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8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**

11
12 DANE WIGINGTON dba
13 GEOENGINEERING WATCH,

14 Plaintiff,

15 vs.

16 DOUGLAS MacMARTIN fka DOUGLAS
17 MacMYNOWSKI; and DOES 1-10,
18 inclusive.

18 Defendant.

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

Hon. Kimberly J. Mueller

**DEFENDANT DOUGLAS MacMARTIN'S
OPPOSITION TO PLAINTIFF'S MOTION
TO REMAND TO STATE COURT**

Date: February 11, 2022

Time: 10:00 a.m.

Courtroom: 3, 15th Floor

Complaint filed: November 5, 2021

Removal Date: December 17, 2021

[Filed concurrently with Declaration of Douglas
MacMartin; and Declaration of Andrew M.
Hutchison]

1 Defendant Douglas MacMartin fka Douglas MacMynowski (“Defendant” or “MacMartin”)
2 submits this Opposition to Plaintiff Dane Wigington’s (“Plaintiff”) Motion to Remand Action to
3 State Court.

4 **I. INTRODUCTION**

5 MacMartin properly removed this case from state court as there is complete diversity of
6 parties; as such, Plaintiff’s Motion for Remand fails because, pursuant to 28 U.S.C. § 1332(a), this
7 Court has jurisdiction over Plaintiff’s claims. Plaintiff’s only challenge to the Court’s jurisdiction
8 is that the diversity-of-citizenship requirement is not met.¹ (*See* Doc. No. 6-1 at 2:14-4:8.)
9 Plaintiff’s argument that MacMartin is domiciled in California (and therefore that there is no
10 complete diversity) is based on a limited relationship MacMartin maintains with Caltech and ignores
11 the mountain of objective evidence that shows that MacMartin has made his permanent home in
12 New York: it is where he owns a home and lives with his family, where he has his cars registered,
13 has a driver’s license, is registered to vote, pays property and income taxes, and holds a position at
14 Cornell pursuant to which he has been teaching students every year for the last six years.
15 Importantly, all of these facts were true as of the date the Complaint in this case was filed (and were
16 relayed to Plaintiff’s counsel in a meet-and-confer prior to the filing of the instant Motion). For the
17 reasons set forth herein, the diversity of citizenship requirement for diversity jurisdiction is satisfied
18 and the Motion for Remand should be denied.

19 **II. GOVERNING LAW**

20 Federal courts may exercise “diversity jurisdiction” when the amount in controversy exceeds
21 \$75,000 and the parties are “citizens of different States.” 28 U.S.C. § 1332(a); *Mitchell v. Artists*
22 *Rights Enforcement Corp.*, 653 F. App’x 522, 523 (9th Cir. 2016). Diversity jurisdiction requires
23 “complete diversity,” meaning that the citizenship of each plaintiff is different from the citizenship
24 of each defendant. *Pomares v. Sutter Fam. Corp.*, No. 1:15-CV-00838 MJS, 2015 WL 6689579, at
25 *2 (E.D. Cal. Oct. 30, 2015) (quoting *Diaz v. Davis (In re Digimarc Corp. Derivative Litig.)*, 549
26 F.3d 1223, 1234 (9th Cir.2008)).

27
28 ¹ Plaintiff does not dispute that he seeks damages in excess of \$75,000. (*See* Doc. No. 6-1.)

1 For purposes of diversity jurisdiction, natural persons are citizens of the states in which they
2 are domiciled. A natural person’s “domicile” is the person’s “permanent home, where she resides
3 with the intention to remain or to which she intends to return.” *Kanter v. Warner-Lambert Co.*, 265
4 F.3d 853, 857 (9th Cir. 2001). Courts in this Circuit look at a series of factors to determine domicile:
5 the person’s (1) current residence, (2) voter registration and practice, (3) driver’s license and
6 automobile registration, (4) location of personal and real property, (5) location of bank accounts, (6)
7 location of spouse and family, (7) place of employment and business, and (8) payment of taxes.
8 *White*, 2011 WL 2414420, at *2; *Smith v. Simmons*, 2008 WL 744709, at *8 (E.D. Cal. Mar. 18,
9 2008) (citing *Lew*, 797 F.2d at 750). While no one factor is dispositive, individuals are
10 presumptively domiciled at their places of residence. *NewGen, LLC v. Safe Cig LLC*, 840 F.3d 606,
11 614 (9th Cir. 2016) (“the place where a person lives is taken to be his domicile until facts adduced
12 establish the contrary”) (internal quotation omitted).

13 “[T]he existence of domicile for purposes of diversity is determined as of the time the
14 lawsuit is filed.” *White v. Lemendola*, No. CIV S-10-3303 KJM DA, 2011 WL 2414420, at *2
15 (E.D. Cal. June 8, 2011) (quoting *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir.1986)). “A person can
16 have but one domicile.” *Vizcarra v. Bank of New York Mellon*, 2012 WL 12903651, at *1 (C.D.
17 Cal. Feb. 16, 2012) (citing *Gaudlin v. Reis*, 379 F.3d 631, 636 (9th Cir. 2004)).

18 **III. ARGUMENT**

19 The diversity-of-citizenship requirement is satisfied in this case because Plaintiff pleads that
20 he is a citizen of California and MacMartin is domiciled in New York. As the attached declaration
21 of MacMartin demonstrates:

- 22 • In 2014, MacMartin purchased a home in New York State. MacMartin has
23 lived in New York full time, with his family, since 2015. Plaintiff served
24 MacMartin with the Summons and Complaint in this lawsuit at his home in
25 New York.
- 26 • Since 2014, MacMartin has paid New York property taxes.

- 1 • Since 2015, MacMartin has been a Senior Research Associate at Cornell.
2 Since 2015, he has taught every fall (and some spring) semesters at Cornell,
3 as well as over a dozen guest lectures at Cornell.
- 4 • For at least the last five years, MacMartin has been registered to vote in
5 New York.
- 6 • For at least the last five years, MacMartin’s car has been registered in New
7 York.
- 8 • For at least the last five years, MacMartin has had a New York driver’s
9 license.
- 10 • For at least the last five years, MacMartin has paid New York income tax
11 and California non-resident taxes.
- 12 • MacMartin has never owned any real estate in California.
- 13 • MacMartin considers New York his permanent home and does not intend
14 to move outside of the State of New York.

15 (See Declaration of Douglas MacMartin (“MacMartin Decl.”), ¶¶ 2-7, 14.)

16 These very factors are those that courts in this Circuit look to in establishing domicile for purposes
17 of diversity jurisdiction. Indeed, the *only* “domicile” factor that favors California rather than New
18 York is that MacMartin still has a bank account with a California bank (which he uses exclusively
19 online)—and yet courts in this Circuit have made clear that the weight to be applied to this particular
20 factor is minimal given the advent of online banking. See, e.g., *Shimomura v. Am. Med. Response*
21 *Inc.*, 2018 WL 2057636, at *3 (D. Ariz. May 3, 2018). Critically, these facts supporting
22 MacMartin’s domicile in New York were all disclosed to Plaintiff’s counsel in advance of their
23 filing the Motion for Remand. (See Declaration of Andrew M. Hutchison (“Hutchison Decl.”), ¶¶
24 2-3.)

25 In the face of this evidence that courts rely on in finding domicile, Plaintiff leans heavily on
26 MacMartin having a position at Caltech. Indeed, prior to moving to New York, and long before the
27 Claim Review at issue in this suit was published (and before this suit was commenced), MacMartin
28 held a position as Research Professor at Caltech. (MacMartin Decl., ¶¶ 4, 7, 8.) However,

1 MacMartin’s role at Caltech changed after 2015. He was no longer a Research Professor; instead,
2 MacMartin has since received grant money through Caltech, for which he is given the title “visiting
3 associate.” (*Id.*, ¶ 10.) And he has not taught a class at Caltech since he co-taught a class in Caltech’s
4 winter quarter of 2016. (*Id.*) Since 2017, the only work MacMartin has performed relating in any
5 way to Caltech concerns the design of the “Thirty Meter Telescope,” an international project.
6 (*Id.*) Since 2018 (before the Covid-19 pandemic) MacMartin has participated in all meetings related
7 to this project *virtually* and from *outside of California*, not in person. (*Id.*) Indeed, even between
8 2015 and 2018, most meetings MacMartin attended relating to Caltech he attended virtually.
9 (*Id.*) In the face of the objective evidence of domicile in New York, this connection to Caltech fails
10 to establish that MacMartin lives permanently in California.

11 Plaintiff points to a few online postings that Plaintiff argues connects MacMartin to
12 California. MacMartin’s LinkedIn page references both his current position as a Senior Research
13 Associate at Cornell, but it has simply has not been updated to reflect MacMartin’s changed position
14 at Caltech and his current permanent residence. (*Id.*, ¶ 12.) This outdated LinkedIn page does not
15 change the underlying facts; indeed, the change in MacMartin’s Caltech position is reflected in the
16 Caltech directory that Plaintiff appends as Exhibit 3.

17 Plaintiff attaches a few other Internet screenshots that are similarly outdated and therefore
18 cannot provide evidence as to MacMartin’s permanent home as of the date this action was filed. For
19 example, Plaintiff attaches as Exhibit 4 “a copy of MacMartin’s biography page on Caltech’s
20 Control + Dynamical Systems website,” which lists his Caltech office. This page is not current: as
21 it refers to MacMartin by the title “Research Professor,” a position he did not hold since 2015 (as
22 demonstrated by Plaintiff’s own Exhibit 3), it does not provide any information about MacMartin’s
23 position at Cornell, and it links to a “recent paper on treating geoengineering as a design problem”—
24 but that paper was written in 2016. (MacMartin Decl., ¶ 12.) It is not surprising, then, that the
25 curriculum vitae linked from this website (and attached as Exhibit 5) is similarly outdated. (*Id.*)

26 Plaintiff also attaches as Exhibit 6 what is purported to be a comparison between his web
27 biography at Cornell in 2019 and in 2021. The earlier biography still lists MacMartin’s position as
28 “research professor” at Caltech, an outdated position that the later version of the biography fixes. It

1 is unclear what Plaintiff is suggesting is relevant from this comparison; if it is that MacMartin was
2 at one point a research professor at Caltech, that is not in dispute—but as the Caltech page Plaintiff
3 himself attaches as Exhibit 3 makes clear, that position changed years before this suit was filed, and
4 Plaintiff has since been a visiting associate.

5 Finally, Plaintiff attaches as Exhibit 2 a web bio from the Carnegie Council for Ethics in
6 International Affairs, a nonprofit for whom MacMartin has done panel lectures, which states that
7 MacMartin “splits his time” between New York and California. But this is simply outdated—and
8 inaccurate—information that is belied by the volume of proof that MacMartin makes his permanent
9 residence in New York. (*Id.*, ¶ 13.) Moreover, courts recognize that a person can have only one
10 domicile. *Vizcarra*, 2012 WL 12903651, at *1. Given the evidence, it is clear that MacMartin’s
11 one state of domicile is New York. At the time the Complaint was filed, MacMartin had not
12 travelled to California since 2019, and his two visits in 2019 were personal and to attend a scientific
13 conference. (*Id.* ¶ 11.) And MacMartin has not taught a class at CalTech since 2016. (*Id.* ¶ 10.)

14 Ultimately, Plaintiff’s argument in favor of remand is that, because MacMartin’s role at
15 Caltech has been longer than his role at Cornell, he must be a California citizen for purposes of
16 diversity jurisdiction. In other words, because MacMartin’s relationship with Caltech predates his
17 Cornell employment, according to Plaintiff, MacMartin must have the intention to return to
18 California. Plaintiff cites no case law for this proposition, which is not surprising—how long a
19 person worked at a previous job is simply not relevant where they have put down permanent roots
20 with their family in another location. That is what MacMartin did in New York, and all of the
21 objective facts, as well as MacMartin’s sworn statements, support New York as his domicile and
22 dispel Plaintiff’s inference-based theory.

23 For the reasons stated above, seven of the eight factors support the presumption that
24 MacMartin is domiciled in New York. The one outlier factor – the location of MacMartin’s bank
25 account – has marginal value because MacMartin does all of his banking online. The objective facts
26 therefore demonstrate that MacMartin is domiciled in New York. Moreover, here, discovery on the
27 issue of domicile is not warranted because MacMartin has provided direct evidence regarding the
28

1 factors California courts consider in establishing domicile, and this evidence all supports domicile
2 in New York as of the date of this Complaint was filed and then removed to this Court.

3 **IV. CONCLUSION**

4 The Court cannot remand this case because there is complete diversity and Plaintiff does not
5 challenge that the \$75,000 monetary threshold for federal jurisdiction is met. Therefore, under 28
6 U.S.C. § 1332(a), the requirements of diversity jurisdiction are satisfied.

7 Dated: January 28, 2022

COZEN O’CONNOR

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