

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

MMT City View Properties, LLC v. Orange Grove Ventures, LLC

No. 2:25-cv-01920-WLH-SK (C.D. Cal. May 7, 2025) · No. 2:25-cv-01920-WLH-SK · Decided May 7, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 CENTRAL DISTRICT OF
CALIFORNIA 10 MMT CITY VIEW PROPERTIES, Case No. 2:25-cv-01920-WLH-SK 11 LLC,
ORDER RE PLAINTIFF’S MOTION 12 Plaintiff, TO REMAND [16] 13 v. 14 ORANGE
GROVE VENTURES, LLC; 15 and DOES 1-50, 16 Defendants. 17 18 19 Before the Court is
Plaintiff’s Motion to Remand (the “Motion”). (Mot., 20 Docket No. 16).

No party filed a written request for oral argument stating that an 21 attorney with five years or less
of experience would be arguing the matter. (See 22 Standing Order, Docket No. 8 at 16). Further,
pursuant to Federal Rule of Civil 23 Procedure 78 and Local Rule 7-15, the Court finds this matter
appropriate for decision 24 without oral argument.

The hearing calendared for May 16, 2025, is VACATED, and 25 the matter taken off calendar. For
the reasons explained herein, the Court GRANTS 26 Plaintiff’s Motion and ORDERS the case be
remanded to the Los Angeles Superior 27 Court. 28 1 I. BACKGROUND 2 A. Factual
Background 3 Plaintiff MMT City View Properties, LLC (“Plaintiff” or “Plaintiff MMT”) 4 brings
the present action against Defendant Orange Grove Ventures, LLC 5 (“Defendant” or “Defendant
OGV”), alleging private nuisance and negligence.

(First. 6 Am. Compl. (“FAC”), Docket No. 11). Plaintiff is a Delaware limited liability 7 company,
and its sole member is a citizen of California. (Id. ¶ 1). Defendant is a 8 California limited liability
company, and its sole member is a citizen of California. 9 (Id. ¶ 2; see also Notice of Removal ¶ 7,
Ex. E). 10 Plaintiff alleges that it possesses a property located at 1693 Marmont Avenue 11 (the
“Property”) in Los Angeles, CA.

(Id. ¶ 5). Defendant owns a series of lots (the 12 “Lots”) at “higher elevation and up a hill” from
the Property. (Id. ¶ 6). Following 13 heavy rains in January 2023, “massive amounts of mud” slid
from the Lots to the 14 Property. (Id. ¶ 7). Plaintiff contends that Defendants’ negligent
maintenance of its 15 Lots “caused and/or contributed to” the mudslide that damaged Property.

(Id. ¶¶ 8-9). 16 B. Procedural Background 17 Plaintiff initially filed the present action on
December 20, 2024, before the Los 18 Angeles Superior Court (the “LASC”). (Notice of
Removal, Docket No. 1 ¶ 1). On 19 March 5, 2025, Defendant removed the action to this Court,
asserting diversity of 20 citizenship. (Id. ¶¶ 6-12).

On March 11, 2025, Defendant filed a motion to dismiss. 21 (Mot. to Dismiss, Docket No. 6). On March 19, 2025, however, Plaintiff filed a First 22 Amended Complaint (“FAC”) (FAC, Docket No. 11), thereby mooting Defendant’s 23 pending motion. (Order Deeming Defendant’s Mot. as Moot, Docket No. 12).

On 24 March 28, Defendant filed its answer. (Answer, Docket No. 15). On April 2, 2025, 25 Plaintiff filed the Motion before the Court. (Mot., Docket No. 16). 26 II. DISCUSSION 27 Before the Court is Plaintiff’s Motion to Remand. (See Mot.).

The Motion is 28 fully briefed. For the reasons explained herein, the Court GRANTS the Motion.

1 A. Legal Standard 2 A defendant may remove an action from state court to federal court if the 3 plaintiff could have originally filed the action in federal court. See 28 U.S.C. 4 § 1441(a). A plaintiff moving to remand “on the basis of any defect other than lack of 5 subject matter jurisdiction must be made within 30 days after the filing of the notice of 6 removal...” 28 U.S.C. § 1447(c).

7 Under 28 U.S.C. § 1332(a), a district court has original jurisdiction over a civil 8 action where (1) the amount in controversy exceeds the sum or value of \$75,000, 9 exclusive of interest and costs, and (2) the dispute is between “citizens of different 10 States.” ““A limited liability company is a citizen of every state of which its owner / 11 members are citizens, not the state in which it was formed or does business.”” *Voltage 12 Pictures, LLC v. Gussi, S.A. de C.V.*, 92 F.4th 815, 822 (9th Cir.

2024) (quoting 13 *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 612 (9th Cir. 2016)). Nonetheless, “[a] 14 civil action otherwise removable solely on the basis of [diversity jurisdiction] may not 15 be removed if any of the parties in interest properly joined and served as defendants is 16 a citizen of the State in which such action is brought.” A violation of this rule, 17 however, is a procedural, rather than jurisdictional defect.

Lively v. Wild Oats 18 Markets, Inc., 456 F.3d 933, 942 (9th Cir. 2006). Therefore, as a waivable, non- 19 jurisdictional defect, it is “subject to the 30-day time limit imposed by § 1447(c).” *Id.* 20 Courts strictly construe the removal statutes, rejecting removal jurisdiction in favor of 21 remand to the state court if any doubts as to the right of removal exist.

Nevada v. 22 Bank of Am. Corp., 672 F.3d 661, 667 (9th Cir. 2012). 23 B. Analysis 24 Plaintiff moves for remand, presenting two main arguments. Plaintiff contends 25 that Defendant “is barred from removing this action under the forum defendant rule 26 [(the “Forum Defendant Rule”)] because it is a citizen of California.” (Mot. at 1). 27 Further, Plaintiff contends that complete diversity of citizenship is not satisfied, such 28 that this Court lacks jurisdiction and must remand the action.

(Id. at 3-4). Defendant 1 argues that Plaintiff waived the Forum Defendant Rule and requests jurisdictional 2 discovery with respect to Plaintiff's member's citizenship. (Opp'n to Mot, Docket 3 No. 17 at 1-3). The Court agrees with Plaintiff.

As such, the Court GRANTS the 4 Motion and ORDERS the case be remanded to the LASC. Finally, Plaintiff also 5 requests sanctions in the form of costs and attorney's fees because Defendant "lacked 6 any objectively reasonable basis to remove this action." (Mot. at 4). Though the 7 Court agrees with Plaintiff that sanctions are warranted, the Court DENIES the 8 request, as Plaintiff failed to provide its counsel's hourly rate or hours expended.

9 1. Forum Defendant Rule Barred Removal and Was Not Waived by Plaintiff 10 Plaintiff contends that the Forum Defendant Rule made removal to this Court 11 improper in the first instance, as Defendant is a citizen of California. (Mot. at 3). 12 Citing to *In re Moore* ("Moore"), 209 U.S. 490 (1908), overruled on other grounds by 13 *Ex Parte Harding*, 219 U.S. 363 (1911), Defendant argues that this is a non- 14 jurisdictional defect and that Plaintiff "waived the [Forum Defendant] Rule by filing 15 an amended complaint, asking for a jury trial, [and] filing a certificate of interested 16 parties..." (Opp'n to Mot at 1).

The Court agrees with Plaintiff. 17 Title 28, United States Code, Section 1441(b)(2), also known as the Forum 18 Defendant Rule, places limitations on a defendant's ability to remove a civil action to 19 a federal court. See 28 U.S.C. § 1441(b)(2).

The Ninth Circuit has emphasized that 20 this rule "confines removal on the basis of diversity jurisdiction to instances where no 21 defendant is a citizen of the forum state." *Lively*, 456 F.3d at 939-40. A violation of 22 this rule, however, is a procedural, rather than jurisdictional defect. *Lively*, 456 F.3d 23 at 942.

Therefore, as a waivable, non-jurisdictional defect, it is "subject to the 30-day 24 time limit imposed by § 1447(c)." Id. 25 "To waive a remand challenge by affirmative conduct, the plaintiff must engage 26 in 'affirmative conduct or unequivocal assent of a sort which would render it offensive 27 to fundamental principles of fairness to remand.'" *Everest Sys.*

Co. v. Platinum 28 Roofing, Inc., No. 19-cv-03133-BLF, 2019 WL 3387951, at *1 (N.D. Cal. Jul. 26, 1 2019) (quoting *SWC Inc. v. Elite Promo Inc.*, 234 F.Supp.3d 1018, 1022 (N.D. Cal. 2 2017)). Such affirmative conduct includes filing "'numerous pleadings and discovery 3 requests after a case has been removed to federal court.'" Id. (quoting *SWC Inc.*, 234 4 F.Supp.3d at 1023).

On the other hand, tending to minimal case-management 5 obligations is not the sort of affirmative conduct demonstrating consent to jurisdiction. 6 Id. 7 While Defendant correctly notes that the Forum Defendant Rule is, technically, 8 a waivable, non-jurisdictional defect, the Court finds that Plaintiff has not waived it. 9 For one, Plaintiff timely moved to remand under § 1447(c).

See *Lively*, 456 F.3d at 10 942. Further, Plaintiff persuasively argues that its conduct is not of the sort that 11 demonstrates consent to the Court’s jurisdiction. (Reply, Docket No. 18 at 2-3). The 12 Court agrees. 13 The court in *Rapid Displays* rejected Defendant’s exact line of argument. 14 *Rapid Displays, Inc. v. Ford, Walker, Haggerty & Behar, LLP* (“*Rapid Displays*”), 15 No. 16-cv-1703-WQH-JLB, 2016 WL 6543207, at *1-4 (S.D.

Cal. Nov. 3, 2016). In 16 *Rapid Displays*, the defendants, citing to *Moore*, argued that the plaintiffs had waived 17 their right to “timely remand this action” pursuant to the Forum Defendant Rule when 18 they filed a first amended complaint and demanded a jury trial after the action was 19 removed. *Id.* at *3.

The court distinguished the matter from *Moore*, emphasizing that 20 the plaintiff in that case had waited over six months to file a motion to remand, 21 thereby missing the thirty-day window to move to remand. *Id.* Furthermore, the 22 plaintiff had made “‘repeated recognitions of the jurisdiction’ of the federal court,” 23 including entering into “several stipulations,” engaging in discovery and generally 24 demonstrating its willingness to proceed in that forum.

Id. (quoting *Moore*, 209 U.S. 25 at 496). By contrast, the plaintiffs in *Rapid Displays* had timely filed a motion to 26 remand within 28 days of removal, “in compliance with the thirty-day requirement set 27 forth in section 1447(c).” *Id.* at *3. Furthermore, the court concluded that filing an 28 amended complaint – after the defendants filed a motion to dismiss – and demanding a 1 jury trial – which would otherwise be forfeited if not requested within fourteen days – 2 “did not demonstrate that [the plaintiffs] ‘consented to accept the jurisdiction of the 3 United States court[.]’” *Id.* at *4 (quoting *Moore*, 209 U.S. at 496).

The court, 4 therefore, granted the motion to remand. *Id.* 5 The Court finds the instant matter to be on all fours. Plaintiff moved to remand 6 within the thirty-day requirement set forth in § 1447(c). Furthermore, as in *Rapid 7 Displays*, the Court finds that Plaintiff’s actions¹ are not of the sort that demonstrate 8 consent to this Court’s jurisdiction. *Id.* Rather, Plaintiff’s filing its FAC – after 9 Defendant filed its motion to dismiss – and demanding a jury trial are minimal case- 10 management obligations.

Everest Sys. Co., 2019 WL 3387951, at *1. 11 Accordingly, the Court agrees with Plaintiff, finding that removal was improper 12 in the first instance under the Forum Defendant Rule, which has not been waived by 13 Plaintiff.

As such, the Court must remand the action. *Rapid Displays*, 2016 WL 14 6543207, at *4; see also *Nevada*, 672 F.3d at 667 (emphasizing that courts must 15 strictly construe removal statutes, rejecting removal jurisdiction in favor of remand to 16 the state court if any doubts as to the right of removal exist). 17 2. Diversity Jurisdiction Is Lacking, Such That Remand Is Required 18 Plaintiff also argues that remand is mandatory because diversity of citizenship 19 is not satisfied,

as Plaintiff's sole member is a citizen of California (Decl. of Henry 20 Ohebshalom in Supp. of Mot. ("Ohebshalom Decl."), Docket No. 16-2 ¶¶ 3-4), as is 21 Defendant's sole member (see Notice of Removal, Docket No. 1-10, Ex. E).

(Mot. at 22 3-4). Defendant, however, contends that Plaintiff failed to sufficiently establish its 23 sole member's citizenship and, therefore, argues jurisdictional discovery is warranted. 24 (Opp'n at 2-3). The Court agrees with Plaintiff and denies the request for 25 jurisdictional discovery. 26 27 1 The Court also adds that Plaintiff's filing a certificate of interested parties similarly fails to demonstrate consent to this Court's jurisdiction, where it is mandatory case 28 management under this Court's local rules.

See L.R. 7.1-1. 1 A district court's discretion to deny jurisdictional discovery will remain 2 undisturbed except "upon the clearest showing that denial of discovery results in 3 actual and substantial prejudice to the complaining litigant." Butcher's Union Local 4 No. 498, United Food & Commercial Workers v. SDC Inv., Inc., 788 F.2d 535, 540 5 (9th Cir. 1986) (citing Data Disc., Inc. v. Systems Tech.

Associates, Inc., 557 F.2d 6 1280, 1285 n.1 (9th Cir. 1977)). "Prejudice is established if there is a reasonable 7 probability that the outcome would have been different had discovery been allowed." 8 Laub v. U.S. Dep't of Interior, 342 F.3d 1080, 1093 (9th Cir. 2003). A court does not 9 abuse its discretion for denial of a request for jurisdictional discovery that appears to 10 be "based on little more than a hunch that it might yield jurisdictionally relevant 11 facts[.]" Boschetto v. Hansing, 539 F.3d 1011, 1020 (9th Cir.

2008). 12 Here, Plaintiff submitted a sworn declaration, stating that its sole member is a 13 citizen and resident of California. (Ohebshalom Decl. ¶¶ 3-4). Defendant argues that 14 Plaintiff provides "no factual support, such as a home address... company operating 15 agreement... length of residency in California, days per year spent in 16 California... evidence of tax payments to the State of California, etc." (Opp'n to 17 Mot. at 3).

The Court disagrees. First, Defendant cites to no case law demonstrating 18 such a heightened showing is required to demonstrate citizenship. Furthermore, the 19 Defendant provides no evidence rebutting that Plaintiff's sole member is a citizen of 20 California.² Accordingly, the Court agrees with Plaintiff that Defendant has failed to 21 demonstrate what prejudice it would suffer absent jurisdictional discovery.

(Reply at 22 5); see *Holliday v. Jaguar Land Rover N. Am., LLC*, No. 24-cv-00553-BLF, 2024 WL 23 1244299, at *7 (N.D. Cal. Mar. 21, 2024) (denying request for jurisdictional discovery 24 to determine citizenship of limited liability company members where defendant failed 25 to identify any evidence that it might discover that "might change the outcome of the 26 Court's ruling...").

The Court concludes that Defendant's request is "based on little 27 2 Instead, Defendant expends significant energy dissecting the reputation of and 28 casting aspersions about the character of Plaintiff's sole member. 1 more than a hunch that it might yield jurisdictionally relevant facts[.]" Boschetto, 539 2 F.3d at 1020. 3 Absent evidence suggesting otherwise, the Court finds that Plaintiff is a 4 citizen of California.

As Defendant is also a citizen of California, this Court lacks 5 subject matter jurisdiction, as complete diversity of citizenship is not satisfied. See 28 6 U.S.C. § 1332(a). The Court, therefore, GRANTS Plaintiff's Motion to Remand. 7 3. Though Sanctions Are Warranted, Plaintiff Failed to Provide Figures 8 Necessary to Assess the Reasonableness 9 Finally, Plaintiff argues that sanctions are warranted – in the form of costs and 10 expenses, including attorney's fees – because Defendant lacked any "objectively 11 reasonable basis to remove this action[.]" particularly given the Forum Defendant 12 Rule.

(Mot. at 4). Further, Defendant "refused to voluntarily remand this action[.]" 13 even after Plaintiff amended its complaint to specify its sole member's California 14 citizenship, such that diversity jurisdiction is clearly lacking. (Id.). Defendant argues 15 it had reason to believe diversity jurisdiction was satisfied where Plaintiff's initial 16 complaint failed to mention the names or citizenship of its members, but it fails to 17 address the fact that it entirely ignored the Forum Defendant Rule.

(Opp'n at 4). 18 "An order remanding the case may require payment of just costs and any actual 19 expense, including attorney fees, incurred as a result of the removal." 28 U.S.C. 20 § 1447(c). "Absent unusual circumstances, a court may award attorney's fees under 21 § 1447(c) where the removing party lacked an objectively reasonable basis for seeking 22 removal." *Mendoza v. Yu*, No. 21-cv-08632-TSH, 2022 WL 17862, at *3 (N.D.

Cal. 23 Jan. 3, 2022). A Defendant lacks an objectively reasonable basis for seeking removal 24 when such removal is clearly barred by the Forum Defendant Rule. *Everest Sys. Co.*, 25 2019 WL 3387951, at *2. 26 Here, the Court agrees with Plaintiff that Defendant, as a California citizen, 27 lacked an objectively reasonable basis for seeking removal, given the application of 28 the Forum Defendant Rule. "Even though this rule is merely procedural and thus 1 | waivable, it would flout the forum defendant rule if the Court were to condone in-state 2 | defendants baselessly removing to federal court in the hopes that a plaintiff will waive 3 | its right to remand." /d.

4 Plaintiff, however, failed to provide its counsel's hourly rate or the number of 5 || hours expended. Without such information, the Court 1s unable to assess the 6 | reasonableness of such costs. See *Everest Sys. Co.*, 2019 WL 3387951, at *2 7 || (demonstrating that the Court must confirm that both the attorney's rate and the 8 | number of hours expended are reasonable, "considering counsel's years of experience 9 | and comparable rates charged in this District[.]" as well as the "nature and complexity 10 | of the issues presented").

Accordingly, the Court DENIES the request for sanctions. 11 | I. CONCLUSION 12 For the foregoing reasons, the Motion is GRANTED. The Court, accordingly, 13 | ORDERS the case be remanded to the Los Angeles Superior Court. 14 15 IT IS SO ORDERED. 16 _ 17 | Dated: May 7, 2025 (bag A HON. WESLEY L. HSU 18 UNITED STATES DISTRICT JUDGE 19 20 21 22 23 24 25 26 27 28