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

BLUE MOUNTAIN HOMES LLC,

Plaintiff,

No. CIV S-11-2158 MCE DAD PS

vs.

ENRIQUE VASQUEZ, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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By Notice of Removal filed August 15, 2011, this unlawful detainer action was removed from Solano County Superior Court by defendant Enrique Vasquez, who paid the required filing fee. Defendant Vasquez is proceeding pro se. Accordingly, the matter has been referred to the undersigned for all purposes encompassed by Local Rule 302(c)(21).

It is well established that the statutes governing removal jurisdiction must be “strictly construed against removal.” Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir. 1979) (citing Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108 (1941)). “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). “The burden of establishing federal jurisdiction falls on the party invoking removal.” Harris v. Provident Life & Accident Ins. Co., 26 F.3d 930, 932 (9th Cir. 1994) (quoting Gould v. Mut. Life Ins. Co., 790 F.2d 769,

1 771 (9th Cir.1986)). Moreover, “the existence of federal jurisdiction depends solely on the  
2 plaintiff’s claims for relief and not on anticipated defenses to those claims.” ARCO Envtl.  
3 Remediation, LLC v. Dep’t of Health & Envtl. Quality, 213 F.3d 1108, 1113 (9th Cir. 2000).  
4 Where it appears that the district court lacks subject matter jurisdiction over a removed case, “the  
5 case shall be remanded.” 28 U.S.C. § 1447(c).

6 In conclusory fashion, defendant Vasquez alleges as follows in his notice of  
7 removal: plaintiff filed an unlawful detainer action in Solano County Superior Court; defendant  
8 Vasquez filed a demurrer alleging that plaintiff’s notice to vacate premises did not comply with  
9 The Protecting Tenants at Foreclosure Act, 12 U.S.C. § 5220; the state court did not sustain  
10 defendant’s demurrer. (Notice of Removal (Doc. No. 1) at 1-2.) Defendant argues that  
11 “[f]ederal question jurisdiction exists because Defendants’ demurrer, a pleading, depend [sic] on  
12 the determination of Defendants’ rights and Plaintiff’s duties under federal law.” (Id. at 3.)

13 Defendant’s notice of removal includes a copy of plaintiff’s complaint (Id., Ex.  
14 A.) It is evident from plaintiff’s complaint that this action is nothing more than a garden-variety  
15 unlawful detainer action filed against the former owner of real property located in California and  
16 based wholly on California law. Plaintiff’s complaint does not involve any “claim or right  
17 arising under the Constitution, treaties or laws of the United States” that would have permitted  
18 plaintiff to file this action originally in federal court. See 28 U.S.C. § 1441(b). Defendant’s own  
19 argument demonstrates that if there is any federal claim in this action it arises solely from the  
20 affirmative defense asserted by defendant and not from the claims alleged in plaintiff’s unlawful  
21 detainer complaint.

22 For the reasons set forth above, the court finds that defendant Vasquez has failed  
23 to meet his burden of establishing a basis for federal jurisdiction.

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1                   Accordingly, IT IS HEREBY RECOMMENDED that this action be summarily  
2 remanded to the Superior Court of California, County of Solano and this case be closed.

3                   These findings and recommendations will be submitted to the United States  
4 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
5 fourteen days after being served with these findings and recommendations, any party may file  
6 written objections with the court and serve a copy on all parties. A document presenting  
7 objections should be titled "Objections to Magistrate Judge's Findings and Recommendations."  
8 Any reply to objections shall be filed and served within seven days after service of the objections.

9 DATED: August 19, 2011.

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13                   DALE A. DROZD  
14                   UNITED STATES MAGISTRATE JUDGE

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