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UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF CALIFORNIA

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JORGE ANTHONY CARRASCO aka
TONY CARRASCO MOTORS; and
NANCY JEAN CARRASCO, an
individual,

CASE NO. 14cv1645-WQH-DHB

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ORDER

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Plaintiff,

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vs.

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STANLEY IVAN HORWITZ, an
individual; ANITA HORWITZ, an
individual; THE SPRING STAR
TRUST, a Trust; KENNETH G.
ADAMS REVOCABLE TRUST dtd
05/14/93; and ALAN G. HORWITZ,
individually and as trustee of the Star
Spring Trust and Kenneth G. Adams
Revocable Trust; and DOES 1 through
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Defendant.

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HAYES, Judge:

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The matter before the Court is the Motion for Reconsideration of this Court's
October 23, 2014 Order remanding this case to San Diego County Superior Court.
(ECF No. 29).

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I. Background

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On January 29, 2013, Plaintiffs Jorge Anthony Carrasco and Nancy Jean
Carrasco commenced this action by filing a complaint in San Diego County Superior
Court. (ECF No. 1 at 2). On June 14, 2014, Plaintiffs filed a second amended
complaint, which is the operative pleading. *Id.* On July 11, 2014, Defendants Alan

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1 Horwitz, the Star Spring Trust, and the Kenneth G. Adams Revocable Trust removed
2 to this Court pursuant to 28 U.S.C. § 1441(a) on the basis of federal question
3 jurisdiction. (ECF No. 1). On July 26, 2014, Plaintiffs filed a motion to remand on the
4 ground that Defendant Star Spring Trust failed to attach a copy of all process, pleadings,
5 and orders served upon him in state court. (ECF No. 10). On October 23, 2014, the
6 Court issued an order granting Plaintiffs' motion to remand and remanding this case to
7 San Diego County Superior Court. (ECF No. 28). In the October 23, 2014 Order, the
8 Court found that "Plaintiffs have timely raised a procedural defect in the notice of
9 removal" in Defendants' failure to attach all "process, pleadings, and orders" as
10 required by 28 U.S.C. section 1446(a). *Id.* at 4. The Court noted that Defendants'
11 failure to attach all "process, pleadings, and orders" was undisputed. The Court found
12 that Defendants had failed to cure this procedural defect within thirty days, attempting
13 to cure the defect for the first time in opposition to Plaintiffs' motion for remand. The
14 Court concluded that it lacked discretion to waive or cure Defendants' failure to attach
15 all "process, pleadings, and orders" within the thirty day period, and remanded the case
16 to San Diego County Superior Court.

17 On October 30, 2014, Defendants filed the Motion for Reconsideration. (ECF
18 No. 29). On November 22, 2014, Plaintiffs filed an opposition. (ECF No. 32). On
19 December 1, 2014, Defendants filed a reply. (ECF No. 33).

20 **II. Discussion**

21 Defendants contend that the Court erred by relying on the fact that only one
22 Defendant, the Star Spring Trust, failed to attach all "process, pleadings, and orders,"
23 while the other removing defendants complied with the removal statute. Defendants
24 contend that Defendant Star Spring Trust could therefore consent to joining Defendants
25 Alan Horwitz's and Kenneth G. Adams Trust's proper removals. Defendants contend
26 that the Court erred in finding that it lacked authority to allow the removing parties to
27 cure the alleged defect. Defendants cite to *Kuxhausen v. BMW Fin. Servs. NA, LLC*,
28 707 F.3d 1136 (9th Cir. 2013) for the proposition that a removing defendant has a right

1 to cure the removal defect of failing to attach all “process, pleadings, and orders.”
2 Defendants contend that the Court erred in applying a thirty-day period in which
3 Defendants were required to cure procedural defects to their removal.

4 Plaintiffs contend that Defendants removed together, and, therefore, the failure
5 of one Defendant to comply with the removal statute amounts to a procedurally
6 defective removal. Plaintiffs contend that *Kuxhausen* is distinguishable because it was
7 a class action case and involved the failure to attach the original complaint. Plaintiffs
8 assert that in this case, “[a]t least 3 ... pleadings and orders are still lacking from the
9 filing.” (ECF No. 32 at 5). Plaintiffs contend they will suffer injustice from removal
10 because this case had proceeded in state court for seventeen months prior to removal.

11 Reconsideration is an “extraordinary remedy, to be used sparingly in the interests
12 of finality and conservation of judicial resources.” *Kona Enters. Inc. v. Estate of*
13 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000); *see also United Natn’l Ins. Co. v. Spectrum*
14 *Worldwide, Inc.*, 555 F.3d 772, 780 (9th Cir. 2009). “[A] motion for reconsideration
15 should not be granted, absent highly unusual circumstances, unless the district court is
16 presented with newly discovered evidence, committed clear error, or if there is an
17 intervening change in the controlling law.” *Marlyn Nutraceuticals, Inc. v. Mucos*
18 *Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (citing *389 Orange St.*
19 *Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)).

20 In *Kuxhausen*, the defendant removed a class action filed in California state court
21 to federal court. The plaintiff moved to remand on the ground that removal was
22 untimely. The district court granted the motion, but the Ninth Circuit Court of Appeals
23 reversed and held that removal was timely. The plaintiff contended that remand was
24 nevertheless proper because the defendant’s “failure to attach her original complaint to
25 its notice of removal is an infirmity warranting remand.” *Id.* at 1142. The Ninth Circuit
26 rejected this contention:

27 The district court declined to rest on this basis and so do we. Here, once
28 *Kuxhausen* raised this objection in the district court, BMW identified
precisely where the missing complaint could be found in the record, and
indicated that should the court desire copies of other state documents

1 “[d]efendants will of course supply them.” We agree with a leading
2 treatise and with our sister circuits that “this de minimis procedural defect
3 was curable” even “after expiration of the thirty-day removal period.” *See*
4 *Countryman v. Farmers Ins. Exch.*, 639 F.3d 1270, 1272 (10th Cir.2011);
5 *Walton v. Bayer Corp.*, 643 F.3d 994, 999 (7th Cir.2011); 14C Charles
6 Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3733
(4th ed. 2011) (explaining that “both the failure to file all the state court
7 papers and the failure to provide the Federal Civil Rule 11 signature are
8 curable in the federal court” (footnotes omitted)).

9 *Id.* The Ninth Circuit reversed the district court’s remand.

10 Under *Kuxhausen*, the failure to attach “a copy of all process, pleadings, and
11 orders served upon such defendant or defendants in such action” to a notice of removal
12 is a curable defect and not a sufficient basis for remand. 28 U.S.C. § 1446(a). The
13 failure to attach “a copy of all process, pleadings, and orders served upon such
14 defendant or defendants” in this case was a curable defect and this case should not be
15 remanded to San Diego County Superior Court. *Id.* The Court finds that Defendants
16 cured this defect by filing sixteen exhibits from the state court proceedings that consists
17 of all three complaints, Defendants’ answers, court orders, and summonses. *See* ECF
18 No. 14. To the extent that any state court filing is missing, the Court “may require the
19 removing party to file with its clerk copies of all records and proceedings in such State
20 court or may cause the same to be brought before it by writ of certiorari issued to such
21 State court.” 28 U.S.C. § 1447(b).

22 Defendants’ motion for reconsideration is granted.

23 **III. Conclusion**

24 IT IS HEREBY ORDERED that the Motion for Reconsideration is GRANTED.
25 (ECF No. 29). Plaintiffs’ motion to remand is DENIED. (ECF No. 10).

26 IT IS FURTHER ORDERED that the Court’s October 23, 2014 Order is
27 VACATED. (ECF No. 28). The case will proceed. The Court will rule on Defendants’
28 motions to dismiss. (ECF Nos. 8 and 9).

DATED: December 17, 2014


WILLIAM Q. HAYES
United States District Judge