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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JOSEPH SOUZA MARTIN,

CASE NO. 1:08-cv-01386-DLB PC

Plaintiff,

ORDER REMANDING ACTION TO KINGS  
COUNTY SUPERIOR COURT

v.

(Docs. 5, 6)

THANIT HASADSRI, et al.,

Defendants.

\_\_\_\_\_ /

Plaintiff Joseph Souza Martin (“Plaintiff”) is a state prisoner proceeding pro se in this civil action. Defendants T. Hasadsri, W. McGuiness, J. Kim and C. Schutt (“Defendants”) filed a notice of removal from Kings County Superior Court on September 15, 2008. Plaintiff filed a motion to remand on September 25, 2008. (Court Dockets (Docs). 5, 6). Upon court order, Defendants filed an opposition on November 3, 2008 and Plaintiff filed a reply on November 10, 2008. (Docs. 8, 9).

Plaintiff argues, inter alia, that the motion to remand is made on the grounds that removal was “a dilatory litigation tactic filed on the exact day for an answer to be filed...”. (Doc. 5, p.1:23-26). In response, defendants contend that they timely filed and served their notice of removal. (Doc. 8, p.6:12-16).

This court has the authority to remand an action to state court for procedural defects. Maniar v. FDIC, 979 F.2d 782, 785 (9th Cir. 1992). A tardy removal under § 1446(b) constitutes a procedural defect. Id.

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1 Defendants were personally served on August 12, 2008 with the summons and complaint.  
2 Defendants were required to file their notice of removal within 30 days, by September 12, 2008. 28  
3 U.S.C. § 1446(b). Defendants' notice of removal was not filed under September 15, 2008, when  
4 defendants paid the filing fee for the action. (Doc. 1, 2). Local Rule 77-121(c).

5 Because defendants' tardy filing is a procedural defect and warrants remand, the Court will  
6 not press further to address the parties' arguments regarding this court's subject matter jurisdiction.

7 Accordingly, this Court hereby:

- 8 1. GRANTS Plaintiff's motion to remand;
- 9 2. REMANDS this action to the Kings County Superior Court; and
- 10 3. DIRECTS this Court's clerk to serve a copy of this order on the Kings County  
11 Superior Court and to serve the parties in the customary manner.

12 IT IS SO ORDERED.

13 **Dated: April 9, 2009**

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE