

United States District Court  
For the Northern District of California

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

CRAIG JOHANN DOUGLAS,

No. C-09-0183 MMC

Plaintiff,

**ORDER REMANDING ACTION**

v.

CITY AND COUNTY OF SAN FRANCISCO,  
et al.,

Defendants.

On February 20, 2009, the Court ordered defendant City and County of San Francisco ("City") to show cause why the above-titled action should not be remanded to state court, for the reason that the City had failed to show, in its Notice of Removal, that plaintiff intended his use of the term "constitutional" in his Sixth Claim for Relief to be a reference to the federal Constitution, as opposed to the state Constitution. (See Order filed Feb. 20, 2009 ("OSC") at 1-2.) The Court advised the City that if it was unable to meet its burden of showing plaintiff had brought his Sixth Claim for Relief under the federal Constitution, or, alternatively, if plaintiff stated his intention was to bring said claim solely under the California Constitution, the Court would remand the action. (See id. at 2.)

On March 6, 2009, the City filed a response to the Court's OSC. In such response, counsel for the City represents he spoke with plaintiff and that plaintiff "was unable to confirm whether the constitutional violations claimed are federal or state constitutional

1 violations.” (See Response at 1:22-23.) Counsel for the City further represents that  
2 plaintiff advised him plaintiff “was retaining an attorney” and that such attorney would  
3 “clarify the nature of plaintiff’s constitutional violation claims.” (See id. at 1:23-25.)  
4 Thereafter, counsel for the City represents, he was contacted by an attorney “in connection  
5 with this case,” but, by the time of the filing of the City’s response to the Court’s OSC, said  
6 attorney had not clarified the basis for plaintiff’s Sixth Claim for Relief, confirmed that she  
7 would be representing plaintiff, or appeared in the instant action. (See id. at 1:25-2:6.)

8 In the period since the filing of the City’s response, no attorney has appeared on  
9 behalf of plaintiff, and plaintiff has not stated whether he intended to bring his Sixth Claim  
10 for Relief under the federal Constitution or the state Constitution.<sup>1</sup>

11 Accordingly, the City has failed to carry its burden of demonstrating removal was  
12 proper, see Gaus v. Miles, 980 F.2d 564, 566 (9th Cir. 1992), and, consequently, the  
13 above-titled action is hereby REMANDED to the Superior Court of the State of California in  
14 and for the County of San Francisco.<sup>2</sup>

15 **IT IS SO ORDERED.**

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17 Dated: March 30, 2009

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19 MAXINE M. CHESNEY  
20 United States District Judge

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26 <sup>1</sup>The Court, in its OSC, advised plaintiff that if he wished to file a reply to the City’s  
27 response to the OSC, he must do so no later than March 20, 2009. (See OSC at 2:2-3.)  
28 No such reply was filed.

<sup>2</sup>The Court expresses no opinion herein as to whether the instant action may be re-  
removed should evidence obtained at a later time demonstrate a valid basis for removal.