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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ONEWEST BANK, FSB AS PURCHASER  
OF CERTAIN ASSETS OF FIRST FEDERAL  
BANK OF CALIFORNIA FROM THE  
FEDERAL DEPOSIT INSURANCE  
CORPORATION, AS RECEIVER,

Plaintiff,

No. CIV S-10-1179 GEB EFB PS

vs.

KONEY AUSTINN,

Defendant.

FINDINGS AND RECOMMENDATIONS

On May 14, 2010, defendant Koney Austinn, proceeding pro se, filed a notice of removal of this unlawful detainer action from the Superior Court of the State of California for Sacramento County. This case is before the undersigned in accordance with 28 U.S.C. § 636(b)(1) and Eastern District of California Local Rule 302(c)(21).

This court has an independent duty to ascertain its jurisdiction and may remand sua sponte for lack of subject matter jurisdiction. See 28 U.S.C. § 1447(c). “The burden of establishing federal jurisdiction is on the party seeking removal, and the removal statute is strictly construed against removal jurisdiction.” *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988). “Federal jurisdiction must be rejected if there is any doubt as to the right

1 of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). As  
2 explained below, defendant has failed to meet their burden.

3 Defendant’s notice of removal is predicated upon the court’s federal question  
4 jurisdiction. Dckt. No. 1 at 2 (citing 28 U.S.C. §§ 1441(b), 1446(a)). Defendant contends that  
5 plaintiff alleges claims under the Federal Fair Debt Collections Act (FDCPA), the Real Estate  
6 Settlement Procedures Act (RESPA), the Truth in Lending Act (TILA), Generally Accepted  
7 Accounting Principles (GAAP), and the Universal Commercial Code (UCC). *Id.* at 3. However,  
8 a review of the complaint reveals that plaintiff does not allege any federal claims; instead,  
9 plaintiff alleges only unlawful detainer under state law. *Id.* at 88 (Compl.). Therefore, because  
10 defendant has not adequately established that plaintiff’s complaint alleges a federal claim,<sup>1</sup> the  
11 court lacks subject matter jurisdiction and must remand the case.<sup>2</sup> *See* 28 U.S.C. § 1447(c).

12 Accordingly, IT IS RECOMMENDED that the above-captioned case be REMANDED to  
13 the Superior Court of the State of California in and for the County of Sacramento.

14 These findings and recommendations are submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
16 after being served with these findings and recommendations, any party may file written  
17 objections with the court and serve a copy on all parties. Such a document should be captioned  
18 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
19 shall be served and filed within fourteen days after service of the objections. Failure to file  
20 objections within the specified time may waive the right to appeal the District Court’s order.

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21 <sup>1</sup> Nor has defendant established that this court has diversity jurisdiction.

22 <sup>2</sup> It is also unclear whether the notice of removal was timely. Although defendant  
23 contends that his notice of removal “is timely pursuant to 28 U.S.C. § 1441(b) because it [was]  
24 filed before proper service of the Notice of the Trial was made on Defendant,” it is unclear  
25 whether the notice of removal was “filed within thirty days after the receipt by the defendant,  
26 through service or otherwise, of a copy of the initial pleading setting forth the claim for relief  
upon which such action or proceeding is based, or within thirty days after the service of  
summons upon the defendant if such initial pleading has then been filed in court and is not  
required to be served on the defendant, whichever period is shorter.” 28 U.S.C. § 1446(b).

1 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th  
2 Cir. 1991).

3 SO ORDERED.

4 Dated: May 17, 2010.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE

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