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

U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE FOR THE LXS 2006-16N
TRUST FUND,

Plaintiff,

No. 2:10-cv-02736 KJM KJN PS

v.

MARLENE GONZALES; and
DOES 1-10, inclusive

Defendants.

FINDINGS AND RECOMMENDATIONS

Presently before the court is plaintiff's motion to dismiss for lack of an existing state court action, and plaintiff's motion for an order remanding this unlawful detainer action to the Superior Court of the State of California, County of Sacramento ("Superior Court"). (Dkt. Nos. 4, 13.)¹ For the reasons that follow, the undersigned recommends that: (1) plaintiff's motion to dismiss be denied; (2) plaintiff's motion to remand be granted; and (3) that this entire case be remanded to the Superior Court for further proceedings.

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

1 I. BACKGROUND

2 Plaintiff is alleged to be the purchaser of real property at a trustee's sale
3 effectuated under California state law.² (Compl. for Unlawful Detainer ("Complaint") ¶ 1, Dkt.
4 No. 4.) Defendant is an individual who is alleged to be a holdover occupant and previous owner
5 of the subject property. (Id. ¶ 2.) Defendant is a resident of the State of California. (Notice of
6 Removal ¶ 16, Dkt. No. 1.)

7 Plaintiff alleges that on March 17, 2010, following the trustee's sale and
8 perfection of plaintiff's title to the subject property, it served defendant with a "Three Day Notice
9 for Possession," which required defendant to quit and deliver up possession of the premises to
10 plaintiff. (Compl. ¶ 5.) Plaintiff alleges that defendant remains in possession of the property.
11 (Id. ¶ 6.)

12 On April 7, 2010, plaintiff filed its verified Complaint in the Superior Court,
13 seeking: (1) restitution and possession of the real property in question; (2) damages at a rate of
14 \$50.00 per day from March 21, 2010, until the date of entry of judgment for plaintiff; and
15 (3) costs and further relief as is proper. (Id. at 3.) The caption of the Complaint states the
16 following: "DEMAND UNDER \$10,000." (Id. at 1.) On May 18, 2010, the Superior Court
17 entered judgment in favor of plaintiff. (See Writ of Execution of Possession of Real Property
18 ("Writ of Execution"), Dkt. No. 1 at 19-20.) Subsequently, a Writ of Possession was issued on
19 May 28, 2010, followed by a Notice to Vacate. (Dkt. No. 1 at 21). Defendant implies that an
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21 ² Plaintiff requests that the court take judicial notice of the Complaint for Unlawful
22 Detainer filed in the state court action. (Req. for Judicial Notice, Dkt. No. 4.) The district court
23 may take judicial notice of state court actions where the state court proceedings have a direct
24 relation to the matters at issue. See, e.g., Betker v. U.S. Trust Corp. (In re Heritage Bond Litig.),
25 546 F.3d 667, 670 n.1, 673 n.8 (9th Cir. 2008) (citing U.S. ex rel. Robinson Rancheria Citizens
26 Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992)); Bias v. Moynihan, 508 F.3d 1212,
1225 (9th Cir. 2007); Cactus Corner, LLC v. U.S. Dep't of Agric., 346 F. Supp. 2d 1075, 1092
(E.D. Cal. 2004). Accordingly, the undersigned grants defendant's request for judicial notice.
Additionally, the court takes judicial notice, *sua sponte*, of the Writ of Execution for Possession
and the Notice to Vacate (Dkt. No. 1 at 19-21). See Fed. R. Evid. 201 ("A court may take
judicial notice, whether requested or not.").

1 order was issued by the Sacramento Superior Court which addressed a “Motion to Stay and
2 Recall Writ.” (Notice of Removal ¶ 19.) However, defendant did not file this document with the
3 court as required by 28 U.S.C. § 1446(a).³

4 On October 8, 2010, defendant removed this unlawful detainer action to this court
5 on the grounds that: (1) this court has original jurisdiction because defendant’s “principle claim
6 for relief concerns [U.S. Bank’s] wrongful foreclosure practices which action arises under
7 28 U.S.C. § 1331”; and (2) this court has original jurisdiction over this action under 28 U.S.C.
8 § 1332 because plaintiff’s state of incorporation is not California and defendant is a resident of
9 California. (Notice of Removal ¶¶ 14-16.)

10 Plaintiff filed a motion to remand on January 11, 2011. (Dkt. No. 4.) Plaintiff’s
11 motion seeks remand on the ground that this court lacks subject matter jurisdiction. Defendant
12 did not file an opposition. The court heard this matter on its law and motion calendar on
13 February 17, 2011. Attorney Deepika S. Saluja appeared on behalf of plaintiff. Defendant did
14 not appear.

15 Before proceeding to discuss the motion to remand, the undersigned addresses a
16 preliminary matter—the recently filed motion to dismiss. At the February 17, 2011 hearing on
17 the motion to remand, the undersigned expressed concern regarding the status of the state court
18 action. The undersigned informed plaintiff’s counsel that in their respective filings, the parties
19 had each represented that a final judgment had been entered, but that the court’s records did not
20 contain any support for these assertions.⁴ Further, the undersigned informed counsel that if there
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22 ³ “A defendant or defendants desiring to remove any civil action or criminal prosecution
23 from a State court shall file in the district court for the United States for the district and division
24 within which such action is *pending* a notice of removal. . . containing a short and plain
25 statement of the grounds for removal, together with a copy of *all process, pleadings, and orders*
26 served upon such defendant or defendants in such action.” 28 U.S.C. § 1446(a) (emphasis
added).

⁴ In its moving papers, plaintiff notes that remand is required because “the State Court
Action has been disposed of by judgment.” (Mot. to Remand at 6, Dkt. No. 4.) Similarly, in her

1 was no existing action to remove, logically, there was no action to remand. See U.S.C. § 1446;
2 see also Ristuccia v. Adams, 406 F.2d 1257, 1258 (9th Cir. 1969) (per curiam) (“We hold that, as
3 a matter of logic, if appellants had no existing cause of action to remove, the fact that the district
4 court has determined that appellants lacked a removable cause of action creates no cause of
5 action that can be remanded.”)

6 To determine whether there was any action to remand to state court, the
7 undersigned inquired of plaintiff’s counsel: (1) whether the state court action had reached a final
8 judgment; (2) whether defendant’s representation that she had filed a Motion to Stay and Recall
9 the Writ of Possession was accurate; and (3) why plaintiff sought to remand, rather than dismiss
10 this action, if in fact the state court action had proceeded to a final judgment.

11 Plaintiff’s counsel again represented that a final judgment had been entered. The
12 court then ordered counsel to file, within one week, evidence of the final state court judgment.
13 (Minute Order, Dkt. No. 12.) Further, the court informed counsel that if there had been a ruling
14 on the Motion to Stay and Recall, this document should also be filed with this court. Finally, the
15 undersigned advised plaintiff’s counsel that if the state court documents established that there
16 was no action to remove at the time the Notice of Removal was filed with this court, then a
17 motion to dismiss would be the procedural device for disposing of the federal court action.
18 Counsel was instructed that if a motion to dismiss was required, plaintiff would need to notice
19 such a motion and brief the grounds on which dismissal would be proper.

20 On February 24, 2011, plaintiff filed a motion to dismiss. (Dkt. No. 13.) Despite
21 this court’s guidance at the February 17, 2011 hearing, the arguments supporting this motion
22 miss the point. Rather than addressing the status of the state court action, the motion to dismiss
23 makes the same arguments found in the motion to remand, i.e., lack of subject matter
24 jurisdiction. Further, although counsel attached evidence of the final judgment, no documents or

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26 Notice of Removal, defendant references a judgment filed on May 18, 2010, nearly five months
before this action was removed. (Notice of Removal ¶ 19.)

1 representations were made regarding the Motion to Stay and Recall the Writ of Possession.
2 Absent documents or declarations demonstrating that the Motion to Stay and Recall the Writ of
3 Possession is not currently pending in state court, plaintiff has failed to establish that there was
4 no pending action to remove to federal court. Accordingly, the undersigned recommends that
5 plaintiff's motion to dismiss be denied. The undersigned next addresses plaintiff's motion to
6 remand.

7 II. LEGAL STANDARDS

8 The federal courts are courts of limited jurisdiction, and only cases which could
9 have originally been brought in federal court may be properly removed from state court.
10 28 U.S.C. § 1441(a)⁵; Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987). Further, a
11 defendant may not remove a case to federal court unless it is established, from the face of the
12 plaintiff's complaint, that original jurisdiction over the civil action lies with the federal courts.
13 Gweke Ford v. St. Joseph's Omni Preferred Care Inc., 130 F.3d 1355, 1357-58 (9th Cir. 1997)
14 ("Questions of jurisdiction and removal are generally determined from the face of a 'well-
15 pleaded' complaint.") (citing Franchise Tax Board v. Constr. Labors Vacation Trust, 463 U.S. 1,
16 9-12 (1983)); Snow v. Ford Motor Co., 56 F.2d 787, 789 (9th Cir. 1977).

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18 ⁵ In relevant part, the federal removal statute provides:

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

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

26 28 U.S.C. § 1441(a), (b).

1 Unlawful detainer cases are state actions that may be removed to federal court
2 when “the components of federal jurisdiction are present.” U.S. Bank Nat’l Ass’n v. Bravo, No.
3 CV 08-7736 GW (RCx), 2009 WL 210481, at *1 (C.D. Cal. Jan. 23, 2009) (unpublished) (noting
4 that unlawful detainer actions are not exempt from removal) (citing Swords v. Kemp, 423
5 F. Supp. 2d 1031, 1037 (N.D. Cal. 2005)). “The defendant bears the burden of establishing that
6 removal is proper.” Provincial Gov’t of Marinduque v. Placer Dome, Inc., 582 F.3d 1083, 1087
7 (9th Cir. 2009), cert. denied, 131 S. Ct. 65 (2010). “The removal statute is strictly construed
8 against removal jurisdiction,” id., and removal jurisdiction ““must be rejected if there is any
9 doubt as to the right of removal in the first instance.”” Geographic Expeditions, Inc. v. Estate of
10 Lhotka, 599 F.3d 1102, 1106 (9th Cir. 2010) (per curiam) (quoting Gaus v. Miles, Inc., 980 F.2d
11 564, 566 (9th Cir. 1992)).

12 III. DISCUSSION

13 Plaintiff urges this court to find that removal of this action was improper because:
14 (a) plaintiff’s Complaint states no claim arising under federal law; (b) defendant has not shown
15 that the amount in controversy requirement for diversity jurisdiction has been met; and (c) the
16 “forum defendant” rule bars removal. Defendant’s belief that she is entitled to removal is not
17 supported by the application of the relevant statutes and Ninth Circuit case law to the facts of this
18 case. Rather, the undersigned concludes that plaintiff’s first two arguments are persuasive.
19 Accordingly, the undersigned recommends that this case be remanded to the Superior Court.

20 A. Federal Question Jurisdiction Does Not Support Removal

21 Defendant asserts that removal is proper on the basis of the court’s federal
22 question jurisdiction. Specifically, defendant alleges that plaintiff’s conduct in foreclosing on
23 her home was subject to, and had to comply with, certain federal statutes. (Notice of Removal
24 ¶¶ 5-10.)

25 District courts have federal question jurisdiction over “all civil actions that arise
26 under the Constitution, laws, or treaties of the United States.” 28 U.S.C. §1331. “A case ‘arises

1 under' federal law either where federal law creates the cause of action or 'where the vindication
2 of a right under state law necessarily turn[s] on some construction of federal law.'” Republican
3 Party of Guam v. Gutierrez, 277 F.3d 1086, 1088-89 (9th Cir. 2002) (alteration in original)
4 (citing Franchise Tax Bd., 463 U.S. at 8-9). “[T]he presence or absence of federal-question
5 jurisdiction is governed by the ‘well-pleaded complaint rule,’ which provides that federal
6 jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly
7 pleaded complaint.” Placer Dome, Inc., 582 F.3d at 1091. “Jurisdiction is based on the
8 complaint as originally filed” Abada v. Charles Schwab & Co., 300 F.3d 1112, 1117 (9th
9 Cir. 2002) (citation and quotation marks omitted) (noting that the court must look to the
10 complaint as of the time the removal petition was filed).

11 Defendant alleges that to prevail on its unlawful detainer claim plaintiff must
12 prove that it has perfected title to the real property which is the subject of the unlawful detainer
13 action. Further, defendant argues, such proof necessarily raises issues that must be resolved
14 under federal law, including what amount to defendant’s potential counterclaims asserted under
15 the Federal Truth In Lending Act (“TILA”) and the Real Estate Settlement Procedures Act
16 (“RESPA”). (See Notice of Removal ¶¶ 8, 10, 15.) The undersigned is not persuaded by
17 defendant’s argument.

18 A claim for unlawful detainer does not by itself present a federal question or
19 necessarily turn on the construction of federal law, and, therefore, no basis for federal question
20 jurisdiction appears on the face of the Complaint. See, e.g., U.S. Bank Nat’l Ass’n v. Tyler, No.
21 C-10-4033 PJH, 2010 WL 4918790, at *2 (N.D. Cal. Nov. 12, 2010) (unpublished) (concluding
22 that a single claim for unlawful detainer under state law does not provide a basis for federal
23 question jurisdiction); OneWest Bank FSB v. Ignacio, No. CIV S-10-1683 JAM DAD PS, 2010
24 WL 2696702, at *2 (E.D. Cal. July 6, 2010) (unpublished) (same); IndyMac Federal Bank, F.S.B.
25 v. Ocampo, No. EDCV 09-2337 PA (DTBx), 2010 WL 234828, *2 (C.D. Cal. Jan. 13, 2010)
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(unpublished) (same); HSBC Bank, N.A. v. Bryant, No. 09-CV-1659-IEG (POR), 2009 WL 3787195, at *3 (S.D. Cal. Nov. 10, 2009) (unpublished) (same).

Moreover, defendant cannot rely on her potential counterclaims premised on TILA, RESPA, and other federal statutes to establish a federal question because those claims do not appear on the face of plaintiff's Complaint. See Vaden v. Discover Bank, 129 S. Ct. 1262, 1272 (2009) (stating that federal question jurisdiction cannot rest upon an actual or anticipated defense or counterclaim); accord Hunter v. Philip Morris USA, 582 F.3d 1039, 1042-43 (9th Cir. 2009); Takeda v. Nw. Nat'l Life Ins Co., 765 F.2d 815, 822 (9th Cir. 1985). Accordingly, federal question jurisdiction does not provide a proper basis for removal.

B. Diversity Jurisdiction Does Not Support Removal

Defendant also removed this case on the basis of this court's diversity jurisdiction. She alleges that she is a resident and citizen of California but that plaintiff's state of incorporation is "NOT CALIFORNIA." (Notice of Removal ¶ 16.) Defendant did not provide a factual basis for this court to find that plaintiff's main office is not located in the state of California.⁶ Regarding the amount in controversy, defendant argues that the matter in controversy exceeds the statutory minimum because "[p]laintiff is attempting to wrongfully deprive [d]efendant of their [*sic*] home valued [at] \$259,362.00." (Id.) Plaintiff does not refute that complete diversity exists, rather, plaintiff argues that removal is improper because: (1) the minimum amount in controversy is not satisfied; and (2) defendant is a citizen of California and, therefore, removal is barred by the "forum defendant" rule. (Mot. to Remand at 7.)

1. The Amount in Controversy Does Not Exceed the Statutory Minimum

Defendant argues that the amount in controversy is the value of the real property at issue in the unlawful detainer action. (Notice of Removal ¶ 16.) Plaintiff claims that the

⁶ "All national banking associations shall, for the purposes of all other actions by or against them, be deemed citizens of the States in which they are respectively located." 28 U.S.C. § 1348.

1 amount in controversy is the amount of holdover damages, which it alleges are less than \$14,500.
2 (Mot. to Remand at 7.) Assuming that the parties are diverse for the purposes of diversity
3 jurisdiction, defendant has still failed to prove that the matter in controversy exceeds the sum or
4 value of \$75,000.

5 District courts have diversity jurisdiction over “all civil actions where the matter
6 in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs,” and the
7 action is between: “(1) citizens of different States; (2) citizens of a State and citizens or subjects
8 of a foreign state; (3) citizens of different States and in which citizens or subjects of a foreign
9 state are additional parties; and (4) a foreign state . . . as plaintiff and citizens of a State or of
10 different States.” 28 U.S.C. § 1332; see also Geographic Expeditions, Inc., 599 F.3d at 1106.
11 When determining the existence of removal jurisdiction, federal courts look to the face of the
12 complaint at the time that the complaint was filed. See Caterpillar, Inc., 482 U.S. at 392.

13 Moreover, when a state court complaint affirmatively alleges that the amount in
14 controversy is less than the jurisdictional threshold, the party seeking removal must prove with
15 “legal certainty” that the jurisdictional amount is met. See Lowdermilk v. U.S. Bank Nat’l
16 Ass’n, 479 F.3d 994, 1000 (9th Cir. 2007); see also Wachovia Mortgage FSB v. Atencio, No. C
17 09-5275 BZ, 2010 WL 1221804, at *1 (N.D. Cal. Mar. 9, 2010) (unpublished) (finding that when
18 plaintiff has plead a “specific amount in damages” it is not necessary to look beyond the face of
19 the complaint) (citing Lowdermilk, 479 F.3d at 999); Valdez v. Allstate Ins. Co., 372 F.3d 1115,
20 1117 (9th Cir. 2004) (acknowledging the general “facially evident” rule but noting that the
21 inquiry is not confined to the face of the complaint when the amount in controversy is not stated
22 therein).

23 As the party seeking removal, defendant had the burden of establishing, to a legal
24 certainty, that the value of the claim meets the jurisdictional minimum. To this end, defendant
25 argues that the amount in controversy is defined by the value of her home, rather than the amount
26 stated in the Complaint. Defendant’s argument is incorrect. As noted above, when the plaintiff

1 has plead a specific amount in damages, those damages govern the propriety of removal. See,
2 e.g., U.S. Bank Nat'l Ass'n v. Belle, Case No. 08-00763, 2008 U.S. Dist. LEXIS 54293, at *2
3 (C.D. Cal. July 8, 2008) (unpublished) (remanding an unlawful detainer action to Superior Court
4 based, in part, on the finding that defendant's claim for damages in excess of \$370,000 were not
5 the damages which govern the propriety of removal); U.S. Bank v. Lasoff, No. CV 10-00235
6 MMM (Rcx), 2010 WL 669239, at *5 (C.D. Cal. Feb. 23, 2010) (unpublished) (holding that the
7 total potential damages, plaintiff's holdover damages demand, did not exceed \$75,000); Bravo,
8 2009 WL 210481, at *3 (holding that for purposes of removal premised on diversity jurisdiction,
9 the damages emblazoned on the face of the unlawful detainer complaint are controlling).
10 Further, defendant offered only her own valuation of her home—which itself is unsupported by
11 objective evidence—to establish that the jurisdictional minimum has been met. (Compare
12 Trustee's Deed Upon Sale, Dkt. No. 1 at 14 (listing the amount paid by plaintiff at the February
13 23, 2010 public auction as \$242,352), with Notice of Removal ¶ 16 (stating that the value of the
14 home is \$259,362).)

15 Consequently, defendant did not establish with legal certainty that this court can
16 maintain diversity jurisdiction over this action because the face of the Complaint conspicuously
17 states, "Under \$10,000," and defendant's characterization of the value of plaintiff's claim is
18 unsupported by fact or law. Accordingly, the undersigned recommends that this action be
19 remanded to the Superior Court.⁷ See GMAC Mortgage, LLC v. Martinez, No. CV 10-02882
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21 ⁷ In addition to removal of the unlawful detainer action, defendant requested
22 consolidation with an action pending in the U.S. District Court for the Eastern District of
23 California, Case No. 2:10-cv-00374 KJM KJN, a class action suit. Federal courts may
24 consolidate actions which are before the court when they involve a common question of law or
25 fact. See Fed. R. Civ. P. 42(a)(2). Because the undersigned concludes that removal is not
26 proper, the present action is not *before the court*, and therefore consolidation is not permitted.
See Oregon Egg Producers v. Andrew, 458 F.2d 382, 383 (9th Cir. 1972) (per curiam) (holding
that Rule 42 cannot be used to avoid remand to state court by consolidating with a pending
federal action because Rule 42 can only be invoked in, and applied to, cases that are properly
before the court); U.S. for Use of Owens-Corning Fiberglass Corp. v. Brandt Constr. Co., 826
F.2d 643, 647 (7th Cir. 1987) (vacating a trial verdict and holding that the district court never

1 MMM (PLAx), 2010 WL 1931268, at *4 (C.D. Cal. May 10, 2010) (unpublished) (remanding
2 unlawful detainer action to state court where plaintiff filed action as a limited civil action with an
3 affirmative demand of less than \$10,000); accord Wells Fargo Bank, N.A. v. Cencil, No.
4 C-10-01169 EDL, 2010 WL 2179778, at *3 (N.D. Cal. May 27, 2010) (unpublished); Lasoff,
5 2010 WL 669239, at *5; Deutsche Bank Nat'l Trust Co. v. Sitanggang, No. 1:09cv01835 AWI
6 DLB, 2010 WL 144439, at *2 (E.D. Cal. Jan. 11, 2010) (unpublished); Bravo, 2009 WL 210481,
7 at *2-3; HSBC Bank USA v. Ramirez, No. CV 08-05638-RGK (CWx), 2008 WL 4724055, at *2
8 (C.D. Cal. Oct. 21, 2008) (unpublished).

9 2. Plaintiff Waived Reliance on the Forum Defendant Rule

10 Plaintiff also argues that as a resident of California, defendant may not remove the
11 underlying action to this court. However, plaintiff has waived any reliance on the forum
12 defendant rule by filing an untimely motion to remand.

13 The rule governing removability expressly states that an action is removable “only
14 if none of the parties in interest properly joined and served as defendants is a citizen of the State
15 in which such action is brought.” 28 U.S.C. 1441(b). Therefore, as a general matter, removal
16 premised on diversity jurisdiction is improper where one of the defendants named in the action is
17 a resident of the forum state. Spencer v. U.S. Dist. Court for N. Dist. of Cal., 393 F.3d 867, 870
18 (9th Cir. 2004). However, “[a] motion to remand the case on the basis of any defect *other than*
19 *lack of subject matter jurisdiction* must be made within 30 days after the filing of the notice of
20 removal under section 1446(a).” 28 U.S.C. § 1447(c) (emphasis added).

21 Interpreting Section 1447(c), the Ninth Circuit Court of Appeals has held that a
22 violation of the forum defendant rule is “a waivable non-jurisdictional defect subject to the 30-

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24 acquired ancillary jurisdiction over improperly removed case by consolidating it with related and
25 properly filed case because Rule 42 requires that both cases be “pending before the court and an
26 improperly removed action does not meet this criterion”); see also Lasoff, 2010 WL 669239,
at *1 (“An already-existing federal action cannot provide the mechanism for removal of a non-
removable state-court action.”) (internal citations omitted).

1 day time limit.” Lively v. Wild Oats Market, Inc., 456 F.3d 933, 942 (9th Cir. 2006), cert.
2 denied, 549 U.S. 1207 (2007); see also Coto Settlement v. Eisenberg, 593 F.3d 1031, 1034 (9th
3 Cir. 2010) (retaining jurisdiction for want of a timely motion to remand that was premised on the
4 forum defendant rule); Powell v. DEF Express, Inc., 265 Fed. Appx. 672, 674 (9th Cir. 2008)
5 (holding that plaintiff waived procedural objections to removal, including one based on the
6 forum defendant rule, where the motion for remand was not filed within 30 days of removal).

7 Here, plaintiff’s motion to remand was filed more than 90 days after defendant’s
8 removal, i.e., outside of the 30-day window. As a result, plaintiff has waived any procedural
9 objections to removal, including the forum defendant rule. Accordingly, remand is not proper on
10 the grounds that defendant’s removal violated the forum defendant rule.

11 IV. CONCLUSION

12 For the reasons stated above, IT IS HEREBY RECOMMENDED that:

- 13 1. Plaintiff’s motion to dismiss (Dkt. No. 13) be denied.
- 14 2. Plaintiff’s motion to remand (Dkt. No. 4) be granted and that this entire
15 case be remanded to the Superior Court of the State of California, County of Sacramento.
- 16 3. This case be closed and all dates in this matter be vacated.

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

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1 all parties within fourteen days after service of the objections. E. Dist. Local Rule 304(d).
2 Failure to file objections within the specified time may waive the right to appeal the District
3 Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d
4 1153, 1156-57 (9th Cir. 1991).

5 IT IS SO RECOMMENDED.

6 DATED: March 22, 2011

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8 
9 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE