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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Betsy Hall, *et al.*,

10 Plaintiffs,

11 v.

12 Randy Wayne Eads, *et al.*,

13 Defendants.
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No. CV-16-03855-PHX-JJT

ORDER

15 At issue are Plaintiffs Betsy Hall and Wade Hall's Motion to Remand to State
16 Court (Doc. 11, Mot.), to which Defendants Randy Wayne Eads, Joyce Eads, and Eads
17 Enterprises Incorporated filed a Response (Doc. 12, Resp.), and in support of which
18 Plaintiffs filed a Reply (Doc. 13, Reply), as well Defendants' Motion to Strike Plaintiffs'
19 Reply (Doc. 14).

20 **I. BACKGROUND**

21 On December 16, 2014, Defendant Randy Eads and Plaintiff Betsy Hall were
22 involved in a motor vehicle accident. Plaintiffs brought suit against Defendants in
23 Maricopa County Superior Court and Defendants removed the action to this Court
24 pursuant to 28 U.S.C. § 1332 (Diversity of Citizenship). Plaintiffs now move to remand
25 this action alleging that Defendants are domiciled in Arizona, thereby negating diversity
26 jurisdiction.
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1 **II. LEGAL STANDARD**

2 For purposes of determining diversity of citizenship, persons are deemed to be
3 citizens of the state in which they are domiciled. *See Kanter v. Warner-Lambert Co.*, 265
4 F.3d 853, 857 (9th Cir. 2001). A person is “domiciled” where he or she has “established a
5 fixed habitation or abode in a particular place and [intends] to remain there permanently
6 or indefinitely.” *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986) (internal citations and
7 quotations omitted). While residency is a factor in determining a person’s citizenship for
8 diversity jurisdiction purposes, the fact that a person resides in a given state does not
9 necessarily determine one’s domicile. *Id.* (“Residence is physical, whereas domicile is
10 generally a compound of physical presence plus an intention to make a certain definite
11 place one’s permanent abode Residence is not an immutable condition of
12 domicile.”). Instead, a “person’s domicile is [their] permanent home, where [they] reside
13 with the intention to remain or to which [they] intend[] to return.” *Id.* (internal citation
14 omitted). A mere averment, or even proof, of residency in a particular state is not an
15 averment or proof of citizenship in that state for the purpose of diversity jurisdiction.
16 *Kanter*, 265 F.3d at 857-58.

17 When parties to litigation dispute citizenship based on a purported recent change
18 in domicile, “additional principles of law apply.” *Rice v. Thomas*, 64 Fed. App’x 628 (9th
19 Cir. 2003). These factors include: “current residence, voting registration and voting
20 practices, location of personal and real property, location of brokerage and bank
21 accounts, location of spouse and family, membership in unions and other organizations,
22 place of employment or business, driver’s license and automobile registration, and
23 payment of taxes.” *Lew*, 797 F.2d at 750.

24 A defendant seeking to remove a case to federal court carries the burden of
25 establishing diversity jurisdiction, and “[a]ll doubts about federal jurisdiction should be
26 resolved in favor of remand to state court.” *In re Prempro Prod. Liab. Litig.*, 591 F.3d
27 613, 620 (8th Cir. 2010); *see* 28 U.S.C. § 1447(c). A plaintiff may seek to have a case
28 remanded to the state court from which it was removed if the district court lacks

1 jurisdiction or if there is a defect in the removal procedure. 28 U.S.C. § 1447(c). The
2 district court must remand the case if it appears before final judgment that the court lacks
3 subject matter jurisdiction. *Id.*

4 **III. ANALYSIS**

5 In their Motion, Plaintiffs argue Defendants were citizens of Arizona due almost
6 solely to one fact: Defendants purchased property in Maricopa County, Arizona and
7 declared to a notary public that the home was to be used as their “primary residence.”
8 (Mot. at 2.) Defendants, on the other hand, present a multitude of evidence averring that
9 they were and are citizens of Missouri. (Resp. at 2-3.) These include Defendants
10 primarily residing in Missouri for 30 years—including at least 10 months a year
11 currently—maintaining Missouri drivers’ licenses and bank accounts, filing taxes in
12 Missouri, regularly attending church in Missouri, and lack of personal care or
13 maintenance of their Arizona property. (Resp. at 2-3.) Defendants also serve on boards
14 and committees in Missouri which require state citizenship, receive Social Security
15 Disability payments in Missouri, obtain healthcare through the Affordable Care Act
16 Missouri marketplace, and accept all bills—including those related to their Arizona
17 property—at their Missouri home. (Resp. at 2-3.) Finally, Defendants each avow a static
18 intent to remain in Missouri.¹ (Resp. at 3.)

19 Defendants admit that the affidavit of property value signed in March 2013
20 identifies their Phoenix property as a “primary residence,” but contend that it was a
21 mistake during the escrow process. (Resp. at 3.) Plaintiffs respond that this statement was
22 made under oath, that Defendants took title to the property as “Community Property”
23 (which Plaintiffs assert is available to Arizona residents but not Missouri residents), and
24 that some consequences must flow from these attestations as “proper classification of
25 residential property in this State is critical to determining education funding through
26 property taxes.” (Reply at 3.) This may be true—some legal consequences may flow from

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28 ¹ There is no dispute as to the corporate Defendant—Eads Enterprises, Inc.’s—
domicile, as it is a foreign corporation incorporated in Missouri.

1 Plaintiffs' apparently false statement and there may be significance to the State when a
2 residence is not properly classified. But those consequences do not include Defendants
3 being domiciled in Arizona. For that to occur, Defendants must have an intent to remain
4 in Arizona, which is belied by nearly all of the evidence available to the Court. *See Lew,*
5 *797 F.2d at 749.*

6 **IV. CONCLUSION**

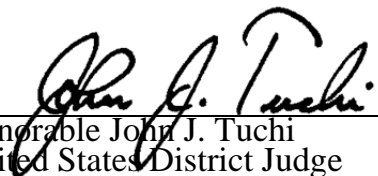
7 While Defendants may have a fixed residence in Arizona, the evidence presented
8 illustrates that it is not their permanent residence. Defendants' Arizona residence does not
9 appear to be a full or even half-time home and all attestations to date affirm their intent
10 and desire to maintain a Missouri primary residence and domicile. Because Plaintiffs
11 have not established that Defendants were not still domiciled in and citizens of Missouri
12 at the time this action was filed, there is diversity jurisdiction over this matter.

13 Defendants also have moved to strike Plaintiffs' Reply (Doc. 13), arguing that it
14 was untimely filed. (Doc. 14.) Because the Court finds for Defendants on the underlying
15 Motion, regardless of Plaintiffs' Reply, the Court will deny as moot Defendants' Motion
16 to Strike.

17 **IT IS THEREFORE ORDERED** denying Plaintiffs' Motion to Remand to State
18 Court (Doc. 11).

19 **IT IS FURTHER ORDERED** denying Defendants' Motion to Strike Plaintiffs'
20 Reply in Support of their Motion to Remand (Doc. 14) as moot.

21 Dated this 2nd day of February, 2017.

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25 Honorable John J. Tuchi
26 United States District Judge
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