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3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
56
7 JAMES ICARD,

8 Plaintiff,

No. C 11-3258 PJH

9 v.

**ORDER GRANTING SECOND
MOTION TO REMAND AND
VACATING HEARING DATE**

10 ECOLAB, INC., et al.,

11 Defendants.
12 _____/

13 Before this court is plaintiff's motion to remand this matter to San Francisco County
14 Superior Court, it having been removed a second time by defendant. See C 10-0410 PJH.
15 The court GRANTS defendant motion for leave to file supplemental material in support of
16 its opposition to the motion to remand. Doc. no. 31. Having carefully read the parties'
17 papers and considered the relevant legal authority, the court GRANTS the motion and
18 VACATES the October 5, 2011 hearing for the following reason.

19 Remand may be ordered for either lack of subject matter jurisdiction or for "any
20 defect in removal procedure." 28 U.S.C. § 1447(c). Generally, there is a strong
21 presumption in favor of remand. Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 403-
22 04 (9th Cir. 1996). The removal statutes are construed restrictively, and doubts about
23 removability are resolved in favor of remanding the case to state court. Shamrock Oil &
24 Gas Corp. v. Sheets, 313 U.S. 100, 108-09 (1941); Guas v. Miles, Inc., 980 F.2d 564 (9th
25 Cir. 1992). The party seeking to invoke the jurisdiction of the court – i.e., defendant in this
26 case – has the burden of establishing that removal jurisdiction exists. Scott v. Breeland,
27 792 F.2d 925, 927 (9th Cir. 1986).
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Given the multiple factual disputes that exist with respect to the likely size of the putative class and the amount of damages each member suffered, defendant has not established the amount in controversy by a preponderance of the evidence. See Guglielmino v. McKee Foods Corp., 506 F.3d 696, 699 (9th Cir. 2007). Consequently, the court finds that defendant has not sustained its burden of showing that removal was proper.

The case is REMANDED to the Superior Court of San Francisco County.

IT IS SO ORDERED.

Dated: September 30, 2011



PHYLLIS J. HAMILTON
United States District Judge