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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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PACIFICA L 23 LLC, a Delaware Limited
Liability Company,

Case No. 1:14-cv-01711-AWI-SMS

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Plaintiff,

ORDER REMANDING CASE TO
STATE COURT FOR LACK OF
SUBJECT MATTER JURISDICTION

11

v.

12

MARK RUEGER, et als.,

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Defendants.

(Doc. 1)

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On November 3, 2014, Defendants Mark Rueger and Terry Rueger removed this case to federal district court. Defendants allege that this Court has subject matter jurisdiction based on their defense that Plaintiff failed to comply with the provisions of the Protecting Tenants Against Foreclosure Act, 12 U.S.C. § 5220 (the "Act").

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¹ In at least one instance, the notice of removal erroneously refers to the court from which the case was removed as Shasta County Superior Court.

1 **I. Procedural and Factual Background**

2 On or about May 20, 2014, Plaintiff purchased the subject property, commonly known as
3 5285 Treosti Place, Valley Springs, California, from the Trustee at a Trustee's sale conducted
4 following foreclosure proceedings. On July 29, 2014, Plaintiff served Defendants with a written
5 notice to quit in compliance with California Code of Civil Procedure § 1161 *et seq.* Because
6 Defendants were the prior owners of the property, the notice ordered them to vacate the premises
7 within three days.

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9 Defendants' having failed to vacate the premises, on August 18, 2014, Plaintiff filed a
10 complaint for unlawful detainer in Calaveras County Superior Court. On September 17, 2014,
11 Defendants, proceeding *in propria persona*, filed an answer to the complaint, generally denying of
12 its allegations and raising five affirmative defenses. On November 3, 2014, Defendants removed
13 the case to this Court.

14 **II. The Court Lacks Federal Question Jurisdiction**

15 "Except as otherwise expressly provided by Act of Congress, any civil action brought in a
16 State court of which the district courts of the United States have original jurisdiction, may be
17 removed by the defendant or the defendants, to the district court for the United States for the district
18 and division embracing the place where the action is pending." 28 U.S.C. § 1441(a). Nonetheless,
19 "[i]f at any time before the final judgment, it appears that the district court lacks subject matter
20 jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c).

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22 The Ninth Circuit "strictly construe[s] the removal statute against removal jurisdiction."
23 *Gaus v. Miles, Inc.*, 980 F.2d 564, 546 (9th Cir. 1992). A district court must reject federal
24 jurisdiction if any doubt exists about the right to removal. *Id.* Because of the strong presumption
25 against removal jurisdiction, the defendant always has the burden of proving the propriety of
26 removal. *Id.* Removal jurisdiction "must be rejected if there is any doubt as to the right of removal
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1 in the first instance." *Geographic Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d 1102, 1106 (9th
2 Cir. 2010).

3 "Only state-court actions that originally could have been filed in federal court may be
4 removed to federal court by the defendant. Absent diversity of citizenship,² federal-question
5 jurisdiction is required." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Federal question
6 jurisdiction is presumed to be absent unless the defendant, as the party who has removed the action,
7 shows that the plaintiff has alleged (1) a federal claim (*American Well Works Co. v. Layne &*
8 *Bowler Co.*, 241 U.S. 257, 260 (1916)); (2) a state cause of action that requires resolution of a
9 substantial issue of federal law (*Franchise Tax Bd. of the State of California v. Construction*
10 *Laborers Vacation Trust for S. California*, 463 U.S. 1, 9 (1983)); or (3) a state cause of action that
11 Congress has transformed into an inherently federal claim by completely preempting the field
12 (*Avco Corp. v. Aero Lodge No. 735, Int'l Ass'n of Machinists and Aerospace Workers*, 390 U.S.
13 557, 560 (1968)).

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15 Since Section 1441(b) permits a defendant to remove a case only if the claim could
16 originally have been filed in federal court, the existence of removal jurisdiction is determined by
17 reference to the "well-pleaded complaint." *Merrill Dow Pharm., Inc. v. Thompson*, 478 U.S. 804,
18 808 (1986). That a federal question arises as part of a defense or counterclaim is not enough.
19 *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009); *Hunter v. Philip Morris USA*, 582 F.3d 1039,
20 1042-43 (9th Cir. 2009). "[F]ederal jurisdiction exists only when a federal question is presented on
21 the face of the plaintiff's properly pleaded complaint." *Caterpillar*, 482 U.S. at 392. *See also*
22 *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152 (1908).

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25 The complaint's sole claim is unlawful detainer pursuant to Cal. Code Civil Procedure §
26 1161a. An unlawful detainer action is a purely state cause of action. A single claim for unlawful
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² The removal notice does not allege the existence of diversity jurisdiction.

1 detainer under California law provides no basis for federal question jurisdiction. *See U.S. Bank*
2 *Nat'l Ass'n v. Tyler*, 2010 WL 4918790 at *2 (N.D.Cal. Nov. 12, 2010) (No. C 10-4033 PJH);
3 *Everbank v. Wissa*, 2012 WL 1565714 at * 2 (E.D. Cal. May 2, 2012) (No. 2:12-cv-00735-JAM-
4 KJN); *OneWest Bank FSB v. Ignacio*, 2010 WL 2696702 at *2 (E.D.Cal. July 6, 2010) (No. 1:10-
5 cv-01683-JAM-DAD); *IndyMac Fed. Bank, F.S.B. v. Ocampo*, 2010 WL 234828 at *2 (C.D.Cal.
6 Jan. 13, 2010) (No. ED-CV-09-2337 PA (DTBx)); *HSBC Bank, N.A. v. Bryant*, 2009 WL 3787195
7 at *3 (S.D.Cal. Nov. 10, 2009) (N0. 09-cv-1659 IEG (PQR))
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9 Defendants removed the case based on their defense that Plaintiff's eviction notice did not
10 comply with the Protecting Tenants at Foreclosure Act, 12 U.S.C. § 5220 (the "Act"). "[T]he Act
11 provides protections to tenants who reside in properties subject to foreclosure, including the
12 requirement that a 90-day notice to vacate be given to bona fide tenants." *Bank of New York*
13 *Mellon v. Flores*, 2012 WL 761951 at *3 (E.D.Cal. Mar. 7, 2012), *report and recommendation*
14 *vacated*, 2012 WL 1981329 (E.D.Cal. June 1, 2012), *report and recommendation adopted*, 2012
15 WL 3886097 (E.D.Cal. Sep. 6, 2012), (No. 2:12-cv-00435-KJM-KJN PS). Federal courts have
16 consistently rejected this argument since for removal purposes, federal jurisdiction may not be
17 premised on a defense or counterclaim. *See Everbank*, 2012 WL 156714 at * 3; *Citibank, N.A. v.*
18 *Corey*, 2012 WL 1552888 at *3 (E.D.Cal. April 26, 2012) (No. 2:12-cv-00499-MCE); *Parkland*
19 *Sec., Inc. v. Carey*, 2012 WL 159621 at *2 (E.D. Cal. Jan. 18, 2012), *adopted by* 2012 WL 458433
20 (E.D. Cal. Feb. 10, 2012) (No. 11-cv-3281-GEB-GGH); *Westcom Credit Union v. Dudley*, 2010
21 WL 4916578 at *2 (C.D. Cal. Nov. 22, 2010) (No. CV 10-8203 GAF (SSx)); *SD Coastline LP v.*
22 *Buck*, 2010 WL 4809661 at *2-3 (S.D.Cal. Nov. 19, 2010) (No. 10CV2108 MMA NLS); *Aurora*
23 *Loan Serv., LLC v. Martinez*, 2010 WL 1266887 at * 1 (N.D. Cal. Mar. 29, 2010) (No. C10-01260
24 HRL).
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1 Removal of this case to federal district court is not justified based on federal question
2 jurisdiction.

3 **IV. Conclusion and Order**

4 For the reasons set forth above, the Court hereby ORDERS that this matter be remanded to
5 the Superior Court of California, Calavares County.

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7 IT IS SO ORDERED.

8 Dated: November 5, 2014

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10 SENIOR DISTRICT JUDGE