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5 SELF-REPRESENTED
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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 DONGXIAO YUE,
12 Plaintiff,
13 v.
14 CHUN-HUI MIAO, et al.,
15 Defendants.
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Case No. C18-1074-DMR

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO REMAND TO STATE
COURT**

(28 U.S.C. § 1447(c))

Hearing Date: May 10, 2018
Time: 11:00 AM
Courtroom: 4, 3rd Floor

Judge: The Honorable Donna M. Ryu

1 **NOTICE OF MOTION AND MOTION TO REMAND CASE TO STATE COURT**

2 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that on May 10th, 2018 at 11:00 AM, or on a date the Court
4 deems appropriate, in court room 4, 3rd Floor of the above entitled court, located at United States
5 Courthouse, 1301 Clay Street, Oakland, CA 94612, before Magistrate Judge the Honorable Donna
6 M. Ryu, Plaintiff will move to remand the instant case back to the Superior Court of California for
7 the County of Contra Costa (Case No. CIVMSC17-02449), pursuant to 28 U.S.C. § 1447(c).

8 Plaintiff's motion is based on the Memorandum of Points and Authorities, and supported
9 by the Affidavit of Service ("Affidavit") by Henrietta J. Seyue, being filed as an attachment, the
10 pleadings, records and files in this action.

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12 Dated: March 8, 2018

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15 By: /s/
16 Dongxiao Yue

MEMORANDUM OF POINTS AND AUTHORITIES

BACKGROUND

On December 15, 2017, Plaintiff commenced the underlying state law action against Defendants in the Superior Court of California for the County of Contra Costa ("the state court"). (Docket #1, p.10) On January 17, 2018, Defendants Chun-hui Miao ("Miao") and Bian-Wang.com were served the Summons and Complaint by personal service on Miao. See paragraph 1 of Defendants' Notice of Removal (Docket #1) and the attached Affidavit.

On February 20, 2018, Defendants filed a notice of removal in the federal district court, Northern District of California, alleging diversity jurisdiction only. Plaintiff now moves to remand the case back to the state court on the ground that Defendants' removal was untimely.

LEGAL STANDARD

A defendant may remove a state civil action to federal court only if it could have originally been brought in federal court. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). A defendant has thirty days from the day he is formally served the summons and complaint to remove the case to federal court. 28 U.S.C. §1446(b); see also, *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 119 S.Ct. 1322 (1999). There is a strong presumption against removal jurisdiction and the defendant always has the burden of establishing that removal is proper. *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992). The 30-day statutory "time limit is mandatory". *Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1212 (9th Cir.1980). "Absent a finding of waiver or estoppel, federal courts rigorously enforce the statute's thirty-day filing requirement." *Somlyo v. J. Lu-Rob Enters., Inc.*, 932 F.2d 1043, 1046 (2d Cir. 1991).

ARGUMENT

1 In this case, Defendants filed their notice of remove on February 20, 2018, some thirty-
2 four days after they were formally served the summons and complaint. Defendants thus filed their
3 notice of removal after the 30-day statutory limit. Their notice of removal was untimely.

4 Since “timeliness” is one of the “express statutory requirements for removal”, Defendants’
5 failure to comply with the requirement “render the removal ‘defective’ and justify a remand.”
6 Snapper, Inc. v. Redan, 171 F.3d 1249, 1253 (11th Cir. 1999).

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8 In Wilson v. The Master's Miracle, Inc., 2006 WL 163020 *2 (N.D. Ill. 2006), the notice of
9 removal was one day late, and the case was remanded to state court. Here, Defendants were late by
10 four days. Plaintiff’s motion to remand is timely, as it is filed within 30 days after the filing of
11 notice of removal. 28 U.S.C. § 1447(c). The Court should remand the case back to the state court.
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13 CONCLUSION

14 Defendants’ notice of removal was untimely. Plaintiff respectfully requests that the Court
15 remand the case to the state court.
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18 Respectfully submitted.

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20 Dated: March 8, 2018
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23 _____/S/_____

24 DONGXIAO YUE
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