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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL T. POWELL,

Plaintiff/Petitioner,

v.

TOMERY A. POWELL,

Defendant/Respondent.

No. 2:17-cv-1035-KJM-CKD

ORDER

On May 16, 2017, defendant Tomery Powell filed a notice of removal in this case. ECF No. 1. Defendant asserts “federal question” jurisdiction under 28 U.S.C. § 1331 and “diversity” jurisdiction under 28 U.S.C. § 1332, and that removal is appropriate under 28 U.S.C. § 1441. Defendant was served with the complaint in the state case on January 13, 2017. ECF No. 1 at ¶ 2.

Removal appears untimely under 28 U.S.C. § 1446(b). Section 1446(b) provides for a thirty-day removal period, which runs from the date defendant received the complaint “through service or otherwise” and is triggered “if the case stated by the initial pleading is removable on its face.” *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 885 (9th Cir. 2010) (quoting *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005)).

Here, defendant received the state complaint on January 13, 2017, but waited over 120 days to remove the case. “If a notice of removal is filed after this thirty-day window, it is

1 untimely and remand to state court is therefore appropriate.” *Babasa v. LensCrafters, Inc.*, 498
2 F.3d 972, 974 (9th Cir. 2007) (citing 28 U.S.C. § 1446(b)). Accordingly, defendant is ordered to
3 SHOW CAUSE within fourteen (14) days of this order why this case should not be remanded to
4 state court for untimely removal under 28 U.S.C. § 1446(b).

5 IT IS SO ORDERED.

6 DATED: June 21, 2017.

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UNITED STATES DISTRICT JUDGE