

1 first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). As explained below,
2 defendant has failed to meet that burden.

3 The notice of removal states that this court has federal question jurisdiction pursuant to 28
4 U.S.C. § 1331. ECF. No. 1 at 2-3. Defendant claims the answer she filed in the state court rests
5 upon a “determination of Defendant’s rights and Plaintiff’s duties under federal law.” *Id.*
6 However, a review of the complaint reveals that plaintiff does not allege any federal claims;
7 instead, plaintiff alleges only unlawful detainer under state law. ECF No. 1 at 5-9 (Compl.). The
8 presence or absence of federal question jurisdiction “is governed by the ‘well-pleaded complaint
9 rule,’ which provides that federal jurisdiction exists only when a federal question is presented on
10 the face of plaintiff’s properly pleaded complaint.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386,
11 392 (1987). This is the case where the complaint “establishes either that [1] federal law creates
12 the cause of action or that [2] the plaintiff’s right to relief necessarily depends on resolution of a
13 substantial question of federal law.” *Williston Basin Interstate Pipeline Co. v. An Exclusive Gas*
14 *Storage Leasehold & Easement*, 524 F.3d 1090, 1100 (9th Cir. 2008) (quoting *Franchise Tax Bd.*
15 *v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983)). Here, plaintiff’s one cause of
16 action is for unlawful detainer under state law, and under the well-pleaded complaint rule, a
17 defendants’ claims or defenses may not serve as a basis for removal.² *See Takeda v. Nw. Nat’l*
18 *Life Ins. Co.*, 765 F.2d 815, 822 (9th Cir. 1985).

19 Therefore, because defendant has not adequately established a basis for this court’s
20 subject matter jurisdiction, the case must be remanded. *See* 28 U.S.C. § 1447(c).

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24 ² Nor has defendant established that this court has diversity jurisdiction, since the notice
25 of removal does not establish diversity of the parties or that the amount in controversy exceeds
26 \$75,000, nor does it appear that removal by defendant would be proper under 28 U.S.C. §
27 1441(b), which permits removal in diversity cases only when “none of the parties in interest
28 properly joined and served as defendants is a citizen of the State in which such action is brought.”
See also Fed. Home Loan Mortg. Corp. v. Cantillano, 2012 WL 1193613, at *2 (C.D. Cal. Apr. 9,
2012) (“The appropriate dollar amount in determining the amount of controversy in unlawful
detrainer actions is the rental value of the property, not the value of the property as a whole.”).

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Accordingly, IT IS HEREBY RECOMMENDED that the above-captioned case be REMANDED to the Superior Court of the State of California in and for the County of San Joaquin.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections shall be served and filed within fourteen days after service of the objections. Failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

DATED: September 8, 2014.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE