



1 where the district court would have original jurisdiction. *Caterpillar, Inc. v. Williams*, 482 U.S. 286,  
2 392 (1987). Specifically,

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

7 28 U.S.C. § 1441(a). District courts have “original jurisdiction of all civil actions arising under the  
8 Constitution, laws, or treaties of the United States.” *Id.* at § 1331.

9       A party seeking removal must file a notice of removal of a civil action within thirty days of  
10 receipt of a copy of the initial pleading. *Id.* at § 1446(b). Removal statutes are to be strictly construed,  
11 and any doubts are to be resolved in favor of state court jurisdiction and remand. *See Gaus v. Miles*,  
12 980 F.2d 564, 566 (9th Cir. 1992). The party seeking removal bears the burden of proving its  
13 propriety. *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996); *Abrego v. Dow Chem. Co.*, 443 F.3d  
14 676, 683-85 (9th Cir. 2006); *see also Calif. ex. rel. Lockyer v. Dynegy, Inc.*, 2274 F.3d 831, 838 (“the  
15 burden of establishing federal jurisdiction falls to the party invoking the statute”). If there is any doubt  
16 as to the right of removal, “federal jurisdiction must be rejected.” *Duncan*, 76 F.3d at 1485.

17       The district court has “a duty to establish subject matter jurisdiction over [a] removed action  
18 *sua sponte*, whether the parties raised the issue or not.” *United Investors Life Ins. Co. v. Waddell &*  
19 *Reed, Inc.*, 360 F.3d 960, 967 (9th Cir. 2004); *see also Kelton Arms Condo. Homeowners Ass’n v.*  
20 *Homestead Ins. Co.*, 346 F.3d 1190, 1192-93 (9th Cir. 2003) (noting a distinction between procedural  
21 and jurisdictional defects and holding that a “district court *must* remand if it lacks jurisdiction”). Thus,  
22 the Sixth Circuit explained that a court “can, in fact must, dismiss a case when it determines that it  
23 lacks subject matter jurisdiction, whether or not a party has a filed a motion.” *Page v. City of*  
24 *Southfield*, 45 F.3d 128, 133 (6th Cir. 1995).

## 24 **II. Discussion and Analysis**

25       Defendant Sandra Sosa asserts that this court has original jurisdiction over the complaint  
26 pursuant to 28 U.S.C. § 1441. (Doc. 1 at 2.) The determination of subject matter jurisdiction “is  
27 governed by the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only  
28 when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.”

1 *Caterpillar*, 482 U.S. at 392. Therefore, the complaint must establish “either that [1] federal law  
2 creates the cause of action or that [2] the plaintiff’s right to relief necessarily depends on resolution of  
3 a substantial question of federal law.” *Williston Basin Interstate Pipeline Co. v. An Exclusive Gas*  
4 *Storage Leasehold & Easement*, 524 F.3d 1090, 1100 (9th Cir. 2008) (quoting *Franchise Tax Bd. v.*  
5 *Constr. Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983)).

6       Significantly, the only cause of action identified by the plaintiff in the complaint is unlawful  
7 detainer. (See Doc. 1 at 9-11.) An unlawful detainer action does not arise under federal law, but arises  
8 instead under state law. See *Fannie Mae v. Suarez*, 2011 U.S. Dist. LEXIS 82300, at \*6 (E.D. Cal.  
9 July 27, 2011) (“Unlawful detainer actions are strictly within the province of state court”); *Deutsche*  
10 *Bank Nat’l Trust Co v. Leonardo*, 2011 U.S. Dist. LEXIS 83854, at \*2 (C.D. Cal. Aug. 1, 2011) (“the  
11 complaint only asserts a claim for unlawful detainer, a cause of action that is purely a matter of state  
12 law”). Thus, the plaintiff has not raised a claim that invokes federal subject matter jurisdiction.

13       Nevertheless, Ms. Sosa seeks to invoke federal jurisdiction because she claims the plaintiff  
14 violated the Protecting Tenants at Foreclosure Act of 2009 by providing insufficient notice prior to  
15 initiating eviction proceedings. (Doc. 1 at 2-3). However, claims regarding the Protecting Tenants at  
16 Foreclosure Act “are best characterized as defenses or potential counterclaims; neither of which are  
17 considered in evaluating whether a federal question appears on the face of a plaintiff’s complaint. *First*  
18 *Northern Bank of Dixon v. Hatanaka*, 2011 U.S. Dist. LEXIS 145066, at \*11-12 (E.D. Cal. Dec.16,  
19 2011) (citing *Vaden v. Discover Bank*, 556 U.S. 49, 59 (2009)). Moreover, “federal district courts  
20 have held that the Protecting Tenants at Foreclosure Act does not create a federal private right of  
21 action.” *Aurora Loan Servs., LLC v. Montoya*, 2011 U.S. Dist. LEXIS 129905, at \*7, n. 3 (E.D. Cal.,  
22 Nov. 9, 2011). Accordingly, the Court does not have jurisdiction over the action based upon  
23 Defendant’s claim that the plaintiff violated the Protecting Tenants at Foreclosure Act.

### 24 **III. Conclusion**

25       Because there is no federal question appearing in the complaint, the Court cannot exercise  
26 jurisdiction over this action and the matter must be remanded to the state court. See 28 U.S.C. §  
27 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter  
28 jurisdiction, the case shall be remanded”).

1 Good cause appearing, the Clerk of Court is **DIRECTED** to assign a United States District  
2 Judge to this action

3 **IV. Findings and Recommendations**

4 Based upon the foregoing, **IT IS HEREBY RECOMMENDED:**

- 5 1. The matter be **REMANDED** to the Superior Court of Kern County; and
- 6 2. The Clerk of Court be **DIRECTED** to close this matter.

7 These Findings and Recommendations are submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local  
9 Rules of Practice for the United States District Court, Eastern District of California. Within 14 days  
10 after being served with these Findings and Recommendations, any party may file written objections  
11 with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and  
12 Recommendations.” The parties are advised that failure to file objections within the specified time may  
13 waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

14  
15 IT IS SO ORDERED.

16 Dated: March 25, 2015

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE