

E-FILED on 9/30/13

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

BLUE MOUNTAIN HOMES, LLC,  
Plaintiff,  
v.  
JOSE GUTIERREZ, et al.,  
Defendants.

No. C-13-03425 RMW

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND REMANDING  
CASE

[Re Docket No. 5]

On July 24, 2013, Jose Gutierrez and Lola Gutierrez (collectively “defendants”) filed a notice of removal pursuant to § 28 U.S.C. 1331. Dkt. No. 1. Defendants also filed motions for leave to proceed *in forma pauperis* (“IFP”). Dkt. Nos. 2, 3. On August 2, 2013, the magistrate judge granted defendants’ applications to proceed IPF. Dkt. No. 5. The magistrate judge also issued a report and recommendation that the case be remanded to the Santa Clara County Superior Court for lack of subject matter jurisdiction or diversity jurisdiction. *Id.* Because not all parties consented to the magistrate judge’s jurisdiction, the magistrate further ordered the clerk of the court to reassign this case to a district judge. *Id.* The case is now before the undersigned. Dkt. No. 6.

Objections to the magistrate’s report were due on August 16, 2013. Defendants have not filed any objections. Having reviewed the magistrate’s report and recommendation, the court agrees that a remand to the Santa Clara Superior Court for lack of jurisdiction is appropriate. The court

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1 adopts the magistrate judge's report and recommendation in full. The case is hereby remanded to  
2 the Santa Clara County Superior Court.

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5 DATED: September 30, 2013

  
RONALD M. WHYTE  
United States District Judge