

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

ABITSCH & ABITSCH, LLC,)	Case No. 11-5319 SC
)	
)	<u>ORDER REMANDING CASE</u>
Plaintiff,)	
)	
v.)	
)	
DARUKA WANIGATUNGA,)	
)	
Defendant.)	
)	

Plaintiff Abitsch & Abitsch ("Plaintiff") filed this unlawful detainer action in the Superior Court of the State of California, City and County of San Francisco on August 9, 2010. ECF. No. 1 ("Nov. 2, 2011 Not. of Removal"). Defendant Daruka Wanigatunga ("Defendant") has removed this case to federal court twice. The case was first removed on September 30, 2011, but was remanded back to state court one week later by Chief Magistrate Judge James. Case No. 11-4833 ECF Nos. 1 ("Sept. 30, 2011 Not. of Removal"), 11 ("Oct. 7, 2011 Remand Order"). Defendant removed the case for a second time on November 2, 2011, a few days prior to the trial date set by the state court. Nov. 2, 2011 Not. Of Removal. Now the case is before this Court.

"If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3). "[A] court may raise the question of subject

1 matter jurisdiction, sua sponte, at any time during the pendency of
2 the action[.]" Snell v. Cleveland, Inc., 316 F.3d 822, 826 (9th
3 Cir. 2002).

4 Having reviewed the most recent Notice of Removal, the Court
5 finds that Defendant has failed to establish that federal subject
6 matter jurisdiction exists. The grounds for the first removal of
7 the action included the same grounds as those asserted here:
8 Defendant intended to file a counter-complaint against Plaintiff
9 based on the Federal Debt Collection Practices Act ("FDCPA").
10 Compare Sept. 30, 2011 Not. Removal at 2 with Nov. 2, 2011 Not. of
11 Removal at 2. Judge James rejected Defendant's position in her
12 October 7, 2011 Remand Order, and the Court sees no reason why it
13 should reach a different conclusion here.

14 Accordingly, this action is hereby REMANDED to the Superior
15 Court of the State of California, City and County of San
16 Francisco.¹

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18 IT IS SO ORDERED.

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20 Dated: January 25, 2012



21 UNITED STATES DISTRICT JUDGE

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28 ¹ The Court also VACATES its January 24, 2012 Order shortening time
to hear Plaintiff's motion to remand (ECF No. 9).