

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

KELVIN McCLAIN, as )  
Attorney in Fact for )  
Mervin McClain, )  
 )  
Plaintiff, )  
 ) CIVIL ACTION NO.  
v. ) 2:14cv1070-MHT  
 ) (WO)  
SSC MONTGOMERY CEDAR CREST )  
OPERATING COMPANY LLC, et )  
al., )  
 )  
Defendants. )

OPINION AND ORDER

This lawsuit, which was removed to this court from the Circuit Court of Montgomery County, Alabama based on diversity of citizenship, see 28 U.S.C.A. §§ 1332 and 1441, is now before the court on defendant Comfort Dental of Dothan LLC's motion to remand. Comfort Dental asserts that it did not agree to removal of the case from state court. Therefore, it argues, defendant SSC Montgomery Cedar Crest Operating Company, LLC's notice of removal was invalid under 28 U.S.C. § 1446(b)(2)(A), which requires the consent of all

defendants who have been "properly joined and served". The court agrees with Comfort Dental that, under § 1446(b) (2) (A), this case was improperly removed from state court. Therefore, the court lacks jurisdiction to hear this case.

In addition, on November 7, 2014, this court entered a combined opinion and order that noted problems in the jurisdictional allegations in the notice of removal and gave the removing party until November 14, 2014, to amend the notice to allege jurisdiction sufficiently. In the order, the court advised that failure to do so would result in the case being remanded to state court. No curative pleading has been filed.

Finally, counsel for all parties have informed the court that they all now agree to remand.

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Accordingly, it is the ORDER, JUDGMENT, and DECREE of the court that the motion to remand (doc. no. 14) is

granted and that, pursuant to 28 U.S.C.A. § 1447(c),  
this cause is remanded to the Circuit Court of  
Montgomery County, Alabama.

It is further ORDERED that all other pending  
motions are left for resolution after remand.

The clerk of the court is DIRECTED to take  
appropriate steps to effect the remand.

This case is closed in this court.

DONE, this the 9th day of December, 2014.

/s/ Myron H. Thompson  
UNITED STATES DISTRICT JUDGE