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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD TUSCANY,
Plaintiff,
v.
ELENA VILLALOBOS, et al.,
Defendants.

Case No. [16-cv-07373-JD](#)

**ORDER ADOPTING REPORT AND
RECOMMENDATION, REMANDING
CASE AND IMPOSING PRE-FILING
REVIEW**

Re: Dkt. No. 8

The Court has reviewed Chief Magistrate Judge Joseph Spero’s report and recommendations. Dkt. No. 8. No objections have been filed in response to the report, and by the Court’s calculation, the time to file objections expired on January 20, 2017. *See* Fed. R. Civ. P. 72(b).

This is defendants’ second attempt to remove the very same case the Court previously ordered remanded. *See* Case No. 16-cv-6252-JD, Dkt. No. 10 (order remanding case, dated December 12, 2016). The Court agrees with Magistrate Judge Spero’s recommendation that the case should be remanded again because the removal is jurisdictionally improper and untimely. Dkt. No. 8.

The Court further agrees with Magistrate Judge Spero’s finding that defendants’ removals are frivolous and his recommendation that a pre-filing review order should be imposed. The Court consequently orders that before filing any further notices of removal of Monterey County Superior Court case number 16CV001985, Elena Villalobos, Jonathan Villalobos, Raul Villalobos and/or Ashley Villalobos must first file a motion with the Court seeking leave to file a notice of removal. Any such motion must include: (1) a copy of Magistrate Judge Spero’s Report and Recommendation issued in this case; (2) a copy of this Order; and (3) a copy of the proposed


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filing. The Clerk of the Court shall not accept for filing any further notices of removal of Monterey County Superior Court case number 16CV001985 unless accompanied by an order from a judge of this district granting leave to file the removal papers.

The Court agrees with Magistrate Judge Spero’s finding that “[t]he record as a whole indicates an intent to delay” on the part of defendants, “rather than a bona fide desire to litigate in a federal forum.” Dkt. No. 8 at 4. Unfortunately, it does not appear to the Court that fees and sanctions can properly be awarded at this time under Rule 11 of the Federal Rules of Civil Procedure or 28 U.S.C. § 1447(c). Any further attempts to remove this case that are not in compliance with this order, however, will result in monetary sanctions on defendants.

IT IS SO ORDERED.

Dated: January 30, 2017



JAMES DONATO
United States District Judge