

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3

4 ING BANK, FSB,

5 Plaintiff,

6 vs.  
7

8 RAUL R. PINEDA AND GRACIELA PINEDA,

9 Defendants.  
10

Case No.: 12-CV-03782-YGR

**ORDER GRANTING PLAINTIFF'S MOTION TO  
REMAND ACTION TO STATE COURT**

11 Defendants Raul and Graciela Pineda (collectively, "Defendants") removed this case from  
12 the Superior Court of the State of California, County of Alameda ("Alameda County Superior  
13 Court") on July 19, 2012. (Dkt. No. 1, "Notice of Removal of Action to United States District  
14 Court" ("Removal Notice") at 1.) Plaintiff filed the instant Motion to Remand Action to State  
15 Court on July 25, 2012. (Dkt. No. 9 ("Motion").) On the same day, Plaintiff filed an Application  
16 for Order Remanding Action or Shortening Time for Hearing on Motion to Remand Action to State  
17 Court. (Dkt. No. 10 ("Application to Shorten Time").)

18 Defendants asserted removal was proper based on federal question jurisdiction. *Id.* at 2.  
19 Pursuant to 28 U.S.C. § 1441(a), "any civil action brought in a State court of which the district  
20 courts of the United States have original jurisdiction, may be removed by the defendant or the  
21 defendants, to the district court of the United States for the district and division embracing the place  
22 where such action is pending." 28 U.S.C. § 1441(a). Under 28 U.S.C. § 1331, a district court has  
23 original jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the  
24 United States." 28 U.S.C. § 1331. The burden of establishing federal jurisdiction is on the party  
25 seeking removal, and courts strictly construe the removal statute against removal jurisdiction. *Gaus*  
26 *v. Miles, Inc.*, 980 F.2d 564, 566-67 (9th Cir. 1992) (internal citations omitted). Accordingly,  
27 "federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first  
28 instance." *Id.* at 566. A district court *must* remand the case to state court if it appears at any time

United States District Court  
Northern District of California

1 before final judgment that the district court lacks subject matter jurisdiction. 28 U.S.C. § 1447(c).  
2 Further, a defendant may not twice remove the same action where each removal is based on the  
3 same grounds. *St. Paul & C. Ry. Co. v. McLean*, 108 U.S. 212, 217 (1883); *Midlock v. Apple*  
4 *Vacations West, Inc.*, 406 F.3d 453, 457 (7th Cir. 2005) (there must be intervening events justifying  
5 the second removal); *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492-93 (5th Cir. 1996)  
6 (defendants are generally prohibited from seeking a second removal on the same ground, *i.e.*, the  
7 same pleading or event that made the case removable).

8 Defendants previously removed this case to federal court based on diversity jurisdiction on  
9 May 14, 2012. *ING Bank, FSB v. Pineda*, No. C 12-02418 CRB, Dkt. No. 14 (Order Remanding  
10 Case ("Prior Remand Order"). However, as Plaintiff's Motion indicates, Judge Breyer ordered the  
11 case remanded on June 8, 2012. Mot. at 3; Prior Remand Order at 2. In that order, Judge Breyer  
12 found that neither federal question jurisdiction nor diversity jurisdiction was proper based on the  
13 face of Plaintiff's well-pleaded complaint, which alleged only an unlawful detainer claim. Prior  
14 Remand Order at 2. This Court has reviewed the Complaint in this action and finds it identical to  
15 that previously before Judge Breyer. (*Compare* Dkt. No. 9-3, attached to Declaration of Jonathan  
16 Seigel in Support of Plaintiff Bank, F.S.B.'s Motion ("Seigel Decl.") as Ex. 1, "Complaint for  
17 Unlawful Detainer - Limited" *with* Dkt. No. 9-5, Seigel Decl., Ex. 3 (prior notice of removal with  
18 complaint).) The only apparent difference between this case and that before Judge Breyer is that  
19 Defendants now allege removal based on federal question jurisdiction rather than diversity  
20 jurisdiction. *See* Removal Notice at 2.

21 Federal question jurisdiction exists only when a federal question exists on the face of a well-  
22 pleaded complaint. *See Wayne v. DHL Worldwide Express*, 294 F.3d 179, 1183 (9th Cir. 2002).  
23 As Judge Breyer previously held with regard to the same Complaint, no federal question is apparent  
24 from the face of Plaintiff's Complaint for Unlawful Detainer. Prior Remand Order at 2. The fact  
25 that Defendants now explicitly raise federal question jurisdiction rather than diversity jurisdiction  
26 does not change this. Further, Defendants were barred from removing this action by their earlier  
27 removal based on the exact same Complaint. Consequently, Plaintiff's Motion to Remand is  
28 **GRANTED**. The Court **DENIES AS MOOT** Plaintiff's Application to Shorten Time.

1 Pursuant to 28 U.S.C. § 1447(c), an order remanding a case may require payment of "just  
2 costs and any actual expenses, including attorney fees, incurred as a result of removal." 28 U.S.C.  
3 § 1447(c). Plaintiff's counsel's total estimated fees in connection with the instant Motion and  
4 accompanying documents is \$1,347.50. Mot. at 6; Seigel Decl. ¶ 9.

5 "[A]bsent unusual circumstances, attorney's fees should not be awarded when the removing  
6 party has an objectively reasonable basis for removal." *Martin v. Franklin Capital Corp.*, 546 U.S.  
7 132, 136 (2005). "The appropriate test for awarding fees under § 1447(c) should recognize the  
8 desire to deter removals sought for the purpose of prolonging litigation and imposing costs on the  
9 opposing party, while not undermining Congress' basic decision to afford Defendants a right to  
10 remove as a general matter, when the statutory criteria are satisfied." *Id.* at 140. In this case,  
11 Defendants were already aware from the Prior Remand Order that no federal question jurisdiction  
12 existed. Consequently, as in the Prior Remand Order, the Court finds that there was no objectively  
13 reasonable basis for removal.

14 Plaintiff's request for \$1,347.50 in fees is based on a billing rate of \$275.00 per hour  
15 multiplied by 4.9 hours, of which 2.1 hours were spent drafting Plaintiff's moving papers, 0.8 hours  
16 were spent "drafting Plaintiff's Application for Remand," and 2.0 hours which were anticipated to  
17 be spent reviewing Plaintiff's opposition papers and drafting Plaintiff's reply brief. Seigel Decl. ¶ 9.  
18 The Court calculates the award based only on time spent drafting the instant Motion. The Court  
19 therefore **GRANTS** Plaintiff's request for attorney's fees and Plaintiff is awarded fees in the amount  
20 of \$577.50.

21 For the foregoing reasons, this action is hereby **REMANDED** to the Alameda County  
22 Superior Court. This Order terminates Dkt. Nos. 9 and 10. The pending Applications to Proceed *in*  
23 *Forma Pauperis* by Defendants (Dkt. Nos. 2–3) are **DENIED AS MOOT** based on this Order.

24 The Clerk of this Court is further ordered to forward certified copies of this Order and all  
25 docket entries to the Clerk of the Alameda County Superior Court.  
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**IT IS SO ORDERED.**

Dated: July 27, 2012

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE