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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE FOR CREDIT SUISSE
FIRST BOSTON MORTGAGE
SECURITIES CORP, CSMC
MORTGAGE-BACKED PASS-THROUGH
CERTIFICATES, SERIES 2007-4,

Plaintiff,

v.

MARK BELLINGER,

Defendant.

Case No. 1: 14-cv-1538-JAM-BAM

**FINDINGS AND RECOMMENDATIONS
TO REMAND CASE TO CALVERAS
COUNTY SUPERIOR COURT**

**VACATING HEARING ON OCTOBER 10,
2014 ON THE MOTION TO REMAND**

Defendant Mark Bellinger (“Defendant”), proceeding pro se, filed this “removal” action on September 2, 2014. (Doc. 1.) On September 5, 2014, Plaintiff U.S. Bank filed a motion to remand. (Doc. 2.) Defendant filed an opposition to the motion on September 25, 2014. (Doc. 7.) The underlying complaint is an unlawful detainer action filed by Plaintiff. By order on September 19, 2014, this motion was referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 through 304.¹ The Court determines the matter is suitable for decision without oral argument. Therefore, the hearing set for October 10, 2014 is vacated and the matter is hereby submitted on the pleadings. See Local Rule 78-230(g). Having considered the parties’ papers, the

¹ By order on October 1, 2014, this Court redesignated this removed case to its own, separate case. Defendant had removed the unlawful detainer action “into” an existing case which Defendant has against this plaintiff and other parties. The Court determined that this unlawful detainer action should be its own case.

1 entire file in this action and in the case of 1:14-cv-1076, *Bellinger v. Wells Fargo*, the Court rules as
2 follows. For the reasons stated below, the Court lacks subject matter jurisdiction over this unlawful
3 detainer action, and therefore recommends this case be remanded to the Calaveras County Superior
4 Court.

5 DISCUSSION

6 A. Legal Standard

7 28 U.S.C. § 1441(a) empowers a defendant to remove an action to federal court if the district
8 court has original jurisdiction. *Catepillar, Inc. v. Williams*, 482 U.S. 286, 392 (1987). The removal
9 statute provides:

10
11 Except otherwise expressly provided by Act of Congress, any civil action brought in a
12 State court of which the district courts of the United States have original jurisdiction,
13 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.

14 28 U.S.C. § 1441(a).

15 A removing party must file a notice of removal of a civil action within 30 days of receipt of a
16 copy of the initial pleading. 28 U.S.C. § 1446(b). Removal statutes are strictly construed with doubts
17 resolved in favor of state court jurisdiction and remand. *See Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir.
18 1992). The removing party bears the burden to prove propriety of removal. *Abrego v. Dow Chem. Co.*,
19 443 F.3d 676, 683–685 (9th Cir.2006); *Calif. ex. rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th
20 Cir.2004) (“the burden of establishing federal jurisdiction falls to the party invoking the statute”). A
21 district court may remand an action to state court for lack of subject matter jurisdiction or a defect in
22 the removal procedure. 28 U.S.C. § 1447(c).

23 B. This Court Does Not Have Subject Matter Jurisdiction over Plaintiff’s Claims

24 1. Federal Question Jurisdiction

25 Defendant alleges that removal is proper based on federal question jurisdiction. (Doc. 7.)
26 Defendant argues that federal question jurisdiction exists because he is challenging the
27 constitutionality of the foreclosure statutes under which Plaintiff obtained title to the property.
28

1 Defendant contends the California foreclosure statutes, Cal Code Civ.P. §§1161-1162 and Cal.Civ.C.
2 §§2924-2934, violate Due Process, Equal Protection and other Constitutional provisions.

3 District courts have “original jurisdiction of all civil actions arising under the Constitution,
4 laws, or treaties of the United States.” 28 U.S.C. § 1331. Determination of federal question jurisdiction
5 “is governed by the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only
6 when a federal question is presented on the face of a plaintiff’s properly pleaded complaint.”
7 *Catepillar*, 482 U.S. at 392. To invoke federal question jurisdiction, a complaint must establish “either
8 that (1) federal law creates the cause of action or that (2) plaintiff’s right to relief necessarily depends
9 on resolution of a substantial question of federal law.” *Williston Basin Interstate Pipeline Co. v. An*
10 *Exclusive Gas Storage & Easement*, 524 F.3d 1090, 1100 (9th Cir. 2008).

11 The complaint states a single cause of action for unlawful detainer. Doc. 1, p. 8. Plaintiff
12 alleges that it served on Defendant a written Notice to Occupants to vacate premises and that
13 defendant did not vacate the premises.² Claims for unlawful detainer arise under state law, not federal
14 law. *See Fannie Mae v. Suarez*, 2011 U.S. Dist. LEXIS 82300, at *6 (E.D.Cal.2011) (“Unlawful
15 detainer actions are strictly the province of state court”); *Deutsche Bank Nat’l Trust Co. v. Leonardo*,
16 2011 U.S. Dist. LEXIS 83854, at * 2 (C.D.Cal.2011) (“the complaint only asserts a claim for unlawful
17 detainer, a cause of action that is purely a matter of state law”). Accordingly, the Court does not have
18 subject matter jurisdiction because the complaint does not contain a federal question.

19 Defendant argues that removal is proper because he has challenged the complaint by alleging
20 that the statutes are unconstitutional. However, any purported federal law defense or counterclaim is
21 insufficient to confer jurisdiction over Plaintiff’s unlawful detainer action. *Valles v. Ivy Hill Corp.*, 410
22 F.3d 1071, 1075 (9th Cir.2005) (“A federal law defense to a state-law claim does not confer
23 jurisdiction on a federal court, even if the defense is that of federal preemption and is anticipated in the
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25
26 ² A complaint for unlawful detainer is a very specific action. See Cal.Civ.Proc.Code § 1161 a. It exists to provide a
27 landlord with a remedy of a speedy eviction. *Childs v. Eltinge*, 29 Cal.App.3d 843, 853, 105 Cal.Rptr. 864
28 (Cal.Ct.App.1973) (affirming that “the very purpose of this statutory, summary procedure, [is] to afford an expeditious and
adequate remedy for obtaining possession of premises wrongfully withheld by tenants”). Defendant contends his defense
is that Plaintiff obtained title unconstitutionally. A defendant generally may not challenge the plaintiff’s title as a defense to
the unlawful detainer action. Code of Civil Procedure section 1161a.

1 plaintiff's complaint.”). Thus, Defendant fails to invoke federal question jurisdiction despite his
2 argument that he is challenging the Constitutionality of state statutes.

3 **2. Diversity Jurisdiction**

4 Federal courts have original jurisdiction of all civil actions where the matter in controversy
5 exceeds \$75,000, exclusive of interest and costs, and is between citizens of different states. 28 U.S.C.
6 § 1332. Jurisdiction under Section 1332 requires complete diversity, so each plaintiff must be diverse
7 from each defendant. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553, 125 S.Ct. 2611,
8 162 L.Ed.2d 502 (2005). In an unlawful detainer action, “the right to possession alone [is] involved-
9 not title to the property.” *See Litton Loan Servicing, L.P. v. Villegas*, No. C 10-05478 PJH, 2011 WL
10 204322, at *2 (N.D.Cal. Jan. 21, 2011).

11 Here, Plaintiff does not claim damages in excess of the jurisdictional amount. The Complaint
12 for Unlawful Detainer states that the amount of damages claimed in the action does not exceed
13 \$10,000.00, and the relief requested is limited to restitution of the property. Doc. 1, p. 8. As Plaintiff
14 does not claim damages in excess of \$75,000, Defendant has the burden of showing that more than
15 \$75,000 is in controversy. *Sanchez v. Monumental Life Ins.*, 102 F.3d 398, 403 (9th Cir. 1996) (A
16 defendant “bears the burden of actually proving the facts to support jurisdiction, including the
17 jurisdictional amount.”)

18 Defendant argues that the amount in controversy is the amount of the lien on the property and
19 not the rental value of the property. The lien approximates \$455,000.

20 Here, the amount in controversy does not exceed \$75,000. In unlawful detainer actions, the
21 right to possession of the property is contested, not title to the property, and plaintiff may collect only
22 damages that are incident to that unlawful possession. *See Litton Loan Servicing, L.P. v. Villegas*,
23 2011 WL 204322, at *2 (*quoting Evans v. Super. Ct.*, 67 Cal.App.3d 162, 170 (1977)). The unlawful
24 detainer complaint does not seek anywhere near \$75,000. Thus, the amount in controversy fails to
25 establish diversity jurisdiction.

1 **3. Removal “into” a Pre-existing Case**

2 The Court does not consider any other pending case to determine its jurisdiction in the
3 removed action. Here, upon removal, the Calaveras County unlawful detainer action was improperly
4 incorporated into a pre-existing federal case. The pre-existing federal case was filed on July 10, 2014
5 by Mark Bellinger (plaintiff in the pre-existing case; defendant in the current case) and which is based
6 upon federal question (*Bellinger v. Wells Fargo et al.*, 1:14-cv-1076). After he filed the *Bellinger v.*
7 *Wells Fargo* federal question case, Mark Bellinger removed the Calaveras County unlawful detainer
8 “into” the pre-existing federal case (*Bellinger v. Wells Fargo et al.*, 1:14-cv-1076).

9 A removed case cannot be removed “into” a pre-existing case. Local Rule 101(e) provides that
10 a removed action must be initiated as any other newly filed action. Further, pursuant to 28 U.S.C.
11 §1441, the Court must assess its subject matter jurisdiction. Subject matter jurisdiction is determined,
12 as explained above, by the “well-pleaded complaint” in the removed action. *Rivet v. Regions Bank of*
13 *Louisiana*, 522 US 470, 475, 118 S.Ct. 921, 925 (1998). Thus, the Court considers the complaint that
14 is removed to determine whether the Court has jurisdiction. “For better or worse ... a defendant may
15 not remove a case to federal court unless the plaintiff’s complaint establishes that the case ‘arises
16 under’ federal law.” *Franchise Tax Board of State of Calif. v. Construction Laborers Vacation Trust*
17 *for Southern Calif.*, 463 U.S. 1, 10, 103 S.Ct. 2841, 2846 (1983) (emphasis in original). Whether a
18 defendant may rightfully remove a case from a state court to a federal district court is entirely
19 governed by statutory authorization by Congress. *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062,
20 1064 (9th Cir.1979). Plaintiff cannot escape the requirements of the well-pleaded complaint rule by
21 incorporating a removed action into a pre-existing case.

22 **RECOMMENDATIONS AND ORDER**

23 For the reasons discussed above, this Court lacks subject matter jurisdiction over this action,
24 and Defendant has failed to show that removal is proper. Accordingly, this Court RECOMMENDS
25 this case be REMANDED to the Calaveras County Superior Court; and

26 These findings and recommendations are submitted to the district judge assigned to this action,
27 pursuant to Title 28 of the United States Code section 636(b)(1)(B) and this Court’s Local Rule 304.
28 Within fourteen (14) days of service of this recommendation, any party may file written objections to

1 these findings and recommendations with the Court and serve a copy on all parties. Such a document
2 should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The district
3 judge will review the magistrate judge's findings and recommendations pursuant to Title 28 of the
4 United States Code section 636(b)(1)(C). The parties are advised that failure to file objections within
5 the specified time may waive the right to appeal the district judge's order. *Martinez v. Ylst*, 951 F.2d
6 1153 (9th Cir. 1991).

7
8 IT IS SO ORDERED.

9 Dated: October 2, 2014

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE