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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 THE BANK OF NEW YORK MELLON
10 FKA THE BANK OF NEW YORK, AS
11 TRUSTEE FOR THE
12 CERTIFICATEHOLDERS OF THE
13 CWABS, INC., ASSET-BACKED
14 CERTIFICATES, SERIES 2007-1,
15 Plaintiff,
16 vs.
17 JEFFREY A. SULLIVAN, ROSE
18 SULLIVAN, and Does 1 through 5,
19 inclusive,
20 Defendants.
21

NO. 4:17-cv-005055-SAB

**ORDER GRANTING MOTION
FOR REMAND TO STATE
COURT**

22 Before the Court is Defendant's Motion for Remand to State Court, ECF
23 No. 7. The motion was heard without oral argument.

24 Plaintiff The Bank of New York, as Trustee for the Certificateholders of the
25 CWABS Inc., Asset-Backed Certificates Series 2007-1, asks the Court to remand
26 its unlawful detainer action that it filed against Defendants, Jeffrey A. Sullivan
27 and Rose Sullivan ("Defendants"). Plaintiff originally filed the action in Benton
28 County Superior Court in January, 2017. Defendants, proceeding pro se, removed

ORDER GRANTING MOTION FOR REMAND TO STATE COURT ~ 1

1 the action on April 27, 2017.

2 Plaintiff asserts removal is improper because Defendant's petition for
3 removal was untimely filed under 28 U.S.C. § 1446 and neither federal-question
4 nor diversity jurisdiction exists in this unlawful detainer action. The Court agrees.
5 Plaintiff is also requesting attorney's fees in the amount of \$525.00. The award of
6 attorney's fees in this case is appropriate.

7 **BACKGROUND FACTS**

8 Defendants executed a deed of trust on or about January 3, 2007 that
9 secured a promissory note for \$387,000.00. Defendants subsequently defaulted in
10 the Note and the Deed. Non-judicial foreclosure proceeding were instituted by
11 recording a notice of default in state court. A trustee's sale was conducted and
12 Plaintiff purchased the property at the sale.

13 On January 24, 2017, Plaintiff filed an Unlawful Detainer state action in
14 Benton County. Defendants filed their answer in state court on March 10, 2017,
15 asserting Plaintiff's Complaint is defective because the Complaint failed to allege
16 that a Three Day Notice was provided as required under 12 U.S.C. § 5220.

17 An order to show cause hearing was scheduled in state court for April 28,
18 2017. Two days prior the hearing, Defendants filed their Notice of Removal and
19 the case was removed to this Court. In their Notice of Removal, Defendants assert
20 the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1441,
21 and the removal was timely because "it was not barred by the provision of 28
22 U.S.C. § 1446(b)." Specifically, they assert that because they "demurrer a pleading
23 depending on the determination of Defendant's rights and Plaintiff's duties under
24 federal law," removal is proper.

25 **ANALYSIS**

26 Here, Defendants' removal was clearly untimely and the removal was
27 improper because a defense based on federal law cannot provide subject matter
28 jurisdiction.

1 **I. Timeliness of Removal**

2 Defendants assert that because they were given defective notice to vacate
3 the premises, their Removal is still timely even though it was filed more than 30
4 days after receiving Plaintiff's complaint.

5 28 U.S.C. § 1446(b)(1) provides:

6 The notice of removal of a civil action or proceeding shall be filed
7 within 30 days after the receipt by the defendant, through service or
8 otherwise, of a copy of the initial pleading setting forth a claim for
relief upon which such action or proceeding is based.

9 Untimely removal is a procedural defect, not a jurisdictional defect. *Maniar*
10 *v. F.D.I.C.*, 979 F.2d 782, 785 (9th Cir. 1992). Here, Plaintiff timely objected to
11 the late removal.

12 The Affidavit of Service indicates that Defendants were served a copy of the
13 Summons and Complaint against them on February 21, 2017. ECF No. 8, Ex. 5.
14 The Notice of Removal was filed on April 26, 2017 and the Removal was re-noted
15 on May 25, 2017. ECF Nos. 1 and 6. Because the Notice of Removal was not filed
16 within the allotted 30 days, the Notice of Removal is untimely and the case should
17 be remanded to state court.

18 **II. Federal Question**

19 Additionally, even if the removal were proper, this case should be remanded
20 to state court because this Court does not have federal subject matter jurisdiction.

21 **A. Legal Standard for Removal**

22 Federal courts are courts of limited jurisdiction and the burden of
23 establishing jurisdiction rests upon the party asserting jurisdiction. *Kokkonen v.*
24 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). If there is any doubt as
25 to the right of removal, jurisdiction must be rejected. *Gaus v. Miles, Inc.*, 980 F.2d
26 564, 566 (9th Cir. 1992). A defendant in a state court may remove an action to
27 federal court so long as the action could have originally asserted federal-question
28

1 jurisdiction. 28 U.S.C. 1441(b). But, the “mere presence of a federal issue in a
2 state cause of action does not automatically confer federal-question jurisdiction.”
3 *Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804, 813 (1986).
4 For instance, a federal defense does not support federal-question jurisdiction.
5 *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987) (“Thus, it is now settled
6 law that a case may not be removed to federal court on the basis of a federal
7 defense, including the defense of pre-emption, even if the defense is anticipated in
8 the plaintiff's complaint, and even if both parties concede that the federal defense
9 is the only question truly at issue.”) (emphasis in original).

10 **B. Analysis**

11 In their notice of removal, Defendants rely on the fact that they have alleged
12 a violation of the Protecting Tenants at Foreclosure Act (“PTFA”) to provide
13 subject matter jurisdiction. Case law is clear, however, that the PTFA does not
14 provide a private cause of action. Rather, it provides a defense to state eviction
15 proceedings. *Logan v. U.S. Bank Nat. Ass’n*, 722 F.3d 1163, 1173 (9th Cir. 2013)
16 (“The PTFA is framed in terms of ‘protections’ for tenants, suggesting that it was
17 intended to provide a defense in state eviction proceedings rather than a basis for
18 offensive suits in federal court.”).

19 Under *Caterpillar*, the existence of a federal defense does not confer subject
20 matter jurisdiction on this Court. Thus, regardless of whether Defendants’ notice
21 was timely, remand is necessary because the Court does not have jurisdiction over
22 this action. See, e.g., *Wescom Credit Union v. Dudley*, No. CV 10-8203 GAF
23 (SSx), 2010 WL 4916578, at *2 (C.D. Cal. Nov. 22, 2010) (““The PTFA’s
24 requirements are straightforward, and the mere presence of a federal issue does not
25 confer federal-question jurisdiction.”); *Zalemba v. HSBC Bank*, No. 10-cv-1646
26 BEN (BLM), 2010 WL 3894577, at *2 (S.D. Cal. Oct. 1, 2010) (holding that the
27 PTFA, in general, cannot raise a “substantial federal-question” because these
28 provisions do not create a private right of action).

1 Also, diversity jurisdiction removal does not apply in this case because
2 Defendants are citizens of the State of Washington, which is the state where the
3 action was brought. See *Lincoln Property Co. v. Roche*, 546 U.S. 81, 90 (2005)
4 (holding that diversity jurisdiction removal is only permissible if none of the
5 parties in interest properly joined and served as defendants is a citizen of the State
6 in which the action is brought).

7 **III. Attorney's Fees**

8 Plaintiff is requesting \$525.00 in reasonable attorney's fees. The Court may
9 in its discretion "require payment of just costs and actual expenses, including
10 attorney's fees, incurred as a result of the removal." 28 U.S.C. § 1447(c). Absent
11 unusual circumstances, a court may not award attorney's fees pursuant to
12 § 1447(c) unless the removing party lacked an objectively reasonable basis for
13 seeking removal. *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005).

14 Here, the award of attorney's fees is appropriate because Defendants lacked
15 an objectively reasonable basis for removing this action. As set forth above, the
16 case law is clear. The PTFA does not provide a federal cause of action and
17 asserting a defense under the PTFA does not confer subject matter jurisdiction on
18 the courts. Moreover, it appears the PTFA expired in 2014. Finally, the timing of
19 the notice of removal suggests that Defendants removed this action to federal
20 court to delay the unlawful detainer action and continue to occupy the property
21 that they no longer own.

22 Accordingly, **IT IS HEREBY ORDERED** that:

23 1. Plaintiff's Motion to Remand, ECF No. 7, is **GRANTED**.

24 2. The above-captioned case is **REMANDED** to Benton County
25 Superior Court.

26 3. Attorney's fees in the amount of **\$525.00** are awarded to Plaintiff.
27 The District Court Executive is directed to enter judgment in this amount in favor
28 of Plaintiff.

1 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
2 forward copies to counsel and pro se Defendants, and close the file.

3 **DATED** this 18th day of July, 2017.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

9 Stanley A. Bastian
10 United States District Judge