

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF  
CALIFORNIA

Hung Huynh v. Gerard Richard Williams III

Huynh · No. 2:25-cv-07351-JC · Decided October 2, 2025

SUMMARY

The United States District Court for the Central District of California grants Plaintiff Hung Huynh’s motion to remand, vacates the scheduled hearing, and remands the action to Orange County Superior Court. The court holds that Defendant’s removal based on diversity jurisdiction was untimely under 28 U.S.C. § 1446(b)(1) and also improper under the forum defendant rule because Defendant failed to establish Missouri rather than California citizenship. The court denies Plaintiff’s request for attorney’s fees and costs because the removal was not objectively unreasonable.

CASE DETAILS

|                       |                                                                                                                                                                                                                                            |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Central District of California                                                                                                                                                                        |
| WRITING FOR THE COURT | Jacqueline Chooljian                                                                                                                                                                                                                       |
| JURISDICTION          | United States District Court for the Central District of California                                                                                                                                                                        |
| DECIDED               | October 2, 2025                                                                                                                                                                                                                            |
| DOCKET                | 2:25-cv-07351-JC                                                                                                                                                                                                                           |
| DISPOSITION           | remanded                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Plaintiff moved to remand a removed personal-injury action to state court, arguing that removal was untimely and independently barred by the forum defendant rule. The district court granted remand but denied attorney's fees and costs. |
| STANDARD OF REVIEW    | Removal jurisdiction is strictly construed in favor of remand, and the removing party bears the burden of establishing federal jurisdiction. If doubt exists as to the propriety of removal, remand is required.                           |
| PRECEDENTIAL VALUE    | Unknown; district court order with no reported citation                                                                                                                                                                                    |

TOPICS

- civil procedure
- subject matter jurisdiction
- federalism

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether Defendant's August 7, 2025 removal was timely under 28 U.S.C. § 1446(b)(1).
2. Whether removal was barred by the forum defendant rule because Defendant was domiciled in California, the forum state.
3. Whether Plaintiff was entitled to attorney's fees and costs under 28 U.S.C. § 1447(c).

## HOLDINGS

1. Removal was untimely because diversity jurisdiction was apparent from the complaint served on November 27, 2024, triggering the thirty-day removal period, and the purported dismissal request did not toll or restart that period because it was never filed and the action was never dismissed.
2. Removal was independently improper under 28 U.S.C. § 1441(b)(2) because Defendant was domiciled in California, the state in which the action was brought.
3. Attorney's fees and costs were denied because, although Defendant's removal arguments lacked merit, the court could not conclude that removal was objectively unreasonable or clearly foreclosed by relevant precedent.

## KEY QUOTATIONS

*“If there is any doubt as to whether removal is proper, remand must be ordered.”* (3)

*“Such actions reflect, at most, that Defendant believed the case should have been dismissed and that he was entitled to such dismissal, but it was Defendant’s choice to litigate that procedural issue in the state courts rather than timely to remove the action to federal court.”* (8)

*“There is a difference between intention and desire.”* (14-15)

*“Indeed, the facts confirm that Defendant intends to remain indefinitely – albeit not permanently – at his present home with his wife in California, where he has lived and worked for several years and has strong ties in the community.”* (15)

## FACTUAL BACKGROUND

Plaintiff filed a state-court complaint and served Defendant, whose citizenship and the existence of diversity jurisdiction were apparent from the initial pleading. A purported request for dismissal was submitted electronically on Plaintiff's behalf but was rejected as erroneous and was never filed; the state court later confirmed that the action had never been dismissed. Defendant nevertheless waited until August 7, 2025, to remove the case. Defendant claimed Missouri domicile based primarily on family and emotional ties and an asserted future intention to return, although he had lived and worked in California for approximately fifteen years, owned a home there with his wife, and worked in San Diego.

## PROCEDURAL HISTORY

Plaintiff filed the action in Orange County Superior Court on October 31, 2024, and served Defendant on November 27, 2024. Defendant removed the case to the Central District of California on August 7, 2025, asserting diversity jurisdiction. Plaintiff moved to remand; the court submitted the motion without oral argument, granted remand based on both untimeliness and the forum defendant rule, denied fees and costs, and returned the case to state court.

## DISPOSITION

remanded

## REMAND INSTRUCTIONS

The Clerk shall remand the action to the Orange County Superior Court and send that court a copy of the order. The scheduled hearing and November 4, 2025 Scheduling Conference were vacated. Plaintiff's requests for judicial notice were granted, and attorney's fees and costs were denied.

## CASES CITED

- Harris v. Bankers Life and Cas. Co., 425 F.3d 689 (9th Cir. 2005)
- Abrego Abrego v. Dow Chem. Co., 443 F.3d 676 (9th Cir. 2006)
- Ethridge v. Harbor House Rest., 861 F.2d 1389 (9th Cir. 1988)
- Roth v. CHA Hollywood Med. Ctr., L.P., 720 F.3d 1121 (9th Cir. 2013)
- Dietrich v. Boeing Co., 14 F.4th 1089 (9th Cir. 2021)
- Law Offs. of Andrew L. Ellis v. Yang, 178 Cal. App. 4th 869 (2009)
- Casola v. Dexcom, Inc., 98 F.4th 947 (9th Cir. 2024)
- O'Dell v. Freightliner Corp., 10 Cal. App. 4th 645 (1992)
- Fristoe v. Reynolds Metals Co., 615 F.2d 1209 (9th Cir. 1980)
- Transp. Indem. Co. v. Fin. Tr. Co., 339 F. Supp. 405 (C.D. Cal. 1972)
- Lively v. Wild Oats Mkts., Inc., 456 F.3d 933 (9th Cir. 2006)
- Lew v. Moss, 797 F.2d 747 (9th Cir. 1986)
- Owens v. Huntling, 115 F.2d 160 (9th Cir. 1940)
- Kanter v. Warner-Lambert Co., 265 F.3d 853 (9th Cir. 2001)
- Weible v. United States, 244 F.2d 158 (9th Cir. 1957)
- Mondragon v. Cap. One Auto Fin., 736 F.3d 880 (9th Cir. 2013)
- Anderson v. Watts, 138 U.S. 694 (1891)
- Hollinger v. Home State Mut. Ins. Co., 654 F.3d 564 (5th Cir. 2011) (per curiam)
- Adams v. W. Marine Prods., Inc., 958 F.3d 1216 (9th Cir. 2020)
- Freeman v. Nw. Acceptance Corp., 754 F.2d 553 (5th Cir. 1985)
- Hawes v. Club Ecuestre El Comandante, 598 F.2d 698 (1st Cir. 1979)
- Owens v. Nuxoll, 2013 WL 5553897 (E.D. Cal. Oct. 8, 2013)

- Johnson v. Gibson, 2011 WL 3359974 (D. Or. Aug. 3, 2011)
- Gilbert v. David, 235 U.S. 561 (1915)
- Hossein v. Cantor, 2024 WL 866534 (C.D. Cal. Feb. 29, 2024)
- Martin v. Franklin Cap. Corp., 546 U.S. 132 (2005)
- Hornbuckle v. State Farm Lloyds, 385 F.3d 538 (5th Cir. 2004)
- Valdes v. Wal-Mart Stores, Inc., 199 F.3d 290 (5th Cir. 2000)
- Lussier v. Dollar Tree Stores, Inc., 518 F.3d 1062 (9th Cir. 2008)
- Lott v. Pfizer, Inc., 492 F.3d 789 (7th Cir. 2007)

## OPINION

Hung Huynh v. Gerard Richard Williams III

PER CURIAM.

1 JS-6 2 3 4 5 6 7 8

UNITED STATES DISTRICT COURT

9

CENTRAL DISTRICT OF CALIFORNIA

10 HUNG HUYNH, Case No. 2:25-cv-07351-JC 11 Plaintiff,

12 ORDER (1) SUBMITTING,

v. VACATING HEARING ON, AND

13 GRANTING PLAINTIFF’S MOTION

TO REMAND; AND (2) REMANDING

14 GERARD RICHARD WILLIAMS, THE CASE TO THE STATE COURT

III,

15 [DOCKET NO. 13]

16 Defendant. 17

18 I. SUMMARY

19 On October 31, 2024, Plaintiff Hung Huynh (“Plaintiff”), filed a Complaint 20 against Defendant Gerard Richard Williams, III (“Defendant”), in Orange County 21 Superior Case No. 30-2024-01436961-CU-PO-CJC (“State Action”). (Docket No. 22 1-5). On November 27, 2024, Plaintiff served the Summons and Complaint on 23 Defendant. (Docket No. 1-7). On August 7, 2025, Defendant removed the case to 24 federal court based on diversity jurisdiction, alleging that Plaintiff is a citizen of 25 Vietnam and Defendant is a citizen of Missouri. (Docket No. 1 at 3). The matter 26 was thus removed to the United States District Court for the Central District of 27 California and was subsequently assigned to this Court as to whom the parties have 28 been deemed to consent. (See Docket Nos. 1, 2, 6, 7). 1 On September 4, 2025, Plaintiff filed a Motion to Remand and Request for 2 Attorney’s Fees (“Motion”) along with a supporting Memorandum of Points and 3 Authorities (“Motion Memo”), a declaration of counsel (“Tran Decl.”), a Request 4 for Judicial Notice (alternatively, “RJN”), and exhibits (“Motion Ex.”). (Docket

5 No. 13). Plaintiff contends that remand is warranted because Defendant's removal  
6 of the case to this Court (1) was untimely; and, alternatively, (2) was based on 7 Defendant's  
false assertion that he is a citizen of Missouri, whereas Plaintiff 8 contends Defendant is actually  
domiciled in California, making remand improper 9 under the "forum defendant rule" set forth in  
28 U.S.C. § 1441(b)(2). (See Motion  
10 Memo at 3-12). On September 16, 2025, Defendant filed an Opposition to the  
11 Motion ("Opposition") and a supporting declaration of Defendant ("Def. Decl."). 12 (Docket  
Nos. 16, 17). On September 23, 2025, Plaintiff filed a Reply, along with a 13 Supplemental  
Request for Judicial Notice (alternatively, "Supp. RJN") and an 14 exhibit ("Reply Ex.").1  
(Docket No. 22). 15 Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule  
16 7-15, the Court finds the Motion appropriate for decision without oral argument. 17 /// 18 19  
1The Request for Judicial Notice asks the Court to take judicial notice of documents filed 20 in  
state court cases in Texas and California, which contain allegations relevant to the determination  
of Defendant's domicile for purposes of diversity jurisdiction, one of the central 21 matters at  
issue here. The Supplemental Request for Judicial Notice asks the Court to take judicial notice of  
the docket for the State Action in Orange County Superior Court before the 22 case was removed  
to this Court, which is relevant to the other matter in dispute, the timeliness of 23 removal.  
Defendant has objected to the latter filing – Plaintiff's copy of the State Action docket – because it  
was improperly filed with the Reply, depriving Defendant of an opportunity to 24 respond to it.  
(See Docket No. 23). However, that exhibit is identical in all relevant respects to 25 an exhibit that  
was attached to Defendant's Notice of Removal (see Docket No. 1-19), and Defendant is in no  
way prejudiced by it. Defendant's objection is overruled. As the state court 26 documents  
submitted by Plaintiff are properly subject to judicial notice, the Request for Judicial Notice and  
Supplemental Request for Judicial Notice are granted. See Fed. R. Evid. 201; Harris 27 v. County  
of Orange, 682 F.3d 1126, 1131-32. 28 2 1 The hearing calendared for October 7, 2025 at 9:30  
a.m. is hereby vacated and the 2 Motion is taken off calendar and is submitted for decision. 3 For  
the reasons discussed below, the Motion is granted, except as to 4 attorney's fees and costs, and  
the case is remanded to the Orange County Superior 5 Court.2 In reaching this conclusion, the  
Court has considered every argument made 6 by the parties and discusses the main contentions  
herein.

## 7 II. STANDARD OF REVIEW

8 Removal of a case from state court to federal court is governed by 28 U.S.C. 9 § 1441, which  
provides in relevant part that "any civil action brought in a State 10 court of which the district  
courts of the United States have original jurisdiction, 11 may be removed . . . to the district court  
of the United States for the district and 12 division embracing the place where such action is  
pending." 28 U.S.C. § 1441(a). 13 Federal courts have original subject matter jurisdiction where  
an action presents 14 either a federal question under 28 U.S.C. § 1331 or diversity of citizenship  
under 15 28 U.S.C. § 1332. Generally, a court has diversity jurisdiction only when there is 16

complete diversity of citizenship among adverse parties and the amount in controversy exceeds \$75,000. See 28 U.S.C. § 1332(a). Remand to state court may be ordered for lack of subject matter jurisdiction or any defect in the removal procedure. See 28 U.S.C. § 1447(c). To protect the jurisdiction of state courts, removal jurisdiction is strictly construed in favor of remand. See *Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689, 698 (9th Cir. 2005); see also *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006) (“It is to be presumed that a cause lies outside the limited jurisdiction of the federal courts and the burden of establishing the contrary rests upon the party asserting jurisdiction.” (internal quotation marks and brackets)). Accordingly, the Court likewise vacates the November 4, 2025 Scheduling Conference. 1 || omitted)). If there is any doubt as to whether removal is proper, remand must be 2 || ordered. *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1393 (9th Cir. 1988). 3 || “The party seeking removal bears the burden of establishing federal jurisdiction.” 4 || *Id.*

## 5] I. DISCUSSION

6 As indicated above, Plaintiff's Motion contends that remand is warranted 7 || due to (1) the untimeliness of Defendant's removal of the case to this Court 8 || (see Motion Memo at 3-5); and (2) the “forum defendant rule” set forth in 9 || 28 U.S.C. § 1441(b)(2) (see Motion Memo at 5-12). Additionally, Plaintiff seeks 10 || an award of attorney's fees and costs incurred as a result of the allegedly improper 11 || removal. (See Motion Memo at 12-13). As explained below, the Court agrees that 12 || Defendant's removal of the case was untimely as well as improper due to the forum 13 || defendant rule, though the Court does not find that such removal was objectively 14 || unreasonable. The Court therefore grants Plaintiff's Motion, except as to 15 || attorney's fees and costs, and remands this case to the state court. 16 A. Removal Was Untimely 17 1. Pertinent Law 18 The Ninth Circuit has explained that there are three pathways for removal of 19 || an action from state court based on diversity jurisdiction. See *Roth v. CHA 20 || Hollywood Med. Ctr., L.P.*, 720 F.3d 1121, 1124 (9th Cir. 2013). The first two 21 || pathways are contained in 28 U.S.C. § 1446(b) and impose thirty-day deadlines for 22 || removal. See *Dietrich v. Boeing Co.*, 14 F.4th 1089, 1093 (9th Cir. 2021). The 23 || third pathway is based on reading 28 U.S.C. § 1446 together with 28 U.S.C. § 1441 24 || and permits removal up to one year from the filing of the complaint, but this 25 || pathway only applies if the first two do not. See *Roth*, 720 F.3d at 1125-26. 26 The first pathway is set forth by Section 1446(b)(1) and states that “[t]he 27 || notice of removal of a civil action or proceeding shall be filed within 30 days after 28 || the receipt by the defendant, through service or otherwise, of a copy of the initial 1 pleading setting forth the claim for relief upon which such action or proceeding is 2 based, or within 30 days after the service of summons upon the defendant if such 3 initial pleading has then been filed in court and is not required to be served on the 4 defendant, whichever period is shorter.” 28 U.S.C. § 1446(b)(1). The second 5 pathway is set forth by Section 1446(b)(3) and states in relevant part that “if the 6 case stated by the initial pleading is not removable, a notice of removal may be 7 filed within 30 days after receipt by the defendant, through service or otherwise, of 8 a copy of an amended pleading,

motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3). The third pathway is based on the interaction of Section 1446 with Section 1441. See *Roth*, 720 F.3d at 1125. Section 1441(a) states that “[e]xcept as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a). The Ninth Circuit has explained “that §§ 1441 and 1446, read together, permit a defendant to remove outside the two thirty-day periods on the basis of its own information, provided that it has not run afoul of either of the thirty-day deadlines.” *Roth*, 720 F.3d at 1125. Thus, “a defendant who has not lost the right to remove because of a failure to timely file a notice of removal under § 1446(b)(1) or (b)(3) may remove to federal court when it discovers, based on its own investigation, that a case is removable.” *Id.* at 1123. The only time limit on removal under this third pathway is that a defendant must file the notice of removal within one year of the filing of the complaint. *Id.* at 1126 (citing 28 U.S.C. § 1446(c) (1) for the one-year time limit). 2. Pertinent Facts As noted above, Plaintiff filed his Complaint in Orange County Superior Court on October 31, 2024, and served Defendant on November 27, 2024. (Docket Nos. 1-5, 1-7). Five days later, on December 2, 2024, Plaintiff’s then-counsel submitted a Request for Dismissal which apparently was erroneous and had not been authorized by Plaintiff. (Docket No. 1-8). After Plaintiff’s counsel then advised the court of the erroneous filing, the clerk entered a Notice of Rejection of Electronic Filing at the direction of the court on December 16, 2024. (Docket No. 1-9). The Notice of Rejection stated: “Per the courtroom, rejected at the request of Olivia Maclay at Wilshire Law Firm,” which was Plaintiff’s then-counsel. (*Id.*). On December 27, 2024, Defendant filed his notice of appearance of counsel along with a “Motion for Order Directing the Clerk to Enter an Order Recognizing the Voluntary Dismissal of this Action with Prejudice.” (Docket No. 1-10). The motion argued that the Request for Dismissal submitted on Plaintiff’s behalf on December 2, 2024 immediately resulted in the case’s dismissal, leaving no discretion for the clerk or the court to reject it, and instead divesting the court of jurisdiction over the case and requiring the clerk to file an order recognizing that the action had been dismissed with prejudice on December 2. (See *id.* at 4-6). Plaintiff opposed the motion on the grounds that he had not authorized the Request for Dismissal and its submission was due to an error. (Docket No. 1-11). The trial court heard oral arguments on July 7, 2025, and issued its final ruling on July 8, 2025, denying Defendant’s Motion to Enforce Dismissal upon finding that the Request for Dismissal had been “submitted due to a miscommunication between Plaintiff and his attorney” and “was properly withdrawn by the Court at the request of Plaintiff’s counsel,” as Plaintiff’s “intent was not to dismiss the case,” and so the “dismissal

was never entered.” (Docket No. 1-14). 27 On July 10, 2025, Defendant filed a Motion for Reconsideration. (Docket 28 No. 1-16). On July 28, 2025, Defendant filed a Petition for Writ of Mandate, 6 1 Prohibition, or Other Extraordinary Relief to appeal the state trial court’s decision. 2 (Tran Decl. ¶ 6; Motion Ex. K). On August 1, 2025, Plaintiff served an initial 3 round of written discovery on Defendant, consisting of Form Interrogatories, 4 Requests for Production, and Requests for Inspection. (Tran Decl. ¶ 8). The 5 California Court of Appeals denied Defendant’s Petition for Writ of Mandate on 6 August 7, 2025. (Tran Decl. ¶ 7; Motion Ex. L). Later that day, Defendant filed 7 his Notice of Removal to federal court based on diversity jurisdiction. (Docket No. 8 1). 9 3. Analysis 10 There is no dispute here that the basis for Defendant’s removal of the case, 11 diversity jurisdiction, was clear from the Complaint that was served on Defendant 12 on November 27, 2024 (Docket No. 1-7), and thus 28 U.S.C. § 1446(b)(1) applies, 13 under which removal would be required within thirty days of such service. (See 14 Motion Memo at 3-4; Opposition at 4). Defendant contends, however, that because 15 a Request for Dismissal was submitted to the state court on Plaintiff’s behalf just 16 five days later, on December 2, 2024, “there was no case to remove” at that point. 17 (Opposition at 1). In Defendant’s view, the clerk’s subsequent rejection of 18 Plaintiff’s erroneous filing, on December 16, 2024, did nothing to change this fact. 19 Defendant asserts that he instead “[r]easonably believ[ed]” that the Request for 20 Dismissal “took effect as soon as it [was] filed notwithstanding what [the] court 21 clerk d[id] or d[id] not do ministerially.” (Opposition at 5). On December 27, 22 2024, Defendant filed his Motion For Order Directing the Clerk to Enter an Order 23 Recognizing the Voluntary Dismissal of th[e] Action with Prejudice,” which the 24 Court denied more than five months later, on July 8, 2025. (Docket Nos. 1-10. 1- 25 14). According to Defendant, “only then,” on July 8, 2025, “did the [State Action] 26 formally become ‘un-dismissed’ and come back into existence.” (Opposition at 1; 27 see also id. at 6 (stating that the state court’s July 8 order “confirm[ed] for the first 28 /// 7 1 || time that [the State Action] was formally ‘un-dismissed’ and active as of such 2 || date’’)). However, this characterization is not supported by the record or the law. 3 In particular, contrary to Defendant’s account, the State Action was not 4 || suddenly “un-dismissed” or rendered “active” on July 8, 2025 (see Opposition at 1, 5 || 6), because it had never been dismissed, closed, or inactive prior to that. California 6 || law provides that a plaintiff may dismiss his complaint upon written request to the 7 || clerk, “filed with papers in the case,” at any time before trial. Cal. Civ. Proc. Code 8 | § 581(b)(1) (emphasis added); see also id. § 581(c). Such requests do not become 9 || effective unless and until they are actually “filed” in the case. As the California 10 || Court of Appeals has stated, requests for dismissal are “usually effective upon 11 | filing, and no other action by the clerk or the court is required.” Law Offs. of 12 || Andrew L. Ellis v. Yang, 178 Cal. App. 4th 869, 876 (2009) (citations omitted) 13 || (emphasis added). Moreover, “/u/pon the proper filing” of such requests, “the trial 14 || court loses jurisdiction to act in the case,” except to award

fees and costs, and “[a]ll 15 || subsequent proceeding [are] void.” *Id.* (citations omitted). Here, the Request for 16 || Dismissal was never “filed”; rather, it was merely submitted for electronic filing, 17 || erroneously, and was subsequently rejected when the error was addressed. (See 18 || Reply Ex. 1 (docket)); see also *Casola v. Dexcom, Inc.*, 98 F.4th 947, 956 (9th Cir. 19 || 2024) (in California, “just because a document is ‘submitted for electronic filing,’ 20 || does not mean that it is, or will be, filed” (quoting Cal. Civ. Proc. Code 21 || § 1010.6(e)(4)(A))). 22 Furthermore, although “[n]either the clerk nor the trial court has any 23 || discretion” regarding a plaintiff’s request for dismissal, *Law Offs. of Andrew L. 24 | Ellis*, 178 Cal. App. 4th at 876, the request here was not rejected simply at the 25 || discretion of the clerk or trial court. It was instead rejected at the request of 26 || Plaintiffs counsel because it had been submitted in error, and it was never 27 || Plaintiffs intent to dismiss the matter. (See Docket No. 1-9 (Notice of Removal 28 || Ex. 9)). As it was Plaintiffs “absolute right to dismiss” the action by filing such a 1 || request, see *O’ Dell v. Freightliner Corp.*, 10 Cal. App. 4th 645, 659 (1992), he 2 || certainly had a right to prevent the filing of a dismissal request submitted 3 || erroneously on his behalf. 4 The state court obviously recognized this by rejecting the filing on 5 || December 16, 2024. (See Docket No. 1-9; Reply Ex. 1). By that date, at the latest, 6 || it should have been clear to Defendant that the matter was not dismissed and was 7 || instead an open, pending state court action that could be removed to federal court. 8 || Defendant fails to identify any reasonable basis for him to have believed otherwise. 9 || Yet, Defendant delayed for nearly eight months after that before removing the case 10 || on August 7, 2025. (See Docket No. 1). Though he now contends otherwise, 11 || Defendant at that time did not proceed as though he actually believed the case had 12 || been dismissed and rendered inactive by the Request for Dismissal. Rather, as 13 || indicated above, Defendant actively pursued the case’s dismissal by moving for an 14 || order requiring the clerk to enter dismissal. Indeed, even after the Superior Court 15 || denied his motion on July 8, 2025, and confirmed what had already been apparent — 16 || that “dismissal was never entered” in the case, nor should it have been (see Docket 17 || No. 1-14 at 2) — Defendant continued to press the matter in the state courts (see 18 || Docket No. 1-16; Motion Exs. K-L). 19 Such actions reflect, at most, that Defendant believed the case should have 20 || been dismissed and that he was entitled to such dismissal, but it was Defendant’s 21 || choice to litigate that procedural issue in the state courts rather than timely to 22 || remove the action to federal court. As there is no legal basis to toll the thirty-day 23 || removal period under 28 U.S.C. § 1446(b)(1) in these circumstances, removal was 24 || untimely, and remand is warranted on this basis. See, e.g., *Fristoe v. Reynolds 25 || Metals Co.*, 615 F.2d 1209, 1212 (9th Cir. 1980) (noting that “the time limit is 26 || mandatory and a timely objection to a late petition will defeat removal”); *Transp. 27 || Indem. Co. v. Fin. Tr. Co.*, 339 F. Supp. 405, 407 (C.D. Cal. 1972) (“[T]he 28 || thirty-day period [under Section 1446(b)] may not be enlarged . . . by act of the 1 || State Court... .” (citing *Green v. Zuck*, 133 F. Supp. 436 (S.D.N.Y. 1965); *Dutton 2 || v. Moody*, 104 F. Supp. 838 (S.D.N.Y. 1952); *Robinson v. La Chance*, 209 F. 3 || Supp. 845 (D.C.N.C. 1962))). 4 B. | Removal Was Also Improper Due to the Forum Defendant Rule 5 1.

Pertinent Law 6 Under the “forum defendant rule,” an action that is otherwise removable to 7 || federal court solely on the basis of diversity jurisdiction “may not be removed if 8 || any of the parties in interest properly joined and served as defendants is a citizen of 9 || the State in which such action is brought.” 28 U.S.C. § 1441(b)(2); see also *Lively* 10 || v. *Wild Oats Mkts., Inc.*, 456 F.3d 933, 939 (9th Cir. 2006) (“Separate and apart 11 || from the statute conferring diversity jurisdiction, 28 U.S.C. § 1332, § 1441(b) 12 || confines removal on the basis of diversity jurisdiction to instances where no 13 || defendant is a citizen of the forum state.”), cert. denied, 549 U.S. 1207 (2007). 14 || “To demonstrate citizenship for diversity purposes a party must (a) be a citizen of 15 || the United States, and (b) be domiciled in a state of the United States.” *Lew v. 16 || Moss*, 797 F.2d 747, 749 (9th Cir. 1986) (emphasis added). 17 A person’s “domicile” is the “location where he or she has established a 18 || ‘fixed habitation or abode in a particular place, and [intends] to remain there 19 || permanently or indefinitely.” *Id.* at 749-50 (quoting *Owens v. Huntling*, 115 F.2d 20 || 160, 162 (9th Cir. 1940) (alteration in original)). “Intention to remain ‘indefinitely’ 21 22 3 °\*The Ninth Circuit has explained the purpose of this rule as follows: 24 Removal based on diversity jurisdiction is intended to protect out-of-state defendants from possible prejudices in state court. The need for such protection is 25 absent, however, in cases where the defendant is a citizen of the state in which the 6 case is brought. Within this contextual framework, the forum defendant rule allows the plaintiff to regain some control over forum selection by requesting that 27 the case be remanded to state court. 28 *Lively*, 456 F.3d at 940 (citation omitted). 10 1 || does not require an intent to stay at the new location permanently, but ‘a person 2 || must intend to make that place his home for the time at least.’” *Owens v. Nuxoll*, 3 || 2013 WL 5553897, at \*4 (E.D. Cal. Oct. 8, 2013) (quoting *Johnson v. Gibson*, 4 | 2011 WL 3359974, at \*3 (D. Or. Aug.3, 2011)); see also *Hawes v. Club Ecuestre* 5 || *El Comandante*, 598 F.2d 698, 701 (1st Cir. 1979) (“There must be an intention to 6 || remain at the new residence indefinitely; it is not required that the intention be to 7 || stay there permanently.”). Moreover, “a person’s old domicile is not lost until a 8 || new one is acquired. A change in domicile requires the confluence of (a) physical 9 || presence at the new location with (b) an intention to remain there indefinitely.” 10 || *Lew*, 797 F.2d at 750 (citations omitted). 11 Residence, which entails only physical presence, is not equivalent to 12 || domicile, as “[a] person residing in a given state is not necessarily domiciled there, 13 || and thus is not necessarily a citizen of that state.” *Kanter v. Warner-Lambert Co.*, 14 265 F.3d 853, 857 (9th Cir. 2001) (citing *Weible v. United States*, 244 F.2d 158, 15 | 163 (9th Cir. 1957) (“Residence is physical, whereas domicile is generally a 16 || compound of physical presence plus an intention to make a certain definite place 17 || one’s permanent abode, though, to be sure, domicile often hangs on the slender 18 || thread of intent alone, as for instance where one is a wanderer over the earth. 19 || Residence is not an immutable condition of domicile.”)). Nonetheless, “numerous 20 || courts treat a person’s residence as prima facie evidence of the person’s domicile,” 21 | though the Ninth Circuit has not “yet adopted this presumption.” *Mondragon v. 22 || Cap. One Auto Fin.*, 736 F.3d 880, 885-86 (9th Cir. 2013) (citing

Anderson v. 23 || Watts, 138 U.S. 694, 706 (1891); Hollinger v. Home State Mut. Ins. Co., 654 F.3d 24 || 564, 571 (Sth Cir. 2011) (per curiam); 13E Charles Alan Wright & Arthur R. 25 | Miller, Federal Practice and Procedure § 3612 & n.28 (3d ed. 2013)). “At 26 || minimum, a person’s residence constitutes some evidence of domicile,” Adams v. 27 || W. Marine Prods., Inc., 958 F.3d 1216, 1221 (9th Cir. 2020) (citing Mondragon, 28 || 736 F.3d at 886) (emphasis in original), though a number of other factors are also 11 1 || relevant to the determination, including “voting registration and voting practices, 2 || location of personal and real property, location of brokerage and bank accounts, 3 || location of spouse and family, membership in unions and other organizations, place 4 || of employment or business, driver’s license and automobile registration, and 5 || payment of taxes.” Lew, 797 F.2d at 750 (citations omitted). 6 “[T]he existence of domicile for purposes of diversity is determined as of the 7 || time the lawsuit is filed.” Id. It is “evaluated in terms of ‘objective facts,’” and 8 || “statements of intent are entitled to little weight when in conflict with facts.” 9 || Id. (quoting Freeman v. Nw. Acceptance Corp., 754 F.2d 553, 556 (Sth Cir. 1985)). 10 | “[T]he actual fact of residence and a real intention of remaining there, as disclosed 11 || by [a party’s] entire course of conduct, are the controlling factors in ascertaining 12 || his domicile.” Freeman, 754 F.2d at 555-56. The party asserting diversity 13 || jurisdiction bears the burden of proof. Kanter, 265 F.3d at 857-58; Lew, 797 F.2d 14 || ] at 749. 15 2. Pertinent Facts and Contentions 16 As noted above, Defendant removed this case on the basis of diversity 17 || jurisdiction, alleging that Plaintiff is a citizen of Vietnam and Defendant is a citizen 18 || of Missouri. (See Docket No. 1 at 3). Defendant claimed specifically that he is 19 | domiciled at 1110 N. 19th Avenue, in Ozark, Missouri. (Docket No. 1-2 at 1). 20 || Plaintiff disputes this, contending that Defendant is instead a citizen of California, 21 || where Defendant presently resides, and thus removal was improper under the 22 || forum defendant rule. (See Motion Memo at 5-12). As support, Plaintiff has 23 || submitted state court filings from California and Texas between December 2024 24 || and February 2025, in which Defendant alleged that he is a citizen of California 25 || and a California resident. (See Motion Ex. A at 2, Ex. B at 2, Ex. C at 2, Ex. D at 26 || 4). 27 Defendant does not dispute that he presently resides in California and has 28 || lived here for about fifteen years. Since about 2021, Defendant and his wife have 12 1 resided in the house they own in Newport Coast, California, while Defendant 2 works for Qualcomm in San Diego. (See Opposition at 6, 17; Def. Decl. ¶ 17). 3 They had moved in 2021 to Southern California from the San Francisco Bay Area 4 of California, where Defendant had resided since taking a position at Apple in 5 Cupertino, California, in “early 2010.” (Def. Decl. ¶ 14). It was there in the Bay 6 Area, while working at Apple, that Defendant met his current wife, and they 7 “helped raise seven children – taking them to parks, feeding, and caring for them.” 8 (Def. Decl. ¶ 15). Prior to that, Defendant lived and worked in Texas for about 9 fifteen years. (See Opposition at 16, 18). Moreover, because of his wife’s 10 Vietnamese heritage, Defendant is “very proud to have built connections and 11 forged ties with the Vietnamese-American community in Texas, the Bay Area, and 12 Orange County, the last of which is home to the largest concentration of 13

individuals of Vietnamese origin outside of Vietnam.” (Def. Decl. ¶ 17). 14 Yet, notwithstanding these ties established over the last nearly thirty years in 15 California and Texas, according to Defendant, “none of those places ever truly felt 16 like home.” (Def. Decl. ¶ 13). Defendant avers that his “permanent home and true 17 intent have always remained in Ozark, Missouri.” (Def. Decl. ¶ 18). 18 Defendant was “born and raised” in Southwestern Missouri and alleges 19 strong family, spiritual, and emotional connections to that area, though he 20 apparently has not lived there since completing his master’s degree at the 21 University of Missouri, Rolla, almost thirty years ago. (See Def. Decl. ¶¶ 2-7, 13- 22 14). The home Defendant claims as his “domicile,” at 1110 North 19th Avenue, in 23 Ozark, Missouri (see Docket No. 1-2 at 1), is his parents’ current home that 24 Defendant expects to inherit when they pass away (Def. Decl. ¶ 19). It is not the 25 Missouri home Defendant grew up in, but he asserts that it “resembles all the 26 memories [Defendant] carr[ies] in [his] heart from childhood.” (Def. Decl. ¶ 12). 27 His parents moved there in 2012 because they wished “to create a new home . . . so 28 the family could live together in the same place permanently.” (Def. Decl. ¶ 10). 1 Defendant’s parents “want [Defendant’s] family to return to Ozark because [they] 2 will be surrounded with [his] sister and other relatives,” including “about thirty 3 uncles, aunts, and cousins.” (Def. Decl. ¶ 16). Defendant thus “hold[s] a solemn 4 promise to [his] parents to return permanently to Ozark, Missouri, to honor the 5 home they built with their hands and hearts.” (Def. Decl. ¶ 20). 6 Defendant and his wife assertedly share the decision to move there, and they 7 have stored many of their “valuable personal effects” in his parents’ Ozark home, 8 including their “favorite furniture,” “precious wedding clothes,” and “valuable 9 household goods that [they] received as wedding gifts”; “[m]any photos of 10 [Defendant’s] seven children”; Defendant’s “precious U.S. stamp collection”; his 11 “collection of valuable books that [he] saved and intend[s] to read again when [he] 12 retire[s]”; and his “treasured family heirlooms and keepsakes” such as “numerous 13 childhood, high school, college, graduation, and wedding photos, along with [his] 14 college diplomas, technological achievements, and awards.” (Def. Decl. ¶¶ 17-19). 15 Defendant additionally states that his “plan is to transform the small town of Ozark, 16 Missouri – home to just 24,000 people – into a technologically advanced haven, a 17 place of opportunity built on love, community, and the values [Defendant’s] 18 parents and [he] hold so dear.” (Def. Decl. ¶ 20). Defendant also “aspire[s] to one 19 day serve as an adjunct professor at the University of Missouri, where [he] earned 20 [his] master’s degree, sharing knowledge with the next generation through teaching 21 and writing.” (Def. Decl. ¶ 23). 22 3. Analysis 23 Defendant fails to demonstrate that he is a citizen of Missouri rather than 24 California, as he has offered little other than vague assertions of his emotional 25 connection to the Ozark region and his desire to move there some day in the future. 26 Yet, “[t]here is a difference between intention and desire.” Hawes, 598 F.2d at 27 702; see id. at 702-03 (despite that plaintiffs did not desire to leave Puerto Rico, 28 and their eldest daughter remained there as did their furniture, they clearly intended 14 1 to relocate to New York City for an indefinite period, as shown by their actions in 2 renting an apartment, obtaining New

York driver's license, enrolling child in 3 school, and obtaining employment there). To the extent that Defendant claims an 4 intention to live in Ozark, Missouri, such "statements of intent are entitled to little 5 weight when in conflict with facts." Lew, 797 F.2d at 750. Although Ozark is 6 allegedly his "haven" and "true home" (Def. Decl. ¶¶ 11, 24), Defendant has never 7 lived there, and he has not resided in Missouri at all essentially since his youth, 8 about thirty years ago, nor has he shown any present intention to relocate. *Gilbert 9 v. David*, 235 U.S. 561, 569 (1915) ("The requisite animus is the present intention 10 of permanent or indefinite residence in a given place or country, or, negatively 11 expressed, the absence of any present intention of not residing there permanently or 12 indefinitely." (citation omitted)). Among the factors that might evidence such 13 intention are, as indicated above, "voting registration and voting practices, location 14 of personal and real property, location of brokerage and bank accounts, location of 15 spouse and family, membership in unions and other organizations, place of 16 employment or business, driver's license and automobile registration, and payment 17 of taxes." Lew, 797 F.2d at 750 (citations omitted). Of these, Defendant has noted 18 only that he retains some family and personal property in Missouri. He is silent 19 regarding the other factors. 20 Such facts fall far short of demonstrating the requisite intention to relocate. 21 See, e.g., *Hossein v. Cantor*, 2024 WL 866534, at \*2 (C.D. Cal. Feb. 29, 2024) 22 ("Cantor's declaration establishes only a floating intention to return at some future 23 period to New Jersey; Cantor does not offer any evidence of a genuine plan to 24 relocate away from California at a definite time. Furthermore, Cantor's statements 25 of intent conflict with the objective facts in this case, which show that he works, 26 lives, and pays taxes in California and has a California driver's license." (emphasis 27 in original)). Indeed, the facts confirm that Defendant intends to remain 28 indefinitely – albeit not permanently – at his present home with his wife in 15 1 || California, where he has lived and worked for several years and has strong ties in 2 || the community. (See Def. Decl. §§[ 14-17; Opposition at 7, 17-18). That is his 3 || domicile, until he actually acquires a new one. See Lew, 797 F.2d at 750. 4 As such, Defendant is a citizen of California, where this action was brought, 5 || and removal was improper under the forum defendant rule. See 28 U.S.C. 6 | § 1441(b)(2); *Lively*, 456 F.3d at 939. 7 C. An Award of Attorney's Fees and Costs Is Not Warranted 8 "An order remanding the case may require payment of just costs and any 9 || actual expenses, including attorney fees, incurred as a result of the removal." 10 | 28 U.S.C. § § 1447(c). The standard for awarding costs and fees under this 11 | provision "turn[s] on the reasonableness of the removal." *Martin v. Franklin Cap. 12 || Corp.*, 546 U.S. 132, 141 (2005). "Absent unusual circumstances, courts may 13 || award attorney's fees under § 1447(c) only where the removing party lacked an 14 || objectively reasonable basis for seeking removal. Conversely, when an objectively 15 || reasonable basis exists, fees should be denied." *Id.* (citing *Hornbuckle v. State 16 || Farm Lloyds*, 385 F.3d 538, 541 (Sth Cir. 2004); *Valdes v. Wal-Mart Stores, Inc.*, 17 | 199 F.3d 290, 293 (Sth Cir. 2000)). "[R]emoval is not objectively unreasonable 18 || solely because the removing party's arguments lack merit, or else attorney's fees 19 || would always be awarded whenever remand is granted." *Lussier v. Dollar Tree 20 || Stores*,

Inc., 518 F.3d 1062, 1065 (9th Cir. 2008). Objective reasonableness is 21 || instead assessed based on “whether the relevant case law clearly foreclosed the 22 || defendant’s basis of removal.” Id. at 1066 (citing Lott v. Pfizer, Inc., 492 F.3d 789, 23 | 793 (7th Cir. 2007)). 24 Plaintiff argues that the Court should award attorney’s fees and costs here 25 || because Defendant’s removal was “plainly untimely” and was also “clearly 26 || improper under the Forum Defendant Rule, which Defendant and his counsel 27 || attempted to avoid my falsely claiming that Defendant is a citizen of Missouri.” 28 || (Motion Memo at 13). Defendant contends that if the Court orders remand, an 16 1 award of fees is unwarranted because removal was objectively reasonable. In 2 particular, Defendant asserts that the “peculiar circumstances” of the pre-removal 3 proceedings in state court “created at least a legitimate question” as to the 4 untimeliness of removal, and there was also “at least a ‘close call’” as to whether 5 Defendant’s domicile is in Missouri rather than California. (Opposition at 20-21). 6 Upon review, though Defendant’s positions on timeliness and domicile 7 certainly lack merit – and, indeed, strain credulity – the Court cannot find that they 8 are clearly foreclosed by the relevant case law or are otherwise objectively 9 unreasonable. Plaintiff’s request for attorney’s fees and costs is therefore denied.

#### 10 IV. ORDERS

11 IT THEREFORE ORDERED that (1) Plaintiff’s Request and Supplemental 12 Request for Judicial Notice are granted; (2) Plaintiff’s Motion is granted, except as 13 to attorney’s fees and costs; (3) this action is remanded to the Orange County 14 Superior Court; and (4) the Clerk shall send a copy of this Order to the Orange 15 County Superior Court. 16 IT IS SO ORDERED. 17 18 DATED: October 2, 2025 19 \_\_\_\_\_/s/\_\_\_\_\_ 20 Honorable Jacqueline Chooljian

UNITED STATES MAGISTRATE JUDGE

21 22 23 24 25 26 27 28 17