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

ONEWEST BANK FSB,

Plaintiff,

No. CIV S-10-1683 JAM DAD PS

vs.

DOMINADOR C. IGNACIO, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff OneWest Bank FSB filed an unlawful detainer action against defendant Dominador C. Ignacio and Does 1 - 100 in the San Joaquin County Superior Court on November 9, 2009. On June 30, 2010, the defendant, proceeding pro se, removed the case to this court and paid the required filing fee. The case has been referred to the undersigned pursuant to Local Rule 302(c)(21) for all purposes encompassed by that provision.

Defendant Ignacio alleges that plaintiff sold him an illegal loan product that inevitably led to a mortgage foreclosure and that plaintiff now seeks to evict defendant. Defendant contends that plaintiff’s mortgage activities were subject to federal law, including the Truth in Lending Act and the Real Estate Settlement Procedures Act, and that plaintiff’s violations of those laws, as well as state laws, rendered the loan illegal. Defendant argues that plaintiff’s unlawful detainer action should be removed to federal court “so that the underlying

1 title claims made pursuant to Federal and State law may be adjudicated.” The civil cover sheet
2 attached to defendant’s notice of removal identifies “federal question” as the basis of jurisdiction.

3 The general removal statute provides that “any civil action brought in a State court
4 of which the district courts of the United States have original jurisdiction, may be removed by the
5 defendant or the defendants, to the district court of the United States for the district and division
6 embracing the place where such action is pending.” 28 U.S.C. § 1441(a). “The threshold
7 requirement for removal under 28 U.S.C. § 1441 is a finding that the complaint contains a cause
8 of action that is within the original jurisdiction of the district court.” Hunter v. Philip Morris
9 USA, 582 F.3d 1039, 1042 (9th Cir. 2009) (internal quotation marks omitted). Simply put, “an
10 action must ‘be fit for federal adjudication when the removal petition is filed.’” Sparta Surgical
11 Corp. v. Nat’l Ass’n of Securities Dealers, Inc., 159 F.3d 1209, 1211 (9th Cir. 1998).

12 District courts are required to presume that the plaintiff’s causes of action lie
13 outside the limited jurisdiction of the federal courts, and the burden of establishing the contrary
14 rests upon the party asserting jurisdiction. Hunter, 582 F.3d at 1042. Because removal is
15 permissible only where original jurisdiction exists at the time of removal, the district court has a
16 duty to establish sua sponte whether it has subject matter jurisdiction over a removed action.
17 United Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004); Sparta
18 Surgical Corp, 159 F.3d at 1211.

19 The removal statutes are strictly construed against removal jurisdiction, and
20 federal jurisdiction must be rejected if there is any doubt as to the right of removal. Duncan v.
21 Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir.
22 1992). A strong presumption for remand exists when the original jurisdiction of the district court
23 is questionable. Gaus, 980 F.2d at 566.

24 “A defendant may remove an action to federal court based on federal question
25 jurisdiction or diversity jurisdiction.” Hunter, 582 F.3d at 1042. Removal based on federal
26 question jurisdiction is proper only when a federal question is presented on the face of the

1 plaintiff's properly pleaded complaint. Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987);
2 Hunter, 582 F.3d at 1042. More precisely, federal question jurisdiction exists only if “a well-
3 pleaded complaint establishes either that [1] federal law creates the cause of action or that [2] the
4 plaintiff's right to relief necessarily depends on resolution of a substantial question of federal
5 law.” Armstrong v. N. Mariana Islands, 576 F.3d 950, 954-55 (9th Cir. 2009) (internal quotation
6 marks and citations omitted).

7 In general, a defendant's actual or anticipated defense or counterclaim cannot
8 supply the basis for federal question jurisdiction. Vaden v. Discover Bank, ___ U.S. ___, ___,
9 129 S. Ct. 1262, 1272-73 (2009) (“Federal jurisdiction cannot be predicated on an actual or
10 anticipated defense” or “an actual or anticipated counterclaim.”); Holmes Group, Inc. v.
11 Vornado Air Circulation Sys., Inc., 535 U.S. 826, 830-32 & n.2 (2002) (a federal law
12 counterclaim, even when compulsory, does not establish “arising under” jurisdiction); Great N.
13 Ry. Co. v. Alexander, 246 U.S. 276, 281 (1918) (a case “cannot be made removable to federal
14 court by any statement in the petition for removal or in subsequent pleadings by the defendant”);
15 Valles v. Ivy Hill Corp., 410 F.3d 1071, 1075 (9th Cir. 2005) (“A federal law defense to a state-
16 law claim does not confer jurisdiction on a federal court, even if the defense is that of federal
17 preemption and is anticipated in the plaintiff's complaint.”).

18 Here, a review of plaintiff's complaint reveals that the facts alleged therein do not
19 present a basis for federal jurisdiction. The pleading is titled “Complaint in Unlawful Detainer”
20 and asserts limited civil jurisdiction over a post-foreclosure eviction, with the amount demanded
21 not exceeding \$10,000. The ten-paragraph complaint seeks only possession of the premises and
22 costs of suit pursuant to state statutes. Plaintiff also cites state statutes to establish its ownership
23 of the property. Although the complaint includes an allegation that the defendants are not
24 entitled to any protection under the federal Protecting Tenants at Foreclosure Act of 2009
25 because none of them are tenants under California law, this allegation is plainly made in
26 anticipation of a defense and is not a federal claim asserted by plaintiff.

1 The undersigned finds that the complaint does not plead any federal claim and that
2 plaintiff's right to relief for unlawful detainer does not depend on the resolution of any question
3 of federal law. No basis for federal question jurisdiction arises from the defenses and
4 counterclaims suggested by defendant Ignacio in his notice of removal. Nor does federal
5 question jurisdiction arise from defendant's allegation that the unlawful detainer action is related
6 to a federal class action lawsuit proceeding in this district.¹

7 Defendant has not carried his burden of establishing that plaintiff has alleged any
8 cause of action that provides this court with federal question jurisdiction.² The Ninth Circuit has
9 held that "[i]f a district court lacks subject matter jurisdiction over a removed action, it has the
10 duty to remand it." Sparta Surgical Corp., 159 F.3d at 1211.

11 Accordingly, IT IS RECOMMENDED that this action be summarily remanded to
12 the San Joaquin County Superior Court for lack of jurisdiction.

13 These findings and recommendations will be submitted to the United States
14 District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
15 fourteen days after being served with these findings and recommendations, defendant may file
16 any written objections with the court. A document containing objections should be titled
17 "Objections to Magistrate Judge's Findings and Recommendations."

18 DATED: July 2, 2010.

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21 _____
22 DALE A. DROZD
23 UNITED STATES MAGISTRATE JUDGE

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23 _____
24 ¹ The case cited by plaintiff as 2:10-at-0190 is proceeding as 2:10-cv-0374 FCD KJM.
25 OneWest Bank FSB is not a defendant in that case. Removing defendant Dominador Ignacio is
26 not a named plaintiff in the suit, and the case has not been certified as a class action.

² Defendant has not asserted diversity jurisdiction. Plaintiff's citizenship is unknown,
but the complaint does not allege a sufficient amount in controversy. See 28 U.S.C. § 1332(a).