

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 21 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

COOPER TRUST DTD 10-05-2000, by its
Trustee Letitia M. Cooper, an individual,

Plaintiff-Appellee,

v.

JOHN L. PARMIGIANI,

Defendant-Appellant.

No. 17-55939

D.C. No. 2:17-cv-04379-PA-AGR

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted December 17, 2018**

Before: WALLACE, SILVERMAN, and McKEOWN, Circuit Judges.

Defendant John L. Parmigiani appeals from the district court's order remanding plaintiff's action to California state court.¹ We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's decision to remand a

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

¹ The appellee has not submitted an answering brief.

removed case. *Lively v. Wild Oats Mkt., Inc.*, 456 F.3d 933, 938 (9th Cir. 2006).

We reverse and remand.

The district court remanded the action to state court sua sponte on the basis of non-jurisdictional procedural defects in the removal process. However, given that diversity jurisdiction existed over the action at the time of the district court's remand order, the district court had no authority to remand the case to state court on procedural grounds where plaintiff did not move for remand. *See Kuxhausen v. BMW Fin. Servs., NA LLC*, 707 F.3d 1136, 1142 (9th Cir. 2017) (failure to attach "a copy of all process, pleadings, and orders served" to the notice of removal is a curable procedural defect); *Kelton Arms Condo. Owners Ass'n, Inc. v. Homestead Ins. Co.*, 346 F.3d 1190, 1192-93 (9th Cir. 2003) (district court does not have authority to remand a case sua sponte based on procedural defects).

REVERSED and REMANDED.