

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

JOHN PATRICK MCGUIRE,
Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE, ET AL.,
Defendant.

No. C 11-02344 CW

ORDER DENYING
PLAINTIFF'S
MOTION TO REMAND
(Docket No. 12)
AND ADDRESSING
DEFENDANTS'
MOTIONS TO
DISMISS
(Docket Nos. 7,
17 & 29)

The United States, specially appearing for Defendant federal agencies, officials and individuals, Defendant Merck Sharp & Dohme Corp., formerly known as Merck & Co., Inc., and Defendants the City of Santa Rosa and the Santa Rosa Police Department have moved to dismiss Plaintiff John Patrick McGuire's Complaint. Docket Nos. 7, 17 & 29. Plaintiff has also moved to remand this action to Sonoma County Superior Court. Docket No. 12. Plaintiff's motion to remand is DENIED. In addition, the Court sets forth a briefing schedule for Defendants' motions to dismiss and vacates the August 11, 2011 hearing date and case management conference.

I. Motion to Remand

A defendant may remove a civil action filed in state court to federal district court so long as the district court could have exercised original jurisdiction over the matter. 28 U.S.C. § 1441(a). Title 28 U.S.C. § 1447 provides that if at any time

1 before judgment it appears that the district court lacks subject
2 matter jurisdiction over a case previously removed from state
3 court, the case must be remanded. 28 U.S.C. § 1447(c). On a
4 motion to remand, the scope of the removal statute must be strictly
5 construed. See Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir.
6 1992). "The 'strong presumption' against removal jurisdiction
7 means that the defendant always has the burden of establishing that
8 removal is proper." Id. (internal citation omitted). Courts
9 should resolve doubts as to removability in favor of remanding the
10 case to state court. See id. Ordinarily, federal question
11 jurisdiction is determined by examining the face of the plaintiff's
12 properly pleaded complaint. Caterpillar Inc. v. Williams, 482 U.S.
13 386, 392 (1987).

14 In this case, in which Plaintiff has sued federal Defendants
15 for their official actions, the United States appropriately sought
16 removal of the action to federal district court pursuant to 28
17 U.S.C. § 1442(a). Section 1442(a) authorizes the removal of a
18 civil action commenced in state court against the United States,
19 any agency thereof, or any officer or person acting under an
20 officer of the United States or of any agency thereof, when such a
21 defendant is sued in an official or individual capacity for any act
22 under color of law. Id. Plaintiff's disability, his unwillingness
23 to consent to removal, and any alleged contract that he might have
24 with the Superior Court of Sonoma County, do not divest this Court
25 of its jurisdiction to consider the matter. Plaintiff's cite to
26 Medellin v. Texas, 552 U.S. 491 (2008), is unpersuasive because the
27 case does not address this court's jurisdiction under section
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1 1442(a), and does not otherwise establish that removal of this
2 action is improper. Thus, Plaintiff's motion to remand is DENIED.

3 II. Motions to Dismiss

4 Plaintiff shall oppose Defendants' motions to dismiss in a
5 single consolidated brief, not to exceed twenty-five pages, filed
6 within fourteen days from the date this Order issues. The page
7 limit for Plaintiff's opposition is set at twenty-five pages
8 because Defendants' motions to dismiss do not exceed this length.
9 Provided that Plaintiff meets the deadline to oppose, Defendants
10 may each submit a reply brief, none to exceed five pages, within a
11 week after Plaintiff has filed his opposition. If Plaintiff fails
12 to oppose the motions by the deadline, Plaintiff will face
13 dismissal of his Complaint for failure to prosecute.

14 The motions to dismiss will be decided on the papers. The
15 August 11, 2011 date for hearing and a case management conference
16 is VACATED. A case management conference will be reset for a later
17 date if necessary.

18 IT IS SO ORDERED.

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21 Dated: 6/23/2011

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CLAUDIA WILKEN
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 MCGUIRE et al,

5 Plaintiff,

6 v.

7 U.S. DEPARTMENT OF JUSTICE et al,

8 Defendant.

Case Number: CV11-02344 CW

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
10 Northern District of California.

11 That on June 23, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies)
12 in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in
13 the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's
14 office.

15 John Patrick McGuire
16 1407 Townview Avenue Apt.213
17 Santa Rosa, CA 95405

Dated: June 23, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk

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For the Northern District of California