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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Morgan Stanley Smith Barney LLC,
9
10 Petitioner,

No. CV-11-1183-PHX-DGC

ORDER

11 vs.

12 Mark E. Stuart d/b/a Stuart Investments,
13 Respondent.

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15 On June 2, 2011, Petitioner filed in state court a petition for an order to show
16 cause for Respondent's failure to comply with an arbitration subpoena. Doc. 1-1 at 5-12.
17 Because the underlying arbitration is scheduled to begin on June 20, 2011, an expedited
18 hearing on the petition was held June 14, 2011. *See id.* at 21. The next day, before the
19 hearing could be completed, Respondent removed the action to this Court asserting
20 federal question jurisdiction. Doc. 1.

21 Petitioner has filed an emergency motion for remand on the ground that the Court
22 is without subject matter jurisdiction. Doc. 5. In response, Respondent filed a notice of
23 withdrawal of his notice of removal and a notice of settlement. Doc. 8. Respondent
24 states that the parties have settled this matter, including attorneys' fees and costs, and
25 have agreed to the dismissal of the state court action.

26 Respondent does not state whether he concedes that federal jurisdiction does not
27 exist in this case. Regardless, "the rule [is] that the existence or non-existence of subject
28 matter jurisdiction in a given case does not hinge on the representations of parties to the

1 case.” *Weese v. Union Carbide Corp.*, No. 07-581-GPM, 2007 WL 290814, at *3 (S.D.
2 Ill. Oct. 3, 2007). A federal court ““has an independent duty to satisfy itself that it has
3 subject-matter jurisdiction.”” *Id.* (citation omitted).

4 The Court has federal question jurisdiction over cases “arising under” federal law.
5 28 U.S.C. § 1331. The subpoena Petitioner seeks to enforce was issued by the arbitrator,
6 not this Court. The petition seeks enforcement of the subpoena pursuant to Arizona law,
7 that is, A.R.S. § 12-1507(A). In short, this case arises not under federal law, but state
8 law. The Court therefore is without subject matter jurisdiction under 28 U.S.C. § 1331.
9 *See Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 10
10 (1983) (federal question jurisdiction exists only where the “complaint establishes that the
11 case ‘arises under’ federal law”); *Takeda v. Nw. Nat’l Life Ins. Co.*, 765 F.2d 815, 821
12 (9th Cir. 1985) (“The federal question ‘must be disclosed upon the face of the complaint
13 unaided by the answer or petition for removal.’”) (quoting *Gully v. First Nat’l Bank*, 299
14 U.S. 109, 113 (1936)). The Court will grant the motion for remand (Doc. 5) and deem
15 moot the notice of withdrawal (Doc. 8). *See Weese*, 2007 WL 290814, at *3.

16 **IT IS ORDERED:**

- 17 1. Petitioner’s emergency motion for remand (Doc. 5) is **granted**.
18 2. The Clerk is directed to **remand** this matter to state court.

19 Dated this 17th day of June, 2011.

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24 David G. Campbell
25 United States District Judge
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