1

2

3

4

5

6

7

8   **IN THE UNITED STATES DISTRICT COURT**

9   **FOR THE EASTERN DISTRICT OF CALIFORNIA**

10

11 FEDERAL HOME LOAN   ) Case No.: 1:11-cv-00711 AWI JLT
    MORTGAGE CORPORATION,   )
12   ) ORDER ADOPTING THE FINDINGS AND
                          Plaintiff,   ) RECOMMENDATION GRANTING THE
13   v.   ) MOTION TO REMAND THE MATTER TO
) THE KERN COUNTY SUPERIOR COURT
14   ) AND TO DISMISS THE MATTER
    SERGIO GARCIA, an individual,   )
15 MARK LOPEZ, an individual, and   )
    DOES 1 through 10 inclusive,   )
16   )
                          Defendants.   )
17 _____)

18   Sergio Garcia ("Garcia") seeks removal of an unlawful detainer action filed in Kern County

19 Superior Court by the plaintiff, Federal Home Loan Mortgage Corporation. (Doc. 1). Garcia seeks

20 to challenge the unlawful detainer action and raises numerous "causes of action" related to the

21 foreclosure of the real property.

22   On June 13, 2011, the Magistrate Judge recommended that the plaintiff's motion to remand

23 the matter to Kern County Superior Court be granted. (Doc. 8). The Magistrate Judge found

24 Garcia's removal was procedurally defective because it violated the "rule of unanimity" and was

25 untimely. Further, the Magistrate Judge determined Garcia failed to establish any basis for federal

26 court jurisdiction.

27   To remove a case to federal court in cases involving multiple defendants, such as the current

28 matter, the "rule of unanimity" requires that all defendants must join in a removal petition.

                                        1

Wisconsin Dept of Corrections v. Schacht, 524 U.S. 381, 393 (1998), citing *Chicago, Rock Island, &*
Pacific Railway Co. v. Martin, 178 U.S. 245, 248 (1900). The Magistrate Judge found Garcia failed
to indicate his co-defendant joins or consents to the removal. In addition to this defect, the
Magistrate Judge found Garcia failed to file his notice of removal within the thirty days required
under 28 U.S.C. § 1446(b).

As the party seeking removal to the federal Court, Garcia "bears the burden of actually
proving the facts to support jurisdiction, including the jurisdictional amount." *Sanchez v.*
Monumental Life Ins., 102 F.3d 398, 403 (9th Cir. 1996), *citing Gaus v. Miles*, 980 F.2d 564, 566-67
(9th Cir. 1992). The Magistrate Judge found that the underlying complaint in the unlawful detainer
action establishes the Court lacks jurisdiction, because an unlawful detainer action arises under state
law. *See Deutsche Bank Nat'l Trust Co v. Solih Jora*, 2010 U.S. Dist. LEXIS 105453, at *4 (E.D.
Cal. Oct. 1, 2010). Further, to have diversity jurisdiction, the amount in controversy must exceed the
sum or value of $75,000. 28 U.S.C. § 1332(a). However, the Magistrate Judge reviewed the state
court docket, and found it indicates the amount sought by Plaintiff in the action was less than
$10,000. Therefore, the Magistrate Judge concluded the Court lacks subject matter and diversity
jurisdiction.

Although Garcia was granted 21 days from June 13, 2011, or until July 5, 2011, to file
objections to the Magistrate Judge's Findings and Recommendations, he did not do so. Notably,
Garcia was advised that failure to file objections within the specified time may waive the right to
appeal the Court's order. (Doc. 8 at 5).

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C) and *Britt v. Simi Valley*
United School Dist., 708 F.2d 452, 454 (9th Cir. 1983), this Court has conducted a *de novo* review of
the case. Having carefully reviewed the entire file, the Court finds that the findings and
recommendation are supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1.   The Findings and Recommendations filed June 13, 2011, are

        ADOPTED IN FULL;

1   2.   The matter is **ORDERED** to be **REMANDED** to the Kern County Superior Court;

2   and

3   3.   The Clerk of Court **IS DIRECTED** to close this action because this order terminates

4   the action in its entirety.

5 IT IS SO ORDERED.

6

Dated: July 7, 2011

7   CHIEF UNITED STATES DISTRICT JUDGE