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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HSBC BANK USA, NATIONAL ASSOCIATION,)	1:11-cv-01100-LJO-JLT
)	ORDER GRANTING DEFENDANTS’
Plaintiff,)	MOTIONS TO PROCEED IN FORMA
)	PAUPERIS
v.)	(Docs. 2, 3)
)	
DANIEL LOPEZ and OLGA LOPEZ,)	FINDINGS AND RECOMMENDATION TO
)	REMAND THE MATTER TO KERN COUNTY
Defendants.)	SUPERIOR COURT
)	(Doc. 1)

Daniel Lopez and Olga Lopez (“Defendants”) seek to proceed *in forma pauperis* and *pro se* with an action removing an unlawful detainer action from Kern County Superior Court. Defendants filed a notice of removal on July 5, 2011 (Doc. 1), along with their individual motions to proceed *in forma pauperis*. (Docs. 2-3).

For the following reasons, Defendants motions to proceed *in forma pauperis* is **GRANTED**. However, the Court finds it lacks jurisdiction over this matter and recommends the matter be **REMANDED** to Kern County Superior Court.

I. Proceeding in forma paueris

The Court may authorize the commencement of an action without prepayment of fees

1 when an individual “submits an affidavit that includes a statement of all assets such person . . .
2 possesses [and] that the person is unable to pay such fees or give security therefor.” 28 U.S.C. §
3 1915(a). The Court has reviewed the applications and has determined Defendants satisfy the
4 requirements of 28 U.S.C. § 1915(a). Therefore, Defendants’s motions to proceed *in forma*
5 *pauperis* are **GRANTED**.

6 **II. Procedural History**

7 Plaintiff HSBC Bank USA, National Association, commenced this action by filing a
8 complaint for unlawful detainer in Kern County Superior Court against Daniel Lopez and Olga
9 Lopez on March 3, 2011, in case number S-1500-CL-257480. (Doc. 1, Exh. 1). On April 1,
10 2011, defendants filed a motion to quash their summons and sought an order dismissing the
11 action. (Doc. 1, Exh. 2).

12 On July 5, 2011, Defendants filed a “Notice of Removal,” thereby commencing the action
13 in this Court. (Doc. 1). Defendant’s notice for removal reads like a complaint for damages,
14 because Defendants seek quiet title of the property located at 9210 East Wilson Road,
15 Bakersfield, California, 93307. *Id.* at 2. Defendants assert the district court has jurisdiction over
16 the quiet title action pursuant 28 U.S.C. §§ 1346, 2410 .

17 **III. Removal Jurisdiction**

18 Pursuant to 28 U.S.C. § 1441(a), a defendant has the right to remove a matter to federal
19 court where the district court would have original jurisdiction. *Caterpillar, Inc. v. Williams*, 482
20 U.S. 286, 392 (1987). Specifically,

21 Except otherwise expressly provided by Act of Congress, any civil action brought in
22 a State court of which the district courts of the United States have original
23 jurisdiction, may be removed by the defendant or defendants, to the district court of
the United States for the district and division embracing the place where such action
is pending.

24 28 U.S.C. § 1441(a). District courts have “original jurisdiction of all civil actions arising under
25 the Constitution, laws, or treaties of the United States.” *Id.* at § 1331.

26 A party seeking removal must file a notice of removal of a civil action within thirty days
27 of receipt of a copy of the initial pleading. *Id.* at § 1446(b). Removal statutes are to be strictly
28 construed, and any doubts are to be resolved in favor of state court jurisdiction and remand. *See*

1 *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992). The party seeking removal bears the burden of
2 proving its propriety. *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996); *Abrego v. Dow*
3 *Chem. Co.*, 443 F.3d 676, 683-85 (9th Cir. 2006); *see also Calif. ex. rel. Lockyer v. Dynege, Inc.*,
4 2274 F.3d 831, 838 (“the burden of establishing federal jurisdiction falls to the party invoking the
5 statute”). The Court may remand an action to state court for lack of subject matter jurisdiction or
6 for defect in the removal procedure. 28 U.S.C. § 1447(c).

7 **IV. Discussion and Analysis**

8 In the context of removal, a district court must remand a case to state court if, at any time
9 before final judgment, the court determines it lacks subject matter jurisdiction. *See* 28 U.S.C. §
10 1447(c). Moreover, the Court is required to consider issues related to federal subject matter
11 jurisdiction and may do so *sua sponte*. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 93-
12 94 (1998).

13 Defendants “bear[] the burden of actually proving the facts to support jurisdiction,
14 including the jurisdictional amount.” *Sanchez v. Monumental Life Ins.*, 102 F.3d 398, 403 (9th
15 Cir. 1996), *citing Gaus*, 980 F.2d at 677-671; *see also Moore-Thomas v. Alaska Airlines, Inc.*,
16 553 F.3d 1241, 1244 (9th Cir. 2009) (“The presumption against removal means that the
17 defendant always has the burden of establishing that removal is proper.”). However, the
18 determination of federal question jurisdiction “is governed by the ‘well-pleaded complaint rule,’
19 which provides that federal jurisdiction exists only when a federal question is presented on the
20 face of plaintiff’s properly pleaded complaint.” *Caterpillar*, 482 U.S. at 392). Therefore, the
21 complaint must establish “either that [1] federal law creates the cause of action or that [2] the
22 plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal
23 law.” *Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage Leasehold &*
24 *Easement*, 524 F.3d 1090, 1100 (9th Cir. 2008), quoting *Franchise Tax Bd. v. Constr. Laborers*
25 *Vacation Trust*, 463 U.S. 1, 27-28 (1983).

26 The complaint filed in state court was an action for unlawful detainer. Importantly, an
27 unlawful detainer action does not arise under federal law, but arises instead under state law.
28 *Deutsche Bank Nat’l Trust Co v. Solih Jora*, 2010 U.S. Dist. LEXIS 105453, at *4 (E.D. Cal.

1 Oct. 1, 2010). Second, to have diversity jurisdiction, the amount in controversy must exceed the
2 sum or value of \$75,000. 28 U.S.C. § 1332(a). However, review of the original complaint filed
3 against Defendants establishes Plaintiff HSBC Bank USA, National Association sought less than
4 \$10,000 in the action. (Doc. 1, Exh. 1). The complaint clearly sets forth in the caption “Demand
5 up to \$10,000.00.” *Id.* Therefore, the Court lacks subject matter and diversity jurisdiction.

6 **V. Order**

7 Defendants have shown they are unable to pay the Court costs as required by 28 U.S.C. §
8 1915(a). Therefore, Defendants’s motions to proceed *in forma pauperis* (Docs. 2-3) are

9 **GRANTED.**

10 **VI. Findings and Recommendations**

11 Based upon the foregoing, the Court finds it lacks subject matter and diversity jurisdiction
12 over the matter. Accordingly, the Court **HEREBY RECOMMENDS:**

- 13 1. The matter be **REMANDED** to the Kern County Superior Court; and
- 14 2. Because the order remanding this matter to state court concludes this case, the
15 Clerk of the Court be directed to close this matter.

16 These Findings and Recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the
18 Local Rules of Practice for the United States District Court, Eastern District of California.

19 Within twenty-one days after being served with these findings and recommendations, Defendants
20 may file written objections with the court. Such a document should be captioned “Objections to
21 Magistrate Judge’s Findings and Recommendations.” Defendants are advised that failure to file
22 objections within the specified time may waive the right to appeal the District Court’s order.

23 *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

24
25 IT IS SO ORDERED.

26 Dated: July 14, 2011

27 /s/ Jennifer L. Thurston
28 UNITED STATES MAGISTRATE JUDGE