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4 **UNITED STATES DISTRICT COURT**  
5 **EASTERN DISTRICT OF CALIFORNIA**  
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7 **U.S. BANK NATIONAL ASSOCIATION,**

8 **Plaintiff**

9 **v.**

10 **DEBRA KELLER, and DOES 1 to 10,**  
11 **inclusive,**

12 **Defendant**

**CASE NO. 1:13-CV-2049 AWI GSA**

**ORDER REMANDING MATTER TO  
THE MERCED COUNTY SUPERIOR  
COURT**

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14 Defendant Debra Keller, who is proceeding pro se, removed this case from the Superior  
15 Court of Merced County on December 16, 2013. See Court’s Docket Doc. No. 1. Defendant  
16 asserts that the basis for removal is the presence of a federal question. Specifically, Defendant  
17 contends Plaintiff sent a notice that expressly incorporates the “Protecting Tenants at Foreclosure  
18 Act of 2009,” 12 U.S.C. § 5201.

19 A district court has “a duty to establish subject matter jurisdiction over the removed action  
20 *sua sponte*, whether the parties raised the issue or not.” United Investors Life Ins. Co. v. Waddell  
21 & Reed, Inc., 360 F.3d 960, 967 (9th Cir. 2004). The removal statute (28 U.S.C. § 1441) is  
22 strictly construed against removal jurisdiction. Geographic Expeditions, Inc. v. Estate of Lhotka,  
23 599 F.3d 1102, 1107 (9th Cir. 2010); Provincial Gov’t of Marinduque v. Placer Dome, Inc., 582  
24 F.3d 1083, 1087 (9th Cir. 2009). It is presumed that a case lies outside the limited jurisdiction of  
25 the federal courts, and the burden of establishing the contrary rests upon the party asserting  
26 jurisdiction. Geographic Expeditions, 599 F.3d at 1106-07; Hunter v. Philip Morris USA, 582  
27 F.3d 1039, 1042 (9th Cir. 2009). “The strong presumption against removal jurisdiction” means  
28 that “the court resolves all ambiguity in favor of remand to state court.” Hunter, 582 F.3d at 1042;

1 Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). That is, federal jurisdiction over a  
2 removed case “must be rejected if there is any doubt as to the right of removal in the first  
3 instance.” Geographic Expeditions, 599 F.3d at 1107; Duncan v. Stuetzle, 76 F.3d 1480, 1485  
4 (9th Cir. 1996); Gaus, 980 F.2d at 566. “If at any time prior to judgment it appears that the district  
5 court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c); Gibson  
6 v. Chrysler Corp., 261 F.3d 927, 932 (9th Cir. 2001). Remand under 28 U.S.C. § 1447(c) “is  
7 mandatory, not discretionary.” Bruns v. NCUA, 122 F.3d 1251, 1257 (9th Cir. 1997); see  
8 California ex. rel. Lockyer v. Dynege, Inc., 375 F.3d 831, 838 (9th Cir. 2004). That is, the court  
9 “must dismiss a case when it determines that it lacks subject matter jurisdiction, whether or not a  
10 party has filed a motion.” Page v. City of Southfield, 45 F.3d 128, 133 (6th Cir. 1995).

11 “The presence or absence of federal question jurisdiction is governed by the ‘well-pleaded  
12 complaint rule,’ which provides that federal jurisdiction exists only when a federal question is  
13 presented on the face of the plaintiff’s properly pleaded complaint.” California v. United States,  
14 215 F.3d 1005, 1014 (9th Cir. 2000); see Dynege, 375 F.3d at 838; Duncan, 76 F.3d at 1485.  
15 Under the “well-pleaded complaint” rule, courts look to what “necessarily appears in the  
16 plaintiff’s statement of his own claim in the bill or declaration, unaided by anything in anticipation  
17 of avoidance of defenses which it is thought the defendant may interpose.” California, 215 F.3d at  
18 1014. Thus, “a case may not be removed on the basis of a federal defense . . . even if the defense  
19 is anticipated in the plaintiff’s complaint and both parties concede that the federal defense is the  
20 only question truly at issue.” Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987); Wayne v.  
21 DHL Worldwide Express, 294 F.3d 1179, 1183 (9th Cir. 2002); see also Vaden v. Discover Bank,  
22 129 S. Ct. 1262, 1278 (2009) (“It does not suffice to show that a federal question lurks somewhere  
23 inside the parties’ controversy, or that a defense or counterclaim would arise under federal law.”).

24 Here, Defendant has not shown that removal was appropriate. Plaintiff’s Complaint is for  
25 an unlawful detainer action that is based entirely on state law. Defendant states that a notice by  
26 Plaintiff referenced § 5201. While that may be, the only cause of action that appears in the  
27 Complaint is a single claim for unlawful detainer. There is no federal question in Plaintiff’s  
28 Complaint.

1           Because there is no federal question appearing in Plaintiff's Complaint, Defendant has  
2 failed to invoke this Court's jurisdiction. Remand to the Merced County Superior Court is  
3 appropriate and mandatory. 28 U.S.C. § 1447(c); Geographic Expeditions, 599 F.3d at 1107;  
4 Bruns, 122 F.3d at 1257; Page, 45 F.3d at 133.

5           Accordingly, IT IS HEREBY ORDERED that, per 28 U.S.C. § 1447(c), due to this Court's  
6 lack of subject matter jurisdiction, this case is REMANDED forthwith to the Superior Court of  
7 Merced County.

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9 IT IS SO ORDERED.

10 Dated: January 3, 2014

  
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11 SENIOR DISTRICT JUDGE  
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