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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

HSBC BANK USA, NA, AS TRUSTEE ON )  
BEHALF OF ACE SECURITIES CORP. )  
HOME EQUITY LOAN TRUST AND FOR )  
THE REGISTERED HOLDERS OF ACE )  
SECURITIES CORP. HOME EQUITY )  
LOAN TRUST, SERIES 2007-ASAP1 )  
ASSET BACKED PASS-THROUGH )  
CERTIFICATES, )  
  
Plaintiff, )  
  
v. )  
  
ERIC VALENCIA, HILDA VALENCIA, )  
  
Defendants. )

1:09-cv-1260 OWW BAK  
ORDER AFTER SCHEDULING  
CONFERENCE

I. Date of Scheduling Conference.

November 18, 2009.

II. Appearances Of Counsel.

Houser & Allison by Joshua H. Abel, Esq., appeared on behalf  
of Plaintiff.

Hilda Valencia appeared in pro se.

Also present is Antonio Machuca.

III. Summary of Pleadings.

1. This Court does not have jurisdiction over this matter

1 because there is no subject matter jurisdiction. The instant  
2 case was an unlawful detainer which was tried in May 2009 and for  
3 which Plaintiff obtained judgment. Under 28 U.S.C. § 1447(c),  
4 this case should be remanded to the State Court. Plaintiff's  
5 claims did not and do not arise under the laws of the United  
6 States. A case arises under federal law where federal law  
7 "creates the cause of action" or "the vindication of a right  
8 under state law necessarily turn[s] on some construction of  
9 federal law." *Franchise Tax Board v. Construction Laborers*  
10 *Vacation Trust*, 463 U.S. 1, 9 (1983) (internal citations  
11 omitted). In addition, where a Plaintiff claims to rely on a  
12 state remedy, but the rights she possesses are actually based on  
13 federal law, federal question jurisdiction exists. *Fristoe v.*  
14 *Reynolds Metals Co.*, 615 F.2d 1209, 1211-1212 (9th Cir. 1980).

15 2. Here, the Complaint filed was an unlawful detainer  
16 action for the possession of real property. There were no  
17 additional claims and there is neither federal question  
18 jurisdiction nor diversity jurisdiction, nor is any alleged in  
19 the Notice of Removal filed by Defendants.

20 3. Plaintiff filed an unlawful detainer complaint in the  
21 Superior Court of California, for the County of Kern on March 19,  
22 2009, case number S-1500-CL-236845. A true and correct copy of  
23 the Kern County Superior Court website docket is attached as  
24 Exhibit 1 to the Report of the Parties' for Mandatory Scheduling  
25 conference pursuant to Rule 26(f) filed herein ("Report"). On  
26 May 28, 2009, this matter proceeded to trial and judgment was  
27 rendered for Plaintiff. See Exhibit 1 attached to the Report.  
28 Subsequently, judgment was entered and a writ of possession

1 issued. Months later, on July 21, 2009, Defendants Eric Valencia  
2 and Hilda Valencia ("Defendants") filed a notice of removal  
3 bringing this action to this Court. Two days after that,  
4 Defendants filed a Chapter 13 Bankruptcy action, which was  
5 dismissed approximately a month later. See Exhibit 2 attached to  
6 the Report, which is a true and correct copy of the Bankruptcy  
7 Court's docket for the Defendants' Bankruptcy case. Defendants  
8 had no grounds to remove an unlawful detainer action to this  
9 Court and have not filed any documents since filing their Notice  
10 of Removal.

11 4. All claims and defenses in the instant matter were  
12 dealt with in the eviction trial in May 2009.

13 5. The Defendant, Hilda Valencia, has presented the Court  
14 with an "affidavit of non-response" and related documents filed  
15 with the Court on November 17, 2009.

#### 16 IV. Further Scheduling Conference.

17 1. Plaintiff disputes jurisdiction in this removed  
18 case and intends to file a notice for remand of the case to the  
19 State Court on or before November 26, 2009.

20 2. By virtue of the question concerning the  
21 jurisdiction of the United States Court and the propriety of  
22 removal to this Court, a Further Scheduling Conference shall be  
23 held following the hearing and decision on Plaintiff's Motion for  
24 Remand.

25 3. Following disposition of the removal and remand motion,  
26 a Further Scheduling Conference, if necessary, will be set.

27 4. The Correct address, 5524 Apple Tree Lane, Bakersfield,  
28 CA 93309 is shown in the docket and that is where the Valencias

1 are to be served.

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4 IT IS SO ORDERED.

5 Dated: November 19, 2009

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE

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