

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**

SUSAN FLORES AND HEIDI  
BRESHEARS,

Plaintiffs,

v.

DORINA DJURDJEV NEDA,

Defendant.

No. 1:14-cv-450 LJO-GSA

**ORDER REMANDING ACTION**

(Doc. 1)

**INTRODUCTION**

Pro se Defendant Dorina Djurdev Neda ("Defendants") filed a Notice of Removal of an unlawful detainer action brought against her in Fresno County Superior Court. (Doc. 1). Defendant's papers fail to invoke this Court's subject matter jurisdiction. Accordingly, the case will be remanded to the Fresno County Superior Court.

**DISCUSSION**

**Removal**

28 U.S.C. § 1441(a) empowers a defendant to remove an action to federal court if the district court has original jurisdiction. *Catepillar, Inc. v. Williams*, 482 U.S. 286, 392 (1987). The removal statute provides:

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

5 28 U.S.C. § 1441(a).

6 A removing party must file a notice of removal of a civil action within 30 days of receipt of a  
7 copy of the initial pleading. 28 U.S.C. § 1446(b). Removal statutes are strictly construed with doubts  
8 resolved in favor of state court jurisdiction and remand. See *Gaus v. Miles*, 980 F.2d 564, 566 (9th  
9 Cir. 1992). The removing party bears the burden to prove propriety of removal. *Abrego v. Dow*  
10 *Chem. Co.*, 443 F.3d 676, 683-685 (9th Cir. 2006); *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir.  
11 1996); see also *Calif. ex. rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004) (“the burden  
12 of establishing federal jurisdiction falls to the party invoking the statute”). A district court may  
13 remand an action to state court for lack of subject matter jurisdiction or a defect in the removal  
14 procedure. 28 U.S.C. § 1447(c).

15 Generally, subject matter jurisdiction can be established in three ways: 1) a federal  
16 question is presented, 2) diversity of citizenship is established (the matter in controversy exceeds  
17 \$75,000 and is between citizens of different states), or 3) the United States is a party. 28 U.S.C.  
18 §§ 1331 and 1332; See also, *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994); *Finley v.*  
19 *United States*, 490 U.S. 545, 109 S.Ct. 2003, 2008 (1989). As discussed below, Defendant has  
20 failed to establish that federal jurisdiction is proper. The United States is not a party to this  
21 action. Similarly, Defendant cannot establish jurisdiction is proper because no federal question  
22 has been presented and the amount in controversy does not exceed \$75,000.

### 23 **Federal Question Jurisdiction**

24  
25 District courts have “original jurisdiction of all civil actions arising under the Constitution,  
26 laws, or treaties of the United States.” 28 U.S.C. § 1331. Determination of federal question  
27 jurisdiction “is governed by the well-pleaded complaint rule, which provides that federal jurisdiction  
28

1 exists only when a federal question is presented on the face of plaintiff's properly pleaded complaint."  
2 Caterpillar, 482 U.S. at 392. To invoke federal question jurisdiction, a complaint must establish  
3 "either that (1) federal law creates the cause of action or that (2) plaintiff's right to relief necessarily  
4 depends on resolution of a substantial question of federal law." Williston Basin Interstate Pipeline Co.  
5 v. An Exclusive Gas Storage & Easement, 524 F.3d 1090, 1100 (9th Cir. 2008).

6 Under the "well-pleaded complaint" rule, courts look to what "necessarily appears in the  
7 plaintiff's statement of his own claim in the bill or declaration, unaided by anything in anticipation of  
8 avoidance of defenses which it is thought the defendant may interpose." *California v. United States*,  
9 215 F.3d 1005, 1014 (9<sup>th</sup> Cir. 2000). Thus, "a case may not be removed on the basis of a federal  
10 defense . . . even if the defense is anticipated in the plaintiff's complaint and both parties concede that  
11 the federal defense is the only question truly at issue." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392  
12 (1987); *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002); see also *Vaden v.*  
13 *Discover Bank*, 129 S. Ct. 1262, 1278 (2009) ("It does not suffice to show that a federal question  
14 lurks somewhere inside the parties' controversy, or that a defense or counterclaim would arise under  
15 federal law."). Thus, Plaintiff's claim that her defense is based on federal law does it establish this  
16 Court's jurisdiction

17  
18 To the contrary, the record indicates that Ms. Neda is named as a Defendant in a state court  
19 complaint seeking unlawful detainer relief, which arises under state law. See *Fannie Mae v. Suarez*,  
20 2011 U.S. Dist. LEXIS 82300, at \*6 (E.D. Cal. 2011) ("Unlawful detainer actions are strictly the  
21 province of state court"); *Deutsche Bank Nat'l Trust Co. v. Leonardo*, 2011 U.S. Dist. LEXIS 83854,  
22 at \* 2 (C.D. Cal. 2011) ("the complaint only asserts a claim for unlawful detainer, a cause of action  
23 that is purely a matter of state law"). An unlawful detainer plaintiff is entitled to judgment after  
24 establishing that the property at issue sold in compliance with California Civil Code section 2924 and  
25 that the requisite three-day notice to quit was served on defendant as required by California Code of  
26 Civil Procedure section 1161. See *Litton Loan Servicing, L.P. v. Villegas*, U.S. Dist. LEXIS 8018, at  
27  
28

1 \*5 (N.D. Cal. 2011) (citing Evans v. Superior Court, 67 Cal.App.3d 162, 168 (1977)). This unlawful  
2 detainer action fails to invoke federal question jurisdiction and is not properly before this Court.

3 **Diversity Jurisdiction**

4 28 U.S.C. § 1332(a) establishes diversity of citizenship jurisdiction and provides in pertinent  
5 part:

6 The district courts shall have original jurisdiction of all civil actions where the matter in  
7 controversy exceeds the sum or value of \$75,000 . . . and is between –

8 (1) citizens of different States . . .

9  
10 To invoke diversity jurisdiction, the amount in controversy must exceed the sum or value of  
11 \$75,000. 28 U.S.C. § 1332(a). In an unlawful detainer action, “the right to possession alone [is]  
12 involved – not title to the property.” Litton, 2011 U.S. Dist. LEXIS 8081, at \*6-7. In a federal action,  
13 a defendant “bears the burden of actually proving the facts to support jurisdiction, including the  
14 jurisdictional amount.” Sanchez v. Monumental Life Ins., 102 F.3d 398, 403 (9th Cir. 1996). Nothing  
15 indicates that the unlawful detainer complaint seeks anywhere near \$75,000. Additionally, the  
16 complaint alleges that the Plaintiffs and Defendant are all citizens of California. Accordingly,  
17 diversity jurisdiction is not established.

18 **CONCLUSION AND ORDER**

19  
20 For the reasons discussed above, Defendants’ papers fail to invoke this Court’s subject matter  
21 jurisdiction. Accordingly, this case is REMANDED forthwith to the Fresno County Superior Court.  
22 The Clerk of the Court is directed to vacate the initial scheduling conference set for June 3, 2014 at  
23 10:00 a.m.

24  
25 IT IS SO ORDERED.

26 Dated: April 2, 2014

27 /s/ Gary S. Austin  
28 UNITED STATES MAGISTRATE JUDGE