

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

CITIBANK, N.A.,
Plaintiff,
v.

No. C 12-2994 MMC

**ORDER REMANDING ACTION;
GRANTING APPLICATION TO
PROCEED IN FORMA PAUPERIS**

JUAN MARTINEZ,
Defendant.

Before the Court is plaintiff Citibank, N.A.'s ("Citibank") Notice of Related Cases, filed July 10, 2012, by which Citibank seeks an order remanding the above-titled case to Sonoma County Superior Court.¹ Defendant Juan Martinez ("Martinez"), who appears pro se, has not filed a response.² Having read and considered the notice, the Court rules as follows.

In its complaint, Citibank alleges one claim, specifically, a state law claim for unlawful detainer. In the notice of removal, Martinez asserts the complaint is removable

¹ Also before the Court is Martinez's Application to Proceed in Forma Pauperis, filed June 11, 2012. The Court finds Martinez has shown good cause to proceed in forma pauperis, and accordingly, the Application is hereby GRANTED.

²Because the notice was served on Martinez by mail, any opposition was due no later than July 17, 2012. See Civil L.R. 7-11 (providing opposition to motion for administrative relief must be "filed no later than 4 days after the motion has been filed"); Civil L.R. 5-5(a)(2) (providing that where motion is served by mail, "3 days are added to the time in which any party must respond").

1 pursuant to 28 U.S.C. § 1331 because, he contends, a federal question is presented.


2 As Citibank correctly observes in its notice, the instant complaint was previously
3 removed to this Court by Martinez on January 25, 2012, and was remanded to state court
4 on March 12, 2012, when the undersigned adopted in full a Report and Recommendation
5 issued February 17, 2012 by Magistrate Judge Maria Elena James. See Citibank v.
6 Martinez, Civil Case No. 12-0403 MMC.³ In said Report and Recommendation, Magistrate
7 Judge James found no federal question was presented by the state law claim alleged in the
8 complaint. Additionally, Magistrate Judge James found Martinez, who is a citizen of
9 California, was not entitled to remove the case on diversity grounds, and, in any event,
10 Martinez had failed to establish the requisite amount in controversy.

11 On June 11, 2012, Martinez again removed the case to district court. In his second
12 notice of removal, Martinez fails to allege that any new circumstance has arisen since
13 March 12, 2012. See Kirkbride v. Cont'l Cas. Co., 933 F.2d 729 (9th Cir. 1991) (holding “a
14 defendant who fails in an attempt to remove on the initial pleadings can file a removal
15 petition when subsequent pleadings or events reveal a new and different ground for
16 removal”) (emphasis, internal quotation and citation omitted). Under such circumstances,
17 the Court finds, for the reasons set forth in Magistrate Judge James’s Report and
18 Recommendation, filed February 17, 2012 in Civil Case No. 12-403, that Martinez has
19 failed to show, and cannot show, the Court has jurisdiction over Citibank’s complaint.

20 Accordingly, the complaint is hereby REMANDED to the Superior Court of California,
21 in and for the County of Sonoma.

22 **IT IS SO ORDERED.**

23 Dated: August 9, 2012


MAXINE M. CHESNEY
United States District Judge

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³ By order filed July 24, 2012, the Court related the above-titled case to Case No.
28 12-0403 MMC.