

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

THE BANK OF NEW YORK MELLON  
FKA THE BANK OF NEW YORK, AS  
TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF CWABS,  
INC., ASSET-BACKED CERTIFICATES,  
SERIES 2007-8,

No. C 12-2780 RS

**ORDER SETTING BRIEFING  
SCHEDULE FOR MOTION TO  
REMAND**

Plaintiff,

v.

ARTHUR D BORDESSA JR, DONNA  
LEVINE,

Defendants.

---

This matter was filed as an unlawful detainer action in Sonoma County Superior Court. Contending that it actually is an action for “ejectment” arising under federal law, and governed by the Protecting Tenants at Foreclosure Act of 2009, 12 U.S.C. § 5201, defendant Donna Levine removed it to this Court. Prior to reassignment to the undersigned, plaintiff filed what it labeled as an “*ex parte*” application to have its motion to remand heard on shortened time, arguing that the removal is improper and interferes with what is designed to be an expeditious procedure in state court to obtain possession.<sup>1</sup>

---

<sup>1</sup> Under Civil Local Rule 7-10, an *ex parte* motion is one filed without notice to opposing party, and is only permitted where specifically authorized by statute, Federal Rule, local rule, or Standing Order. There was no basis to proceed *ex parte* in these circumstances, and plaintiff should have brought its motion to shorten time pursuant to Rule 6-3. Plaintiff in fact, however, did provide

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Although plaintiff submitted no separate motion to remand with its application to shorten time, it included substantive argument as to why it contends the removal was improper. Accordingly, its application will be deemed to include its motion to remand. Good cause appearing, defendant shall file written opposition to the motion to remand no later than July 25, 2012. Plaintiff shall file any reply within three court days after opposition is filed. The matter will then be submitted without oral argument.

IT IS SO ORDERED.

Dated: 7/11/12



---

RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE

---

notice of its application to defendant, despite mischaracterizing it as “*ex parte*.” Accordingly, it will be deemed to have been properly brought under Rule 6-3.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

Donna A. Levine  
6095 Bodega Avenue  
Petaluma, CA 94952

DATED: 7/11/12

/s/ Chambers Staff

Chambers of Magistrate Judge Richard Seeborg