



1 exercised jurisdiction over the action had it originally been filed in federal court. Caterpillar, Inc.  
2 v. Williams, 482 U.S. 386, 392 (1987). The “presence or absence of federal-question jurisdiction  
3 is governed by the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists  
4 only when a federal question is presented on the face of the plaintiff’s properly pleaded  
5 complaint.” Id.

6 Attached to the Notice of Removal is a copy of the complaint filed by plaintiff in the  
7 Sacramento County Superior Court. The complaint contains a single claim for unlawful detainer.  
8 In defendant’s removal notice, it is asserted that the court has jurisdiction under the Due Process  
9 Clause and the Equal Protection Clause stemming from plaintiff’s alleged violations of state law.  
10 Plaintiff’s complaint for unlawful detainer, however, does not state claims under any federal law.  
11 Rather, defendant appears to assert that her constitutional rights are at issue by virtue of her  
12 defense to the action.

13 Removal, however, cannot be based on a defense, counterclaim, cross-claim, or third-  
14 party claim raising a federal question, whether filed in state or federal court. See Vaden v.  
15 Discover Bank, 556 U.S. 49 (2009); Hunter v. Philip Morris USA, 582 F.3d 1039, 1042-43 (9th  
16 Cir. 2009); Metro Ford Truck Sales, Inc. v. Ford Motor Co., 145 F.3d 320, 327 (5th Cir. 1998);  
17 Preciado v. Ocwen Loan Servicing, 2011 WL 977819, at \*1 (C.D. Cal. Mar. 18, 2011); Fed. Nat’l  
18 Mortg. Ass’n. v. Bridgeman, 2010 WL 5330499, at \*4 (E.D. Cal. Dec. 20, 2010). The complaint  
19 indicates that the only cause of action is one for unlawful detainer, which arises under state law  
20 and not under federal law. Thus, this action does not arise under federal law, and jurisdiction  
21 under 28 U.S.C. § 1331 does not exist.

22 Based on the foregoing, IT IS HEREBY ORDERED that defendant’s motion to proceed  
23 in forma pauperis is granted; and

24 IT IS HEREBY RECOMMENDED that this action be remanded to the Sacramento  
25 County Superior Court.

26 These findings and recommendations are submitted to the United States District Judge  
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
28 after being served with these findings and recommendations, any party may file written

1 objections with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a  
2 document should be captioned “Objections to Magistrate Judge’s Findings and  
3 Recommendations.” Any response to the objections shall be filed with the court and served on all  
4 parties within fourteen days after service of the objections. Local Rule 304(d). Failure to file  
5 objections within the specified time may waive the right to appeal the District Court’s order.  
6 Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57  
7 (9th Cir. 1991).

8 DATED: June 6, 2014

9   
10 ALLISON CLAIRE  
11 UNITED STATES MAGISTRATE JUDGE  
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