



1 first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The party  
2 seeking removal bears the burden of establishing federal jurisdiction. *Durham v.*  
3 *Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006) (citing *Gaus*, 980 F.2d at  
4 566).

5 Federal courts have original jurisdiction where an action presents a federal  
6 question under 28 U.S.C. § 1331 or diversity of citizenship under 28 U.S.C. § 1332.  
7 To exercise diversity jurisdiction, a federal court must find complete diversity of  
8 citizenship among the adverse parties, and the amount in controversy must exceed  
9 \$75,000, usually exclusive of interest and costs. 28 U.S.C. § 1332(a). For complete-  
10 diversity purposes, a natural person’s citizenship is “determined by her state of  
11 domicile, not her state of residence.” *Kantor v. Warner-Lambert Co.*, 265 F.3d 853,  
12 857 (9th Cir. 2001); *see also Jeffcott v. Donovan*, 135 F.2d 213, 214 (9th Cir. 1943)  
13 (“Diversity of citizenship as a basis for the jurisdiction of a cause in the District Court  
14 of the United States is not dependent upon the residence of any of the parties, but  
15 upon their citizenship.”).

16 In its Notice of Removal, Defendants allege that “Plaintiff is a citizen and  
17 resident of the State of California. *See* Complaint ¶ 2.” (Not. of Removal ¶ 11; *see*  
18 *also* Ex. A, ¶ 2.) But Plaintiff did not admit in his Complaint that is a California  
19 citizen; rather, he admits that he is “a *resident* of the County of Orange, State of  
20 California.” (Not. of Removal Ex. A, ¶ 2 (emphasis added).) While a party’s  
21 residence may be prima facie evidence of that party’s domicile when an action is  
22 brought in federal court in the first instance, *see State Farm Mut. Auto. Ins. v. Dyer*,  
23 19 F.3d 514, 520 (10th Cir. 1994), mere residence allegations do not suffice to  
24 establish citizenship on removal in light of the strong presumption against removal  
25 jurisdiction. *See Kanter*, 265 F.3d at 857; *Gaus*, 980 F.2d at 567.

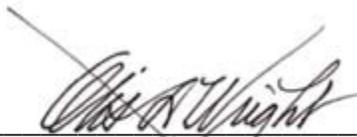
26 Neither do Defendants cite any objective facts to establish that Dilley is a  
27 California citizen, such as “voting registration and voting practices, location of  
28 personal and real property, location of brokerage and bank accounts, location of

1 spouse and family, membership in unions and other organizations, place of  
2 employment or business, driver's license and automobile registration, and payment of  
3 taxes." *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986).

4 Left with just a bare, inadequate residency allegation, the Court finds that  
5 Defendants have not competently established that this Court has diversity jurisdiction  
6 over this case. The Court therefore **REMANDS** this case to the Los Angeles County  
7 Superior Court, case number NC058718. *See* Fed. R. Civ. P. 12(h)(3) ("If the court  
8 determines at any time that it lacks subject-matter jurisdiction, the court must dismiss  
9 the action."). The Clerk of Court shall close this case.

10 **IT IS SO ORDERED.**

11  
12 January 17, 2014

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16 **OTIS D. WRIGHT, II**  
17 **UNITED STATES DISTRICT JUDGE**

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cc: order, docket, remand letter to Los Angeles Superior Court,  
South District, Long Beach, No. NC058718