

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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,

No. C-13-03425 RMW

Plaintiff,

ORDER ADOPTING REPORT AND
RECOMMENDATION AND REMANDING
CASE

v.

JOSE GUTIERREZ, et al.,

[Re Docket No. 5]

Defendants.

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

ORDER ADOPTING REPORT AND RECOMMENDATION AND REMANDING CASE—No. C-13-03425 RMW

United States District Court
For the Northern District of California

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

3

4

5 DATED: September 30, 2013

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Ronald M. Whyte
RONALD M. WHYTE
United States District Judge