

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 5 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PERRY PROIETTE,

Plaintiff - Appellant,

v.

ABBVIE INC.; ALLERGAN USA, INC.;
LILAN HOM,

Defendants - Appellees.

No. 24-3736

D.C. No.

2:24-cv-00233-RGK-SSC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Argued and Submitted October 9, 2025
Pasadena, California

Before: RAWLINSON, MILLER, and JOHNSTONE, Circuit Judges.
Partial Concurrence and Partial Dissent by Judge RAWLINSON.
Partial Concurrence and Partial Dissent by Judge MILLER.

Perry Proiette (Proiette) appeals the district court's dismissal of his case after the court determined that he fraudulently joined defendant Lilan Hom (Hom).

Proiette also appeals the district court's award of sanctions for violating the district

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

court's Standing Order.¹ We affirm the sanctions award, reverse the finding of fraudulent joinder, and remand.

We review de novo a district court's order denying plaintiffs' motion to remand, including decisions that a defendant was fraudulently joined. *See United Computer Sys., Inc. v. AT & T Corp.*, 298 F.3d 756 (9th Cir. 2002). "We review a district court's imposition of sanctions under its inherent powers for abuse of discretion." *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1087 (9th Cir. 2021) (citations omitted).

1. The district court erred in finding that Hom was fraudulently joined. "There are two ways to establish fraudulent joinder: (1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court." *Grancare, LLC v. Thrower ex rel. Mills*, 889 F.3d 543, 548 (9th Cir. 2018) (citation and internal quotation marks omitted). "Fraudulent joinder is established the second way if a defendant shows that an individual joined in the action cannot be liable on any theory." *Id.* at 548 (citation, alteration, and internal quotation marks omitted). "[A] federal court must find that a defendant was properly joined and remand the case to state court if there is a *possibility* that a state court would find that the complaint states a cause of

¹ We deny as unnecessary the Defendants-Appellees' motion to take judicial notice of the district court's Standing Order. *See* Fed. R. Evid. 201(a) ("This rule governs judicial notice of an adjudicative *fact* only.") (emphasis added).

action” against the non-diverse defendant. *Id.* at 549 (citation and internal quotation marks omitted) (emphasis in the original).

The defendants failed to carry their heavy burden of showing no possibility “that [the] state court would find that the complaint states a cause of action against [Hom].” *Id.* Proiette’s first amended complaint alleged that Hom “was the drug representative who visited [Proiette’s] office and provided the Vuity drops which caused [Proiette’s] injuries.” Proiette submitted his own declaration and other evidence to support that allegation. Hom provided a declaration attesting that she does not recall ever visiting Proiette’s office, that she did not distribute Vuity to him, and that she conducted her first sales call after Proiette’s alleged injury. But, “a denial, even a sworn denial, of allegations does not prove their falsity” sufficiently to establish a fraudulent joinder. *Id.* at 551. Moreover, by Hom’s own declaration, she became responsible for promoting Vuity in December 2021, and sent a familiar email to Proiette’s office only a month after the alleged incident.

Because the evidence in the record suggests that there is a possibility that the state court would credit Proiette’s allegations and evidence that Hom was the sales representative that gave him the Vuity sample, the district court erred in denying the motion to remand. *See id.* Therefore, we reverse with instructions to remand the case to state court.

2. The district court did not abuse its discretion by sanctioning Proiette for

violating its Standing Order.² “A determination that an order was disobeyed is entitled to considerable weight because a district judge is best equipped to assess the circumstances of the non-compliance.” *Adriana Int’l Corp. v. Thoeren*, 913 F.2d 1406, 1411 (9th Cir. 1990) (citation omitted). Proiette failed to file notice that he intended to amend his complaint before the opposition date as required by the Standing Order. He also failed to file an opposition in the required time. The standing order does not shorten the 21-day deadline to amend as of right under Federal Rule of Civil Procedure 15(a)(1)(B). Rather, it only required Proiette to provide notice of his intent to amend before the deadline to file an opposition. The Standing Order did not require Proiette to file any pleading, including an amended complaint, before the deadline to file an opposition. The district court therefore acted within its discretion by determining that Proiette had disobeyed the Standing Order, and issuing appropriate sanctions. Although we determine that the district court did not have diversity jurisdiction over the case, the sanctions remain because they did not arise from an evaluation of the merits. *See Willy v. Coastal Corp.*, 503 U.S. 131, 138 (1992).

AFFIRMED in part, REVERSED in part, and REMANDED.³

² Although we instruct the district court to remand this case, we retain jurisdiction over “collateral issues after an action is no longer pending,” including sanctions. *Lake v. Gates*, 130 F.4th 1064, 1067 (9th Cir. 2025) (citation omitted).

³ Each side shall bear its own costs on appeal.

***Proiette v. AbbVie, Inc.*, Case No. 24-3736**

Rawlinson, Circuit Judge, concurring in part and dissenting in part:

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I concur in Paragraph 2 of the disposition. However, I respectfully dissent from Paragraph 1 because I am not persuaded that the plaintiff Perry Proiette (Proiette) plausibly alleged sufficient facts that one could confidently predict that “there is a *possibility* that a state court would find that the complaint states a cause of action against” AbbVie based on the alleged provision of an eye drop sample by sales representative Lilan Hom (Hom). *Grancare, LLC v. Thrower*, 889 F.3d 543, 549 (9th Cir. 2018) (citation omitted) (emphasis in the original). In deciding whether this standard was met in *Grancare*, we discussed whether the “[p]laintiffs allege[d] a colorable claim against” the defendant whose joinder was alleged to be fraudulent, in this case Hom. *Id.* at 551.

It strains credulity to say that Proiette “allege[d] a colorable claim against [Hom]” when he was completely unable to identify her as the sales representative who provided the sample eye drops to him. He did not allege her age, height, body build, ethnicity, hair color, eye color or any other personally identifying information. Rather, he selected Hom as the defendant based solely on an e-mail she sent to the doctor’s office where Proiette worked, after the date he stated she provided him the sample. *See id.* If this scant information is sufficient to “allege a

colorable claim,” there will never be another finding of fraudulent joinder in this Circuit. I respectfully dissent.

Proiette v. AbbVie Inc., No. 24-3736

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MILLER, Circuit Judge, concurring in part and dissenting in part:

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I join part 1 of the court’s disposition, which reverses the district court’s order dismissing this case and directs the court to remand the case to state court. I do not join part 2 because I would also reverse the district court’s award of sanctions against Proiette for violating its standing order.

The standing order requires a plaintiff to give notice before filing an amended complaint in certain limited circumstances:

Where a defendant has filed a Rule 12(b)(6) motion, and *in lieu of filing an opposition*, if the plaintiff intends to file an amended complaint, the plaintiff shall file either the Amended Complaint or a Notice of Intent to File Amended Complaint prior to the date on which the opposition is due.

(emphasis added). Proiette did not file an amended complaint “in lieu of filing an opposition” to AbbVie’s Rule 12(b)(6) motion. Instead, he filed both an amended complaint *and* an opposition. The order therefore did not apply to him.

To be sure, a district court’s interpretation of its own order is entitled to deference. *Adriana Int’l Corp. v. Thoeren*, 913 F.2d 1406, 1411 (9th Cir. 1990). But that does not mean that a district court may sanction a party for conduct to which the order’s terms plainly do not apply.