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

WELLS FARGO BANK, N.A.,

No. 2:14-cv-1574-TLN-CMK

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

WILLIAM W. WARNER, et al.,

Defendants.

_____ /
This case was removed to this court from the Shasta County Superior Court by the defendants, proceeding *in propria persona*. This action was referred to the undersigned for all proceedings pursuant to Eastern District of California Local Rules 302-304

Federal Rule of Civil Procedure 12(h)(3) provides that “[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” See also 28 U.S.C. § 1447(c). Here, it is clear that this court lacks subject-matter jurisdiction over this action.

This action was originally filed as an unlawful detainer action in the Superior Court of California, County of Shasta, on May 21, 2014. The action is based on California Code of Civil Procedure § 1161a. The complaint states the amount demanded does not exceed

1 \$10,000.00. Plaintiff alleges in the complaint that it is the owner of the property at issue,
2 purchased at a trustee's sale following foreclosure. However, defendants have continued to
3 possess the property without plaintiff's permission, even after being served with a written notice
4 to quit. (Compl. for Unlawful Detainer (Complaint), attached to Notice of Removal (Doc. 1)).

5 On July 3, 2014, defendants filed the notice of removal, pursuant to 28 U.S.C. §§
6 1331 and 1441, indicating that this court has jurisdiction over this action as it raises a federal
7 question. The federal question, according to defendants, arises from the Notice to Quit they
8 received which references the Protecting Tenants at Foreclosure Act of 2009, 12 U.S.C. § 5201.

9 "Federal courts are courts of limited jurisdiction." Kokkonen v. Guardian Life
10 Ins. Co. of Am., 511 U.S. 375, 377 (1994). In order for a federal court to have jurisdiction over a
11 specific action, the case must either arise under the Constitution or laws of the United States or
12 involve citizens of different states where the amount in controversy exceeds \$75,000. See 28
13 U.S.C. § 1331, 1332. "[I]t is well established that the plaintiff is 'master of her complaint' and
14 can plead to avoid federal jurisdiction." Lowdermilk v. U.S. Bank Nat'l Ass'n, 479 F.3d 994,
15 997-98 (9th Cir. 2007) (citations omitted). "The defendant bears the burden of establishing that
16 removal is proper." Provincial Gov't of Marinduque v. Placer Dome, Inc., 582 F.3d 1083, 1087
17 (9th Cir. 2009). "The removal status is strictly construed against removal jurisdiction," id., and
18 removal jurisdiction "must be rejected if there is any doubt as to the right of removal in the first
19 instance." Geographic Expeditions, Inc. v. Estate of Lhotka, 599 F.3d 1102, 1106 (9th Cir.
20 2010) (quoting Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (per curiam)).

21 In relevant part, the federal removal statute provides:

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

(b) Any civil action of which the district courts have original
jurisdiction founded on a claim or right arising under the

1 Constitution, treaties or laws of the United States shall be
2 removable without regard to the citizenship or residence of the
3 parties. Any other such action shall be removable only if none of
the parties in interest properly joined and served as defendants is a
citizen of the State in which such action is brought.

4 28 U.S.C. § 1441(a), (b).

5 To the extent defendants base the removal of this action on this court's federal
6 question jurisdiction, such jurisdiction does not exist. District courts have federal question
7 jurisdiction over "all civil actions that arise under the Constitution, laws, or treaties of the United
8 States." 28 U.S.C. § 1331. "A case 'arises under' federal law either where federal law creates
9 the cause of action or 'where the vindication of a right under state law necessarily turn[s] on
10 some construction of federal law.'" Republican Party of Guam v. Gutierrez, 277 F.3d 1086,
11 1088-89 (9th Cir. 2002) (modification in original) (citing Franchise Tax Bd. v. Constr. Laborers
12 Vacation Trust, 463 U.S. 1, 8-9 (1983)). "[T]he presence or absence of federal-question
13 jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal
14 jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly
15 pleaded complaint." Placer Dome, Inc., 582 F.3d at 1091. "[A] counterclaim - which appears as
16 part of the defendant's answer, not as part of the plaintiff's complaint - cannot serve as the basis
17 for 'arising under' jurisdiction." Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc., 535
18 U.S. 826, 831 (2002).

19 Here, the unlawful detainer complaint filed in State court is only premised on
20 California law. No federal question is present, and thus no basis for federal question jurisdiction
21 appears on the face of the complaint. While defendants may contend in their notice of removal
22 that plaintiffs have somehow violated some federal law, perhaps by somehow violating the
23 Protecting Tenants at Foreclosure Act of 2009, 12 U.S.C. § 5201, this assertion (if there is one at
24 all) would relate only to an affirmative defense or potential counterclaim, which is not
25 considered in evaluating whether a federal question appears on the face of a plaintiff's complaint.
26 See Vaden v. Discover Bank, 556 U.S. 49, 129 S. Ct. 1262, 1272 (2009) (stating that federal

1 question jurisdiction cannot “rest upon an actual or anticipated counterclaim”). Accordingly,
2 federal question jurisdiction does not provide a proper basis for removal.

3 The next possible basis for this court’s jurisdiction is diversity jurisdiction.
4 District courts have diversity jurisdiction over “all civil actions where the matter in controversy
5 exceeds the sum or value of \$75,000, exclusive of interests and costs,” and the action is between
6 “(1) citizens of different States; (2) citizens of a State and citizens or subjects of a foreign state;
7 (3) citizens of different States and in which citizens or subjects of a foreign state are additional
8 parties; and (4) a foreign state . . . as plaintiff and citizens of a State or of different States.” 28
9 U.S.C. § 1332; see also Geographic Expeditions, Inc., 599 F.3d at 1106.

10 Defendants do not appear to raise diversity of citizenship for this court’s
11 jurisdiction. However, even if raised, it is clear from the face of the complaint that the amount in
12 controversy does not exceed \$75,000. When a state court complaint affirmatively alleges that the
13 amount in controversy is less than the jurisdictional threshold, the party seeking removal must
14 prove with “legal certainty” that the jurisdictional amount is met. See Lowdermilk, 479 F.3d at
15 1000. The complaint filed in this action states unequivocally that the amount in controversy is
16 less than \$10,000. (Complaint at 1). Defendants’ notice of removal does not challenge the
17 amount in controversy, and does not provide any basis for a finding that the amount in
18 controversy exceeds the \$75,000 required. The amount in controversy is determined without
19 regard to any setoff or counterclaim to which defendant may be entitled. See Snow v. Ford
20 Motor Co., 561 F.2d 787, 789 (9th Cir. 1977). Thus, the amount in controversy is insufficient to
21 provide this court with diversity jurisdiction.

22 Plaintiff has also filed an ex parte motion for an order shortening time, in order to
23 have a motion to remand heard. However, as the undersigned has determined this court lacks
24 jurisdiction over this action, and has the authority to remand the case without a motion from the
25 party, a motion to remand is unnecessary. As such, the ex parte motion for an order shortening
26 time is also unnecessary.

