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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6 WAYPOINT HOMES, INC.,

7
8 Plaintiff,

9 vs.

10 ADE FAGORALA,

11 Defendant.

Case No.: 12-CV-05282-YGR

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION

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13 On November 14, 2012, the Court issued an Order Granting Plaintiff's Motion to Remand
14 Case and Denying Application to Proceed *in Forma Pauperis*. (Dkt. No. 7 ("Remand Order").)
15 The action was closed and the Clerk of this Court transmitted certified copies of docket entries and
16 the Remand Order to the Clerk of the Contra Costa County Superior Court. (Dkt. No. 8.)
17 Thereafter, Defendant Ade Fagorala filed an *untimely* opposition to the motion to remand, which
18 included a counter complaint and a motion to strike the motion to remand. (Dkt. No. 9.) Defendant
19 also filed a motion for reconsideration of the Court's Remand Order, which, in part, sought leave to
20 permit the late-filed opposition and counter complaint. (Dkt. No. 10.)

21 Defendant's motion for reconsideration is improper. Pursuant to Civ. L.R. 7-9(a), "[n]o
22 party may notice a motion for reconsideration without first obtaining leave of Court to file the
23 motion." Defendant did not seek leave of Court and instead filed the motion itself. Moreover, the
24 Remand Order stated that the Court did not have subject matter jurisdiction, and the remand and
25 had already occurred prior to when Defendant filed the above documents. For these reasons, the
26 Court **DENIES** the motion for reconsideration.

27 Even putting aside the fact that Defendant's filings were untimely and unauthorized, the
28 Court previously stated in its Remand Order that it did not have subject matter jurisdiction in this

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Northern District of California


1 action. Defendant has not provided any legal reason that there is now subject matter jurisdiction.
2 (See Remand Order at 2 (“A claim ‘arises under’ federal law if, based on the ‘well-pleaded
3 complaint rule,’ the plaintiff alleges a federal claim for relief. *Vaden v. Discovery Bank*, 556 U.S.
4 49, 60 (2009). Defenses and counterclaims asserting a federal question do not satisfy this
5 requirement. *Id.*; *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987) (“[I]t is now settled law
6 that a case may *not* be removed to federal court on the basis of a federal defense.’). The federal
7 question must be presented by the plaintiff’s complaint *as it stands at the time of removal.*”)
8 (emphasis supplied).) Asserting new federal claims at this time does not provide federal
9 jurisdiction.

10 For the foregoing reasons, Defendant’s motion for reconsideration is **DENIED**, as the case
11 was already remanded and the Court continues to lack subject matter jurisdiction. The Clerk of this
12 Court is ordered to forward a certified copy of this Order and Dkt. Nos. 8–10 to the Clerk of the
13 Contra Costa County Superior Court.

14 This Order terminates Dkt. No. 10 and this case remains closed.

15 **IT IS SO ORDERED.**

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17 Dated: December 10, 2012


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

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