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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE

BY: 

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WELLS FARGO BANK,
NATIONAL ASSOCIATION,

Plaintiff,

vs.

MIGUEL LOZANO AKA JOSE
MIGUEL LOZANO; ADAN
FERNANDEZ AKA ADAN
FERNANDEZ, SR., THE
MUSIC ROOM, A BUSINESS
OF UNKNOWN FORM; AND
DOES 1-100 IN OCCUPANCY,
INCLUSIVE,

Defendants.

Case No. EDCV 13-1121-UA (DUTYx)

ORDER SUMMARILY REMANDING
IMPROPERLY-REMOVED ACTION

The Court will remand this unlawful detainer action to state court summarily because it has been removed improperly.

On June 24, 2013, defendant The Music Room, having been sued in what appears to be a routine unlawful detainer action in California state court, lodged a Notice of Removal of that action to this Court and also presented an application to proceed *in forma pauperis*. The Court has denied the latter application under separate cover because the action was not properly removed. To prevent the action from

1 remaining in jurisdictional limbo, the Court issues this Order to remand the action to
2 state court.

3 Simply stated, plaintiff could not have brought this action in federal court in
4 the first place, in that defendant does not competently allege facts supplying either
5 diversity or federal-question jurisdiction, and therefore removal is improper. 28
6 U.S.C. §1441(a); see Exxon Mobil Corp v. Allapattah Svcs., Inc., 545 U.S. 546, 563,
7 125 S. Ct. 2611, 162 L. Ed. 2d 502 (2005).

8 To the extent defendant asserts 18 U.S.C. § 1001 as a basis for jurisdiction, that
9 provision is a federal criminal statute, and, as such, defendant may not maintain an
10 action thereunder, as the Attorney General of the United States, or his designee, is
11 vested with the exclusive authority to maintain federal criminal proceedings. See e.g.
12 Ponzi v. Fessenden, 258 U.S. 254, 262, 42 S. Ct. 309, 66 L. Ed. 607 (1922); U.S. v.
13 Singleton, 165 F.3d 1297, 1299-300 (“[o]nly officers of the Department of Justice or
14 the United States Attorney can represent the United States in the prosecution of a
15 criminal case.”)

16 Nor does plaintiff’s unlawful detainer action raise any federal legal question.
17 See 28 U.S.C. §§ 1331, 1441(b).

18 Accordingly, IT IS ORDERED that (1) this matter be REMANDED to the
19 Superior Court of California, San Bernardino County, 303 West 3rd Street, San
20 Bernardino, CA 92415, for lack of subject matter jurisdiction pursuant to 28 U.S.C.
21 § 1447(c); (2) that the Clerk send a certified copy of this Order to the state court; and
22 (3) that the Clerk serve copies of this Order on the parties.

23 IT IS SO ORDERED.

24 DATED: 2/3/13

25 Presented by:

26 David T. Bristow

27 David T. Bristow
28 United States Magistrate Judge

George H. King
DEAN D. FREEMAN
GEORGE H. KING
CHIEF UNITED STATES DISTRICT JUDGE

Acting Chief Judge