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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

NONI GOTTI,

Plaintiff,

vs.

VERNA L DISNEY; VALLE AYAKO DBA
SHIMAKI TAILORING; LYDIA HAIR
SALON; and DOES 1 THROUGH 10,
Inclusive,

Defendants.

CASE NO. 08CV2037-MMA (BLM)

**ORDER REMANDING ACTION
TO STATE COURT**

BACKGROUND

On September 12, 2008, Plaintiff Noni Gotti filed the above-entitled action in San Diego County Superior Court alleging various causes of action under the American with Disabilities Act (“ADA”) and various state statutes. [Doc. No. 1] at 8–20. On November 3, 2008, Defendants Valle Ayako and Lydia Hair Salon removed the action to Federal Court on the basis that the case involved a federal question and the Court had supplemental jurisdiction over the various state law claims pursuant to 28 U.S.C § 1367. [Doc. No. 1] at 3:2–8. On November 4, 2008, Plaintiff

1 voluntarily dismissed all of her federal claims. [Doc. No. 2].

2 **LEGAL STANDARD & ANALYSIS**

3 It is well established that a federal court cannot reach the merits of any dispute until it
4 confirms that it has jurisdiction. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 95
5 (1998). Thus, federal courts are under a continuing duty to confirm their jurisdictional power and
6 are “obliged to inquire *sua sponte* whenever a doubt arises as to [its] existence.” *Mt. Healthy City*
7 *Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 278 (1977) (superceded on other grounds).

8 In a removal action, a district court must remand a case to state court if, at any time before
9 final judgment, the court determines that it lacks subject matter jurisdiction or when the notice of
10 removal contains plain jurisdictional defects. *See* 28 U.S.C. § 1447 *et seq.* The party seeking to
11 invoke removal jurisdiction bears the burden of supporting its jurisdictional allegations with
12 competent proof. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (per curiam); *Emrich v.*
13 *Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988). “The propriety of removal thus depends
14 on whether the case originally could have been filed in federal court.” *Chicago v. Int’l Coll. of*
15 *Surgeons*, 522 U.S. 156, 163 (1997).

16 The court’s removal jurisdiction must be analyzed on the basis of the pleadings at the time
17 of removal. *See Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers*, 159 F.3d 1209, 1213 (9th
18 Cir. 1998). “As a general rule, absent diversity jurisdiction, a case will not be removable if the
19 complaint does not affirmatively allege a federal claim.” *Beneficial Nat’l Bank v. Anderson*, 539
20 U.S. 1, 6 (2003). District courts must construe the removal statutes strictly *against* removal and
21 resolve any uncertainty as to removability in favor of remanding the case to state court. *Gaus*, 980
22 F.2d at 566.

23 Here, Defendant’s only basis for removing the action to state court was the Court’s subject
24 matter jurisdiction based on a federal question, Plaintiff’s ADA claims. Plaintiff, however,
25 voluntarily dismissed all of the federal claims immediately after removal. Thus, the remaining
26 claims are all based on state law. A court may decline to exercise supplemental jurisdiction over
27 state law claims and *sua sponte* remand a case if no independent basis for subject matter
28 jurisdiction exists after the dismissal of the federal claims. 28 U.S.C. § 1367(c)(3); 28 U.S.C. §

1 1447(c); *Osborn v. Haley*, 549 U.S. 225, 245 (2007) (citing *Carnegie-Mellon Univ. v. Cohill*, 484
2 U.S. 343, 350–51 (1988)). Because the federal claims were dismissed from this case immediately
3 upon its removal, the Court declines to exercise supplemental jurisdiction over the state law claims
4 in this case.

5 Accordingly, the case is *sua sponte* **REMANDED** to San Diego County Superior Court for
6 such other and further proceedings as that court deems proper. The Clerk shall close the file and
7 send the necessary materials to the San Diego County Superior Court for the remand.

8 **IT IS SO ORDERED.**

9 DATED: March 6, 2009

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11 Hon. Michael M. Anello
12 United States District Judge

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