

# 'Super Snap Removals' Not Permitted in Ninth Circuit

*Tim Kowal* April 24, 2024



Here's a first-year civ pro question with a twist: Plaintiff files a complaint in state court. But before court processes it for filing, defendant—who, not even served yet, gets wind of the complaint through an e-file-watcher service—files a notice of removal in federal court. Question: Is this “super-snap removal” effective?

The answer is important because, in a diversity action as in *Casola v. Dexcom, Inc.*, No. 23-55403 (9th Cir. Apr. 10, 2024), a home-state defendant cannot remove. (28 U.S.C. § 1441(b)(2).) But that defect is deemed waived if the plaintiff does not seek remand within 30 days of the removal.

Answer: No, super-snap removals in the Ninth Circuit are not effective.

True, e-filing a complaint may be effective to beat the statute of limitations. But this is the difference between “presentation” and “acceptance” of documents for filing. For some purposes, like statute of limitations, presentation is all that is required. But for removal purposes, the complaint is not filed until the clerk officially accepts it as filed.

On a point of appellate procedure, the disposition was to dismiss the appeal. The district court had exercised its discretion under 28 U.S.C. § 1447(c) to remand back to state court based on the timely raised non-jurisdictional defect. And under 28 U.S.C. § 1447(d), such orders are nonreviewable. So this is a *Marbury*-esque decision: the court reviewed the propriety of a “super-snap removal” in order to determine that it was not reviewable.

### **Snap removals might still work**

Notably, however, the panel did not decide what happens to regular “snap removals”—that is, where the complaint has been accepted as filed, but the defendant files a notice of removal before service. This is a tricky question because, under the plain text of 28 U.S.C. § 1441(b)(2), the no-removal rule only applies to a defendant who is “served.” So if you are anticipating a lawsuit in your home state and want to remove to federal court, watch the e-filing listener service like Courthouse News Service and file a “snap removal” before you are served—but don’t file a “super-snap removal” before the complaint is actually filed!

*This article was originally published on the website of [Kowal Law Group](#).*

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