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

MSF REO II, LLC,

Plaintiff,

No. 2:11-cv-03265 KJM KJN PS

v.

ANITA M. CATEDRILLA; EFREN L.  
CATEDRILLA, and DOES 1-10,  
Inclusive,

Defendants.

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Presently before the court<sup>1</sup> is plaintiff’s motion to remand this unlawful detainer action to the Superior Court of California for the County of Solano (“Superior Court”). Sheila Floro, who removed this case to federal court, claims to have intervened in this case as a matter of right. Ms. Floro failed to file a written opposition to plaintiff’s motion to remand.

Because oral argument would not materially aid 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 moving papers and record in this case, the undersigned recommends that plaintiff’s motion to remand be granted and that this case be

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<sup>1</sup> 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 remanded to the Superior Court on the grounds that this court lacks federal subject matter  
2 jurisdiction over plaintiff’s unlawful detainer claim.<sup>2</sup> The undersigned recommends that  
3 plaintiff’s request for attorney’s fees be denied.

4 I. BACKGROUND

5 On November 3, 2011, plaintiff filed a complaint in the Superior Court entitled  
6 “Complaint In Unlawful Detainer Demand Amount Under \$10,000.00” (“Complaint”), seeking  
7 to recover possession of the property at issue that is located in Benicia, California. (Compl. ¶ 2,  
8 attached to Notice of Removal, Dkt. No. 1 at 12-19.) The Complaint alleges that plaintiff  
9 purchased the subject property at a “foreclosure sale,” that title under the sale was duly perfected,  
10 and that plaintiff is entitled to immediate possession of the property. (Id. ¶¶ 2, 6.) It further  
11 alleges that plaintiff provided the named defendants, who allegedly continued to live at the  
12 property at the time the complaint was filed, with notice to vacate the premises and deliver  
13 possession of the property within three days. (Id. ¶¶ 5, 7-8 & Ex. 1.) Plaintiff alleges that the  
14 named defendants failed to vacate and deliver possession. (Id. ¶¶ 7-8.) Through this action,  
15 plaintiff seeks: (1) restitution and possession of the subject property, (2) damages at a rate of  
16 \$86.66 per day from November 2, 2011; and (3) costs. (Compl. at 4.)

17 On November 10, 2011, Ms. Floro filed a Prejudgment Claim of Right of  
18 Possession in the Superior Court, asserting that she resides at the subject property pursuant to a  
19 written rental agreement with the landlord, but was not named in the summons or Complaint.  
20 (See Notice of Removal, Dkt. No. 1 at 8-9.) Ms. Floro contends that the named defendants are  
21 no longer participants in this litigation, and that she properly intervened in the action without  
22 leave of court while the action proceeded in the Superior Court. (See Notice of Removal ¶¶ 2-3.)

23 On December 9, 2011, Ms. Floro removed the unlawful detainer action to this

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25 <sup>2</sup> Plaintiff simultaneously filed an ex parte application requesting that this case be  
26 remanded to the Superior Court (Dkt. No. 5), which provided no basis for the court to grant the  
requested relief on an ex parte basis. In light of these findings and recommendations, the  
undersigned recommends that plaintiff’s ex parte application be denied as moot.

1 court pursuant to 28 U.S.C. §§ 1441 and 1446, asserting that this court has subject matter  
2 jurisdiction over plaintiff’s claim pursuant to 28 U.S.C § 1331. (Notice of Removal ¶ 5.)  
3 Specifically, Ms. Floro asserts that this court has federal question jurisdiction based on the  
4 “Protecting Tenants at Foreclosure Act of 2009, 12 USC 5220,” and contends that plaintiff failed  
5 to provide her with a 90-day notice to quit required by that legislation. (See Notice of Removal  
6 ¶¶ 5, 7.)

7 On January 4, 2012, plaintiff filed a defectively noticed motion to remand (Dkt.  
8 No. 4). On January 5, 2012, plaintiff correctly noticed a motion to remand (Dkt. No. 7), which  
9 argues that this court lacks subject matter jurisdiction over its claim.<sup>3</sup>

10 II. LEGAL STANDARDS

11 In relevant part, the federal removal statute provides:

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

15 28 U.S.C. § 1441(a). “The defendant bears the burden of establishing that removal is proper.”  
16 Provincial Gov’t of Marinduque v. Placer Dome, Inc., 582 F.3d 1083, 1087 (9th Cir. 2009), cert.  
17 denied, 131 S. Ct. 65 (2010). “The removal statute is strictly construed against removal  
18 jurisdiction,” id., and removal jurisdiction ““must be rejected if there is any doubt as to the right  
19 of removal in the first instance”” Geographic Expeditions, Inc. v. Estate of Lhotka, 599 F.3d  
20 1102, 1106 (9th Cir. 2010) (quoting Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (per  
21 curiam)).

22 III. DISCUSSION

23 As noted above, Ms. Floro removed this action to federal court on the basis of this

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24 <sup>3</sup> Plaintiff also alleges, without any supporting documentation or declaration, that Ms.  
25 Floro removed this action on the eve of an unlawful detainer trial scheduled to commence in the  
26 Superior Court on December 13, 2011. (Pl.’s P. & A. In Supp. of Mot. to Remand at 4.) The undersigned has given no consideration to this unsupported fact.

1 court's alleged federal question jurisdiction. For the reasons that follow, the undersigned  
2 concludes that this court lacks subject matter jurisdiction over plaintiff's claim.<sup>4</sup> The  
3 undersigned also recommends that plaintiff's request for attorney's fees be denied.

4 A. The Court's Subject Matter Jurisdiction

5 District courts have federal question jurisdiction over "all civil actions that arise  
6 under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. "A case 'arises  
7 under' federal law either where federal law creates the cause of action or 'where the vindication  
8 of a right under state law necessarily turn[s] on some construction of federal law.'" Republican  
9 Party of Guam v. Gutierrez, 277 F.3d 1086, 1088-89 (9th Cir. 2002) (modification in original)  
10 (citing Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 8-9 (1983)). "[T]he  
11 presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint  
12 rule,' which provides that federal jurisdiction exists only when a federal question is presented on  
13 the face of the plaintiff's properly pleaded complaint." Placer Dome, Inc., 582 F.3d at 1091;  
14 Ultramar Am. Ltd. v. Dwelle, 900 F.2d 1412, 1414 (9th Cir. 1990) ("Ordinarily, the existence of  
15 federal question jurisdiction is determined from the face of the complaint."). "In determining the  
16 existence of removal jurisdiction, based upon a federal question, the court must look to the  
17 complaint *as of the time the removal petition was filed*. Jurisdiction is based on the complaint as  
18 originally filed . . . ." Abada v. Charles Schwab & Co., 300 F.3d 1112, 1117 (9th Cir. 2002)  
19 (citation and quotation marks omitted).

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21 <sup>4</sup> 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 Here, plaintiff filed its Complaint in the Superior Court asserting a single claim  
2 for unlawful detainer premised solely on California law. Because a claim for unlawful detainer  
3 does not by itself present a federal question or necessarily turn on the construction of federal law,  
4 no basis for federal question jurisdiction appears on the face of the Complaint. See, e.g., U.S.  
5 Bank Nat'l Ass'n v. Tyler, No. C 10-4033 PJH, 2010 WL 4918790, at \*2 (N.D. Cal. Nov. 12,  
6 2010) (unpublished) (concluding that a single claim for unlawful detainer under state law does  
7 not provide a basis for federal question jurisdiction); OneWest Bank FSB v. Ignacio, No. CIV  
8 S-10-1683 JAM DAD PS, 2010 WL 2696702, at \*2 (E.D. Cal. July 6, 2010) (unpublished)  
9 (same); IndyMac Federal Bank, F.S.B. v. Ocampo, No. EDCV 09-2337 PA (DTBx), 2010 WL  
10 234828, \*2 (C.D. Cal. Jan. 13, 2010) (unpublished) (same); HSBC Bank, N.A. v. Bryant, No. 09-  
11 CV-1659-IEG (POR), 2009 WL 3787195, at \*3 (S.D. Cal. Nov. 10, 2009) (unpublished) (same).

12 Ms. Floro argues that this court has subject matter jurisdiction over plaintiff's  
13 claim because plaintiff's three-day notice to vacate the premises allegedly violated the Protecting  
14 Tenants At Foreclosure Act of 2009, Pub. L. No. 111-22, § 702, 123 Stat. 1660 (2009) (the  
15 "Act"). (See Notice of Removal ¶¶ 6-7.) Insofar as Ms. Floro's argument is concerned, the Act  
16 provides protections to tenants who reside in properties subject to foreclosure, including the  
17 requirement that a 90-day notice to vacate be given to bona fide tenants. See SD Coastline LP v.  
18 Buck, No. 10CV2108 MMA (NLS), 2010 WL 4809661, at \*1 (S.D. Cal. Nov. 19, 2010)  
19 (unpublished).

20 Federal courts have rejected attempts to premise federal subject matter jurisdiction  
21 on the 90-day notice provision provided in the Act. See Wescom Credit Union v. Dudley, No.  
22 CV 10-8203 GAF (SSx), 2010 WL 4916578, at \*2 (C.D. Cal. Nov. 22, 2010) (unpublished); SD  
23 Coastline LP, 2010 WL 4809661, at \*2-3; Aurora Loan Servs., LLC v. Martinez, No. C10-01260  
24 HRL, 2010 WL 1266887, at \*1 (N.D. Cal. Mar. 29, 2010) (unpublished). This rejection of  
25 asserted jurisdiction is because such an argument is an attempt to premise this court's subject  
26 matter jurisdiction on a defense or a counterclaim, which cannot establish a federal question

1 because such a defense or counterclaim does not appear on the face of the complaint.<sup>5</sup> See  
2 Vaden v. Discover Bank, 556 U.S. 49, 60 (2009) (stating that federal question jurisdiction cannot  
3 “rest upon an actual or anticipated counterclaim”); Takeda v. Nw. Nat’l Life Ins Co., 765 F.2d  
4 815, 822 (9th Cir. 1985); see also SD Coastline LP, 2010 WL 4809661, at \*2-3 (concluding that  
5 unlawful detainer defendant’s claim or defense based on the Protecting Tenants at Foreclosure  
6 Act of 2009 cannot serve as a basis for removal jurisdiction); accord Ignacio, 2010 WL 2696702,  
7 at \*2.

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

11 B. Request for Attorney’s Fees

12 Plaintiff argues that it should be permitted to recover from Ms. Floro its attorney’s  
13 fees incurred in moving to remand this action to the Superior Court. It contends that the removal  
14 effectuated by Ms. Floro, who is proceeding without counsel, was “in bad faith and without a  
15 viable reason.” Plaintiff does not request any sum certain insofar as its attorney’s fees are  
16 concerned. The undersigned recommends that plaintiff’s request be denied.

17 Pursuant to 28 U.S.C. § 1447(c), “[a]n order remanding the case may require  
18 payment of just costs and any actual expenses, including attorney fees, incurred as a result of the  
19 removal.” The United States Supreme Court has confirmed that such an award is permissive  
20 and left to the discretion of the district court, but is not automatic or even presumptive. See  
21 Martin v. Franklin Capital Corp., 546 U.S. 132, 136-40 (2005). Indeed, in Martin, the Court held

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23 <sup>5</sup> Additionally, federal district courts have concluded that the Protecting Tenants at  
24 Foreclosure Act of 2009 does not create a federal private right of action, but provides directives  
25 to state courts. Deutsche Bank Nat’l Trust Co. v. Jora, No. CIV S-10-1617 MCE EFB PS, 2010  
26 WL 3943584, at \*1 n.3 (E.D. Cal. Oct. 1, 2010) (unpublished) (citing Fannie Mae v. Lemere, No.  
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 that “[a]bsent unusual circumstances, courts may award attorney’s fees under § 1447(c) only  
2 where the removing party lacked an objectively reasonable basis for seeking removal.  
3 Conversely, when an objectively reasonable basis exists, fees should be denied.” Id. at 141.

4 Here, the undersigned cannot conclude that Ms. Floro, who is not an attorney and  
5 is proceeding pro se, lacked an objectively reasonable basis for removal. Ms. Floro believed that  
6 subject matter jurisdiction existed by reason of her potential defense or counterclaim, but was  
7 mistaken. However, that determination was by no means patently obvious, at least to a non-  
8 attorney. Under these circumstances, the undersigned concludes that sanctions would be  
9 inappropriate, if not inequitable, and recommends that plaintiff’s request for attorney’s fees be  
10 denied.

11 IV. CONCLUSION

12 As stated above, IT IS HEREBY ORDERED that the hearing on plaintiff’s  
13 motion to remand presently set for February 9, 2012, is vacated.

14 For the reasons stated above, IT IS FURTHER RECOMMENDED that:

15 1. Plaintiff’s motion to remand (Dkt. No. 7) be granted and that this matter  
16 be remanded to the Superior Court of California, County of Solano.

17 2. Plaintiff’s request for attorney’s fees be denied.

18 3. Plaintiff’s ex parte application seeking the remand of this case (Dkt. No. 5)  
19 be denied as moot.


20 4. This case be closed and all dates be vacated.

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

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: February 3, 2012

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9 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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