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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

U.S. BANK NATIONAL ASSOCIATION AS  
TRUSTEE FOR CREDIT SUISSE FIRST  
BOSTON MORTGAGE SECURITIES  
CORP.,

Plaintiff,

v.

DARRELL CANADA, et al.,

Defendants.

Case No. 1:15-cv-00630-JAM-SAB

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THAT THIS ACTION  
BE REMANDED TO STATE COURT

OBJECTIONS DUE WITHIN TWENTY-  
ONE (21) DAYS

On April 23, 2015, Defendant Darrell Canada filed the notice of removal in this action. (ECF No. 1.) Plaintiff U.S. Bank National Association as Trustee for Credit Suisse First Boston Mortgage Securities Corp. (“Plaintiff”) filed the original complaint in the Superior Court of California for the County of Stanislaus. The original complaint raised a cause of action for unlawful detainer against Defendants Darrell Canada and Linda Canada (“Defendants”). Defendants removed the action to this Court and contend that jurisdiction exists under 28 U.S.C. § 1331.

For the reasons set forth below, the Court finds that jurisdiction does not exist over this action and recommends that the action be remanded back to state court.

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1 **I.**

2 **SUA SPONTE ASSESSMENT OF JURISDICTION**

3 District courts may dismiss a claim sua sponte under Federal Rule of Civil Procedure  
4 12(b)(6) if the Court gives notice of its intention to dismiss and afford plaintiffs an opportunity to  
5 at least submit a written memorandum in opposition to such motion.<sup>1</sup> Lee v. City of Los  
6 Angeles, 250 F.3d 668, 683 n.7 (9th Cir. 2001) (quoting Omar v. Sea-Land Serv., Inc., 813 F.2d  
7 986, 991 (9th Cir. 1987); Wong v. Bell, 642 F.2d 359, 362 (9th Cir. 1981)). Moreover, district  
8 courts have authority to dismiss actions sua sponte for lack of jurisdiction. Franklin v. State of  
9 Or., State Welfare Division, 662 F.2d 1337, 1342 (9th Cir. 1981). “[F]ederal courts are without  
10 power to entertain claims otherwise within their jurisdiction if they are so attenuated and  
11 unsubstantial as to be absolutely devoid of merit” and are “obviously frivolous.” Hagans v.  
12 Lavine, 415 U.S. 528, 536-37 (1974) (internal quotations and citations omitted).

13 **II.**

14 **DISCUSSION**

15 Plaintiff contends jurisdiction exists under 28 U.S.C. § 1331. District courts have  
16 original jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the  
17 United States.” 28 U.S.C. § 1331. “The well-pleaded-complaint rule has long governed whether  
18 a case ‘arises under’ federal law for purposes of § 1331.” Holmes Group, Inc. v. Vornado Air  
19 Circulation Systems, Inc., 535 U.S. 826, 830 (2002). “[F]ederal jurisdiction generally exists  
20 ‘only when a federal question is presented on the face of the *plaintiff’s* properly pleaded  
21 complaint.’” Id. (quoting Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987) (italics in  
22 original). Federal question jurisdictions cannot be premised on federal issues raised in a  
23 defendant’s answer or counterclaim. Id.

24 “The rule makes the plaintiff the master of the claim; he or she may avoid federal  
25 jurisdiction by exclusive reliance on state law.” Caterpillar Inc. v. Williams, 482 U.S. 386, 393  
26 (1987). Moreover, “[i]t is a ‘long-settled understanding that the mere presence of a federal issue

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27 <sup>1</sup> Through these Findings and Recommendations, the Court gives Defendants notice of its intention to remand.  
28 Defendants have an opportunity to submit a written memorandum in opposition by filing objections to these  
Findings and Recommendations.

1 in a state cause of action does not automatically confer federal-question jurisdiction.” Lippitt v.  
2 Raymond James Financial Services, Inc., 340 F.3d 1033, 1040 (9th Cir. 2003) (quoting Merrell  
3 Dow Pharmaceuticals, Inc. v. Thompson, 478 U.S. 804, 808 (1986)).

4 Plaintiff’s complaint for unlawful detainer is devoid of any federal issues. See First  
5 Northern Bank of Dixon v. Hatanaka, No. 2:11-cv-02976 MCE KJN PS, 2011 WL 6328713, at  
6 \*3 (E.D. Cal. Dec. 16, 2011) (“Because a claim for unlawful detainer does not by itself present a  
7 federal question or necessarily turn on the construction of federal law, no basis for federal  
8 question jurisdiction appears on the face of the Complaint.”).

9 Defendants contend that federal question jurisdiction is proper based on issues arising  
10 under the “Protecting Tenants at Foreclosure Act of 2009,” 12 U.S.C. § 5201. Defendants  
11 contend that this statute requires a ninety day notice period prior to the filing of any state  
12 eviction proceeding.

13 Even if this were true, this issue is not raised in Plaintiff’s complaint. Accordingly, it is  
14 best characterized as a defense or a counterclaim, and therefore cannot serve as the basis of  
15 federal question jurisdiction. The Court finds that removal was improper because this Court  
16 lacks jurisdiction over this action and that this action should be remanded to state court.

### 17 **III.**

### 18 **CONCLUSION AND RECOMMENDATION**

19 The Court finds that it lacks jurisdiction over this action. Accordingly, it is **HEREBY**  
20 **RECOMMENDED** that this matter be **REMANDED** to the Superior Court of California for the  
21 County of Stanislaus.

22 These findings and recommendations are submitted to the district judge assigned to this  
23 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within twenty-  
24 one (21) days of service of this recommendation, any party may file written objections to these  
25 findings and recommendations with the Court and serve a copy on all parties. Such a document  
26 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The  
27 district judge will review the magistrate judge’s findings and recommendations pursuant to 28  
28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified

1 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th  
2 Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: April 24, 2015

  
UNITED STATES MAGISTRATE JUDGE

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