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

RANDALL RAY MITCHELL,)	Case No. 11-752 SC
)	
Plaintiff,)	ORDER REQUIRING
)	<u>SUPPLEMENTAL BRIEFING</u>
v.)	
)	
ACUMED, LLC; and DOES 1 through)	
100, inclusive,)	
)	
Defendants.)	
)	
)	

Plaintiff Randall Ray Mitchell ("Plaintiff") commenced this action in Marin County State Court against Acumed, LLC ("Defendant") for injuries Plaintiff allegedly sustained after a device manufactured by Defendant was surgically inserted into his body. ECF No. 1 ("Notice of Removal") Ex. E ("FAC"). Three fully briefed motions are now before the Court, including Plaintiff's Motion to Remand. ECF Nos. 19 ("MTR"), 25 ("MTR Opp'n"), 28 ("MTR Reply").

Under 28 U.S.C. § 1446(b), notice of removal must be filed within thirty days after the defendant receives the first pleading from which it can be ascertained that the case is removable, "except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action." 28 U.S.C. § 1446(b). Defendant

1 removed this action to federal court on February 18, 2011, citing
2 the diversity of the parties as the sole basis of this Court's
3 subject matter jurisdiction. See Notice of Removal. This action
4 was filed on January 4, 2010, more than one year earlier. See
5 Notice of Removal Ex. A ("Initial Complaint"). In California, an
6 action is "commenced" on the date it is filed. Cal. Civ. Proc.
7 Code § 350; Coman v. Int'l Playtex, Inc., 713 F. Supp. 1324, 1328
8 (N.D. Cal. 1989) (dismissing defendant's argument that
9 "commencement" should be interpreted to be the date when action is
10 filed and served).

11 Given the above, it appears that removal of this action was
12 improper. However, because neither party discussed the one-year
13 limitation of 28 U.S.C. § 1446(b) in its brief, both parties are
14 granted leave to file a supplemental brief of no more than five
15 pages in length -- on this issue. Defendant's brief is due within
16 seven (7) days of this Order; Plaintiff's brief is due within
17 fourteen (14) days of this Order.

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19 IT IS SO ORDERED.

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21 Dated: May 26, 2011

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UNITED STATES DISTRICT JUDGE

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