
No. 17-55939

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

Plaintiff-Appellee,

v.

JOHN L. PARMIGIANI,

Defendant-Appellant.

On Appeal From an Order of the United States District Court for the
Central District of California, Western Division
Case No. 2:17-cv-04379-PA-AGR

**DECLARATION OF BRETT G. EVANS IN SUPPORT OF APPELLANT'S
RESPONSE TO ORDER TO SHOW CAUSE WHY APPEAL SHOULD NOT
BE DISMISSED**

EVANS & KOB, PC
Brett G. Evans (Bar No. 244213)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Telephone: (619) 522-0797 / Facsimile: (888) 956-7890
Attorneys for Defendant-Appellant [REDACTED]

DECLARATION OF BRETT G. EVANS

1. I am a partner at the law firm of Evans & Kob, PC, attorneys of record for Appellant-Defendant [REDACTED] (“Appellant”) in this appeal, and am admitted to practice before this Court. I have personal knowledge of the facts set forth in this Declaration and, if called to do so, could and would competently testify thereto. This declaration is submitted in support of Appellant’s response the order to show cause directing that Appellant either move for voluntary dismissal of this appeal or show cause why it should not be dismissed for lack of jurisdiction, issued by this Court on July 13, 2017.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Docket Report for Case No. 2:17-cv-04379-PA-AGR (“District Court Case”) in the United States District Court for the Central District of California, Western Division (“District Court”) as it appeared on July 18, 2017.

3. Attached hereto as **Exhibit B** is a true and correct copy of the June 16, 2017 order of the District Court ordering Appellee to file a notice informing the Court of when defendant [REDACTED] was served with the Complaint and entered as Docket No. 8 in the District Court Case.

4. Attached hereto as **Exhibit C** is a true and correct copy of the proof of service filed on June 21, 2017 by the Appellee and entered as Docket No. 9 in the District Court Case.

5. Attached hereto as **Exhibit D** is a true and correct copy of the June 21, 2017 order of the District Court remanding the case to the Los Angeles Superior Court, which was until June 28, 2017, and entered as Docket No. 10 in the District Court Case.

6. Attached hereto as **Exhibit E** is a true and correct copy of the June 30, 2017 order of the District Court remanding the case to the Los Angeles Superior Court for the reasons stated in the June 21, 2017 order and entered as Docket No. 15 in the District Court Case.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct. Executed this 2nd day of August, 2017 at Santa Ana, California.



Brett G. Evans, Esq. (Bar No. 244213)
Attorney for Defendant-Appellant [REDACTED]

Exhibit A

ACCO,(AGRx),APPEAL,CLOSED,DISCOVERY,MANADR,REMANDED,STAYED

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA (Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:17-cv-04379-PA-AGR**

Cooper Trust Dtd 10-05-2000 v. John L. Parmigiani et al

Assigned to: Judge Percy Anderson

Referred to: Magistrate Judge Alicia G. Rosenberg

Demand: \$311,000

Case in other court: 9th CCA, 17-55939

Los Angeles Superior Court- Northwest
District, LC105051

Cause: 28:1446 Notice of Removal - Personal Injury

Date Filed: 06/13/2017

Date Terminated: 06/30/2017

Jury Demand: Plaintiff

Nature of Suit: 360 P.I.: Other

Jurisdiction: Diversity

Plaintiff

Cooper Trust Dtd 10-05-2000

by its Trustee Letitia M. Cooper, an individual

represented by **Joseph S Fogel**

Fogel and Associates
16133 Ventura Boulevard Penthouse
Encino, CA 91436
818-986-7100
Fax: 818-986-7106
Email: joefogel@lawfogel.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

John L Parmigiani

an individual

represented by

[REDACTED]

Brett G Evans

Evans and Kob PC

[REDACTED]

Fax: 888-956-7890

Email: brett@eklawpc.com

ATTORNEY TO BE NOTICED

Defendant

Does*1 through 20, Inclusive*

Date Filed	#	Docket Text
06/13/2017	1	NOTICE OF REMOVAL from Los Angeles Superior Court Northwest District, case number LC105051 Receipt No: 0973-20011737 - Fee: \$400, filed by defendant John L Parmigiani. (Attachments: # 1 Exhibit Superior Court Complaint, # 2 Exhibit FINRA arbitration award, # 3 Exhibit Notice to Superior Court) (Attorney Jeffrey S Kob added to party John L Parmigiani(pty:bkmov))(Kob, Jeffrey) (Entered: 06/13/2017)
06/13/2017	2	CIVIL COVER SHEET-Filed as NOTICE OF REMOVAL from Los Angeles Superior Court Northwest District, case number LC105051 with filing fee previously paid (\$400.00 paid on 06/13/2017, receipt number 2631BEIS), filed by defendant John L Parmigiani. (Kob, Jeffrey) Modified on 6/14/2017 (et). (Entered: 06/13/2017)
06/13/2017	3	CERTIFICATION AND NOTICE OF INTERESTED PARTIES-Filed as- NOTICE OF REMOVAL from Los Angeles Superior Court Northwest District, case number LC105051 with filing fee previously paid (\$400.00 paid on 06/13/2017, receipt number 2631BEIS), filed by defendant John L Parmigiani.(Kob, Jeffrey) Modified on 6/14/2017 (et). (Entered: 06/13/2017)
06/13/2017		CONFORMED FILED COPY OF COMPLAINT against Defendants John L Parmigiani., Does 1 through 20, Inclusive. Jury Demanded., filed by Plaintiff Cooper Trust Dtd 10-05-2000. [FILED IN STATE COUR TON 1/9/2017 SUBMITTED ATTACHED TO EXHIBIT A TO NOTICE OF REMOVAL AS ATTACHMENT #1] (et) (Entered: 06/14/2017)
06/14/2017	4	NOTICE OF ASSIGNMENT to District Judge Percy Anderson and Magistrate Judge Alicia G. Rosenberg. (et) (Entered: 06/14/2017)
06/14/2017	5	NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM filed. (et) (Entered: 06/14/2017)
06/15/2017	6	STANDING ORDER by Judge Percy Anderson. READ THIS ORDER CAREFULLY. IT CONTROLS THE CASE AND DIFFERS IN SOME RESPECTS FROM THE LOCAL RULES. (mrgo) (Entered: 06/16/2017)
06/15/2017	7	SCHEDULING MEETING OF COUNSEL [FRCP 16, 26(f)] ORDER by Judge Percy Anderson. (Scheduling Conference set for 7/31/2017 at 10:30 AM before Judge Percy Anderson.) (mrgo) (Entered: 06/16/2017)
06/16/2017	8	(IN CHAMBERS) COURT ORDER by Judge Percy Anderson: Plaintiff Cooper Trust DTD 10/05/2000 is hereby ordered to file on or before June 23, 2017, a notice informing the Court of when defendant John Parmigiani was served with the Complaint. Failure to file the required notice by June 23, 2017, may result in the imposition of sanctions, including dismissal of this action without prejudice. IT IS SO ORDERED. (cr) (Entered: 06/20/2017)
06/21/2017	9	PROCESS RECEIPT AND RETURN (USM-285) of summons and Complaint - (Discovery), upon Cooper Trust Dtd 10-05-2000 served on 5/25/2017, answer due 6/26/2017, served by Substituted Service service, by Federal statute, upon Co-Tenant Alexandra Melendez. (Fogel, Joseph) (Entered: 06/21/2017)
06/21/2017	10	MINUTE ORDER IN CHAMBERS by Judge Percy Anderson. The Court therefore concludes that Defendant's Notice of Removal is procedurally defective. Accordingly, this action is remanded to Los Angeles County Superior Court, Case No. LC105051. See 28

		U.S.C. § 1447(c). The Court stays this order until June 28, 2017. If Plaintiff wishes to remain in federal court and thereby waive the procedural defect discussed above, Plaintiff shall notify the Court in writing on or before June 28, 2017. (mrgo) (Entered: 06/22/2017)
06/27/2017	11	OBJECTIONS to Notice of Removal (Attorney Civil Case Opening), 1 <i>Objection to Proof of Service on Defendant Parmigiani filed by Plaintiff Cooper</i> filed by Defendants Does, John L Parmigiani. (Attachments: # 1 Declaration Defendant Objection to Proof of Service, # 2 Exhibit Exhibit A in support, # 3 Exhibit Exhibit B in support)(Kob, Jeffrey) (Entered: 06/27/2017)
06/30/2017	12	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Defendant John L Parmigiani. Appeal of Minutes of In Chambers Order/Directive - no proceeding held,,, Case Stayed,, 10 . (Appeal Fee - \$505 Fee Paid, Receipt No. 0973-20115388.) (Evans, Brett) (Entered: 06/30/2017)
06/30/2017	13	REPRESENTATION STATEMENT re Notice of Appeal to 9th Circuit Court of Appeals, 12 . (Evans, Brett) (Entered: 06/30/2017)
06/30/2017	14	NOTICE of Appearance filed by attorney Brett G Evans on behalf of Defendant John L Parmigiani (Attorney Brett G Evans added to party John L Parmigiani(pty:dft))(Evans, Brett) (Entered: 06/30/2017)
06/30/2017	15	(IN CHAMBERS) COURT ORDER by Judge Percy Anderson remanding case to SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES.: Please refer to the Court's order for specifics. (Case number LC105051 Case Terminated. Made JS-6.) (cr) (Entered: 07/03/2017)
07/03/2017	16	TRANSMITTAL of documents to Superior Court of California, County of Los Angeles. A certified copy of the order of remand and a copy of the docket sheet from this court was sent to Superior Court of California, County of Los Angeles. (cr) (Entered: 07/03/2017)
07/03/2017	17	First AMENDED NOTICE OF APPEAL to 9th CIRCUIT filed by Defendant John L Parmigiani. Amending Notice of Appeal to 9th Circuit Court of Appeals, 12 Filed On: 06/21/2017; Entered On: 06/21/2017; (Evans, Brett) (Entered: 07/03/2017)
07/05/2017	18	NOTIFICATION from Ninth Circuit Court of Appeals of case number assigned and briefing schedule. Appeal Docket No. 17-55939 assigned to Notice of Appeal to 9th Circuit Court of Appeals, 12 as to defendant John L Parmigiani. (mrgo) (Entered: 07/05/2017)

PACER Service Center			
Transaction Receipt			
07/18/2017 06:10:57			
PACER Login:	evanskob:3773641:0	Client Code:	
Description:	Docket Report	Search Criteria:	2:17-cv-04379-PA-AGR End date: 7/18/2017
Billable Pages:	4	Cost:	0.40

Exhibit B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 17-4379 PA (AGR_x) Date June 16, 2017

Title Cooper Trust DTD 10/05/2000 v. John Parmigiani

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

<u>V.R. Vallery</u>	<u>Not Reported</u>	<u>N/A</u>
<u>Deputy Clerk</u>	<u>Court Reporter</u>	<u>Tape No.</u>

Attorneys Present for Plaintiffs:

None

Attorneys Present for Defendants:

None

Proceedings: IN CHAMBERS – COURT ORDER

Plaintiff Cooper Trust DTD 10/05/2000 is hereby ordered to file on or before June 23, 2017, a notice informing the Court of when defendant [REDACTED] was served with the Complaint. Failure to file the required notice by June 23, 2017, may result in the imposition of sanctions, including dismissal of this action without prejudice.

IT IS SO ORDERED.

Exhibit C

1 FOGEL & ASSOCIATES
2 JOSEPH S. FOGEL [SBN 156746]
3 16133 Ventura Boulevard, Penthouse Suite
4 Encino, California 91436-2447
5 telephone (818) 986-7100
6 fax (818) 986-7106
7
8 *Attorneys Plaintiff* LETITIA MCKEE COOPER

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

11 COOPER TRUST DTD 10/05/2000
12 by its Trustee LETITIA MCKEE
13 COOPER,

Case No. 2:17-cv-04379-PA-AGR

PROOF OF SERVICE ON
DEFENDANT [REDACTED]

14 Plaintiff,

15 v.

16 JOHN L. PARMIGIANI;
17 DOES 1 through 20, Inclusive;

Hon. Judge Percy Anderson, Judge
Presiding.

18 Defendants.

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22 COMES NOW, Plaintiff LETITIA MCKEE COOPER, as Trustee of the
23 above-entitled trust, and provides the attached proof of service of Defendant

24 [REDACTED] served on May 25, 2017, as follows:

- 25 1. The proof of service of service on May 25, 2017 is attached and
26 made part of this document.
27 2. Defendant [REDACTED] was sent the Summons and Complaint, to his
28 work address, with a Notice and Acknowledgment of Receipt on

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May 3, 2017. Defendant [redacted] did not respond.

3. Defendant [redacted] was represented by different counsel previously. A copy of the Summons and Complaint was sent to that counsel, who later stated he was not authorized by [redacted] to accept service and would not represent him in this case.

Respectfully submitted,
FOGEL & ASSOCIATES

DATED: June 21, 2017

By: /s/
JOSEPH S. FOGEL
Attorneys for Plaintiff
LETITIA MCKEE COOPER

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Fogel & Associates 16133 Ventura Blvd. Suite PH Encino, CA 91436 TELEPHONE NO.: 818-986-7100 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Leticia McKee Cooper	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 6230 Sylmar Ave. MAILING ADDRESS: CITY AND ZIP CODE: Van Nuys, CA 91401 BRANCH NAME: Northwest District	
PLAINTIFF/PETITIONER: Cooper Trust DTD 10/05/2000 by its Trustee, et al DEFENDANT/RESPONDENT: John L. Parnigiani, an individual, et al	CASE NUMBER: <p style="text-align: center;">LC105051</p>
PROOF OF SERVICE OF SUMMONS	Ref. No. or F30 No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. summons
 - b. complaint
 - c. Alternative Dispute Resolution (ADR) package
 - d. Civil Case Cover Sheet (served in complex cases only)
 - e. cross-complaint
 - f. other (specify documents): **Notice of Trial Setting Case Management Conference**
3. a. Party served (specify name of party as shown on documents served):
 - b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served:
7 Holdsworth Drive, Huntington, NY 11743
5. I served the party (check proper box)
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): (2) at (time):
 - b. by substituted service. On (date): **05/25/2017** at (time): **7:15am** I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
Alexandra Melendez - Co-Tenant
 - (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 416.20). I mailed the documents on (date): from (city): or a declaration of mailing is attached.
 - (5) I attach a declaration of diligence stating actions taken first to attempt personal service.

Page 1 of 2

PLAINTIFF/PETITIONER: Cooper Trust DTD 10/05/2000 by its Trustee, et al	CASE NUMBER: LC105051
DEFENDANT/RESPONDENT: John L. Parmigiani, an individual, et al	

5. c. by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

(1) on (date): _____ (2) from (city): _____

(3) with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgment of Receipt.) (Code Civ. Proc., § 415.30.)

(4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d. by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

a. as an individual defendant.

b. as the person sued under the fictitious name of (specify):

c. as occupant.

d. On behalf of (specify):

under the following Code of Civil Procedure section:

416.10 (corporation)

416.20 (defunct corporation)

416.30 (joint stock company/association)

416.40 (association or partnership)

416.50 (public entity)

415.95 (business organization, form unknown)

416.80 (minor)

416.70 (ward or conservatee)

416.90 (authorized person)

415.46 (occupant)

other:

7. Person who served papers

a. Name: Victoria Foley

b. Address: 50 Main Street, Hackensack, NJ 07601

c. Telephone number: 201-489-2245

d. The fee for service was: \$

e. I am:

(1) not a registered California process server.

(2) exempt from registration under Business and Professions Code section 22350(b).

(3) a registered California process server:

(i) owner employee independent contractor.

(ii) Registration No.:

(iii) County:

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

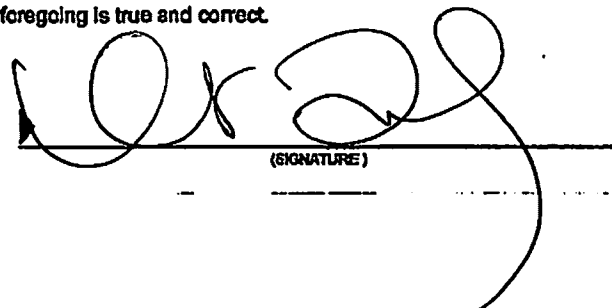
or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 06/09/2017

Victoria Foley

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



(SIGNATURE)

Exhibit D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 17-4379 PA (AGRx) Date June 21, 2017

Title Cooper Trust DTD 10/05/2000 v. John L. Parmigiani

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

Charles A. Rojas

Not Reported

N/A

Deputy Clerk

Court Reporter

Tape No.

Attorneys Present for Plaintiff:

Attorneys Present for Defendant:

None

None

Proceedings: IN CHAMBERS - COURT ORDER

Before the Court is a Notice of Removal filed by defendant [REDACTED] (“Defendant”) on June 13, 2017. Defendant asserts that this Court has jurisdiction over the action brought against it by Letitia M. Cooper as trustee of plaintiff Cooper Trust DTD 10/05/2000 (“Plaintiff”) based on the Court’s diversity jurisdiction. See 28 U.S.C. § 1332.

Federal courts are courts of limited jurisdiction, having subject matter jurisdiction over only those matters authorized by the Constitution and Congress. See, e.g., Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377, 114 S. Ct. 1673, 1675, 128 L. Ed. 2d 391 (1994). A suit filed in state court may be removed to federal court if the federal court would have had original jurisdiction over the suit. 28 U.S.C. § 1441(a). A removed action must be remanded to state court if the federal court lacks subject matter jurisdiction. 28 U.S.C. § 1447(c). “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). The removing party must strictly comply with the removal statute and has the burden of establishing that removal is proper. Id. at 567.

A defendant seeking removal must file a notice of removal “containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served” on the defendant. 28 U.S.C. § 1446(a). Here, though the Notice of Removal includes a copy of the state court Complaint, a Financial Industry Regulatory Authority award, and a notice to be filed in state court and sent to Plaintiff, it is not clear that these exhaust “all process, pleadings, and orders served.” Nor does Defendant allege that this is so.

The Court therefore concludes that Defendant’s Notice of Removal is procedurally defective. Accordingly, this action is remanded to Los Angeles County Superior Court, Case No. LC105051. See 28 U.S.C. § 1447(c). The Court stays this order until June 28, 2017. If Plaintiff wishes to remain in federal court and thereby waive the procedural defect discussed above, Plaintiff shall notify the Court in writing on or before June 28, 2017.

IT IS SO ORDERED.

Exhibit E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 17-4379 PA (AGRx)	Date	June 30, 2017
Title	Cooper Trust DTD 10/05/2000 v. John L. Parmigiani		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE		
V.R. Vallery	Not Reported	N/A	
Deputy Clerk	Court Reporter	Tape No.	
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
None		None	

Proceedings: IN CHAMBERS – COURT ORDER

On June 21, 2017, the Court issued an order provisionally remanding this action to Los Angeles County Superior Court as a result of procedural defects in the Notice of Removal. (Docket No. 10.) The Court stayed the June 21 Order to provide plaintiff with an opportunity to object to the remand and waive the procedural defects. Specifically, plaintiff was directed to inform the Court in writing by June 28, 2017, if it objected to the remand. Plaintiff filed no such objection.^{1/} Accordingly, for the reasons stated in the June 21 Order, this action is remanded to Los Angeles County Superior Court, Case No. LC105051.

IT IS SO ORDERED.

¹ The Court notes that defendant filed an objection, in which defendant states that he “did not attach the Summons and Complaint filed with this Court on June 21, 2017 by Plaintiff Cooper because he was never served with it.” (See Docket No. 11, p. 2.) Even if defendant is asserting that he did not file the Summons with the Notice of Removal because he was not served with it, the procedural defect identified in the June 21 Order remains uncured.