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

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10 M&I Marshall & Ilsley Bank,  
11 Plaintiff,

No. CV-11-1177-PHX-DGC

**ORDER**

12 vs.

13 Jay and Tana Boersma, husband and wife,  
14 Defendants.

15 On June 6, 2011, Plaintiff filed a forcible entry and detainer action against  
16 Defendants in state court. Doc. 1-1 at 3-45. Defendant Jay Boersma removed the action  
17 to this Court a week later. Doc. 1.

18 Plaintiff has filed a motion to remand. Doc. 7. The motion is fully briefed.  
19 Docs. 8, 10. No party has requested oral argument. For reasons stated below, the motion  
20 will be granted.

21 Federal courts are courts of limited jurisdiction, “possess[ing] only that power  
22 authorized by Constitution and statute[.]” *Kokkonen v. Guardian Life Ins. Co. of Am.*,  
23 511 U.S. 375, 377 (1994). Pursuant to 28 U.S.C. § 1441, a defendant “may remove an  
24 action to federal court based on federal question jurisdiction or diversity jurisdiction.”  
25 *Hunter v. Phillip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009); *see* 28 U.S.C.  
26 §§ 1331, 1332. Defendant’s notice of removal asserts both federal question and diversity  
27 jurisdiction. Doc. 1 at 2.

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1            “It is to be presumed that a cause of action lies outside the limited jurisdiction of  
2 the federal courts and the burden of establishing the contrary rests upon the party  
3 asserting jurisdiction.” *Hunter*, 582 F.3d at 1042 (citations omitted). Defendant has not  
4 met his burden.

5            The Court has subject matter jurisdiction over cases “arising under” federal law.  
6 28 U.S.C. § 1331. It is well established that federal question jurisdiction exists only  
7 where the complaint itself establishes that the case arises under federal law. *Franchise*  
8 *Tax Bd. of State of Cal. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 10 (1983).  
9 Stated differently, “[t]he federal question ‘must be disclosed upon the face of the  
10 complaint unaided by the answer or petition for removal.’” *Takeda v. Nw. Nat’l Life Ins.*  
11 *Co.*, 765 F.2d 815, 821 (9th Cir. 1985) (quoting *Gully v. First Nat’l Bank*, 299 U.S. 109,  
12 113 (1936)).

13            Plaintiff’s complaint asserts a forcible entry and detainer claim pursuant to A.R.S.  
14 § 12-1171 et seq. Because that claim does not depend on resolution of any issue of  
15 federal law, the Court does not have subject matter jurisdiction under 28 U.S.C. § 1331.

16            Federal courts possess diversity jurisdiction “where the matter in controversy  
17 exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . .  
18 citizens of different States[.]” 28 U.S.C. § 1332(a)(1). “[T]he removing defendant bears  
19 the burden of proving by a preponderance of the evidence that the amount in controversy  
20 exceeds [\$75,000].” *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th  
21 Cir. 1997) (citations omitted). Defendant presents no evidence, or even an argument, that  
22 the amount in controversy exceeds the jurisdictional amount.

23            Moreover, because Defendant is “a citizen of and domiciled in the State of  
24 Arizona” (Doc. 1 at 2), the forum defendant rule, 28 U.S.C. § 141(b), prohibits removal  
25 on the basis of diversity jurisdiction. *See Lively v. Wild Oats Markets, Inc.*, 456 F.3d 933,  
26 939 (9th Cir. 2006) (noting that § 1441(b) “confines removal on the basis of diversity  
27 jurisdiction to instances where no defendant is a citizen of the forum state”).  
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1 Courts strictly construe the removal statute, 28 U.S.C. § 1441, against removal  
2 jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). This strong  
3 presumption against removal means that the defendant always has the burden of  
4 establishing that removal is proper, and federal jurisdiction “must be rejected if there is  
5 any doubt as to the right of removal in the first instance.” *Id.* Defendant has failed to  
6 meet his high burden. The Court therefore will remand the case to state court for lack of  
7 subject matter jurisdiction. 28 U.S.C. § 1447(c) (the case shall be remanded if “at any  
8 time before final judgment it appears that the district court lacks subject matter  
9 jurisdiction”).

10 Defendant’s motion for joinder (Doc. 9) will be denied as he seeks to join no  
11 additional party. Plaintiff argues, correctly, that Rules 18, 19, and 20 have no relevance  
12 to this case.

13 **IT IS ORDERED:**

- 14 1. Plaintiff’s motion to remand (Doc. 7) is **granted**.
- 15 2. Defendant’s motion for joinder (Doc. 9) is **denied**.
- 16 3. The Clerk is directed to **remand** this action to state court.
- 17 4. Plaintiff may file a motion for attorneys’ fees pursuant to Local Rule 54.2.

18 Dated this 18th day of July, 2011.

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22 David G. Campbell  
23 United States District Judge  
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