

§16(a)(3); that the district court had effectively denied the motion to compel arbitration, thereby creating appellate jurisdiction under 9 U.S.C. §16(a)(1)(B); or that the district court's order was appealable under the collateral order doctrine. *Webb v. Farmers of N. Am., Inc.*, ___ F.3d ___ (8th Cir. 2019).

■ **Trademark; presumption of irreparable harm; appealability of stay order.** Affirming the denial of a request for a preliminary injunction in a trademark action, the 8th Circuit found that it was “unclear” whether the presumption of irreparable harm in trademark cases had “survived” recent Supreme Court decisions holding that the movant has the burden to demonstrate that irreparable harm is “likely” absent an injunction, and noted decisions from other circuits that have “abandoned” that presumption.

The 8th Circuit also found that it lacked jurisdiction over an appeal from the district court's order staying litigation pending resolution of related proceedings, where the stay order did not “effectively end the litigation.” *Phyllis Schlafly Revocable Trust v. Cori*, ___ F.3d ___ (8th Cir. 2019).

■ **Limited liability company; motion to remand denied; jurisdictional discovery.** Where the plaintiff limited liability company commenced an action in the Minnesota courts, defendants removed the action on the basis of diversity jurisdiction but did not allege the citizenship of the plaintiff, the plaintiff moved to remand (arguing that the defendants had not met their burden to establish its citizenship), and the defendants sought leave to conduct jurisdictional discovery to allow them to determine the citizenship of the members of the LLC. Judge Magnuson denied the motion to remand without prejudice and found that the defendants were “entitled” to jurisdictional discovery. *MN Airlines, LLC v. Global Aviation Servs. USA, Inc.*, 2019 WL 2296882 (D. Minn. 5/30/2019).

■ **Punitive damages; Minn. Stat. §549.191; Fed. R. Civ. P. 15.** While ultimately denying the plaintiff's motion to add claims for punitive damages, Magistrate Judge Menendez concluded that the motion was governed by Fed. R. Civ. P. 15 rather than Minn. Stat. §549.191. *In re: McNeilus Mfg. Explosion Coor. Litig.*, 2019 WL 2387110 (D. Minn. 6/6/2019).

■ **28 U.S.C. §1441(b)(2); forum defendant rule; motion to remand denied.** Where the plaintiffs commenced their action against a number of defendants, including persons domiciled in Minnesota, in the California state courts, the defendants removed the action to the Central District of California, and the California federal court transferred the case to the District of Minnesota, Judge Magnuson denied the plaintiffs' motion to remand premised on the so-called forum defendant rule, finding that the rule applies only at the time of removal, and that the removal was proper where no defendant was domiciled in California. *Bruni Media LLC v. AAPM Media Group, LLC*, 2019 WL 2192781 (D. Minn. 5/21/2019).

■ **Motion to certify question to the Minnesota Supreme Court denied.** While acknowledging disagreement between the District of Minnesota and the Minnesota Court of Appeals on an issue of central importance to the case, Magistrate Judge Menendez denied defendants' motion to certify, finding that resolution of the issue was “premature,” and that, having granted review of the court of appeals' decision, the Minnesota Supreme Court was likely to resolve the issue even in the absence of a certified question. *In re: McNeilus Mfg. Explosion Coor. Litig.*, 2019 WL 2151703 (D. Minn. 5/17/2019).

■ **28 U.S.C. §1367(c)(3); supplemental jurisdiction; order to show cause.** Where the plaintiff commenced an eight-count action in the Minnesota courts and the defendants removed based on a presence of a single federal claim, Judge Nelson granted the defendants' motion for judgment on the pleadings on seven of the eight claims, including the federal claim, and then ordered the parties to show cause why the remaining claim should not be remanded. The defendants urged the court to retain jurisdiction because the case had been pending for nine months and discovery was underway. Judge Nelson remanded the remaining claim, finding that any discovery could be used in the remanded action, and that the “default rule” required remand. *CH Bus Sales, Inc. v. Geiger*, 2019 WL 2337449 (D. Minn. 6/3/2019).



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IMMIGRATION LAW

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■ **Board of Immigration Appeals fails to apply *Sanchez-Sosa* factors to remand request.** The 8th Circuit Court of Appeals remanded the case to the Board of Immigration Appeals to explain why it found the petitioner's inclusion of a U visa (nonimmigrant visa for victims of certain crimes) filing receipt in his remand request was of no consequence, when *Matter of Sanchez-Sosa*, 25 I&N Dec. 807 (BIA 2012), suggests a completed application should pause the removal process. *Caballero-Martinez v. Barr*, Nos. 17-2044, 18-1198 (8th Cir. 4/3/2019). <https://ecf.ca8.uscourts.gov/opndir/19/04/172044P.pdf>

■ **Asylum denial to Guatemalan woman abused by domestic partner.** The 8th Circuit Court of Appeals upheld the Board of Immigration Appeals' denial of asylum to the petitioner, finding a reasonable adjudicator would not be compelled to find that the Guatemalan government was and would be unwilling or unable to protect the petitioner against her daughter's abusive father. “Marroquin has conceded that the government was willing to protect her and substantial evidence supports the conclusion that the Guatemalan government was not unable to provide protection.” *Marroquin v. Barr*, No. 17-3780 (8th Cir. 3/29/2019). <https://ecf.ca8.uscourts.gov/opndir/19/03/173780P.pdf>

■ **“Salvadoran female heads of households” does not constitute a social group.** The 8th Circuit Court of Appeals held the Board of Immigration Appeals did not err when ruling the petitioner failed to prove past persecution on account of her membership in the social group, “Salvadoran female heads of households,” finding the group lacked social distinction and particularity. The court cites approvingly the board's rationale that “The respondent's proposed group is too broad and amorphous to meet the particularity requirement. The respondent did not show that ‘head of household’ has a commonly accepted definition with Salvadoran society, nor is such condition necessarily immutable... The respondent also did not establish that such group is socially distinct.” *De Guevara v. Barr*, No. 18-1080 (8th Cir. 3/21/2019). <https://ecf.ca8.uscourts.gov/opndir/19/03/181080P.pdf>



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