

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
28IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JASON E. McMURRAY,

No. C-07-1007 MMC

Plaintiff,

**ORDER REQUIRING DEFENDANT TO
SHOW CAUSE WHY ACTION SHOULD
NOT BE REMANDED**

v.

MERCK & CO., INC., et al.,

Defendants

Before the Court is defendant Merck & Co., Inc.'s Notice of Removal, filed February 16, 2007, in which defendant asserts the federal district court has diversity jurisdiction under 28 U.S.C. § 1332(a). In the complaint, plaintiff does not seek any particular amount of damages.

A federal district court has jurisdiction over removed actions only if such court would have had original jurisdiction over the action had it originally been filed therein. See 28 U.S.C. § 1441(a). The instant action contains no federal claims. Under such circumstances, the federal district court has subject-matter jurisdiction only if the action is between citizens of different states and the amount in controversy exceeds \$75,000. See 28 U.S.C. § 1332(a).

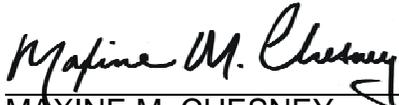
Defendant's notice of removal asserts that the amount in controversy exceeds \$75,000, but fails to submit evidence to support that assertion. As a consequence, defendant has failed to establish diversity jurisdiction. See Gaus v. Miles, 980 F.2d 564, 567 (9th Cir. 1992) (holding defendant in removed action "bears the burden of actually

1 proving the facts to support jurisdiction, including the jurisdictional amount.”)

2 Accordingly, defendant is hereby ORDERED TO SHOW CAUSE in writing, filed and
3 served no later than March 9, 2007, why the instant action should not be remanded for lack
4 of subject matter jurisdiction. Plaintiff may file a reply to defendant’s response to the order
5 to show cause no later than March 23, 2007. The matter will stand submitted on that date,
6 and will be decided without a hearing, unless the Court determines, after reviewing the
7 parties’ submissions, that a hearing is necessary. See Civ. L.R. 7-1(b).

8 **IT IS SO ORDERED.**

9 Dated: February 22, 2007

10 
11 _____
12 MAXINE M. CHESNEY
13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28