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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

VINCENT ABAD,)	NO. CV-F-07-828 OWW/DLB
)	
)	MEMORANDUM DECISION GRANTING
Plaintiff,)	PLAINTIFF'S MOTION TO REMAND
)	(Doc. 19), VACATING ORAL
vs.)	ARGUMENT SET FOR FEBRUARY 9,
)	2009, AND DIRECTING
)	PLAINTIFF TO LODGE ORDER
)	
DIVERSIFIED ADJUSTMENT)	
SERVICE, INC., SPRINT PCS,)	
AND DOES 1 - 20,)	
)	
)	
Defendants.)	
)	
)	

Before the Court is Plaintiff Vincent Abad's motion to remand this action to the Kern County Superior Court.

Plaintiff filed a Complaint in the Kern County Superior Court on February 14, 2007 against Defendants Diversified Adjustment Service, Inc., Sprint PCS, and Does 1-20. The Complaint alleged violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, against Diversified, and violation of the Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788, against Sprint PCS. The action was removed to this

1 Court by Defendant Diversified Adjustment Service, Inc. on June
2 6, 2007 on the ground that Plaintiff's claim against Diversified
3 was separate and independent from Plaintiff's claim against
4 Sprint PCS. Sprint PCS did not join in the removal. By
5 Stipulation and Order filed on June 25, 2008, Plaintiff dismissed
6 the action against Diversified Adjustment Service, Inc. with
7 prejudice pursuant to Rule 41(a)(1), Federal Rules of Civil
8 Procedure.

9 Lilys D. McCoy, counsel for Plaintiff, avers:

10 5. The only remaining defendant, Sprint PCS,
11 was served with the summons and complaint on
12 or about March 26, 2007 via certified mail,
13 return-receipt-requested pursuant to
14 California Code of Civil Procedure section
15 415.40. Defendant Sprint PCS did not file a
16 responsive pleading in the Superior Court of
17 California, remove the action to the United
18 States District Court or file a responsive
19 pleading in the United States District
20 [Court].

21 Because the claim upon which federal subject matter
22 jurisdiction rests has been dismissed and there has been no
23 substantial commitment of judicial resources to the nonfederal
24 claim, the Court exercises its discretion pursuant to 28 U.S.C. §
25 1441(c) to remand this action to the Kern County Superior Court.
26 *See Albingia Versicherungs A.G. v. Schenker Intern. Inc.*, 344
F.3d, *amended on other grounds*, 350 F.3d 916 (9th Cir.2003),
cert. denied, 541 U.S. 1041 (2004); *See Murphy v. Kodz*, 351 F.2d
163, 167-168 (9th Cir.1965).

For the reasons stated:

1. Plaintiff's motion to remand this action to the Kern

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County Superior Court is GRANTED;

2. Oral argument set for February 9, 2009 is VACATED;

3. Plaintiff shall lodge a form of order granting the motion to remand and remanding the action to the Kern County Superior Court within five (5) court days from the date of service of this Memorandum Decision.

IT IS SO ORDERED.

Dated: February 2, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE