

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Angel Russell, et al. v. Darian Patrick O'Brien, et al.

No. CV-26-01549-PHX-KML · No. No. CV-26-01549-PHX-KML · Decided March 6, 2026

OPINION

Russell

PER CURIAM.

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6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

8 9 Angel Russell, et al., No. CV-26-01549-PHX-KML 10 Plaintiffs, ORDER 11 v. 12 Darian
Patrick O'Brien, et al., 13 Defendants. 14 15 According to the complaint, defendant Darian
O'Brien was driving a vehicle in the 16 course and scope of his employment with defendant
Domino's Pizza, LLC, when he hit 17 and killed Dwayne Omar Harvey. Harvey's statutory
beneficiaries filed suit in state court 18 against O'Brien and Domino's, alleging various forms of
negligence. Domino's was served 19 on February 3, 2026, but O'Brien has not yet been served.
On March 4, 2026, Domino's 20 filed a notice of removal. 21 The notice of removal claims
removal is proper because there is diversity 22 jurisdiction. Domino's claims it is a "Michigan
limited liability company with its principal 23 place of business in the State of Michigan." (Doc. 1
at 2.) Domino's also seems to concede 24 plaintiffs and O'Brien are all citizens of Arizona, but
claims that because O'Brien has not 25 yet been served, "snap removal is permissible under 28
U.S.C. § 1441(b)(2)." (Doc. 1 at 26 2.) The notice of removal contains multiple errors and does
not establish the existence of 27 federal jurisdiction. Domino's must file a supplement identifying
the citizenship of all 28 parties and explaining how "snap removal" is relevant in this context. 1
The notice of removal identifies plaintiffs and O'Brien as "residents" of Arizona. 2 "But the
diversity jurisdiction statute, 28 U.S.C. § 1332, speaks of citizenship, not of 3 residency." Kanter
v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001). Merely 4 identifying residency is not
sufficient: Domino's must identify the citizenships of plaintiffs 5 and O'Brien. 6 In addition,
Domino's is a limited liability company. For purposes of diversity 7 jurisdiction, a limited liability
company is "a citizen of every state of which its 8 owners/members are citizens." Johnson v.
Columbia Properties Anchorage, LP, 437 F.3d 9 894, 899 (9th Cir. 2006). Domino's statement that
it is a "Michigan limited liability 10 company with its principal place of business in the State of
Michigan" does not answer the 11 relevant question. Domino's must identify the citizenship of its
members. In doing so, 12 Domino's must trace its citizenship "through as many levels as
necessary until reaching a 13 natural person or a corporation." City of E. St. Louis, Illinois v.
Netflix, Inc., 83 F.4th 1066, 14 1070 (7th Cir. 2023). 15 Domino's next error requires more

explanation. While apparently admitting 16 plaintiffs and O'Brien are both citizens of Arizona, Domino's claims removal based on 17 diversity jurisdiction is permissible because it completed a "snap removal." Domino's 18 seems to misunderstand the problem a "snap removal" is attempting to avoid. A "snap 19 removal" occurs when a defendant "fil[es] its notice[] of removal before service of the 20 summons and complaint" on certain defendants. *Casola v. Dexcom, Inc.*, 98 F.4th 947, 950 21 (9th Cir. 2024). Filing an early notice of removal is meant to avoid the "forum defendant 22 rule," which "prohibits removal of a case when at least one defendant is a citizen of the 23 state in which the action is filed." *Atl. Nat. Tr. LLC v. Mt. Hawley Ins. Co.*, 621 F.3d 931, 24 939 (9th Cir. 2010). Some courts of appeal have recognized a defendant can avoid 25 application of the forum defendant rule by conducting a "snap removal." That is, the forum 26 defendant rule does not apply when a case is properly removed before the forum defendant 27 is served. See, e.g., *Texas Brine Co., L.L.C. v. Am. Arb. Ass'n, Inc.*, 955 F.3d 482, 485 (5th 28 1 Cir. 2020) (citing opinions from Second and Third Circuits).¹ A violation of the forum 2 defendant rule does not deprive the district court of jurisdiction and is therefore waived if 3 not challenged within 30 days of the removal. *Casola*, 98 F.4th at 954, 963. 4 It does not appear a snap removal would help Domino's here, because there is a 5 more fundamental problem: O'Brien's presumed Arizona citizenship would deprive this 6 court of diversity jurisdiction. Cf. *id.* at 951 n.3 (noting it was undisputed the requirements 7 for diversity jurisdiction were satisfied before addressing snap removal). A case is 8 removable only if it is one "which the district courts of the United States have original 9 jurisdiction." 28 U.S.C. § 1441(a). Put differently, "[o]nly state-court actions that originally 10 could have been filed in federal court may be removed to federal court by the defendant." 11 *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). 12 Here, plaintiffs (who may be citizens of Arizona) sued O'Brien (who may be a 13 citizen of Arizona) and Domino's (who may not be a citizen of Arizona). If plaintiffs and 14 O'Brien are both citizens of Arizona, the most basic requirement for removal was not met 15 because this case could not have been filed in federal court in the first instance. The forum 16 defendant rule and snap removals are irrelevant in this situation. See 28 U.S.C. § 1447 ("If 17 at any time before final judgment it appears that the district court lacks subject matter 18 jurisdiction, the case shall be remanded."). Multiple courts of appeal have explicitly held 19 as much. *In re Levy*, 52 F.4th 244, 247 (5th Cir. 2022); *M & B Oil, Inc. v. Federated Mut. 20 Ins. Co.*, 66 F.4th 1106, 1109 (8th Cir. 2023); *Rao v. J.P. Morgan Chase Bank, N.A.*, 153 21 F.4th 541, 549 (7th Cir. 2025). So too have district courts in the Ninth Circuit. See, e.g., 22 *Stone v. Omnicell, Inc.*, No. 25-CV-05229-SVK, 2026 WL 266243, at *8 (N.D. Cal. Feb. 23 2, 2026) ("[T]he forum-defendant rule, and hence the snap removal limitation, are 24 irrelevant where there is both an in-state plaintiff and in-state defendant."). 25 The supplement must identify the citizenship of each defendant. If Domino's 26 determines there is not complete diversity between plaintiffs and defendants, the 27 supplement must explain how a "snap removal" cures that jurisdictional flaw. 28 1 The Ninth Circuit has not yet resolved whether snap removals are permissible. *Casola*, 98 F.4th at 964. 1 IT IS ORDERED

no later than March 12, 2026, Domino's shall file a supplement 2 as outlined above. 3 IT IS FURTHER ORDERED as follows: 4 Governing Rules 5 Both counsel and pro se litigants must abide by the Rules of Practice of the U.S. 6 District Court for the District of Arizona ("Local Rules") and the Federal Rules of Civil 7 Procedure. 8 Disclosure Statements 9 Full compliance with Federal Rule of Civil Procedure 7.1 is required by plaintiff(s) 10 and defendant(s). Rule 7.1(a)(1) requires any nongovernmental corporation to file a 11 disclosure statement identifying "any parent corporation and any publicly held corporation 12 owning 10% or more of its stock." Rule 7.1(a)(2) requires a party in an action where 13 jurisdiction is based on diversity under 28 U.S.C. § 1332(a) to file a disclosure statement 14 identifying the citizenship of "every individual or entity whose citizenship is attributed to 15 that party." A Corporate Disclosure Statement form is available at 16 <https://www.azd.uscourts.gov/forms/disclosure-statement>. 17 Service Deadline 18 Service of the summons and complaint on each defendant located in the United 19 States must occur within 90 days of filing the complaint. See Fed. R. Civ. P. 4(m). If service 20 cannot occur within 90 days, a request for an extension may be filed before expiration of 21 the 90-day period. Any such request must set forth the reason why service has not been 22 accomplished and request a specific short additional period of time. If the court believes 23 your reason constitutes "good cause," it will authorize a brief additional period to 24 accomplish service. 25 Proof of service must be filed with the Clerk of Court, in the form of an affidavit, 26 promptly after service has been made. See Fed. R. Civ. P. 4(l). It is important to comply 27 with this requirement because absent proof of service, the court will have no way of 28 knowing that the complaint has been served. 1 This order serves as an express warning that the court will dismiss this action, 2 without further notice to plaintiff(s), with respect to any defendant that is not timely served. 3 See Fed. R. Civ. P. 4(m). 4 Forms of Papers 5 The parties shall adhere to all of the requirements of Local Rule 7.1, including the 6 requirement that text and footnotes shall be no smaller than 13 point. Citations supporting 7 any textual proposition shall be included in the text, not in a footnote. 8 Notices of supplemental authority and responses to those notices are limited to 350 9 words excluding case captions and signature blocks. 10 Paper Courtesy Copies 11 Do not send paper courtesy copies of Federal Rule of Civil Procedure 7(a) 12 pleadings, short procedural motions (e.g., motions for extension of time), 26(f) reports, or 13 stipulations. A paper courtesy copy of dispositive motions (or other lengthy motions that 14 will be opposed) and any responses or replies thereto shall be either postmarked and mailed 15 to the judge or hand-delivered to the judge's mailbox in the courthouse by the next business 16 day after the electronic filing. Do not attempt to deliver documents to the judge's chambers. 17 Courtesy copies should be double-sided and include the ECF-generated header at the top 18 of each page. Courtesy copies of documents too large for stapling must be submitted in 19 three-ring binders. 20 Amending Pleadings 21 Before filing a motion for leave to amend a pleading, the party that wishes to amend 22 must seek the consent of the other parties in an attempt to file the amended pleading 23 pursuant to Local Rule 15.1(b). If any party is unwilling to consent, the motion for leave 24 to amend must indicate which party (or

parties) will oppose the request. If a motion for 25 leave to amend a pleading fails to so indicate, the motion will be denied without prejudice 26 for failure to adhere to this order. 27 Motions and Stipulations 28 Every motion or stipulation, however mundane, must cite the rule(s) and/or law(s) 1 that permit the court to grant the requested relief. Requests for extensions of time must 2 include a brief explanation of why the extension is needed to help the court determine 3 whether there is good cause. See Fed. R. Civ. P. 6(b)(1)(A). 4 To ensure timely case processing, a party moving for an extension of time, 5 enlargement of page limitations, or leave to file a document under seal shall indicate in the 6 motion whether the non-movant opposes the request and intends to file a written response. 7 If such a motion does not so indicate, it may be denied for failure to comply with this order. 8 Motions and stipulations should be accompanied by proposed orders. A proposed 9 order is not necessary for motions that will require a reasoned analysis from the court, or 10 for stipulations requesting issuance of the court's standard protective order with no 11 amendments. These proposed orders must not be on letterhead or contain any information 12 identifying the party submitting the order, and they must set forth the relief requested rather 13 than incorporating the motion or stipulation by reference. See also Local Rule 7.1(b)(3). 14 Proposed orders must be emailed—in Microsoft Word format (not PDF)—to 15 Lanham_Chambers@azd.uscourts.gov. The subject line of the email must include the case 16 name, case number, the words "proposed order for [name of motion]," and an indication 17 of whether the motion is opposed or unopposed if this is not otherwise apparent from the 18 name of the motion.

19 Rule 12 Motions Are Discouraged

20 Any motion under Federal Rule of Civil Procedure 12 is discouraged if the 21 challenged defect in the pleading can be cured by filing an amended pleading. The court 22 therefore requires that: (1) before filing a Rule 12(b)(6) motion to dismiss or a Rule 12(c) 23 motion for judgment on the pleadings, the movant confer with the opposing party to 24 determine whether such motion can be avoided; and (2) the movant attach a certificate of 25 conferral, certifying that it notified the opposing party of the issues asserted in its motion 26 and that the parties conferred but were unable to agree that the pleading was curable in any 27 part by a permissible amendment offered by the pleading party. See also Local Rule 28 12.1(c). The requirement to meet and confer and attach a certificate of conferral applies in 1 equal force to motions to dismiss amended complaints, notwithstanding earlier conferrals 2 and certificates filed before the complaint was amended. Any motion lacking the required 3 certification may be summarily stricken. 4 Multiple defendants represented by the same counsel may not file separate Rule 12 5 motions. Defendants represented by the same counsel who wish to file a Rule 12 motion 6 must file a single joint motion that includes all arguments applicable to any defendant. 7 Protective Orders 8 The court's standard protective order is available at 9 www.azd.uscourts.gov under: Judges' Information → Orders, Forms and Procedures → 10 Lanham, Krissa M. If the parties agree that discoverable materials should be kept 11 confidential, they may file a stipulation requesting that the court issue its standard 12 protective order. If the parties wish to propose additional provisions, they may

request and 13 stipulate to the additional proposed language, subject to the court’s review. In that case, all 14 language added to the standard order by the parties should be redlined into a Word 15 document using “tracked changes,” and the parties’ Word document with the tracked 16 changes must be emailed to chambers. The parties are reminded that the mere fact the 17 parties have designated certain materials or information as confidential pursuant to an 18 agreement or stipulation does not mean the court will automatically order that filings 19 containing such information be placed under seal. See *Ctr. for Auto Safety v. Chrysler Grp., 20 LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). 21 Motions to Seal 22 Local Rule 5.6 governs sealing of court records in unsealed civil actions. Every 23 motion to seal, including stipulations pursuant to Local Rule 5.6(d), must identify the legal 24 standard applicable to the document at issue and explain why the material sought to be 25 sealed meets that standard. The stringent “compelling reasons supported by specific factual 26 findings” standard articulated in *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 27 1178 (9th Cir. 2006), applies to motions and their attachments where the motion is “more 28 than tangentially related to the merits of a case.” *Ctr. for Auto Safety*, 809 F.3d at 1101. 1 Merely noting that a document was designated confidential by a party will not satisfy any 2 applicable legal standard for sealing. 3 Where a party seeks to seal only certain portions of a given document, the 4 unredacted version of the document, which should be lodged under seal pursuant to Local

5 Rule 5.6(c), must include highlighting to indicate which portions of the document the party 6 seeks to redact. 7 Emergencies and Expedited Consideration 8 Any party desiring expedited consideration of a motion or other matter pending 9 before the court may make such a request by filing a separate Notice for Expedited 10 Consideration accompanied by a certificate from counsel for the moving party or, if 11 unrepresented, the moving party. The certificate must set forth the following: 1) the facts 12 establishing the need for expedited resolution; 2) the dates of the imminent events pertinent 13 to the request; 3) whether the motion or request for expedited consideration could have 14 been filed earlier; and 4) when or how the moving party will provide notice to all other 15 parties and the other parties’ positions on the motion. A request for expedited consideration 16 that is simply mentioned in the caption/title of the related filing will not be considered—a 17 separate notice and certificate must be filed. 18 Requests to Reschedule Court Dates 19 The court interprets Local Rule 7.3(b) as applying to requests to reschedule court 20 dates due to attorney conflicts. As such, and to enable the court to efficiently manage cases, 21 such requests must be made by motion or stipulation, must indicate the position of each 22 other party, and (unless another party plans to file a written opposition, which would be 23 appropriate only in rare circumstances) must propose to the court at least three dates/times 24 when all counsel are available for rescheduling purposes. 25 Noncompliance 26 The parties are specifically advised that failure to prosecute, to comply with court 27 orders, or to comply with the Local and Federal Rules may result in dismissal of all or part 28 of this case, default, imposition of sanctions, or summary disposition of matters pending 1 || before the court. See also Local Rule

7.2(1) (“If a motion does not conform in all substantial 2|| respects with the requirements of [the Local Rules], or if the [opposing party] does not || serve and file the required answering memoranda, .. . such noncompliance may be deemed 4|| a consent to the denial or granting of the motion and the court may dispose of the motion 5 || summarily.”). 6 IT IS FURTHER ORDERED:
7 1. That plaintiff(s) must promptly serve a copy of this order on defendant(s) and file a notice of service with the Clerk of Court; 9 2. That, unless the court orders otherwise, on June 5, 2026 the Clerk of Court shall terminate without further notice any defendant in the United States that has not been 11 |) served pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. 12 Dated this 6th day of March, 2026. 13 4 fy Vo AY. \ 4 (Honorable Krissa M. Lanham 16 United States District Judge 17 18 19 20 21 22 23 24 25 26 27 28 -9-