

1 (internal quotation marks omitted)). “Federal jurisdiction must be rejected if there is any doubt
2 as to the right of removal in the first instance.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir.
3 1992). “If at any time before final judgment it appears that the district court lacks subject matter
4 jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

5 The propriety of removal requires the consideration of whether the district court
6 has original jurisdiction of the action; i.e., whether the case could have originally been filed in
7 federal court based on a federal question, diversity of citizenship, or another statutory grant of
8 jurisdiction. See Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987). If the case is within
9 the original jurisdiction of the district court, removal is proper so long as the defendant complied
10 with the procedural requirements set forth in 28 U.S.C. § 1446. If the case is not within the
11 original jurisdiction of the district court, removal is improper. The absence of subject matter
12 jurisdiction is not waivable by the parties. See Am. Fire & Cas. Co. v. Finn, 341 U.S. 6 (1951).

13 With the Notice of Removal, defendants provides a copy of the complaint filed in
14 San Joaquin County Superior Court. The complaint contains a single claim for unlawful
15 detainer. In defendants’ removal notice, it is asserted that the court has jurisdiction pursuant to
16 the Protecting Tenants at Foreclosure Act of 2009 (“PFTA”), 12 U.S.C. § 5220. The PFTA
17 provides protections to tenants who reside in properties subject to foreclosure, including the
18 requirement that a 90–day notice to vacate be given to bona fide tenants. See SD Coastline LP v.
19 Buck, 2010 WL 4809661, at *1 (S.D. Cal. Nov.19, 2010) (unpublished). Not only is the PFTA
20 inapposite, as defendant Farial Shokoor admits to being the former owner of the subject
21 property, see NOR at 1, but plaintiff’s complaint for unlawful detainer does not state claims
22 under any federal law. Rather, defendants appear to assert the PFTA is at issue by virtue of
23 defendants’ defense to the action.¹

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25 ¹ Additionally, federal district courts have concluded that the PFTA does not create a
26 federal private right of action, but provides directives to state courts. See, e.g., Deutsche Bank
Nat'l Trust Co. v. Jora, 2010 WL 3943584, at *1 n.3 (E.D. Cal. Oct.1, 2010); Zalemba v. HSBC
Bank, USA, Nat'l Ass'n, 2010 WL 3894577, at *2 (S.D. Cal. Oct. 1, 2010).

1 Removal, however, cannot be based on a defense, counterclaim, cross-claim, or
2 third-party claim raising a federal question, whether filed in state or federal court. See Vaden v.
3 Discover Bank, 556 U.S. 49 (2009); Hunter, 582 F.3d at 1042-43; Metro Ford Truck Sales, Inc.
4 v. Ford Motor Co., 145 F.3d 320, 327 (5th Cir. 1998); Preciado v. Ocwen Loan Servicing, 2011
5 WL 977819, at *1 (C.D. Cal. Mar. 18, 2011); Fed. Nat'l Mortg. Ass'n. v. Bridgeman, 2010 WL
6 5330499, at *4 (E.D. Cal. Dec. 20, 2010). The complaint indicates that the only cause of action
7 is one for unlawful detainer, which arises under state law and not under federal law. Thus, this
8 action does not arise under federal law, and jurisdiction under 28 U.S.C. § 1331 does not exist.

9 Accordingly, IT IS HEREBY ORDERED that the hearing scheduled for July 26,
10 2012 is vacated; and

11 IT IS HEREBY RECOMMENDED that:

- 12 1. Plaintiff's motion to remand be granted; and
- 13 2. This action be remanded to the San Joaquin County Superior Court.

14 These findings and recommendations are submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
16 days after being served with these findings and recommendations, defendant may file written
17 objections with the court. The document should be captioned "Objections to Magistrate Judge's
18 Findings and Recommendations." Any response to the objections shall be filed and served
19 within fourteen days after service of the objections. Defendant is advised that failure to file
20 objections within the specified time may waive the right to appeal the District Court's order.

21 DATED: July 12, 2012.

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23 
24 UNITED STATES MAGISTRATE JUDGE

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