

1 Lenden F. Webb (SBN 236377)
2 Amy R. Lovegren-Tipton (SBN 258697)
3 Manuel E. Ignacio (SBN 279191)
4 **WEBB & BORDSON, APC**
5 466 W. Fallbrook Ave. Suite 102
6 Fresno, CA 93711
7 Telephone: (559) 431-4888
8 Facsimile: (559) 821-4500
9 Email: MIgnacio@WBLawGroup.com

10 Attorney for Plaintiffs,
11 MARIO H. CABRERA, an individual, and ROSA CABRERA, an individual

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

14 MARIO H. CABRERA and ROSA
15 CABRERA,

16 Plaintiffs,

17 vs.

18 MARTINEZ & ASSOCIATES, LLC, dba
19 MARIO'S BODY SHOP SUPPLIES; JOSE
20 MANRIQUEZ, dba MARIO'S BODY SHOP
21 SUPPLIES; and DOES 1 through 25,
22 inclusive,

23 Defendants.

24 CASE NO.: 1:11-CV-01782-LJO-JLT

25 **STIPULATION TO REMAND CASE
26 BACK TO KERN COUNTY SUPERIOR
27 COURT; ORDER THEREON**

28 Plaintiffs MARIO H. CABRERA, an Individual; and ROSA CABRERA,
an Individual ("CABRERA"); Defendant MARTINEZ & ASSOCIATES, LLC, dba
MARIO'S BODY SHOP SUPPLIES ("MARTINEZ") and Defendant JOSE
MANRIQUEZ, dba MARIO'S BODY SHOP SUPPLIES ("MANRIQUEZ")
(collectively "Parties") by and through their respective counsel of record, hereby
stipulate and agree as follows:

STIPULATION

1. On July 20, 2011, Plaintiffs commenced an action in the Superior Court
of California, County of Kern entitled *Mario H. Cabrera and Rose Cabrera v. Martinez
& Associates, LLC dba Mario's Body Shop Supplies, Jose Manriquez, dba Mario's Body*

1 *Shop Supplies, et al* bearing Kern County Case No. S-1500-CL-261230 (hereinafter “the
2 Action”).

3 2. On or about October 26, 2011, Defendant MANRIQUEZ filed a Notice of
4 Removal of the Action to this Court pursuant to 28 U.S.C. §§1331 and 1446.

5 3. Defendant MARTINEZ has not consented to Removal in this case and
6 therefore the required unanimity of Defendants for Removal is absent:

7 “While **the failure of one defendant to consent renders the removal**
8 **defective**, each defendant need not necessarily sign the notice of removal.
9 (Citation omitted.) There must, however, be some timely filed written
10 indication from each served defendant, or some person with authority to act on
11 the defendant’s behalf, indicating that the defendant has actually consented to
12 the removal.” (*Getty Oil Corporation, Succeeded by and a Division of Texaco,*
13 *Inc. v. Insurance Company of North America* 841 F.2d 1254 (Fifth Circuit
14 1988) (*Emphasis added.*)

15 4. In addition, after discussion among the Parties, it was discovered that
16 there is no triable cause of action to be heard before the Eastern District Court and that
17 the matter should be remanded to the Kern County Superior Court. The parties agree
18 that this Court lacks subject matter jurisdiction because the facts of this case do not
19 satisfy the jurisdictional requirements of the Protecting Tenants at Foreclosure Act (12
20 U.S.C. §5220).

21 5. The parties hereto stipulate that the Action should be remanded to Kern
22 County Superior Court.

23 6. The parties further stipulate that each party shall bear its own attorneys’
24 fees and costs with respect to the removal and subsequent remand of the Action pursuant
25 to this Stipulation and Order.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: January 25, 2012

WEBB & BORDSON, APC

By: /Manuel E. Ignacio/
Manuel E. Ignacio
Attorney for Plaintiffs
MARIO H. CABRERA and
ROSA CABRERA

Dated: January 26, 2012

GATTUSO & KUMMER

By: /Dixon G. Kummer/
Dixon G. Kummer
Attorney for Defendant
MARTINEZ & ASSOCIATES,
LLC, dba MARIO'S BODY
SHOP SUPPLIES

Dated: January 26, 2012

By: /Jose Manriquez/
JOSE MANRIQUEZ, dba MARIO'S
BODY SHOP SUPPLIES, Defendant
In Pro Per

///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

On January 26, 2012 the Parties to the above-referenced action filed a Stipulation to Remand Removed Action. The Court having reviewed that Stipulation and good cause appearing, Orders as follows:

1. The Parties' Stipulation is approved;
2. Eastern District of California, Case No. 11-cv-1782-LJO-JLT styled MARIO H. CABRERA AND ROSA CABRERA v. MARTINEZ & ASSOCIATES, LLC., dba MARIO'S BODY SHOP SUPPLIES; JOSE MANRIQUEZ, dba MARIO'S BODY SHOP SUPPLIES; and DOES 1 through 25, inclusive is hereby remanded to Kern County Superior Court.

The clerk is directed to take necessary action to remand this action to Kern County Superior Court.

IT IS SO ORDERED.

Dated: January 27, 2012

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT

JUDGE