11, 2026. *See* TEX. R. CIV. P. 355.

Defendant Hyundai Translead Inc.'s response, and the arguments presented by counsel at the hearing, the motion is DENIED.

SO ORDERED.



MARIALYN BARNARD
Judge of the Texas Business Court

SIGNED ON: November 18, 2026