

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

3
4 INTERWORLD NETWORK INTERNATIONAL,
5 INC., a California Corporation,

6 Plaintiff,

7 v.

8 VWR INTERNATIONAL, INC., a
9 Delaware corporation; M.K.
10 SATHYA, an individual; and DOES 1
11 through 10, inclusive,

12 Defendants.

No. C 11-4843 CW

ORDER GRANTING
PLAINTIFF'S MOTION
TO REMAND AND
DENYING
DEFENDANTS' MOTION
TO DISMISS
(Docket Nos. 12
and 15)

United States District Court
For the Northern District of California

13 Plaintiff Interworld Network International, Inc. moves to
14 remand this case to state court. Defendants oppose Plaintiff's
15 motion, and move to dismiss all claims against them. Plaintiff
16 opposes Defendants' motion to dismiss. The Court took the
17 parties' motions under submission on the papers. For the reasons
18 set forth below, the Court GRANTS Plaintiff's motion to remand and
19 DENIES Defendants' motion to dismiss.

20 BACKGROUND

21 The facts set forth below are taken from Plaintiff's
22 Complaint, which is attached to Defendants' Notice of Removal,
23 unless otherwise noted.
24

25 Plaintiff is a California corporation that imports and
26 exports certain products, many of which are manufactured in Asia.
27 Compl. ¶¶ 1, 7. Plaintiff has many business contacts with
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1 manufacturers in Asia. Id. at ¶ 7. Plaintiff's warehouse is
2 located in Fremont, California. Id.

3 VWR is a Delaware corporation with its primary offices in
4 Pennsylvania. Id. at ¶ 2. M.K. Sathya is a California resident
5 and was the agent and representative of VWR during the relevant
6 times. Id. at ¶ 3.

7
8 In 2005, VWR and Sathya approached Plaintiff with a proposal
9 that Plaintiff introduce VWR to Asian manufacturers, so that VWR
10 could purchase products directly from these companies. Id. at ¶¶
11 2, 9. Under the proposal, VWR would then pay Plaintiff to import,
12 warehouse, and distribute these products. Id. at ¶ 9.

13 To induce Plaintiff to accept the proposal, VWR and Sathya
14 represented to Plaintiff that the volume of business that would be
15 channeled through Plaintiff "would be very large, somewhere in the
16 range of \$50 million per year." Id. at ¶¶ 10, 25, 32. Defendants
17 also represented that Plaintiff "would need to expand its
18 warehouse and logistic facilities to accommodate this increased
19 volume of business." Id. at ¶¶ 25, 32. Plaintiff alleges that, in
20 reality, these representations were false and that either
21 Defendants knew that they were false at the they made them or
22 Defendants made them without having any reasonable ground for
23 believing them to be true. Id. at ¶¶ 26, 32. Plaintiff alleges
24 that Defendants made these representations with the express intent
25 to defraud Plaintiff and co-opt its business contacts. Id. at
26 ¶ 30.
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1 In June 2005, based on Defendants' representations, Plaintiff
2 entered into an agreement with VWR regarding the subject matter of
3 the proposal. Id. at ¶ 11. Plaintiff also relied on these
4 representations to increase its warehouse space and introduce VWR
5 to its suppliers. Id. at ¶¶ 28, 35. Plaintiff alleges that it
6 would not have taken any of these actions if not for Defendants'
7 representations and that it suffered harm as a result. Id. at ¶¶
8 28-29, 35-36.
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10 The contract signed by Plaintiff and VWR states, among other
11 things, "This Agreement are [sic] the complete Agreement between
12 the parties regarding [Plaintiff's] provision of Services and
13 Deliverables to VWR and shall supersede and replace all prior
14 communications, Agreements and understandings, oral or written,
15 between the parties regarding the subject matter hereof and
16 thereof." Compl. ¶ 11, Ex. A at 8. The Agreement provided a
17 graduated pricing structure for Plaintiff's services to VWR as
18 follows:
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20 (1) Annual [Purchase Order (PO)] volumes of 0-50 MM\$ -
21 4% of PO value

22 (2) Annual Cumulative PO volumes of 50-100MM\$ - 3.5% of
23 PO value over 50MM \$

24 (3) Annual Cumulative PO volumes of 100+MM\$ - 3% of PO
25 value over 100M\$

26 Id. at 2. The Agreement designated Sathya as VWR's contract
27 representative. Id. at 8. The Agreement also contained a choice
28 of law provision, which states, "The Agreement will be governed by

1 and construed in accordance with the laws of the State of
2 Pennsylvania without giving effect to the principles of conflict
3 of law." Id.

4 The Agreement was amended on October 3, 2006. Compl. ¶ 11.
5 Among other things, the addendum provided that VWR would pay
6 Plaintiff four percent of PO value per shipment for services
7 provided. Compl. ¶ 11, Ex. A at 15.

8
9 The level of business volume did not reach the level that had
10 been represented. Compl. ¶ 15. On March 20, 2009, VWR informed
11 Plaintiff that it was terminating the agreement. Id. at ¶ 16.
12 Plaintiff alleges that VWR breached the contract in various ways
13 before and after that date. Id. at ¶¶ 15-18, 22.

14 On July 21, 2011, Plaintiff filed a complaint in the Alameda
15 County Superior Court, alleging breach of contract and unfair
16 business practices under California's Unfair Competition Law, Cal.
17 Bus. & Prof. Code § 17200, et seq., against VWR and fraud and
18 negligent misrepresentation against both Defendants.

19
20 On September 30, 2011, Defendants removed the action to
21 federal court based on diversity jurisdiction. In their Notice of
22 Removal, Defendants alleged that Sathya was a sham defendant and
23 that his citizenship should be disregarded for diversity purposes.
24 On October 7, 2011, Defendants filed a motion to dismiss all
25 counts in the complaint.

26
27 On October 20, 2011, Plaintiff filed a motion to remand the
28 action to state court.

LEGAL STANDARD

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2 A defendant may remove a civil action filed in state court to
3 federal district court so long as the district court could have
4 exercised original jurisdiction over the matter. 28 U.S.C.
5 § 1441(a). Title 28 U.S.C. § 1447(c) provides that if, at any
6 time before judgment, it appears that the district court lacks
7 subject matter jurisdiction over a case previously removed from
8 state court, the case must be remanded. On a motion to remand,
9 the scope of the removal statute must be strictly construed. Gaus
10 v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). "The 'strong
11 presumption' against removal jurisdiction means that the defendant
12 always has the burden of establishing that removal is proper."
13 Id. Courts should resolve doubts as to removability in favor of
14 remanding the case to state court. Id.

DISCUSSION

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18 Plaintiff argues that, because it and Sathya are citizens of
19 California, the Court lacks diversity jurisdiction over its
20 action. Defendants do not dispute that Sathya is a California
21 citizen and thus non-diverse to Plaintiff. Instead, they argue
22 that Sathya was fraudulently joined to this action.

23 To make a showing of fraudulent joinder, Defendants "must
24 demonstrate that there is no possibility" that Plaintiff will be
25 able to establish a cause of action in state court against Sathya.
26 Lantz v. DaimlerChrysler Corp., 2005 WL 1629937, at *1 (N.D.
27 Cal.). There is a general presumption against finding fraudulent
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1 joinder, and Defendants carry "a heavy burden of persuasion."

2 Plute v. Roadway Package Sys., Inc., 1141 F. Supp. 2d 1005, 1008
3 (N.D. Cal. 2001).

4 A. Choice of Law

5 The parties dispute whether California or Pennsylvania
6 applies to the claims against Sathya. Because the Court grants
7 Plaintiff's motion to remand under either California or
8 Pennsylvania, the Court does not resolve whether or not the
9 choice-of-law clause in the contract applies to the claims against
10 Sathya.
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12 B. Parol Evidence

13 Defendants argue that Plaintiff's claims against Sathya are
14 barred by parol evidence under either California or Pennsylvania
15 law. Defendants' argument are unavailing in either state.
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17 Under California law, parol evidence is admissible to
18 demonstrate alleged fraudulent inducement. Hensley v. Oakshade
19 Town Center, 135 Cal. App. 4th 289, 301 (2005). "Fraud in the
20 inducement renders the entire contract voidable, including any
21 provision in the contract providing the written contract is, for
22 example, the sole agreement of the parties, that it contains their
23 entire agreement and that there are no oral representations
24 (integration/ no oral representations clause)." Id.
25

26 Defendants argues that this rule does not bar "a promise
27 directly at variance with the promise in the writing." Reply at 9
28 n.5 (internal citations and quotations omitted). However, the

1 alleged promise regarding volume of sales does not contradict a
2 promise made in the contract itself. Defendants state that "the
3 Agreement expressly contemplates that VWR may have an order volume
4 as low as \$0," Reply at 10, and cite to the payment clause quoted
5 above. That clause does not imply that there could be a volume of
6 zero; instead, it establishes a graduated payment scheme, in which
7 Defendants would pay a higher percentage for order volume up to a
8 certain amount and a lower percentage for the portion of the order
9 volume that exceeds that amount.
10

11 Pennsylvania law precludes the use of parol evidence in
12 fraudulent inducement claims involving a fully integrated
13 contract. See Interwave Tech. Inc. v. Rockwell Automation, Inc.,
14 2005 U.S. Dist. LEXIS 37980, at *43-55 (E.D. Pa.) (discussing,
15 inter alia, Dayhoff Inc. v. H.J. Heinz Co., 86 F.3d 1287 (3d Cir.
16 1996); 1726 Cherry St. Partnership v. Bell Atlantic Properties.,
17 439 Pa. Super. 141 (1995); HCB Contractors v. Liberty Place Hotel
18 Assocs., 539 Pa. 395 (1995)). However, under Pennsylvania law,
19 Sathya is not a party to the Agreement and the integration clause
20 therefore does not bar fraud in the inducement claims against him.
21 See Interwave, 2005 U.S. Dist. LEXIS 37980, at *55; (holding that
22 the integration clause barred the plaintiff's fraud in the
23 inducement claims against the defendant who was the party to the
24 contract, but not those against the defendant who was not a party
25 to the contract); Sunquest Info. Sys. v. Dean Witter Reynolds,
26 Inc., 40 F. Supp. 2d 644, 656 n.7 (W.D. Pa. 1999) (similar). In
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1 both Interwave and Sunquest, the courts distinguished cases
2 applying the protection of the integration clause to agents of the
3 party to the contract, because in those cases, "the integration
4 clauses, unlike here, specifically referred to the representations
5 of the agents as barred." Interwave, 2005 U.S. Dist. LEXIS 37980,
6 at *55-56; Sunquest, 40 F. Supp. 2d at 656 n.7 (citing Bowman v.
7 Meadow Ridge, Inc., 419 Pa. Super. 511 (1992) and Iwashyna v.
8 Department of Housing & Urban Dev., 1993 U.S. Dist. LEXIS 11369,
9 at *14 (E.D. Pa.). As in Interwave and Sunquest, the integration
10 clause here does not specifically refer to the representations of
11 VWR's agents, including Sathya, and thus it does not necessarily
12 prevent the fraudulent inducement claim against him.
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14 Accordingly, Defendants have not shown that there is no
15 possibility that Plaintiff will be able to establish in state
16 court that the parol evidence rule does not bar Plaintiff's claims
17 against Sathya in either California or Pennsylvania.
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19 C. The Gist of the Action Rule

20 Defendants also argue that Plaintiff's claims against Sathya
21 are barred by Pennsylvania's gist of the action rule.

22 "Pennsylvania's gist of the action doctrine 'bars claims for
23 allegedly tortious conduct where the gist of the alleged conduct
24 sounds in contract rather than tort.'" Farmaceutisk Laboratorium
25 Ferring v. Shire U.S., Inc., 2009 U.S. Dist. LEXIS 30209, at *23
26 (E.D. Pa.) (quoting Hospicomm, Inc. v. Fleet Bank, N.A., 338 F.
27 Supp. 2d 578, 582 (E.D. Pa. 2004). The purpose of the doctrine is
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1 to "preclude[] plaintiffs from re-casting ordinary breach of
2 contract claims into tort claims." Id. (quoting eToll v.
3 Elias/Savion Adver., Inc., 811 A.2d 10, 14 (Pa. Super. Ct. 2002)).

4 "Although a breach of contract can give rise to an actionable
5 tort, 'to be construed as in tort . . . the wrong ascribed to
6 defendant must be the gist of the action, the contract being
7 collateral.'" Id. (quoting Bash v. Bell Tel. Co., 411 Pa. Super.
8 347, 355-56 (1992)). "In other words, a claim should be limited
9 to a contract claim when the parties' obligations are defined by
10 the terms of the contracts, and not by the larger social policies
11 embodied by the law of torts." Id. at *23-24 (quoting Bohler-
12 Uddeholm Am., Inc. v. Ellwood Group, Inc., 247 F.3d 79, 104 (3d
13 Cir. 2001)) (internal quotation marks omitted).

15 "Fraud in the inducement claims are not barred by the gist of
16 the action doctrine where the fraud involves representations of
17 fact independent of promises of performance made in the contract."
18 Id. at *24 (citing eToll, 811 A.2d at 17; TruePosition, Inc. v.
19 Sunon, Inc., 2006 U.S. Dist. LEXIS 32918, at *3 (E.D. Pa.); Air
20 Prods. & Chems., Inc. v. Eaton Metal Prods. Co., 256 F. Supp. 2d
21 329, 341 (E.D. Pa. 2003)). "Fraud to induce a person to enter
22 into a contract is generally collateral to (i.e., not interwoven
23 with) the terms of the contract itself." Id. (quoting Air Prods.,
24 256 F. Supp. 2d at 341) (internal quotation marks and formatting
25 omitted). However, "promises made to induce a party to enter into
26 a contract that eventually become part of the contract itself
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1 cannot be the basis for a fraud-in-the-inducement claim under the
2 gist of the action doctrine." Id. (quoting Freedom Props., L.P.
3 v. Lansdale Warehouse Co., 2007 U.S. Dist. LEXIS 57116, at *6
4 (E.D. Pa.)).

5 The cases cited by Defendants are distinguishable in that
6 each involved complaints that directly asserted both tort and
7 contract claims against the defendants that overlapped heavily
8 with one another. Here, the only claims asserted against Sathya
9 are tort claims. Further, the claims against him are related to
10 the inducement into the contract, rather than promises regarding
11 performance made in the contract.
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13 Accordingly, Defendants do not establish that Plaintiff's
14 claims against Sathya are a sham based on the gist of the action
15 doctrine.¹

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17 D. The Economic Loss Rule

18 Defendants argue that Plaintiff's claims against Sathya are
19 barred by Pennsylvania's economic loss rule.

20 "The economic loss doctrine precludes recovery in tort for
21 economic losses arising from breach of contract." Valley Forge
22 Convention & Visitors Bureau v. Visitor's Servs., Inc., 28 F.
23

24 ¹ In a footnote, Defendants also assert that "California
25 courts, too, are reluctant to permit tort recovery in breach of
26 contract situations." Opp. at 11 n.6. However, Plaintiff is
27 suing Sathya for fraudulent inducement, which is distinct from
28 tortious breach of contract, the subject of the only case that
Defendants cite. See Freeman & Mills, Inc. v. Belcher Oil Co., 11
Cal. 4th 85 (1995).

1 Supp. 2d 947, 951 (E.D. Pa. 1998) (citing Duquesne Light Co. v.
2 Westinghouse Elec. Corp., 66 F.3d 604, 618 (3d Cir. 1995); General
3 Public Utilities v. Glass Kitchens of Lancaster, Inc., 374 Pa.
4 Super. 203, 208-10 (1988)).

5 For their argument, Defendants rely solely on the Third
6 Circuit's decision in Werwinski v. Ford Motor Co., 286 F.3d 661
7 (3d Cir. 2002), in which the court predicted that Pennsylvania's
8 Supreme Court would apply the doctrine to intentional fraud in
9 products liability cases. The plaintiffs in Werwinski brought
10 claims for breach of express warranty, breach of implied warranty,
11 fraudulent concealment, and violations of Pennsylvania's Unfair
12 Trade Practices and Consumer Protection Law (UTPCPL) based on
13 defects in vehicles manufactured by the defendants. Because the
14 only damage suffered was to the products themselves, the Third
15 Circuit court reasoned that the plaintiffs' fraud claims were
16 barred by the economic loss doctrine. The court acknowledged that
17 other courts have excepted "fraud in the inducement" claims from
18 the economic loss doctrine. Id. at 677-78. However, the court
19 noted that this only occurred when the fraud was not intertwined
20 with the contract claims. The court found that the fraud in that
21 case was intertwined with the contract claims, because it were
22 "undergirded by factual allegations identical to those supporting
23 their breach of contract counts" and it "did not cause harm to the
24 plaintiffs distinct from those caused by the breach of contract,"
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1 so that the plaintiffs would be made whole under contract law.
2 Id. at 678-80 (citations omitted).

3 Here, unlike in Werniski, Plaintiff has alleged no breach of
4 contract claims against Sathya, who was not a party to the
5 contract, and thus, Plaintiff cannot be made whole, vis-à-vis any
6 claims against him, through contract law. Defendants have
7 provided no authority that would support that the economic loss
8 rule should apply in such a situation. Accordingly, Defendants do
9 not show that the economic loss rule renders the claims against
10 Sathya a sham.

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12 Defendants' attempt in a footnote to assert the economic loss
13 rule under California law likewise fails. "The economic loss rule
14 prevents the law of contract and the law of tort from dissolving
15 one into the other." Multifamily Captive Group, LLC v. Assur.
16 Risk Managers, Inc., 629 F. Supp. 2d 1135, 1145 (E.D. Cal. 2009)
17 (quoting Robinson Helicopter Co., Inc. v. Dana Corp., 34 Cal. 4th
18 979, 988 (2004)) (internal formatting and quotations omitted).
19 "It precludes recovery for purely economic loss due to
20 disappointed expectations, unless the plaintiff can demonstrate
21 harm above and beyond a broken contractual promise." Id.
22 (internal formatting and quotations omitted). Here, Defendants
23 point to no alleged broken contractual promise between Sathya and
24 Plaintiff that would preclude a tort claim and thus do not show
25 that there is no possibility that Plaintiff will be able to
26 establish a cause of action in state court against Sathya.
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1 E. Managerial Privilege

2 Defendants argue that, because Plaintiff alleged that all
3 actions taken by Sathya were taken in his capacity as an agent of
4 VRW, Plaintiff's claims against Sathya are barred by the
5 managerial privilege under California law.

6 The general rule in California is that agents may be held
7 liable for their own wrongful acts even if done on behalf of a
8 principal. See, e.g., Cal. Civ. Code § 2343 ("One who assumes to
9 act as an agent is responsible to third persons as a principal for
10 his acts in the course of his agency . . . when his acts are
11 wrongful in their nature."); see also 3 Witkin, Sum. Cal. Law
12 Agency § 199 ("An agent or employee is always liable for his or
13 her own torts, whether the principal is liable or not, and in
14 spite of the fact that the agent acts in accordance with the
15 principal's directions."); Restatement 3d of Agency § 7.01 ("An
16 agent is subject to liability to a third party harmed by the
17 agent's tortious conduct. Unless an applicable statute provides
18 otherwise, an actor remains subject to liability although the
19 actor acts as an agent or an employee, with actual or apparent
20 authority, or within the scope of employment."). According to the
21 California Supreme Court, "the agent is liable for his own acts,
22 regardless of whether the principal is liable or amenable to
23 judicial action." Frances T. v. Village Green Owners Ass'n, 42
24 Cal. 3d 490, 505 (1986).
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1 "The general rule applies with equal force in the context of
2 fraud and misrepresentation." Black Donuts, Inc. v. Sumitomo
3 Corp. of Am., 2010 U.S. Dist. LEXIS 30859, at *21-22 (C.D. Cal.).
4 "An agent who fraudulently makes representations, uses duress, or
5 knowingly assists in the commission of tortious fraud or duress by
6 his principal or by others is subject to liability in tort to the
7 injured person although the fraud or duress occurs in a
8 transaction on behalf of the principal." Id. at *22 (quoting
9 Restatement 2d of Agency § 348). See also 3 Witkin, Sum. Cal. Law
10 Agency § 199(1) ("an agent who commits an independent tort, such
11 as fraud, remains liable despite the fact that the principal, by
12 ratification, also becomes liable"); Shafer v. Berger, Kahn,
13 Shafton, Moss, Figler, Simon & Gladstone, 107 Cal. App. 4th 54, 68
14 (2003) ("An agent or employee is always liable for his own torts,
15 whether his employer is liable or not. In other words, when the
16 agent commits a tort, such as fraud, then the agent is subject to
17 liability in a civil suit for such wrongful conduct.") (internal
18 formatting and quotations omitted).

21 Defendants argue that this general rule does not apply,
22 because of the so-called "manager's privilege," which protects an
23 agent from individual liability for certain acts taken on behalf
24 of his employer or principal, unless the agent or employee acts as
25 a dual agent or acts for his own personal advantage. Graw v. Los
26 Angeles County Metro. Transp. Auth., 52 F. Supp. 2d 1152, 1154-
27 1155 (C.D. Cal. 1999). Contrary to Defendants' position, however,
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1 it is a doctrine of limited applicability: "the manager's
2 privilege rule applies only in the context of tortious
3 interference with contract." Black Donuts, 2010 U.S. Dist. LEXIS
4 30859, at *26 (C.D. Cal.). See also Graw, 52 F. Supp. 2d at 1154
5 ("[T]he manager's privilege is merely an application of the
6 general rule that the tort of intentional interference with
7 economic relations applies only to disinterested parties. As an
8 interested party, a manager's actions are privileged."). Thus,
9 the privilege serves to protect a business advisor who "counsel[s]
10 his principal to breach a contract that he reasonably believes to
11 be harmful to his principal's best interests." Los Angeles
12 Airways, Inc. v. Davis, 687 F.2d 321, 326 (9th Cir. 1982).

14 In the case at hand, Plaintiff does not allege that Sathya
15 counseled VWR to breach the contract or that Sathya interfered
16 with the carrying out of the contract in any way. Instead,
17 Plaintiff alleges that Sathya made intentional or negligent
18 misrepresentations to induce Plaintiff to enter into the contract
19 in the first place. Thus, Defendants have not demonstrated that
20 the manager's privilege renders Plaintiff's claims against Sathya
21 a sham.

22 CONCLUSION

24 For the foregoing reasons, Plaintiff's motion to remand is
25 GRANTED (Docket No. 15). Because the case will be remanded,
26 Defendants' motion to dismiss is DENIED as moot without prejudice
27 to renewal by way of demurrer on remand (Docket No. 12).

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The Clerk shall remand this action to Alameda County Superior Court and close the file.

IT IS SO ORDERED.

Dated: 1/10/2012



CLAUDIA WILKEN
United States District Judge