

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 15 2026

FOR THE NINTH CIRCUIT

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

LAURA LYNN HAMMETT, an individual,

Plaintiff - Appellant,

v.

MARY E. SHERMAN, et al.,

Defendants - Appellees.

No. 22-56003

D.C. No.

3:19-cv-00605-LL-AHG

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Linda Lopez, District Judge, Presiding

Submitted April 30, 2026\*\*

Before: RAWLINSON, VANDYKE, and MENDOZA, Circuit Judges.

In this diversity action, Laura Hammett (Hammett) appeals the district court's dismissal of her Third Amended Complaint (TAC) for failure to state a claim and the denial of her request for leave to amend, her request for limited scope representation, and her Motion to Vacate Void Orders Granting Attorneys'

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

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Fees. We have jurisdiction under 28 U.S.C. § 1291. We affirm in part, vacate in part, and remand.

Hammett resides in Arkansas and “owns a 14.1571% interest in [Silver Strand Plaza, LLC (SSP)],” which is a named defendant. Hammett’s TAC asserted two causes of action: “(1) specific performance of [Hammett’s] right to inspect [SSP] company records and (2) dissolution of SSP.” Hammett also sought “declaratory and injunctive relief . . . for an inspection of financial records of SSP since 2013 . . . as well as costs and attorney’s fees.” Previously, Hammett voluntarily dismissed claims against Defendants-Appellees Alan N. Goldberg, Ellis R. Stern, and Stern & Goldberg, Patrick C. McGarrigle, and McGarrigle, Kenney & Zampiello, a Professional Law Corporation (the Attorney Defendants-Appellees). The district court subsequently granted the motions to dismiss filed by Defendants-Appellees Diane Dennis, Linda R. Kramer, Erik Hunsaker, and SSP, and denied Hammett leave to amend. Hammett timely appealed.

1. “We have jurisdiction to determine whether we have jurisdiction to hear the case. We review questions of our jurisdiction de novo. . . .” *Pizzuto v. Tewalt*, 136 F.4th 855, 863 (9th Cir. 2025), *as amended* (citations omitted).

“Every federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts . . .” *Allstate Ins. Co. v. Hughes*, 358 F.3d 1089, 1093 (9th Cir. 2004), *as amended* (citation and internal

quotation marks omitted). “For purposes of diversity jurisdiction, a limited liability company is a citizen of every state of which its owners/members are citizens. . . .” *3123 SMB LLC v. Horn*, 880 F.3d 461, 465 (9th Cir. 2018) (internal quotation marks omitted).

Defendants-Appellees Alan N. Goldberg, Ellis R. Stern, and Stern & Goldberg acknowledge that a limited liability company adopts the citizenship of its members.<sup>1</sup> Hammett is a citizen of Arkansas, and a member of SSP. Thus, SSP is also a citizen of Arkansas, *see Horn*, 880 F.3d at 465, and the complete diversity requirement is not satisfied. *See Rosenwald v. Kimberly-Clark Corp.*, 152 F.4th 1167, 1174 (9th Cir. 2025) (“Section 1332(a) requires complete diversity—no plaintiff may be from the same state as any defendant. . . .”) (citations omitted). In the absence of complete diversity, the district court had no jurisdiction to decide this case. *See id.* at 1185. Thus, we must vacate all orders going to the merits and remand for the district court to dismiss without prejudice for lack of subject-matter jurisdiction.<sup>2</sup> *See id.*

2. “A final determination of lack of subject-matter jurisdiction . . . does

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<sup>1</sup> Defendants-Appellees Patrick McGarrigle and McGarrigle, Kenney, & Zampiello joined this acknowledgment.

<sup>2</sup> And “[s]ince this case should never have made it into federal court, we have no reason to address” Hammett’s remaining arguments. *Weeping Hollow Ave. Tr. v. Spencer*, 831 F.3d 1110, 1114 (9th Cir. 2016).

not automatically wipe out all proceedings had in the district court at a time when the district court operated under the misapprehension that it had jurisdiction. . . .” *Willy v. Coastal Corp.*, 503 U.S. 131, 137 (1992); *see also San Diego Cnty. Credit Union v. Citizens Equity First Credit Union*, 65 F.4th 1012, 1034 (9th Cir. 2023), *as amended*. For example, “[w]hen the district court grants a fee award that is collateral to the merits, it does not risk adjudicating the merits of a case or controversy over which it lacks jurisdiction.” *San Diego Cnty. Credit Union*, 65 F.4th at 1033 (citation and internal quotation marks omitted). Thus, we have jurisdiction to review the award of attorneys’ fees. *See id.*

3. “[W]e review questions of law concerning entitlement to attorneys’ fees de novo . . .” *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 52 F.4th 1054, 1064 (9th Cir. 2022) (citation omitted). Whether a party is a “prevailing party” is also reviewed de novo. *See Weissburg v. Lancaster Sch. Dist.*, 591 F.3d 1255, 1258 (9th Cir. 2010).

The Attorney Defendants-Appellees request that we exercise our authority under Rule 21 of the Federal Rules of Civil Procedure to sever Hammett’s claims against them “in order to determine the appeal of the attorney fee order.” However, because the fee award is “collateral to the merits” of the case, we have jurisdiction over the appeal of the attorneys’ fees award without severing the claims. *San Diego Cnty. Credit Union*, 65 F.4th at 1033.

The district court awarded attorneys' fees to the Attorney Defendants-Appellees under Section 425.16(c) of the California Code of Civil Procedure. Hammett does not challenge the district court's analysis under *Coltrain v. Shewalter*, 66 Cal. App. 4th 94, 101 (1998), *as modified*, which applied Section 425.16(c). Under *Coltrain*, a plaintiff's voluntary dismissal raises a presumption that the defendants are prevailing parties, absent evidence from the plaintiff rebutting the presumption. *See id.* at 107. Hammett failed to rebut the presumption that the Attorney Defendants-Appellees were prevailing parties. Rather, she expressed her intent to refile the action. Thus, the district court did not err in determining that the Attorney Defendants-Appellees were prevailing parties, and awarding them attorneys' fees. *See Nerio Mejia v. O'Malley*, 120 F.4th 1360, 1363 (9th Cir. 2024); *see also Coltrain*, 66 Cal. App. 4th at 107.

**AFFIRMED IN PART, VACATED IN PART, AND REMANDED WITH INSTRUCTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION.<sup>3</sup>**

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<sup>3</sup> The motion for clarification of how to augment the excerpts (Dkt. #34) is denied, and the motion for leave to file supplemental authority (Dkt. #45) is denied as moot.