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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

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11 DANE WIGINGTON dba
12 GEOENGINEERING WATCH,

13 Plaintiff,

14 v.

15 DOUGLAS MacMARTIN fka
DOUGLAS MacMYNOWSKI et al.,

16 Defendants.

No. 2:21-cv-02355-KJM-DMC

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION TO REMAND TO
STATE COURT**

Date: February 11, 2022
Time: 10:00 a.m.
Courtroom: 3, 15th floor
Judge: Hon. Kimberly J. Mueller

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18 **I. ISSUES TO BE DECIDED**

19 Plaintiff Dane Wigington dba GeoEngineering Watch filed this case in the Superior Court
20 of California for the County of Shasta ("state court"). Defendant Douglas MacMartin removed it
21 to the United States District Court for the Eastern District of California ("federal court").

22 The issues to be decided are: (1) whether the case should be remanded to state court; and
23 (2) if for any reason the Court is not inclined to enter an order remanding the case to state court,
24 whether Wigington should be allowed to take discovery relevant to removal requirements prior to
25 any decision not to remand. Wigington submits that the answer to both is "yes."

26 **II. RELEVANT BACKGROUND**

27 Wigington filed the complaint in this case in state court on November 5, 2021. Hutchison
28 Decl. ¶ 2 & Ex. A (hereafter simply cited as, "Compl."), ECF No. 1-1. MacMartin received copies

1 of the amended summons and complaint on November 23, 2021. Def.’s Notice of Removal ¶ 3,
2 ECF No. 1; Hutchison Decl. ¶¶ 2-3 & Exs. A-B, ECF No. 1-1. MacMartin removed the case to
3 federal court on December 17, 2021. Def.’s Notice of Removal, ECF No. 1.

4 **III. STANDARDS GOVERNING A MOTION TO REMAND**

5 After removal, [28 U.S.C. § 1447\(c\)](#) applies. It provides that a case “shall be remanded” if
6 at “any time before final judgment it appears that the district court lacks subject matter jurisdiction.”

7 A plaintiff’s motion for remand effectively forces the defendant – the party who invoked
8 the federal court’s removal jurisdiction – to prove by a preponderance of evidence whatever is
9 necessary to support the removal: e.g., the existence of diversity, the amount in controversy, or the
10 federal nature of the claim. [Gaus v. Miles, Inc., 980 F.2d 564, 566 \(9th Cir. 1992\)](#) (“Gaus”).

11 Moreover, federal courts “strictly construe the removal statute against removal jurisdiction”
12 and “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in the
13 first instance.” [Gaus, supra, 980 F.2d at 566](#).

14 **IV. THE COURT LACKS SUBJECT MATTER JURISDICTION**

15 Here, there is neither federal question jurisdiction nor diversity jurisdiction as to
16 Wigington’s complaint.

17 **A. There is no federal question jurisdiction.**

18 The term “federal question jurisdiction” “refers to the subject matter jurisdiction of federal
19 courts for claims ‘*arising under*’ the U.S. Constitution, treaties, federal statutes, administrative
20 regulations or common law.” [Phillips & Stevenson, Cal. Practice Guide: Federal Civil Procedure
21 Before Trial, Calif. & 9th Cir. Editions \(The Rutter Group April 2021\) ¶ 2:300](#) (“Phillips &
22 Stevenson”) (emphasis in original). The only claims for relief in Wigington’s complaint are state
23 law claims for defamation and interference with prospective economic relations. Compl. at ¶¶ 72-
24 94. Thus, there is no federal question jurisdiction.

25 **B. There is no diversity jurisdiction.**

26 To establish citizenship for diversity purposes, a natural person must “(1) be a citizen of the
27 United States, and (2) be domiciled in the state.” [Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088,
28 1090 \(9th Cir. 1983\)](#). A person’s domicile is the place where the person resides with the intention

1 to remain or to which the person intends to return. “A person residing in a given state is not
2 necessarily domiciled there, and thus is not necessarily a citizen of that state.” Kanter v. Warner-
3 Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001); see, e.g., Weible v. United States, 244 F.2d 158,
4 163 (9th Cir. 1957) (“physical presence plus an intention”).

5 “[W]here federal jurisdiction is predicated on *removal*, the burden of establishing federal
6 question jurisdiction is on the *defendant*, the party invoking removal.” Phillips & Stevenson, supra,
7 ¶ 2:1243 (emphasis in original). In this regard, the defendant “must submit actual evidence” of
8 diversity; “[a]n unsworn statement in a brief will not suffice.” Phillips & Stevenson, supra, ¶ 2:1242
9 (citing Travaglio v. American Express Co., 735 F.3d 1266, 1270 (11th Cir. 2013)).

10 MacMartin has submitted only an unsworn statement in a brief that “Defendant was and is
11 for all relevant time periods a citizen of the State of New York, County of Tompkins. Defendant
12 maintains his permanent residence in New York.” Def.’s Notice of Removal ¶ 12, ECF No. 1.

13 Moreover, MacMartin’s unsworn statement is contradicted by his own online postings. For
14 example, his LinkedIn profile says that he is a “Research Professor at Caltech” (i.e., the California
15 Institute of Technology), that he is in “Pasadena, California”; and that he has been a research
16 professor at Caltech since 2000, for a total of “21 yrs.” Williams Decl. ¶ 2 & Ex. 1.

17 Consistent with this, his listing with the Carnegie Council for Ethics in International Affairs
18 trumpets the fact that MacMartin “splits his time between mechanical and aerospace engineering
19 at Cornell University and computing and mathematical sciences at the California Institute of
20 Technology.” Williams Decl. ¶ 3 & Ex. 2.

21 Also consistent with this are that MacMartin appears in Caltech’s faculty directory with an
22 office in Pasadena, MacMartin maintains a biography page on Caltech’s Control + Dynamical
23 Systems (“CDS”) website, and this CDS biography page in turn links to MacMartin’s curriculum
24 vitae which highlights his role at Caltech. Williams Decl. ¶¶ 4-6 & Ex. 3-5. Exhibit 3 also contains
25 a representation that MacMartin is a Visiting Associate at Caltech from 2015-22.

26 Until recently, MacMartin’s Cornell University biography page also emphasized that he “is
27 ... a Research Professor in Computing + Mathematical Sciences at The California Institute of
28 Technology where he has been since 2000.” Williams Decl. ¶ 7 & Ex. 6.

1 MacMartin’s ties to California are longer than they are in New York. His LinkedIn page
2 shows Cornell as his primary position. He has been involved at CalTech in Pasadena for 22 years,
3 nearly five times the duration of his current position at Carnegie Mellon in New York. His LinkedIn
4 page identifies him as a “Visiting Investigator” for Carnegie Mellon. His links to California
5 universities are confirmed online into the year 2022. In sum, there is no evidence that MacMartin
6 is residing in the State of New York with the intention to remain there as opposed to California. If
7 anything, there is currently only evidence to the contrary. Thus, there is no diversity jurisdiction in
8 this case either.

9 **C. Wigington’s motion is timely.**

10 As noted above, lack of subject matter jurisdiction may be raised at any time. Wigington’s
11 motion is therefore timely.

12 **V. DISCOVERY SHOULD BE ALLOWED IF THE COURT HAS ANY DOUBTS**

13 Courts have suggested that it may be appropriate to allow discovery relevant to removal
14 requirements prior to a decision whether to remand. See [Abrego Abrego v. Dow Chem. Co., 443](#)
15 [F.3d 676, 691 \(9th Cir. 2006\)](#). If for any reason the Court is not inclined to enter an order remanding
16 the case to state court, then Wigington requests the opportunity to pursue discovery as to
17 MacMartin’s domicile.

18 Notably, this case concerns MacMartin’s status as a vaunted Facebook “fact-checker.” It is
19 somewhat ironic that his removal papers tacitly disavow the domicile-related information in his
20 very own LinkedIn profile and all the other information posted about him online that presumably
21 was published with his assistance, consent, and oversight. Williams Decl. Exs. 1-6. In these
22 circumstances, the Court should not simply take MacMartin’s own word for it if he responds with
23 a self-serving declaration. Wigington should be allowed to take discovery as to anything MacMartin
24 says about domicile.

25 **VI. CONCLUSION**

26 The Court lacks subject matter jurisdiction and MacMartin’s removal was objectively
27 unreasonable, because MacMartin’s domicile is in California. The case must therefore be remanded
28 to state court.

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If for any reason the Court is not inclined to enter an order remanding the case to state court,
then Wigington requests the opportunity to take discovery as to MacMartin’s domicile.

Dated: January 14, 2022

/s/ Samuel C. Williams
Samuel C. Williams
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Dane Wigington dba
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