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CLERK U.S. DISTRICT COURT
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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 THE BANK OF NEW YORK) Case No. CV 12-8277-UA-DUTY
12 MELLON,)
13 Plaintiff,) ORDER SUMMARILY REMANDING
14 vs.) IMPROPERLY REMOVED ACTION
15 MARIA GALLARDO,)
16 Defendant.)
17

18 The Court hereby summarily remands this unlawful-detainer
19 action to state court because Defendant removed it improperly.

20 On September 25, 2012, Defendant Maria Gallardo, having been
21 sued in what appears to be a routine unlawful-detainer action in
22 California state court, lodged a Notice Of Removal of that action
23 to this Court and also presented an application to proceed
24 in forma pauperis. The Court has denied Defendant's IFP
25 application under separate cover because the action was not
26 properly removed. To prevent the action from remaining in
27 jurisdictional limbo, the Court issues this Order to remand it to
28 state court.

1 This action is not properly removed because Plaintiff could
2 not have brought it in federal court in the first place;
3 Defendant does not competently allege facts supplying either
4 diversity or federal-question jurisdiction, and therefore removal
5 is improper. 28 U.S.C. § 1441(a); see Exxon Mobil Corp. v.
6 Allapattah Servs., Inc., 545 U.S. 546, 563, 125 S. Ct. 2611,
7 2623, 162 L. Ed. 2d 502 (2005). Even if complete diversity of
8 citizenship exists, the amount in controversy does not exceed the
9 diversity-jurisdiction threshold of \$75,000. See 28 U.S.C.
10 §§ 1332, 1441(b). Although Defendant asserts that "the amount in
11 controversy includes up to, but is not limited to, an actuary
12 exceeding \$75,000" (Notice of Removal at 2), removal is improper
13 if it is "facially apparent" from the complaint that the amount-
14 in-controversy requirement is not satisfied. See Abrego Abrego
15 v. Dow Chem. Co., 443 F.3d 676, 690 (9th Cir. 2006). Here, the
16 unlawful-detainer Complaint clearly recites that the amount in
17 controversy "does not exceed \$10,000.00."¹ (Compl. at 1.)

18 Nor does Plaintiff's unlawful-detainer action raise any
19 federal legal question. See 28 U.S.C. §§ 1331, 1441(b).
20 Defendant appears to assert that federal-question jurisdiction
21 exists because Plaintiff's actions in bringing suit against her
22 violate her constitutional rights to due process and equal
23

24 ¹ Moreover, even if the amount in controversy was ambiguous
25 from the face of the Complaint, which it is not, it would then be
26 Defendant's burden to submit "summary-judgment-type evidence" to
27 prove by a preponderance of the evidence that the amount-in-
28 controversy requirement had been satisfied. See Abrego Abrego, 443
F.3d at 683, 690; Lewis v. Verizon Commc'ns, Inc., 627 F.3d 395,
400 (9th Cir. 2010). Defendant has not submitted any such
evidence.

1 protection. (Notice of Removal at 2.) To the extent Defendant's
2 allegations constitute a counterclaim, they still do not provide
3 a basis for federal-question jurisdiction. It is well
4 established that a suit "arises under" federal law within the
5 meaning of § 1331 "only when the plaintiff's statement of his own
6 cause of action shows that it is based upon [federal law]."
7 Vaden v. Discover Bank, 556 U.S. 49, 59, 12 S. Ct. 1262, 1272,
8 173 L. Ed. 2d 206 (2009) (alteration in original). Federal
9 jurisdiction "cannot be predicated on an actual or anticipated
10 defense," nor can it rest upon "an actual or anticipated
11 counterclaim." Id. at 60. Because the Complaint on its face
12 alleges only an unlawful-detainer action under state law, no
13 basis for federal-question jurisdiction exists. See HSBC Bank
14 USA, N.A. v. Bryant, No. 09-CV-1659-IEG (POR), 2009 WL 3787195,
15 at *3 (S.D. Cal. Nov. 10, 2009) (remanding unlawful-detainer
16 action because "no basis for 'federal question' jurisdiction"
17 existed despite defendant's assertion of federal counterclaims).

18 Accordingly, IT IS ORDERED that (1) this matter be REMANDED
19 to the Superior Court, Los Angeles County, 415 West Ocean
20 Boulevard, Long Beach, California, 90802, for lack of subject
21 matter jurisdiction pursuant to 28 U.S.C. § 1447(c); (2) the
22 Clerk send a certified copy of this Order to the state court; and
23 (3) the Clerk serve copies of it on the parties.

24 IT IS SO ORDERED.

25 DATED: 10/16/12



GEORGE H. KING
CHIEF U.S. DISTRICT JUDGE

26 Presented by:

27 Jean Rosenbluth
28 Jean Rosenbluth
U.S. Magistrate Judge