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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

EXTENDED STAY AMERICA,  Plaintiff,  v.  DAKARAI BRUCE,  Defendants.	}	Case No. SA CV 15-01909-JVS (DFMx)  ORDER REMANDING CASE TO STATE COURT
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The Court sua sponte REMANDS this action to the California Superior Court for the County of Orange for lack of subject matter jurisdiction, as set forth below.

“The right of removal is entirely a creature of statute and ‘a suit commenced in a state court must remain there until cause is shown for its transfer under some act of Congress.’” Syngenta Crop Protection, Inc. v. Henson, 537 U.S. 28, 32 (2002) (quoting Great Northern R. Co. v. Alexander, 246 U.S. 276, 280 (1918)). Where Congress has acted to create a right of removal, those statutes are strictly construed against removal jurisdiction. Id.; Nevada v. Bank of America Corp., 672 F.3d 661, 667 (9th Cir. 2012); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

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1 Unless otherwise expressly provided by Congress, a defendant may remove “any  
2 civil action brought in a State court of which the district courts of the United States have  
3 original jurisdiction.” 28 U.S.C. § 1441(a); Dennis v. Hart, 724 F.3d 1249, 1252 (9th Cir.  
4 2013). The removing defendant bears the burden of establishing federal jurisdiction. Abrego  
5 Abrego v. Dow Chemical Co., 443 F.3d 676, 682 (9th Cir. 2006); Gaus, 980 F.2d at 566-67.  
6 “Under the plain terms of § 1441(a), in order properly to remove [an] action pursuant to that  
7 provision, [the removing defendant] must demonstrate that original subject-matter  
8 jurisdiction lies in the federal courts.” Syngenta Crop Protection, 537 U.S. at 33. Failure to  
9 do so requires that the case be remanded, as “[s]ubject matter jurisdiction may not be  
10 waived, and . . . the district court must remand if it lacks jurisdiction.” Kelton Arms Condo.  
11 Owners Ass’n v. Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003). “If at any time  
12 before final judgment it appears that the district court lacks subject matter jurisdiction, the  
13 case shall be remanded.” 28 U.S.C. § 1447(c). It is “elementary that the subject matter  
14 jurisdiction of the district court is not a waivable matter and may be raised at anytime by  
15 one of the parties, by motion or in the responsive pleadings, or sua sponte by the trial or  
16 reviewing court.” Emrich v. Touche Ross & Co., 846 F.2d 1190, 1194 n.2 (9th Cir. 1988).

17 From a review of the Notice of Removal and the state court records provided, it is  
18 evident that the Court lacks subject matter jurisdiction over the instant case, for the  
19 following reasons.

20 No basis appears for federal question jurisdiction. The Complaint does not include  
21 any claim “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C.  
22 § 1331. Removing defendant(s) asserts that the affirmative defenses at issue give rise to  
23 federal question jurisdiction, but “the existence of federal jurisdiction depends solely on the  
24 plaintiff’s claims for relief and not on anticipated defenses to those claims.” ARCO Env’tl.  
25 Remediation, L.L.C. v. Dept. of Health and Env’tl. Quality, 213 F.3d 1108, 1113 (9th Cir.  
26 2000). An “affirmative defense based on federal law” does not “render[] an action brought  
27 in state court removable.” Berg v. Leason, 32 F.3d 422, 426 (9th Cir. 1994). A “case may  
28 not be removed to federal court on the basis of a federal defense . . . even if the defense is

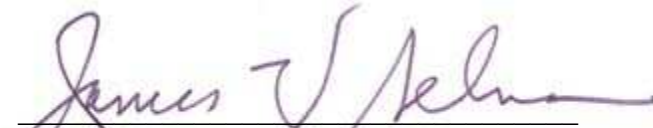
1 anticipated in the plaintiff's complaint, and even if both parties admit that the defense is the  
2 only question truly at issue in the case." Franchise Tax Bd. v. Construction Laborers  
3 Vacation Trust, 463 U.S. 1, 14 (1983). The underlying action is an unlawful detainer  
4 proceeding, arising under and governed by the laws of the State of California.

5 Diversity jurisdiction is also lacking. Every defendant is not alleged to be diverse  
6 from every plaintiff. 28 U.S.C. § 1332(a). Moreover, the Complaint does not allege damages  
7 in excess of \$75,000; to the contrary, the Complaint expressly states that the amount  
8 demanded is less than \$25,000. Defendant has not shown, by a preponderance of the  
9 evidence, that the amount in controversy requirement has been met. 28 U.S.C. § 1332;  
10 Abrego Abrego, 443 F.3d at 683. In determining whether a challenged jurisdictional amount  
11 has been met, district courts assess only the allegations in the complaint. St. Paul  
12 Reinsurance Co. v. Greenburg, 134 F.3d 1250, 1254 (5th Cir. 1998) (citing St. Paul Mercury  
13 Indem. Co. v. Red Cab Co., 303 U.S. 283, 292 (1938). Thus, the amount in controversy is  
14 determined without regard to any counterclaim to which the defendant may be entitled. See  
15 Snow v. Ford Motor Co., 561 F.2d 787, 789 (9th Cir.1977); Ochoa v. Interbrew Am., Inc.,  
16 999 F.2d 626 (2d Cir.1993).

17 IT IS THEREFORE ORDERED that this matter be, and hereby is, REMANDED  
18 to the Superior Court of California listed above, for lack of subject matter jurisdiction.

19 IT IS SO ORDERED.

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21 Dated: November 19, 2015

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23 HONORABLE JAMES V. SELNA  
24 UNITED STATES DISTRICT JUDGE  
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