

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  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FEDERAL HOME LOAN MORTGAGE  
CORPORATION,

Plaintiff,

v.

JULIAN GALLARDO,

Defendant.

1:10-cv-02337 OWW DLB

ORDER GRANTING UNOPPOSED  
MOTION TO REMAND (DOC. 4)

This action concerns real property located at 2409  
Park Brae Way, Modesto, CA 95358 ("Subject Property").  
Plaintiff, Federal Home Loan Mortgage Corporation  
("Freddie Mac"), purchased the Subject Property at a  
trustee's sale on June 8, 2010. Doc. 1 at page 12 of 19.  
Freddie Mac's title was perfected by the recording of the  
Trustee's Deed Upon Sale. *Id.* Defendant Julian Gallardo  
was served with a written 3-Day Notice to Vacate on July  
15, 2010. *Id.* Defendant failed to comply with the  
Notice to Vacate, and Freddie Mac filed an action for  
unlawful detainer in Stanislaus County Superior Court on

1 August 10, 2010. *Id.* Defendant filed an Answer and  
2 trial was scheduled for November 16, 2010.

3 After trial on November 16, 2010, the Superior Court  
4 found Freddie Mac was entitled to possession of the  
5 Subject Property but that no lockout would occur prior to  
6 December 5, 2010. Plaintiff's Request for Judicial  
7 Notice ("PRJN") at Ex. A. Judgment was entered in favor  
8 of Plaintiff and a writ of possession issued on December  
9 10, 2010. *Id.*

11 Defendant removed the underlying action to this Court  
12 on December 15, 2010. Doc. 1. Shortly thereafter, on  
13 December 17, 2010, Defendant filed for Chamber 13,  
14 Bankruptcy protection in the United States Bankruptcy  
15 Court for the Eastern District of California, Petition  
16 No. 10-94880. PRJN, Ex. B. The automatic bankruptcy  
17 stay prevented Plaintiff from executing the writ of  
18 possession on December 10, 2010. On February 24, 2011,  
19 Freddie Mac obtained relief from the automatic stay.  
20 RJN, Ex. C. According to Freddie Mac's motion, lockout  
21 was scheduled and completed on March 2, 2011. Possession  
22 of the property is no longer in dispute. Freddie Mac now  
23 requests remand of this case to Stanislaus County  
24 Superior Court. Doc. 4. Defendant, who proceeds *pro se*,  
25 has not filed an opposition and failed to appear at oral  
26  
27  
28

1 argument on this motion.

2 The standard for removal is set forth in 28 U.S.C. §  
3 1441, which provides that a defendant may remove to  
4 federal court any action over which the federal court  
5 would have original jurisdiction:  
6

7 Except as otherwise expressly provided by Act of  
8 Congress, any civil action brought in a State  
9 court of which the district courts of the United  
10 States have original jurisdiction, may be  
11 removed by the defendant or the defendants, to  
12 the district court of the United States for the  
13 district and division embracing the place where  
14 such action is pending. For purposes of removal  
15 under this chapter, the citizenship of  
16 defendants sued under fictitious names shall be  
17 disregarded.

18 28 U.S.C. § 1441(a).

19 Federal courts have original jurisdiction over civil  
20 actions arising under the U.S. Constitution, federal  
21 laws, or treaties of the United States -- so called  
22 "federal questions." 28 U.S.C. § 1331. Federal Question  
23 jurisdiction is governed by the "well-pleaded complaint  
24 rule," which provides that the federal question must be  
25 presented on the face of the plaintiff's properly pleaded  
26 complaint. *Wayne v. DHL Worldwide Express*, 294 F.3d  
27 1179, 1183 (9th Cir. 2002). The existence of a defense  
28 based on federal law is insufficient. *Id.* Here, there  
is no federal question jurisdiction because the face of  
the complaint reveals only one claim: a state law cause

1 of action for unlawful detainer, to recover possession of  
2 real property, an inherently local action, involving the  
3 law of real property and contract.

4           Alternatively, a Federal Court may assert original  
5 jurisdiction over civil actions where the matter in  
6 controversy exceeds \$75,000 in value, exclusive of  
7 interest and costs, and is between citizens of different  
8 States, pursuant to the "diversity" statute, 28 U.S.C. §  
9 1331. Even assuming the truth of the allegation in the  
10 complaint that the amount in controversy is \$95,000,  
11 removal of diversity cases is limited to situations where  
12 "none of the parties in interest properly joined and  
13 served as defendants is a citizen of the State in which  
14 such action is brought." 28 U.S.C. 1441(b). Here, based  
15 on Julian Gallardo's own admission in his removal papers,  
16 he is a resident of California, Doc. 1, Defendant is a  
17 citizen of the state in which this action is brought and  
18 therefore is barred from removing this case to federal  
19 court.

20  
21  
22           Plaintiff also requests that it be allowed to recover  
23 its reasonable fees and costs incurred in filing this  
24 motion for remand, in the amount of \$675 plus costs. 28  
25 U.S.C. § 1447 provides that "[a]n order remanding the  
26 case may require payment of just costs and any actual  
27  
28

1 expenses, including attorney fees, incurred as a result  
2 of the removal." "Absent unusual circumstances, courts  
3 may award attorney's fees under § 1447(c), only where the  
4 removing party lacked an objectively reasonable basis for  
5 seeking removal." *Martin v. Franklin Capital Corp.*, 546  
6 U.S. 132, 141 (2005). A pro se defendant is "entitled  
7 to more leeway in his attempt to comply with the removal  
8 statute, as long as it was not objectively unreasonable."  
9 *HSBC Bank USA, N.A. v. Bryant*, 2009 WL 3787195 (S.D. Cal.  
10 Nov. 10, 2009). Nevertheless, pro se litigants "must  
11 follow the same rules of procedure that govern other  
12 litigants." *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir.  
13 1987). Defendant has failed to offer any explanation for  
14 his removal, which fails to comply with the facial  
15 requirements of the removal statute, and has filed no  
16 opposition.  
17  
18

19 Plaintiff's fee request includes 2.0 billable hours  
20 to prepare the motion and an anticipated additional one  
21 (1.0) hour to attend the hearing (at \$225.00/hour), for a  
22 total of \$675, is reasonable  
23

#### 24 CONCLUSION

25 For the reasons set forth above:

26 (1) This action is REMANDED to Stanislaus County  
27 Superior Court; and  
28

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

(2) Plaintiff's request for \$675.00 in attorney's fees and costs associated with this remand motion is GRANTED.

Plaintiff shall submit a proposed order consistent with this memorandum decision within five (5) days following electronic service.

SO ORDERED  
Filed: July 18, 2011

/s/ Oliver W. Wanger  
United States District Judge