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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. 2:10-cv-02438 WBS KJN PS

v.

MARIA LOPEZ,

Defendant.

FINDINGS AND RECOMMENDATIONS

_____/

Presently before the court is plaintiff’s motion to remand this unlawful detainer action to the Superior Court of California for the County of Sacramento (“Superior Court”).¹ (Dkt. No. 4.) The undersigned previously set a briefing schedule regarding plaintiff’s motion (Dkt. Nos. 11, 13), and the parties have filed their respective briefs (Dkt. Nos. 14, 15). Because oral argument would not materially aid in the resolution of the pending motion, this matter is submitted on the briefs and record without a hearing. See Fed. R. Civ. P. 78(b); E. Dist. Local Rule 230(g). Having reviewed the briefs and record in this case, the undersigned recommends that plaintiff’s motion to remand be granted and that this case be remanded to the Superior Court

¹ This action proceeds before this court pursuant to Eastern District of California Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 because this court lacks subject matter jurisdiction over plaintiff’s single claim for unlawful
2 detainer.

3 I. BACKGROUND

4 On May 11, 2010, plaintiff filed a Verified Complaint for Unlawful Detainer
5 (“Complaint”) in the Superior Court seeking to recover possession of the property at issue, which
6 is alleged to be situated in the County of Sacramento. (Compl. ¶ 2, attached to Notice of
7 Removal, Dkt. No. 1 at 12-15.) The Complaint alleges that plaintiff purchased the subject
8 property at a trustee’s sale that occurred in accordance with California state law, that plaintiff’s
9 title pursuant to that sale has been perfected, and that plaintiff is entitled to immediate possession
10 of the property. (Id. ¶¶ 4-5.) It further alleges that plaintiff provided defendant, who apparently
11 had rented and still occupies the property, with notice to vacate the premises and deliver
12 possession of the property within 90 days, and that defendant failed to vacate and deliver
13 possession. (Id. ¶¶ 6-7 & Ex. B.) Through this action, plaintiff seeks: (1) restitution and
14 possession of the subject property, and (2) damages at a rate of \$30.00 per day from May 10,
15 2010, until the date of entry of judgment for each day that defendant remains in possession of the
16 property.² (Compl. at 3.)

17 On August 12, 2010, defendant removed this matter to the United States District
18 Court for the Northern District of California, and that district court eventually transferred the
19 case to this district. (Dkt. Nos. 1, 5.) Defendant removed this case pursuant to 28 U.S.C.
20 § 1446(a), and asserted that this court has subject matter jurisdiction over plaintiff’s claims
21 pursuant to, in part, 28 U.S.C § 1331. (Notice of Removal at 1.) Specifically, defendant asserts
22 that this court has federal question jurisdiction based on the “Protecting Tenants at Foreclosure
23 Act of 2009,” and contends that plaintiff “failed to provide the defendant with a 90 day notice to
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25 ² Plaintiff filed this action as a limited civil action in the Superior Court, and the caption
26 of the Complaint states: “AMOUNT DEMANDED DOES NOT EXCEED \$10,000.” (Compl.
at 1.)

1 quit” that is required by that legislation. (See Notice of Removal at 2-3.) Defendant’s Notice of
2 Removal also asserts, in passing and without explanation, that “[t]his action is a civil action of
3 which this Court has original jurisdiction under 28 U.S.C. § 1332(c)(1).”³ (Notice of Removal
4 at 7.) The Notice of Removal contains no specific allegations in support of defendant’s claim
5 that diversity jurisdiction exists pursuant to 28 U.S.C. § 1332.

6 On August 24, 2010, while the case was still pending in the Northern District of
7 California, plaintiff filed and served on defendant a motion to remand this matter to the Superior
8 Court, which argues that defendant has not and cannot establish the existence of federal subject
9 matter jurisdiction. (See Dkt. No. 4.) That same day, United States Magistrate Judge Laurel
10 Beeler signed an order transferring plaintiff’s action to this court. (Dkt. No. 5.) Magistrate Judge
11 Beeler did not address defendant’s motion for an order of remand.

12 II. LEGAL STANDARDS

13 In relevant part, the federal removal statute provides:

14 (a) Except as otherwise expressly provided by Act of Congress, any civil
15 action brought in a State court of which the district courts of the United
16 States have original jurisdiction, may be removed by the defendant or the
17 defendants, to the district court of the United States for the district and
18 division embracing the place where such action is pending. . . .

19 (b) Any civil action of which the district courts have original jurisdiction
20 founded on a claim or right arising under the Constitution, treaties or laws
21 of the United States shall be removable without regard to the citizenship or
22 residence of the parties. Any other such action shall be removable only if
23 none of the parties in interest properly joined and served as defendants is a
24 citizen of the State in which such action is brought.

25 28 U.S.C. § 1441(a), (b). “The defendant bears the burden of establishing that removal is
26 proper.” Provincial Gov’t of Marinduque v. Placer Dome, Inc., 582 F.3d 1083, 1087 (9th

27 ³ Defendant also claims that “[t]his Court has supplemental jurisdiction over all other
28 claims asserted by plaintiff in accordance with 28 U.S.C. § 1367(a).” (Notice of Removal at 7.)
29 However, plaintiff’s Complaint states a single claim for unlawful detainer, and, thus, there are no
30 “other claims” that would invoke the court’s supplemental jurisdiction. See Kelly v. Fleetwood
Enters., Inc., 377 F.3d 1034, 1040 (9th Cir. 2004). Accordingly, this purported basis for subject
31 matter jurisdiction fails and will not be addressed in any detail below.

1 Cir. 2009), cert. denied, 131 S. Ct. 65 (2010). “The removal statute is strictly construed against
2 removal jurisdiction,” id., and removal jurisdiction ““must be rejected if there is any doubt as to
3 the right of removal in the first instance.”” Geographic Expeditions, Inc. v. Estate of Lhotka, 599
4 F.3d 1102, 1106 (9th Cir. 2010) (quoting Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)
5 (per curiam)).

6 III. DISCUSSION

7 As noted above, defendant removed this action to federal court on the basis of this
8 court’s federal question jurisdiction and diversity jurisdiction. For the reasons that follow,
9 neither of these is a proper basis for removal, and the undersigned concludes that this court lacks
10 subject matter jurisdiction over plaintiff’s claim.⁴

11 1. Removal Premised on Federal Question Jurisdiction

12 District courts have federal question jurisdiction over “all civil actions that arise
13 under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. “A case ‘arises
14 under’ federal law either where federal law creates the cause of action or ‘where the vindication
15 of a right under state law necessarily turn[s] on some construction of federal law.’” Republican
16 Party of Guam v. Gutierrez, 277 F.3d 1086, 1088-89 (9th Cir. 2002) (modification in original)
17 (citing Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 8-9 (1983)). “[T]he
18 presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint
19 rule,’ which provides that federal jurisdiction exists only when a federal question is presented on
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21 ⁴ The undersigned notes that a federal court has an independent duty to assess whether
22 federal subject matter jurisdiction exists, whether or not the parties raise the issue. See United
23 Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004) (stating that
24 “the district court had a duty to establish subject matter jurisdiction over the removed action *sua*
25 *sponte*, whether the parties raised the issue or not”); accord Rains v. Criterion Sys., Inc., 80 F.3d
26 339, 342 (9th Cir. 1996). Because subject matter jurisdiction may not be waived by the parties, a
district court must remand a case if it lacks jurisdiction over the matter. Kelton Arms
Condominium Owners Ass’n, Inc. v. Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003);
accord Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc., 159 F.3d 1209, 1211 (9th Cir.
1998); see also 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the
district court lacks subject matter jurisdiction, the case shall be remanded.”).

1 the face of the plaintiff’s properly pleaded complaint.” Placer Dome, Inc., 582 F.3d at 1091;
2 Ultramar Am. Ltd. v. Dwelle, 900 F.2d 1412, 1414 (9th Cir. 1990) (“Ordinarily, the existence of
3 federal question jurisdiction is determined from the face of the complaint.”). “In determining the
4 existence of removal jurisdiction, based upon a federal question, the court must look to the
5 complaint *as of the time the removal petition was filed*. Jurisdiction is based on the complaint as
6 originally filed” Abada v. Charles Schwab & Co., 300 F.3d 1112, 1117 (9th Cir. 2002)
7 (citation and quotation marks omitted).

8 Here, plaintiff filed its Complaint in the Superior Court asserting a single claim
9 for unlawful detainer premised solely on California law. Because a claim for unlawful detainer
10 does not by itself present a federal question or necessarily turn on the construction of federal law,
11 no basis for federal question jurisdiction appears on the face of the Complaint. See, e.g., U.S.
12 Bank Nat’l Ass’n v. Tyler, No. C 10-4033 PJH, 2010 WL 4918790, at *2 (N.D. Cal. Nov. 12,
13 2010) (unpublished) (concluding that a single claim for unlawful detainer under state law does
14 not provide a basis for federal question jurisdiction); OneWest Bank FSB v. Ignacio, No. CIV
15 S-10-1683 JAM DAD PS, 2010 WL 2696702, at *2 (E.D. Cal. July 6, 2010) (unpublished)
16 (same); IndyMac Federal Bank, F.S.B. v. Ocampo, No. EDCV 09-2337 PA (DTBx), 2010 WL
17 234828, *2 (C.D. Cal. Jan. 13, 2010) (unpublished) (same); HSBC Bank, N.A. v. Bryant, No. 09-
18 CV-1659-IEG (POR), 2009 WL 3787195, at *3 (S.D. Cal. Nov. 10, 2009) (unpublished) (same).

19 Defendant argues that this court has subject matter jurisdiction over plaintiff’s
20 claim because defendant’s answer to plaintiff’s Complaint points to plaintiff’s violation of the
21 Protecting Tenants At Foreclosure Act of 2009, Pub. L. No. 111-22, § 702, 123 Stat. 1660 (2009)
22 (the “Act”). (Notice of Removal at 2-5, 72-73; Def’s Opp’n to Mot. to Remand at 2 (arguing that
23 defendant has been discriminated against and thus plaintiff has violated federal law).) Insofar as
24 plaintiff’s argument is concerned, the Act provides protections to tenants who reside in properties
25 subject to foreclosure, including the requirement that a 90-day notice to vacate be given to bona
26 fide tenants. See SD Coastline LP v. Buck, No. 10CV2108 MMA (NLS), 2010 WL 4809661, at

1 *1 (S.D. Cal. Nov. 19, 2010) (unpublished).

2 Federal courts have rejected attempts to premise federal subject matter jurisdiction
3 on the 90-day notice provision provided in the Act. See Wescom Credit Union v. Dudley, No.
4 CV 10-8203 GAF (SSx), 2010 WL 4916578, at *2 (C.D. Cal. Nov. 22, 2010) (unpublished); SD
5 Coastline LP, 2010 WL 4809661, at *2-3; Aurora Loan Servs., LLC v. Martinez, No. C10-01260
6 HRL, 2010 WL 1266887, at *1 (N.D. Cal. Mar. 29, 2010) (unpublished). This rejection of
7 asserted jurisdiction is because such an argument is an attempt to premise this court’s subject
8 matter jurisdiction on a defense or a counterclaim, which cannot establish a federal question
9 because such a defense or counterclaim does not appear on the face of the complaint.⁵ See
10 Vaden v. Discover Bank, 129 S. Ct. 1262, 1272 (2009) (stating that federal question jurisdiction
11 cannot “rest upon an actual or anticipated counterclaim”); Takeda v. Nw. Nat’l Life Ins Co., 765
12 F.2d 815, 822 (9th Cir. 1985); see also SD Coastline LP, 2010 WL 4809661, at *2-3 (concluding
13 that unlawful detainer defendant’s claim or defense based on the Protecting Tenants at
14 Foreclosure Act of 2009 cannot serve as a basis for removal jurisdiction); accord Ignacio, 2010
15 WL 2696702, at *2.

16 In short, no federal question is present on the face of plaintiff’s Complaint.
17 Accordingly, 28 U.S.C. § 1331 does not provide this court with subject matter jurisdiction over
18 plaintiff’s single claim for unlawful detainer brought pursuant to California law.

19 B. Removal Premised on Diversity Jurisdiction

20 Defendant also removed this case on the basis of the court’s diversity jurisdiction,
21 although she provided no factual basis for the existence of diversity jurisdiction. District courts

22 ⁵ Additionally, federal district courts have concluded that the Protecting Tenants at
23 Foreclosure Act of 2009 does not create a federal private right of action, but provides directives
24 to state courts. Deutsche Bank Nat’l Trust Co. v. Jora, No. CIV S-10-1617 MCE EFB PS, 2010
25 WL 3943584, at *1 n.3 (E.D. Cal. Oct. 1, 2010) (unpublished) (citing Fannie Mae v. Lemere, No.
26 S-10-1474 MCE GGH PS, 2010 WL 2696697, at *2 (E.D. Cal. July 6, 2010) (unpublished)
(citing Nativi v. Deutsche Bank Nat’l Trust, No. 09-06096 PVT, 2010 WL 2179885 (N.D.Cal.
2010)); Zalemba v. HSBC Bank, USA, Nat’l Ass’n, No. 10-cv-1646 BEN (BLM), 2010 WL
3894577, at *2 (S.D. Cal. Oct. 1, 2010) (unpublished).

1 have diversity jurisdiction over “all civil actions where the matter in controversy exceeds the sum
2 or value of \$75,000, exclusive of interest and costs,” and the action is between: “(1) citizens of
3 different States; (2) citizens of a State and citizens or subjects of a foreign state; (3) citizens of
4 different States and in which citizens or subjects of a foreign state are additional parties; and (4) a
5 foreign state . . . as plaintiff and citizens of a State or of different States.” 28 U.S.C. § 1332; see
6 also Geographic Expeditions, Inc., 599 F.3d at 1106.

7 It is defendant’s burden to establish the existence of diversity jurisdiction. Here,
8 defendant has made no attempt to provide a factual basis for diversity jurisdiction. Accordingly,
9 the undersigned concludes that defendant has not met her burden, and diversity jurisdiction does
10 not keep plaintiff’s unlawful detainer claim in federal court.

11 IV. CONCLUSION

12 For the reasons stated above, IT IS HEREBY RECOMMENDED that plaintiff’s
13 motion to remand (Dkt. No. 4) be granted and that this matter be remanded to the Superior Court
14 of California, County of Sacramento, on the grounds that this court lacks federal subject matter
15 jurisdiction over plaintiff’s claims.

16 These findings and recommendations are submitted to the United States District
17 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
18 days after being served with these findings and recommendations, any party may file written
19 objections with the court and serve a copy on all parties. Id.; see also E. Dist. Local Rule 304(b).
20 Such a document should be captioned “Objections to Magistrate Judge’s Findings and
21 Recommendations.” Any response to the objections shall be filed with the court and served on
22 all parties within fourteen days after service of the objections. E. Dist. Local Rule 304(d).
23 Failure to file objections within the specified time may waive the right to appeal the District

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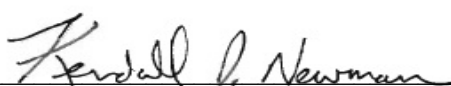
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1 Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951
2 F.2d 1153, 1156-57 (9th Cir. 1991).

3 IT IS SO RECOMMENDED.

4 DATED: December 15, 2010

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE