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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY MERKELO, HANNA  
MERKELO-CHEBERENCHYK,

Plaintiff,

v.

GEORGINA SPIDELL,

Defendant.

No. 2:14-cv-2400-KJM-EFB PS

FINDINGS AND RECOMMENDATIONS

This action, in which the parties are *pro se*, proceeds before this court pursuant to Eastern District of California Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). On October 14, 2014, defendant Georgina Spidell, proceeding *pro se*, filed a second and duplicative notice of removal, which purports to remove plaintiffs’ unlawful detainer action, filed as Sacramento County Superior Court case number 14UD04126. ECF No. 1 at 6.<sup>1</sup> As discussed below, the assigned district judge remanded the unlawful detainer action to the state court on October 28, 2014 and Spidell’s removal petition filed on October 14 is duplicative.

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<sup>1</sup> The notice of removal includes a copy of defendant’s answer filed in the state court, but does not include a copy of the complaint. However, the notice identifies the same superior court case number as the complaint removed in 2:14-cv-2010-KJM-EFB PS.

Also on October 14, 2014, defendant filed applications to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. ECF No. 2. However, in light of the recommendation herein that this action be remanded, defendant’s requests to proceed *in forma pauperis* is moot.

1 Plaintiffs filed the unlawful detainer action in state court on June 9, 2014, against  
2 Georgina and Rodney Spidell. Defendant Rodney Spidell<sup>2</sup> filed a notice of removal on August  
3 29, 2014, which resulted in a civil action being opened in this court as *Merkelo v. Spidell*, No.  
4 2:14-cv-2010-KJM-EFB (*Merkelo I*), ECF No. 1 (removing Sacramento County Superior Court  
5 case number 14UD04126). Judge Mueller ordered the action remanded to the state court on  
6 October 28, 2014. *Id.* at ECF No. 9. During the interim, while the first removal was still pending  
7 before this court, Georgina Spidell filed the second and duplicative notice of removal on October  
8 14, 2014, purporting to remove the same Superior Court case number 14UD04126. She did not,  
9 however, file the required notice of related cases, *see* Local Rule 123, or otherwise file any notice  
10 informing the court that Rodney Spidell had previously sought to remove the same action. Thus,  
11 the clerk opened a second and duplicative civil case in this court.

12 It is clear that the notice of removal filed by Georgina Spidell seeks to remove the  
13 identical unlawful detainer action that had purportedly already been removed to this court and has  
14 since been remanded in *Merkelo I*. *See Merkelo v. Spidell*, No. 2:14-cv-2400-KJM-EFB (*Merkelo*  
15 *II*) (again purporting to remove Sacramento County Superior Court case number 14UD04126).  
16 Apart from Georgina Spidell finally joining in the removal attempted by Rodney Spidell, her  
17 removal petition is completely duplicative of *Merkelo I* and must be remanded for the same  
18 reasons as *Merkelo I*. *See Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (holding  
19 that a complaint that “merely repeats pending or previously litigated claims” may be dismissed as  
20 frivolous under the authority of then-numbered 28 U.S.C. § 1915(d)); *see also Adams v. Cal.*  
21 *Dep’t of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007) (“Plaintiffs generally have no right to  
22 maintain two separate actions involving the same subject matter at the same time in the same  
23 court and against the same defendant.”) (citation and quotation marks omitted), *cert. denied*, 552  
24 U.S. 1076 (2007); *accord Kahre v. Damm*, 342 F. App’x 267, 268-69 (9th Cir. 2009) (affirming  
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27 <sup>2</sup> The complaint named both Rodney and Georgina Spidell, *Merkelo I*, ECF No. 1, p. 25  
28 of 37 at ¶ 1. However, only Rodney Spidell signed the first notice of removal and only he was  
listed in the caption of his notice and removal petition.

1 dismissal of later-filed case where that case contained claims that were almost entirely duplicative  
2 of claims asserted in an earlier-filed case).

3 For the reasons stated above and in this court's earlier Findings and Recommendation and  
4 in Judge Mueller's remand order filed in *Merkelo I*, ECF Nos. 3 and 9, this matter must be  
5 remanded to the state court.

6 Accordingly, it is hereby RECOMMENDED that *Merkelo II* be remanded to the Superior  
7 Court of the State of California in and for the County of Sacramento and that the Clerk of Court  
8 be directed to close this case.

9 These findings and recommendations are submitted to the United States District Judge  
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
11 after being served with these findings and recommendations, any party may file written  
12 objections with the court and serve a copy on all parties. Such a document should be captioned  
13 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
14 shall be served and filed within fourteen days after service of the objections. Failure to file  
15 objections within the specified time may waive the right to appeal the District Court's order.  
16 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th  
17 Cir. 1991).

18 DATED: November 20, 2014.

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20 EDMUND F. BRENNAN  
21 UNITED STATES MAGISTRATE JUDGE  
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