

United States District Court  
For the Northern District of California

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E-FILED on 8/4/09

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

KIMBERLY A. BROCKINGTON, also  
known as KIMBERLY A. SCHATZ, and  
LALLY BROCKINGTON,  
  
Plaintiffs,  
  
v.  
  
J.P. MORGAN CHASE BANK, N.A., a  
National Banking Association, NDEX  
WEST, LLC, a Texas Limited Liability  
Company, and DOES 1 to 20, inclusive,  
  
Defendants.

No. C-08-05795 RMW  
  
ORDER GRANTING PLAINTIFFS'  
MOTION TO REMAND  
  
[Re Docket No. 34]

On July 31, 2009, the court heard plaintiffs' motion to remand this action to the Santa Clara County Superior Court. Defendant J.P. Morgan Chase Bank N.A. opposes the motion. Having considered the papers submitted by the parties and the arguments of counsel, and for good cause appearing, the court grants plaintiffs' motion to remand.

Plaintiffs' first amended complaint abandoned all federal causes of action and plaintiff therefor sought an order remanding the action to Superior Court. In the parties' initial briefing, neither side addressed whether the court had diversity jurisdiction over this action and the court directed the parties to file supplemental briefs. Thereafter, plaintiffs filed their second amended complaint which added a non-diverse party.


1           Accordingly, the under the present operative pleading, there is no federal question  
2 presented and the parties are not diverse. While it appears that the new defendants were added in  
3 large part for the purpose of defeating diversity jurisdiction, it also appears that plaintiff may have  
4 viable claims against them arising out of the same transaction, facts and circumstances.

5           The action was properly removed by defendants based on the federal question then-  
6 presented by the pleadings. Thus, the court has the discretion to exercise its supplemental  
7 jurisdiction to hear the remaining state law claims, even though the complaint, as presently  
8 framed, could not have been brought in federal court. The court also has discretion, however, to  
9 decline to exercise its supplemental jurisdiction to hear such claims. 28 U.S.C. §1367(c)(3);  
10 *Williams v. Costco Wholesale Corp.*, 471 F.3d 975, 977 (9th Cir. 2006). This case is still in its  
11 early stages, the pleadings are not yet closed, and the claims to be litigated are all state law claims.  
12 Accordingly, the court will exercise its discretion and remand this action to the Santa Clara  
13 County Superior Court.

14           IT IS HEREBY ORDERED that this action is remanded to the Superior Court for the State  
15 of California, County of Santa Clara.

16           The clerk is directed to close the file.

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19 DATED: 8/4/09

  
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RONALD M. WHYTE  
United States District Judge

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