United States District Court
For the Northern District of California

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6   UNITED STATES DISTRICT COURT

7   NORTHERN DISTRICT OF CALIFORNIA

8   No. C08-5197 MHP

9   DEVINE COMMUNICATIONS INCORPORATED,

10   Plaintiff(s),   **ORDER OF REMAND**

11   vs.

12   FILKONEK COPORATION, et al.,

13   Defendant(s).
                                                              /
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15   This action was removed to this court from the Superior Court of California, County of San

16   Francisco, based upon this court's alleged diversity jurisdiction. It is hornbook law that the burden

17   of establishing removal jursdiction is upon the party seeking to remove and that "the removal statute

18   is strictly construed against removal jurisdiction". See Salveson v. Western States Bankcard Ass'n.,

19   731 F.2d 1423, 1429 (9th Cir. 1984). It is also hornbook law that all defendants who have been

20   served at the time of removal must join in the removal. See Emrich v. Touche Ross & Co., 846 F.

21   3d 1190, 1193 n.1 (and cases cited therein).

22   In this case the removal was within the time provided by 28 U.S.C. section 1446(b) and a

23   timely motion to remand was made. However, defendant Filkonek Corporation had been served on

24   November 13, 2008, but did not join in the Petition for Removal filed on November 17, 2008. Nor

25   does the petition make any allegation about the service status of defendant Filkonek. Thus, the

26   removal, which is objected to by plaintiff in its motion to remand, is facially deficient and leaves this

27   court without jurisdiction.

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1   For the foregoing reasons, and noting that a temporary restraining order has been entered by

2 the Superior Court and that this matter was on calendar in that court for a hearing on whether a

3 preliminary injunction should issue, this action is REMANDED immediately to the Superior Court

4 of California, County of San Francisco, and the Clerk of Court shall transmit immediately a certified

5 copy of this order to the Clerk of the Superior Court.

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7 Date: November 21, 2008

MARILYN HALL PATEL
Judge
United States District Court
Northern District of California

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