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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BANK OF NEW YORK MELLON,  
Plaintiff,  
v.  
JENNIFER L. MCALLISTER, et al.,  
Defendants.

No. 2:15-cv-00300-TLN-AC

FINDINGS & RECOMMENDATIONS

This action was referred to the undersigned pursuant to Local Rule 302(c)(21). On February 5, 2015, defendants removed this matter from Sutter County Superior Court. ECF No. 1. On February 9, 2015, plaintiff filed a self-styled ex parte motion to remand arguing the court lacks subject matter jurisdiction over this matter. ECF No. 3. On February 18, 2015, the court denied plaintiff’s motion with instructions to re-file in accordance with Local Rule 230. ECF No. 6. On February 20, 2015, plaintiff filed a properly noticed motion to remand. ECF No. 7. On March 12, 2015, plaintiff filed a notice with the court that defendants had failed to file a timely opposition. ECF No. 10. On March 27, 2015, the court vacated the April 1, 2015, hearing set for plaintiff’s motion to remand and, in light of defendants’ failure to file an opposition, submitted the motion on the record. ECF No. 11.

Local Rule 230(c) provides that opposition to the granting of a motion must be filed fourteen (14) days preceding the noticed hearing date. The Rule further provides that “[n]o party

1 will be entitled to be heard in opposition to a motion at oral arguments if written opposition to the  
2 motion has not been timely filed by that party.” Defendants have not filed an opposition to  
3 plaintiff’s motion to remand. Defendants’ failure to oppose will therefore be deemed a waiver of  
4 opposition to the granting of the motion. Accordingly, plaintiff’s motion to remand will be  
5 granted.<sup>1</sup>

6 Even if defendants had timely opposed remand, the court finds this case should be  
7 remanded for lack of subject matter jurisdiction. Courts “strictly construe the removal statute  
8 against removal jurisdiction,” and “the defendant always has the burden of establishing that  
9 removal is proper.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). Furthermore,  
10 “jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.”  
11 Id. Removal is proper only if the court could have exercised jurisdiction over the action had it  
12 originally been filed in federal court. Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987).  
13 The “presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded  
14 complaint rule,’ which provides that federal jurisdiction exists only when a federal question is  
15 presented on the face of the plaintiff’s properly pleaded complaint.” Id.

16 Attached to the Notice of Removal is a copy of the complaint filed by plaintiff in Sutter  
17 County Superior Court. ECF No. 1 at 8–11. The complaint contains a single claim for unlawful  
18 detainer. Id. In defendants’ removal notice, they assert that federal question jurisdiction exists  
19 because plaintiff has violated the Protecting Tenants at Foreclosure Act of 2009, 12 U.S.C. §  
20 5201. Id. at 3. Specifically, defendants allege that plaintiff failed to comply with the act’s ninety  
21 (90) day notice requirement of any proposed eviction. Id.

22 Removal, however, cannot be based on a defense, counterclaim, cross-claim, or third-

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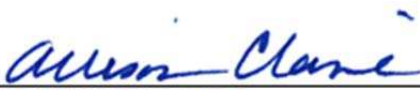
23  
24 <sup>1</sup> Case law is in accord that a district court may impose sanctions, including involuntary dismissal  
25 of a plaintiff’s case pursuant to Federal Rule of Civil Procedure 41(b), where that plaintiff fails to  
26 prosecute his or her case or fails to comply with the court’s orders, the Federal Rules of Civil  
27 Procedure, or the court’s local rules. See, e.g., Chambers v. NASCO, Inc., 501 U.S. 32, 44  
28 (1991) (recognizing that a court “may act sua sponte to dismiss a suit for failure to prosecute”);  
Hells Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005)  
(stating that courts may dismiss an action pursuant to Federal Rule of Civil Procedure 41(b) sua  
sponte for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or the  
court’s orders).

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

9 Accordingly, THE COURT HEREBY RECOMMENDS that plaintiff's motion to remand,  
10 ECF No. 7, be GRANTED and this action be remanded to Sutter County Superior Court.

11 These findings and recommendations are submitted to the United States District Judge  
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
13 after being served with these findings and recommendations, any party may file written  
14 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
15 Findings and Recommendations." Any response to the objections shall be filed and served within  
16 fourteen days after service of the objections. Failure to file objections within the specified time  
17 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th  
18 Cir. 1991).

19 DATED: April 6, 2015

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21 ALLISON CLAIRE  
22 UNITED STATES MAGISTRATE JUDGE  
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