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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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SUNIL WADHWA and LYNN LORI  
WADHWA,

NO. 2:10-cv-03361 WBS DAD

Plaintiffs,

ORDER RE: MOTION TO REMAND

v.

AURORA LOAN SERVICES, LLC, a  
subsidiary of AURORA BANK,  
FSB; GREENPOINT MORTGAGE  
FUNDING, INC.; MORTGAGE  
ELECTRONIC REGISTRATION  
SYSTEMS, INC.; MARIN  
CONVEYANCING CORPORATION; and  
DOES 1-10, inclusive,

Defendants.

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On October 18, 2010, Aurora Loan Services, LLC  
("Aurora"), purchased the home of Sunil and Lynn Lori Wadhwa at  
3055 Orbetello Way in El Dorado Hills, California, at a trustee's  
sale. (Notice of Removal Ex. 1 ¶¶ 2, 4 (Docket No. 4).) When  
the Wadhwas failed to vacate the home, Aurora filed an unlawful  
detainer action in El Dorado County Superior Court on November 3,

1 2010 ("Unlawful Detainer Action"). (Id. ¶¶ 6-7.) On December  
2 17, 2010, the Wadhwas filed an action against Aurora and other  
3 parties in this court, alleging violations of state and federal  
4 law related to their loan and foreclosure ("Federal Action").  
5 (Docket No. 2.) At the same time, the Wadhwas filed a Notice of  
6 Removal of the Unlawful Detainer Action, improperly captioning  
7 and noticing it as part of the Federal Action. (Docket No. 4.)  
8 Aurora now moves to remand the Unlawful Detainer Action on the  
9 ground that this court does not have subject matter jurisdiction.  
10 (Docket No. 8.)

11 A defendant may remove an action filed in state court  
12 to federal court if the federal court would have original subject  
13 matter jurisdiction over the action. 28 U.S.C. § 1441. Federal  
14 courts have original subject matter jurisdiction over "all civil  
15 actions arising under the Constitution, laws, or treaties of the  
16 United States," 28 U.S.C. § 1331, as well as actions in which  
17 there is complete diversity between the parties. 28 U.S.C. §  
18 1332. "The [removing party] bears the burden of establishing  
19 that removal is proper." Provincial Gov't of Marinduque v.  
20 Placer Dome, Inc., 582 F.3d 1083, 1087 (9th Cir. 2009). "The  
21 removal statute is strictly construed against removal  
22 jurisdiction," id., and removal jurisdiction "must be rejected if  
23 there is any doubt as to the right of removal in the first  
24 instance." Geographic Expeditions, Inc. v. Estate of Lhotka, 599  
25 F.3d 1102, 1106 (9th Cir. 2010) (quoting Gaus v. Miles, Inc., 980  
26 F.2d 564, 566 (9th Cir. 1992) (per curiam)) (internal quotation  
27 marks omitted). To determine whether federal question  
28 jurisdiction exists, the court looks to the underlying complaint.

1 Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S.  
2 826, 830 (2002). The court does not consider any answers,  
3 defenses, or counterclaims. Id. at 831.

4 The Unlawful Detainer Action was removed from state  
5 court by the Wadhwas on the ground that the Wadhwas had filed the  
6 Federal Action in federal court. The Wadhwas' apparent attempt  
7 to create subject matter jurisdiction by filing the Notice of  
8 Removal for the Unlawful Detainer Action within their Federal  
9 Action was completely improper. The two actions are distinct,  
10 and the Wadhwas should have removed the Unlawful Detainer Action,  
11 if at all, by filing it independently. A party cannot remove one  
12 action into a another preexisting action.

13 Even if the Unlawful Detainer Action had been properly  
14 filed, this court would not have subject matter jurisdiction over  
15 it. The Unlawful Detainer Action does not raise a federal  
16 question. The complaint pleads an exclusively state law cause of  
17 action, seeks exclusively state law remedies, and makes no  
18 mention of federal law. The Wadhwas do not allege that this  
19 court has jurisdiction on the basis of diversity.

20 IT IS THEREFORE ORDERED that Aurora's motion to remand  
21 its unlawful detainer action (Docket No. 4) be, and the same  
22 hereby is, GRANTED, and that action is hereby REMANDED to the  
23 Superior Court of the State of California, in and for the County

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1 of El Dorado. The Complaint (Docket No. 2) which originally  
2 iniated this action is unaffected by this Order.

3 DATED: January 27, 2011

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WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE