

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

09-CV-1260-OWW-JLT

MEMORANDUM DECISION AND
ORDER RE: PLAINTIFF'S
MOTION TO REMAND (Doc. 9)

I. INTRODUCTION

Before the court is a motion to remand brought by Plaintiff 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"). Defendants Eric Valencia and Hilda Valencia ("Defendants"), who removed this case, have not filed an opposition. The following background facts are taken from Plaintiff's submissions in connection with this motion and other documents on file in this case.

II. BACKGROUND

A. Procedural History

On July 21, 2009, Defendants filed a notice of removal (Doc. 1) which purports to remove an unlawful detainer action that Plaintiff filed against Defendants in Kern County Superior Court.

1 The notice of removal includes a copy of the state court complaint.
2 (Doc. 1, Ex. A.) The complaint is entitled "Verified Complaint For
3 Unlawful Detainer," and, on its face, specifically requests "less
4 than \$10,000" in recovery. (*Id.*) The complaint is two pages long
5 and asserts only one state law claim for unlawful detainer. No
6 federal claims are pled.

7 In their notice of removal, Defendants assert that removal is
8 proper by virtue of federal question jurisdiction and diversity
9 jurisdiction. With respect to diversity, in their notice of
10 removal, Defendants state that their "current residence is that of
11 the State of California" and "[f]rom the allegations set forth in
12 the State Court Complaint," they "[b]elieve that the amount of
13 controversy exceeds \$75,000." (Doc. 1 at 2.)

14 B. Plaintiff's Motion To Remand

15 On November 11, 2009, Plaintiff filed its motion to remand
16 (Doc. 9) in which Plaintiff argues that federal subject matter
17 jurisdiction is lacking. Plaintiff contends that neither federal
18 question nor diversity jurisdiction exist.

19 20 III. STANDARD OF DECISION

21 "A defendant may remove an action to federal court based on
22 federal question jurisdiction or diversity jurisdiction." *Hunter v.*
23 *Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009) (*citing* 28
24 U.S.C. § 1441). It is presumed, however, "that a cause lies
25 outside [the] limited jurisdiction [of the federal courts] and the
26 burden of establishing the contrary rests upon the party asserting
27 jurisdiction.'" *Id.* (alterations in original) (internal quotation
28 marks omitted).

1 "Federal jurisdiction must be rejected if there is any doubt
2 as to the right of removal in the first instance." *Gaus v. Miles,*
3 *Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The defendant always
4 bears the burden of establishing that removal is proper and the
5 court "resolves all ambiguity in favor of remand." *Hunter*, 582 F.3d
6 at 1042. Even absent a formal motion to remand, a "district court
7 ha[s] a duty to establish subject matter jurisdiction over the
8 removed action *sua sponte*." *United Investors Life Ins. Co. v.*
9 *Waddell & Reed Inc.*, 360 F.3d 960, 967 (9th Cir. 2004). A district
10 court must remand a removed case if at any time before final
11 judgment it appears that the district court lacks subject matter
12 jurisdiction. 28 U.S.C. § 1447(c); *Bruns v. Nat'l Credit Union*
13 *Admin*, 122 F.3d 1251, 1257-58 (9th Cir. 1997).

14 A. Removal Based On Federal Question Jurisdiction

15 To determine whether removal is proper based on "federal
16 question jurisdiction, the well-pleaded complaint rule provides
17 that federal jurisdiction exists only when a federal question is
18 presented on the face of the plaintiff's properly pleaded
19 complaint." *Hunter*, 582 F.3d at 1042 (internal quotation marks
20 omitted). Under the well-pleaded complaint rule, federal question
21 jurisdiction attaches "only when the plaintiff's statement of his
22 own cause of action shows that it is based upon [federal law]."
23 *Vaden v. Discover Bank*, __ U.S. __, 129 S. Ct. 1262, 1272 (2009)
24 (alteration in original) (internal quotation marks omitted). More
25 specifically, federal question jurisdiction exists "if a
26 well-pleaded complaint establishes either that [1] federal law
27 creates the cause of action or that [2] the plaintiff's right to
28 relief necessarily depends on resolution of a substantial question

1 of federal law." *Armstrong v. Northern Mariana Islands*, 576 F.3d
2 950, 955 (9th Cir. 2009) (internal quotation marks omitted).

3 Consistent with the well-pleaded complaint rule, a
4 counterclaim, even if completely preempted by federal law, cannot
5 provide the basis for federal question jurisdiction and support
6 removal. *Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc.*,
7 535 U.S. 826, 830-32 & n.2 (2002); *Vaden v. Discover Bank*, ___
8 U.S. ___, 129 S. Ct. 1262, 1273, 1276 (2009). Nor can federal
9 jurisdiction "be predicated on an actual or anticipated defense."
10 *Vaden*, 129 S. Ct. at 1272. In removed cases, federal "jurisdiction
11 must be analyzed on the basis of the pleadings filed at the time of
12 removal without reference to subsequent amendments." *Sparta*
13 *Surgical Corp. v. Nat'l Ass'n of Sec. Dealers, Inc.*, 159 F.3d 1209,
14 1213 (9th Cir. 1998); see also *Williams v. Costco Wholesale Corp.*,
15 471 F.3d 975, 976 (9th Cir. 2006) ("[P]ost-removal amendments to
16 the pleadings cannot affect whether a case is removable, because
17 the propriety of removal is determined solely on the basis of the
18 pleadings filed in state court.").

19 B. Removal Based On Diversity Jurisdiction

20 As to diversity jurisdiction, federal district courts have
21 subject matter jurisdiction over suits for more than \$75,000 where
22 the citizenship of each plaintiff is different from that of each
23 defendant. 28 U.S.C. § 1332(a); see also *Hunter*, 582 F.3d at 1043.
24 Section 1441(b) limits removal in diversity cases to those where
25 "none of the parties in interest properly joined and served as
26 defendants is a citizen of the State in which such action is
27 brought." In other words, "§ 1441(b) confines removal on the basis
28 of diversity jurisdiction to instances where no defendant is a

1 citizen of the forum state." *Lively v. Wild Oats Markets, Inc.*, 456
2 F.3d 933, 939 (9th Cir. 2006). The status of the parties'
3 citizenship and the amount in controversy can be determined from
4 the complaint or from other sources, including statements made in
5 the notice of removal. See *Kanter v. Warner-Lambert Co.*, 265 F.3d
6 853, 857 (9th Cir. 2001) (examining complaint and notice of removal
7 for citizenship determination); *Valdez v. Allstate Ins. Co.*, 372
8 F.3d 1115, 1117 (9th Cir. 2004); ("[W]e reiterate that the
9 amount-in-controversy inquiry in the removal context is not
10 confined to the face of the complaint."); *Cohn v. Petsmart, Inc.*,
11 281 F.3d 837, 839-40 & n.2 (9th Cir. 2002) (considering settlement
12 demand letter for purposes of determining amount in controversy).
13 For removal purposes, diversity jurisdiction is analyzed and must
14 exist "as of the time the complaint is filed and removal is
15 effected." *Strotek Corp. v. Air Transport Ass'n of Am.*, 300 F.3d
16 1129, 1131 (9th Cir. 2002).

17 18 IV. DISCUSSION AND ANALYSIS

19 After reviewing Plaintiff's complaint and Defendants' notice
20 of removal, neither federal question jurisdiction nor diversity
21 jurisdiction exist. Because federal jurisdiction is lacking, this
22 case must be remanded.

23 A. Federal Question

24 On its face, the complaint does not show it is based on
25 federal law. The removed complaint contains only one state law
26 cause of action for unlawful detainer. No federal claims are pled
27 in the complaint, and there is no indication that Plaintiff's right
28 to relief necessarily depends on the resolution of a substantial

1 question of federal law (or any question of federal law for that
2 matter).

3 In their notice of removal, Defendants support their assertion
4 of federal question jurisdiction by citing to a document Defendants
5 drafted and attached to their notice of removal. (Doc. 1 at 2.)
6 This document is entitled "Affidavit Of Negative Averment,
7 Opportunity to Cure, And Counterclaim." The top of the document
8 reads "UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
9 CALIFORNIA" and the words "In Admiralty" appear next to the
10 caption. The document purports to be some sort of federal pleading
11 containing a counterclaim. Upon examination, the document has
12 nothing to do with admiralty; rather, it concerns Defendants'
13 mortgage. For several reasons, this document does not and cannot
14 support removal on the basis of federal question jurisdiction.

15 First, this document is not part of Plaintiff's complaint;
16 rather, it is some type of responsive pleading drafted by
17 Defendants and submitted in connection with their notice of
18 removal. Under the well-pleaded complaint, this document cannot
19 confer, or be considered for purposes of determining, federal
20 question jurisdiction. See *Vaden*, 129 S. Ct. at 1272 (federal
21 question jurisdiction exists "only when the *plaintiff's* statement
22 of his own cause of action shows that it is based upon [federal
23 law]") (emphasis added) (alteration in original); *California ex*
24 *rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004)
25 (the federal question "must be disclosed upon *the face of the*
26 *complaint*, unaided by the answer or by the petition for removal")
27 (emphasis added) (internal quotation marks omitted).

28 Second, considering this document would not only violate the

1 well-pleaded complaint rule, but also the rule that "jurisdiction
2 must be analyzed on the basis of the pleadings filed at the time of
3 removal." *Sparta Surgical Corp*, 159 F.3d at 1213. This document
4 was not part of the pleadings at the time of removal; rather,
5 Defendants filed this document in federal court with their notice
6 of removal. "[B]ecause the propriety of removal is determined
7 solely on the basis of the pleadings filed in state court,"
8 *Williams*, 471 F.3d at 976, this document cannot confer, or be
9 considered for purposes of determining, federal question
10 jurisdiction.

11 Federal question jurisdiction is lacking and removal cannot be
12 justified on this basis.

13 B. Diversity

14 As for diversity jurisdiction, there are at least four reasons
15 why it cannot justify removal. First, there are no allegations in
16 the complaint or in the notice of removal about Defendants' state
17 of "citizenship."

18 As for the complaint, it merely alleges that each Defendant is
19 a "natural person" who, at a given point in time, "occupied"
20 certain premises in California. (Doc. 1, Ex. A. 1-2.) This
21 allegation of mere physical occupancy is not equivalent to, and
22 falls short of, an allegation of citizenship. See *Kanter*, 265 F.3d
23 at 857 (recognizing that a person's physical location is not
24 determinative of their state of citizenship); see also *Lew v. Moss*,
25 797 F.2d 747, 750 (9th Cir. 1986) (same). The complaint's lack of
26 allegations regarding citizenship is understandable. The
27 "citizenship of the parties or the corporation's principal place of
28 business or its state of incorporation normally will not be set

1 forth in a complaint filed in a state court so that that pleading
2 therefore will not reveal the existence of diversity of citizenship
3 jurisdiction." *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 693
4 (9th Cir. 2005) (internal quotation marks omitted).

5 Like Plaintiff's complaint, Defendants' notice of removal is
6 also deficient with respect to citizenship allegations. In the
7 notice of removal, Defendants state only that their "current
8 residence is that of the State of California." (Doc. 1 at 2.) As
9 explained in *Kanter*, however, allegations of "residency" are not
10 equivalent to allegations of "citizenship" which support diversity
11 jurisdiction:

12 Plaintiffs' complaint and Pfizer's notice of removal both
13 state that Plaintiffs were 'residents' of California. But
14 the diversity jurisdiction statute, 28 U.S.C. § 1332,
15 speaks of citizenship, not of residency. To be a citizen
16 of a state, a natural person must first be a citizen of
17 the United States. The natural person's state
18 citizenship is then determined by her state of domicile,
19 not her state of residence. A person's domicile is her
20 permanent home, where she resides with the intention to
21 remain or to which she intends to return. A person
22 residing in a given state is not necessarily domiciled
23 there, and thus is not necessarily a citizen of that
24 state. In this case, neither Plaintiffs' complaint nor
25 Pfizer's notice of removal made any allegation regarding
26 Plaintiffs' state citizenship. Since the party asserting
27 diversity jurisdiction bears the burden of proof,
28 Pfizer's failure to specify Plaintiffs' state citizenship
was fatal to Defendants' assertion of diversity
jurisdiction.

22 265 F.3d at 857-58 (internal citations omitted); see also *Harris*,
23 425 F.3d at 695 ("The face of Harris' initial pleading did not
24 affirmatively reveal information to trigger removal based on
25 diversity jurisdiction because the initial pleading only stated
26 Brown's 1972 residency, not his citizenship"). Here, as in
27 *Kanter*, neither the notice of removal nor the complaint include any
28

1 allegations regarding Defendants' state of citizenship. This is
2 fatal to their assertion of diversity jurisdiction.

3 Second, the notice of removal alleges that Defendants'
4 "current residence" is in California. (Doc. 1 at 2.) To justify
5 removal on diversity grounds, diversity of citizenship must exist
6 "as of the filing of the complaint." *Harris*, 425 F.3d at 695-96.
7 The *current* residence of Defendants does not demonstrate that they
8 were residents, let alone citizens, of California *as of the filing*
9 *of the complaint*.¹

10 Third, there is nothing in the complaint or in the notice of
11 removal about *Plaintiff's* state of citizenship. The complaint
12 merely states that Plaintiff is a "national association qualified
13 to do business in California" and nothing more. (Doc. 1., Ex. A. at
14 1.) Defendants' notice of removal provides no further information.
15 The notice of removal does not include any allegations regarding
16 Plaintiff's status as an association or any corresponding
17 allegations about Plaintiff's state of citizenship.² The complaint
18

19 ¹ Even if Defendants were citizens of California, this would
20 have barred their ability to remove on the basis of diversity
21 jurisdiction because "§ 1441(b) confines removal on the basis of diversity
22 jurisdiction to instances where no defendant is a citizen of the
23 forum state." *Lively*, 456 F.3d at 939. However, the Ninth Circuit
24 has concluded that this limitation, also called the "forum
25 defendant rule," is procedural or non-jurisdictional in nature and,
26 accordingly, is waived unless timely raised. *Id.* at 939, 942.
27 Plaintiff does not mention the forum defendant rule and appears to
28 have waived the issue.

26 ² Plaintiff's state of citizenship depends upon what type of
27 entity it is. See *Johnson v. Columbia Props. Anchorage, LP*, 437
28 F.3d 894, 899 (9th Cir. 2006) (explaining that, for purposes of
diversity jurisdiction, a trust has the citizenship of its
trustees, an unincorporated association has the citizenship of its

1 and the notice of removal fail to indicate Plaintiff's state of
2 citizenship, and this too is fatal to Defendants' assertion of
3 diversity jurisdiction.

4 Fourth, apart from citizenship issues, the amount in
5 controversy requirement is not satisfied. In order to remove the
6 unlawful detainer action, Defendants "must show that the matter in
7 controversy exceeds the sum or value of \$75,000, exclusive of
8 interest and costs." *Valdez*, 372 F.3d at 1116 (internal quotation
9 marks omitted). The state court complaint, on its face, expressly
10 requests "less than \$10,000."³ This amount is far below the
11 monetary threshold necessary to invoke diversity jurisdiction.

12 Plaintiff, citing *Guglielmino v. McKee Foods Corp.*, 506 F.3d
13 696, 699 (9th Cir. 2007), argues that because it expressly
14 requested less than the jurisdictional amount in its state court
15 complaint, to justify removal Defendants must "prove to a legal
16 certainty that [P]laintiff's claim" exceeds \$75,000. In the Ninth
17 Circuit, depending upon the allegations in the complaint, there are
18 different burdens of proof placed upon removing parties with
19 respect to establishing the requisite amount in controversy. See
20 *Guglielmino*, 506 F.3d at 699.

21 In *Guglielmino* the Ninth Circuit discussed one of its recent
22 removal cases, *Lowdermilk v. U.S. Bank National Ass'n*, 479 F.3d 994

23 _____
24 members, and a corporation is deemed a citizen of the state in
25 which it is incorporated and of the state where it has its
26 principal place of business).

27 ³ In addition, the Civil Case Cover Sheet accompanying the
28 complaint indicates that it is a "Limited" civil case in which the
"[a]mount demanded is \$26,000 or less."

1 (9th Cir. 2007), which dealt with a removal in a case involving the
2 Class Action Fairness Act ("CAFA"). The *Guglielmino* court
3 discussed its holding in *Lowdermilk*, stating "we held in the CAFA
4 context that when a state-court complaint affirmatively alleges
5 that the amount in controversy is less than the jurisdictional
6 threshold, the 'party seeking removal must prove with legal
7 certainty that CAFA's jurisdictional amount is met.'" *Guglielmino*,
8 506 F.3d at 699 (quoting *Lowdermilk*, 479 F.3d at 1000) (emphasis
9 added). In a footnote, the *Guglielmino* court discussed and left
10 open the question whether the *Lowdermilk* "legal certainty" standard
11 applies only in the CAFA context. 506 F.3d at 700 n.3. The
12 *Guglielmino* court then determined that the state court complaint at
13 issue failed to "allege a sufficiently specific total amount in
14 controversy," 506 F.3d at 701, and therefore the "legal certainty"
15 standard, even if it applied outside the CAFA context, was not
16 implicated. The *Guglielmino* court then analyzed the case under the
17 "preponderance of the evidence" standard. This standard applies
18 when it is not evident from the face of the state court complaint
19 whether the requisite amount in controversy is pled. *Guglielmino*,
20 506 F.3d at 699. More specifically, "[w]here it is not facially
21 evident from the complaint that more than \$75,000 is in
22 controversy, the removing party must prove, by a preponderance of
23 the evidence, that the amount in controversy meets the
24 jurisdictional threshold." *Matheson v. Progressive Speciality Ins.*
25 *Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003); see also *Valdez*, 372 F.3d
26 at 1117. Under this preponderance of the evidence standard, "the
27 defendant bears the burden of actually proving the facts to support
28 jurisdiction, including the jurisdictional amount." *Sanchez v.*

1 *Monumental Life Ins. Co.*, 102 F.3d 398, 403 (9th Cir. 1996)
2 (internal quotation marks omitted). The defendant must "provide
3 evidence establishing that it is more likely than not that the
4 amount in controversy exceeds" \$75,000. *Valdez*, 372 F.3d at 1117
5 (internal quotation marks omitted).

6 Here, it need not be determined whether the *Lowdermilk* "legal
7 certainty" standard applies. Even under the more lenient
8 preponderance of the evidence standard, Defendants have not met
9 their burden of proof.

10 The notice of removal states that Defendants "[b]elieve the
11 amount of controversy exceeds \$75,000." (Doc. 1 at 2.) This is not
12 enough. "Conclusory allegations as to the amount in controversy,"
13 such as this, "are insufficient." *Matheson*, 319 F.3d at 1090-91.
14 In addition, "information and *belief* hardly constitutes proof by a
15 preponderance of the evidence." *Valdez*, 372 F.3d at 1117 (emphasis
16 added) (internal quotation marks omitted). Defendants have
17 provided no other evidence and have not proved, by a preponderance
18 of the evidence, that it is more likely than not that the amount in
19 controversy exceeds \$75,000.

20 For all these reasons, diversity jurisdiction is lacking and
21 removal cannot be justified on this basis.

22 23 V. CONCLUSION

24 Defendants have not shown that removal was proper. Neither
25 federal question nor diversity jurisdiction supports removal in
26 this case. Because subject matter jurisdiction is lacking,
27 Plaintiff's motion to remand is GRANTED and this case is ORDERED
28 remanded to the Kern County Superior Court.

1 Within five (5) days following electronic service of this
2 Memorandum Decision Plaintiff shall submit a form of order
3 consistent with this decision.

4
5
6 IT IS SO ORDERED.

7 **Dated:** February 10, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28