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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WELLS FARGO BANK, N.A.,

No. C 12-01663 RS

Plaintiff,

v.

**ORDER ADOPTING REPORT AND
RECOMMENDATION TO GRANT
MOTION FOR TO REMAND**

CATALINA R. CARGADO, et al.,

Defendants.

_____ /
This matter was initiated as an unlawful detainer action in San Francisco Superior Court. Defendant Catalina R. Cargado filed a notice of removal, asserting both federal question and diversity jurisdiction. The case was randomly assigned to a magistrate judge upon filing of the notice of removal. Plaintiff Wells Fargo moved to remand, and sought to recover its attorney fees and costs. The magistrate judge issued a Report and Recommendation that the motion to remand be granted, but that no award of fees and cost be made. The matter was then reassigned to the undersigned for disposition.

The time for objecting to the Report and Recommendation has expired and no objections have been filed. For the reasons explained in the Report and Recommendation, removal jurisdiction based on a federal question does not exist. Furthermore, even assuming the amount in controversy requirement for removal based on diversity of citizenship could be deemed satisfied, Cargado is a

1 citizen of California and therefore not entitled to removal on diversity grounds. See, 28 U.S.C. §
2 1441(b)(2). (A civil action “removable solely on the basis of the jurisdiction under section 1332(a)
3 . . . may not be removed if any of the parties in interest properly joined and served as defendants is
4 a citizen of the State in which such action is brought.”) For the reasons identified by the magistrate
5 judge, however, a fee and cost award is not warranted.

6 Accordingly, the Court adopts the Report and Recommendation that the motion to remand
7 be granted and that the request for fees and costs be denied. This matter is hereby remanded to San
8 Francisco Superior Court.

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10 IT IS SO ORDERED.

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13 Dated: 6/25/12



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

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THIS IS TO CERTIFY THAT A HARD COPY OF THIS ORDER WAS MAILED TO:

Catalina R. Cargado
555 44th Avenue
San Francisco, CA 94121

DATED: 6/25/12

/s/ Chambers Staff

Chambers of Magistrate Judge Richard Seeborg