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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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9 HSBC Bank USA, N.A., as trustee, and)
10 its assignee and successor-in-interest, US)
Bank,)

No. CV-09-2195-PHX-DGC

11 Plaintiff,)

ORDER

12 vs.)

13 Juan Aguilar,)

14 Defendant.)
15 _____)

16 Plaintiff purchased residential property located in Phoenix at a trustee’s sale held on
17 June 10, 2009. Plaintiff thereafter demanded that the occupant, Juan Aguilar, vacate the
18 property. When he failed to do so, Plaintiff filed a forcible entry and detainer action in state
19 court. Aguilar removed the case to this Court. Dkt. #1.

20 Plaintiff has filed a motion to remand. Dkt. #11. Aguilar has filed a response.
21 Dkt. #12. For reasons that follow, the Court will grant the motion.

22 **I. Procedural Defect.**

23 The procedure for removing an action to federal court is governed by 28 U.S.C.
24 § 1446. That statute provides that the notice of removal must be filed within thirty days after
25 the defendant receives a copy of the complaint. 28 U.S.C. § 1446(b). “If a notice of removal
26 is filed after this thirty-day window, it is untimely and remand to state court is therefore
27 appropriate.” *Babasa v. LensCrafters, Inc.*, 498 F.3d 972, 974 (9th Cir. 2007) (citing *Eyak*
28 *Native Village v. Exxon*, 25 F.3d 773, 783 (9th Cir. 1994)).

1 Aguilar was served with process on September 2, 2009. Dkt. #11-2. The deadline for
2 filing a notice of removal was therefore October 2, 2009. 28 U.S.C. § 1446(b). Aguilar filed
3 the notice of removal on October 20, 2009, more than two weeks late. *See* Dkt. #1. Plaintiff
4 argues, correctly, that this procedural defect requires that the action be remanded to state
5 court. Dkt. #11 at 3-4; *see Babasa*, 498 F.3d at 975 (“Because LensCrafters filed its notice
6 of removal . . . over thirty days after it first could have ascertained that the case was
7 removable, the district court properly remanded the case to state court.”).

8 **II. Lack of Subject Matter Jurisdiction.**

9 Plaintiff further argues that the case must be remanded for lack of subject matter
10 jurisdiction. Dkt. #11 at 4-5. The Court agrees.

11 “Federal courts are courts of limited jurisdiction. They possess only that power
12 authorized by Constitution and statute[.]” *Kokkonen v. Guardian Life Ins. Co. of Am.*,
13 511 U.S. 375, 377 (1994). Pursuant to federal statutes, this Court has subject matter
14 jurisdiction over a case where the complaint alleges a federal cause of action or the amount
15 in controversy exceeds \$75,000 and the parties are citizens of different states. *See*
16 28 U.S.C. §§ 1331, 1332(a).

17 The notice of removal filed by Aguilar provides no basis for federal jurisdiction. *See*
18 Dkt. #1. Aguilar asserts in his response that jurisdiction exists pursuant to the Declaratory
19 Judgment Act, 28 U.S.C. § 2201 (Dkt. #12 at 3), but that statute “does not by itself confer
20 federal subject-matter jurisdiction[.]” *Nationwide Mut. Ins. Co. v. Liberatore*, 408 F.3d
21 1158, 1161 (9th Cir. 2005). “It only creates a particular kind of remedy available in actions
22 where the district court already has jurisdiction to entertain a suit.” *Jarrett v. Resor*, 426 F.2d
23 213, 216 (9th Cir. 1970).

24 Aguilar claims that, pursuant to 28 U.S.C. § 1331, federal question jurisdiction exists
25 based on a host of federal statutes. Dkt. #11 at 3. For federal question jurisdiction to exist,
26 the federal right claimed “must be an element, and an essential one, of the plaintiff’s cause
27 of action.” *Gully v. First Nat’l Bank*, 299 U.S. 109, 112 (1936) (citations omitted). The sole
28 cause of action asserted in the complaint is a state law claim for forcible entry and detainer.

1 Dkt. #11-1. Aguilar has not shown that a federal statute is a necessary element of the state
2 claim. Nor has he shown that the state claim is preempted by federal law. The Court
3 therefore concludes that federal question jurisdiction does not exist.

4 Aguilar contends that diversity jurisdiction exists under 28 U.S.C. § 1332(a). Dkt.
5 #12 at 3-4. The complaint in this case does not demand a dollar amount. Dkt. #11-1.
6 Plaintiff paid only \$46,500 for the property at issue. *Id.* ¶ 5. Aguilar asserts that comparable
7 homes were valued at up to \$80,000 (Dkt. #12 at 3), but presents no evidence in support of
8 this assertion. Aguilar has not met his “burden of establishing, by a preponderance of the
9 evidence, that the amount in controversy exceeds [\$75,000].” *Sanchez v. Monumental Life*
10 *Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996); *see Matheson v. Progressive Specialty Ins. Co.*,
11 319 F.3d 1089, 1090 (9th Cir. 2003). Diversity jurisdiction does not exist.

12 **III. Conclusion.**

13 The removal statute, 28 U.S.C. § 1441(a), is to be strictly construed against removal.
14 *See Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 32 (2002); *Shamrock Oil & Gas*
15 *Corp. v. Sheets*, 313 U.S. 100, 108 (1941). This “strong presumption” against removal
16 “means that the defendant always has the burden of establishing that removal is proper.”
17 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Aguilar has failed to meet his burden.
18 The Court will therefore grant the motion to remand.

19 **IT IS ORDERED:**

- 20 1. Plaintiff’s motion to remand (Dkt. #11) is **granted**.
21 2. The Clerk is directed to **remand** this action to state court.

22 DATED this 4th day of January, 2010.

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26 David G. Campbell
27 United States District Judge
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