

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

JEFFREY HAW,
Plaintiff,
v.
JOHN HOWARD,
Defendant.

No. C 13-357 SI
Related case: C 12-5167 SI

**ORDER GRANTING UNOPPOSED
MOTION FOR ATTORNEY FEES**

Plaintiff’s motion for attorney’s fees is scheduled for a hearing on March 22, 2013. Defendant has not filed an opposition to the motion. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matter is appropriate for resolution without oral argument, and VACATES the hearing. For the reasons set forth below, the Court GRANTS plaintiff’s motion and awards plaintiff \$3,172 in attorney’s fees.

DISCUSSION

On December 13, 2012, this Court remanded *Haw v. Howard*, C 12-5167 SI (Alameda County Superior Court Case No. RG 12646031), to state court, finding that this Court lacked jurisdiction over that unlawful detainer case. The Court denied plaintiff’s request for attorney’s fees incurred in connection with the improper removal.

On January 25, 2013, defendant again removed the same unlawful detainer action, *Haw v. Howard*, C 13-357 SI (Alameda County Superior Court Case No. RG 12646031), asserting the same defective grounds for jurisdiction that defendant previously asserted in C 12-5167 SI. *Compare* Docket

1 No. 1 in C 12-5167 SI and Docket No. No. 1 in C 13-357 SI. In an order filed February 12, 2013, the
2 Court remanded this case to state court.

3 On February 12, 2013, plaintiff filed a motion for attorney's fees. Plaintiff seeks \$3,172 in
4 attorney's fees incurred in connection with the second improper removal. Plaintiff's lawyer has
5 submitted a declaration stating that he spent 12.2 hours at a rate of \$260 an hour researching and
6 preparing the notice of motion of related case, and the notice and motion to remand. Tubman Decl. ¶ 9.
7 Counsel states that he practices almost exclusively in state court, and that he required time to become
8 familiar with the federal rules. Defendant's opposition to the fee motion was due March 8, 2013, and
9 defendant did not file an opposition.

10 Courts may award attorney's fees under 28 U.S.C. § 1447(c) "where the removing party lacked
11 an objectively reasonable basis for seeking removal." *Martin v. Franklin Capital Corp.*, 546 U.S. 132,
12 141 (2005).¹ The Court finds that defendant lacked an objectively reasonable basis for removing this
13 unlawful detainer action because defendant asserted the same improper bases for removal in the second
14 removal that the Court had already found insufficient for the first removal. *Cf. Knudsen v. Liberty Mut.*
15 *Ins. Co.*, 435 F.3d 755, 757 (7th Cir. 2006) (stating that "[a] second removal is proper when based on
16 a new development"). Accordingly, the Court finds it appropriate to award plaintiff attorney's fees, and
17 GRANTS plaintiff's motion.

18 This order resolves Docket No. 8.

19
20 **IT IS SO ORDERED.**

21
22 Dated: March 18, 2013

23 
24 _____
25 SUSAN ILLSTON
26 United States District Judge

27 _____
28 ¹ Attorney's fees may be awarded in an order to remand or anytime thereafter. *Moore v. Permanente Medical Group, Inc.*, 981 F.2d 443, 445 (9th Cir. 1992) (concluding that "an award of attorney's fees is a collateral matter over which a court normally retains jurisdiction even after being divested of jurisdiction on the merits").