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

WILMINGTON SAVINGS  
FUND SOCIETY, FSB,

Plaintiff,

No. CIV S-11-3339 KJM DAD PS

vs.

SCOTT H. NULTON;  
TONI L. NULTON,

FINDINGS AND RECOMMENDATIONS

Defendants.

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By Notice of Removal filed December 16, 2011, this unlawful detainer action was removed from the Sacramento County Superior Court by defendants Scott Nulton and Toni Nulton, who are proceeding pro se.<sup>1</sup> 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)). See also Syngenta Crop Prot., Inc. v. Henson, 537 U.S. 28, 32 (2002); Provincial Gov’t of Martinique v.

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<sup>1</sup> Defendants have neither paid the filing fee or applied to proceed in forma pauperis.

1 Placer Dome, Inc., 582 F.3d 1083, 1087 (9th Cir. 2009). “Federal jurisdiction must be rejected if  
2 there is any doubt as to the right of removal in the first instance.” Gaus v. Miles, Inc., 980 F.2d  
3 564, 566 (9th Cir. 1992). ““The burden of establishing federal jurisdiction falls on the party  
4 invoking removal.”” Harris v. Provident Life & Accident Ins. Co., 26 F.3d 930, 932 (9th Cir.  
5 1994) (quoting Gould v. Mut. Life Ins. Co., 790 F.2d 769, 771 (9th Cir.1986)). See also  
6 Provincial Gov’t of Martinique, 582 F.3d at 1087. Moreover, “the existence of federal  
7 jurisdiction depends solely on the plaintiff’s claims for relief and not on anticipated defenses to  
8 those claims.” ARCO Envtl. Remediation, LLC v. Dep’t of Health & Envtl. Quality, 213 F.3d  
9 1108, 1113 (9th Cir. 2000). Where it appears, as it does here, that the district court lacks subject  
10 matter jurisdiction over a removed case, “the case shall be remanded.” 28 U.S.C. § 1447(c).

11           In this case, defendants acknowledge that plaintiff filed this unlawful detainer  
12 action in the Sacramento County Superior Court. (Notice of Removal (Doc. No. 1) at 2.)  
13 However, defendants allege in conclusory fashion that “[f]ederal question jurisdiction exists  
14 because Defendants’ demurrer, a pleading, depend (sic) on the determination of Defendants’  
15 rights and Plaintiff’s duties under federal law.” (Id. at 3.) In this regard, defendants argue that  
16 the Sacramento County Superior Court did not sustain defendants’ demurrer, despite defective  
17 notice in violation of “the Protecting Tenants at Foreclosure Act 12 U.S.C. § 5220.” (Id.)

18           It is evident however from a reading of plaintiff’s complaint that plaintiff’s action  
19 is nothing more than a garden-variety unlawful detainer action filed against the former owner of  
20 real property located in California and is based wholly on California law. As such, the complaint  
21 does not involve any “claim or right arising under the Constitution, treaties or laws of the United  
22 States” that would have permitted plaintiff to file this action originally in federal court. See 28  
23 U.S.C. § 1441(b). Moreover, it is evident from defendants’ argument that any federal claims in  
24 this action arise solely from defendants’ own affirmative defenses and not from the plaintiff’s  
25 unlawful detainer complaint. Thus, defendants have failed to meet their burden of establishing a  
26 basis for federal jurisdiction.

