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3 IN THE UNITED STATES DISTRICT COURT  
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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7 U.S. BANK NATIONAL ASSOCIATION,

No. 10-05435 CW

8 Plaintiff,

ORDER DENYING  
APPLICATIONS TO  
PROCEED IN FORMA  
PAUPERIS AND  
REMANDING  
COMPLAINT

9 v.

10 ADE A. HAMZA, Morenike Hamza and  
Wells Fargo Bank, N.A.,

11 Defendants.  
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14 Defendants Ade A. Hamza and Morenike Hamza, husband and  
15 wife, apply for leave to proceed in forma pauperis (IFP) to remove  
16 the above-captioned complaint against them from state court to  
17 federal court. The matter was decided on the papers. Having  
18 considered all of the papers filed by Defendants, the Court DENIES  
19 the application to proceed IFP and remands the complaint on its own  
20 motion.

21 DISCUSSION

22 A court may authorize a party to pursue an action in federal  
23 court without prepayment of fees or security if the party submits  
24 an affidavit showing that he or she is unable to pay such fees or  
25 provide such security. See 28 U.S.C. § 1915(a). From Defendants'  
26 IFP application, it appears that they do not qualify for IFP  
27 status. Ade Hamza is employed and earns \$2,620 per month from a  
28 consulting job. Ade Hamza owns a residence valued at \$320,000 with

1 a monthly mortgage of \$1,100. Although the Hamzas' monthly  
2 disposable income is low due to household and family expenses, the  
3 Court finds that this is not a situation that warrants the granting  
4 of IFP status.

5 Furthermore, Defendants seek to remove the complaint to this  
6 Court based on their counter-claims for violations of federal law.  
7 However, the original state court case filed against them alleges  
8 only state law claims. Because this Court lacks subject matter  
9 jurisdiction over the original complaint, it remands it back to  
10 state court on its own motion. See Valdez v. Allstate Ins. Co.,  
11 372 F.3d 1115, 1116 (9th Cir. 2004) (federal courts obliged to  
12 consider on their own motion whether they have subject matter  
13 jurisdiction). Defendants' counter-claims must be remanded as  
14 well.

15 Accordingly, Defendants' IFP applications are denied and this  
16 case is remanded. The Clerk shall return the file to the Superior  
17 Court for Alameda County.

18 IT IS SO ORDERED.

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20 Dated: 1/25/2011

  
CLAUDIA WILKEN  
United States District Judge

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