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3 **UNITED STATES DISTRICT COURT**  
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

5 **YORK REAL ESTATE AND**  
6 **DEVELOPMENT, LLC,**  
7 **Plaintiff,**  
8 **v.**  
9 **JACOB GUNN, JEANNETTE M. GUNN, et al,**  
10 **Defendants.**

**2:15-cv-01328 JAM DAD**  
**ORDER GRANTING PLAINTIFF’S**  
**MOTION TO REMAND ACTION TO**  
**STATE COURT**

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12 The undersigned revokes any actual or anticipated referral to a Magistrate Judge for the purposes  
13 of Findings and Recommendations in this case. See Local Rule 302(d) (“Notwithstanding any other  
14 provision of this Rule, a Judge may retain any matter otherwise routinely referred to a Magistrate  
15 Judge.”).

16 On June 22, 2015, Defendants Jeannette and Jacob Gunn filed a Notice of Removal with this  
17 Court, seeking to remove an action from the Superior Court for the County of Sacramento. Doc. 1. On  
18 July 6, 2015, Plaintiff York Real Estate and Development, LLC moved to remand the case to state court.  
19 Doc. 3. Under Local Rule 230(c), the deadline for Defendants’ opposition was July 24, 2015.  
20 Defendants did not oppose Plaintiff’s motion. Pursuant to Local Rule 230(g), the Court orders the  
21 matter submitted on the briefs filed, as oral argument would be neither helpful nor necessary. For the  
22 following reasons, the Court REMANDS this case to the Superior Court of California for the County of  
23 Sacramento.

24 Under 28 U.S.C. § 1441(a), a defendant may remove an action to federal court if the district  
25 court has original jurisdiction. *Hunter v. Phillip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009)

1 (quoting *Ansley v. Ameriquest Mortg. Co.*, 340 F.3d 858, 861 (9th Cir. 2003)). If at any time before final  
2 judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.  
3 28 U.S.C. § 1447(c). Generally, a defendant seeking to remove an action to federal court must file a  
4 notice of removal within thirty days of receiving a copy of the initial pleading. 28 U.S.C. § 1446(b). The  
5 defendant seeking removal of an action to federal court has the burden of establishing federal  
6 jurisdiction in the case. *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004).

7 Defendants are attempting to remove an unlawful detainer action based on both federal question  
8 subject matter jurisdiction and diversity of citizenship. Doc. 1. However, Defendants cannot establish  
9 jurisdiction that is proper. Federal courts are courts of limited jurisdiction and lack inherent or general  
10 subject matter jurisdiction. Federal courts can adjudicate only those cases authorized by the United  
11 States Constitution and Congress. Generally, those cases involve diversity of citizenship or a federal  
12 question, or cases in which the United States is a party. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S.  
13 375 (1994); *Finley v. United States*, 490 U.S. 545 (1989). Federal courts are presumptively without  
14 jurisdiction over civil actions. *Kokkonen*, 511 U.S. at 377. Lack of subject matter jurisdiction is never  
15 waived and may be raised by the Court sua sponte. *Attorneys Trust v. Videotape Computer Prods., Inc.*,  
16 93 F.3d 593, 594-95 (9th Cir. 1996). “Nothing is to be more jealously guarded by a court than its  
17 jurisdiction. Jurisdiction is what its power rests upon. Without jurisdiction it is nothing.” *In re Mooney*,  
18 841 F.2d 1003, 1006 (9th Cir. 1988).

19 Furthermore, the law is clear in the Ninth Circuit that the removal statute should be strictly  
20 construed in favor of remand and against removal. *Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689,  
21 698 (9th Cir. 2005). The “strong presumption” against removal jurisdiction means that the defendant  
22 always has the burden of establishing that removal is proper. *Nishimoto v. Federman–Bachrach &*  
23 *Assocs.*, 903 F.2d 709, 712 n.3 (9th Cir. 1990); *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th  
24 Cir. 1988). Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the  
25 first instance. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

1 In this case, Defendants are unable to establish subject matter jurisdiction before this Court  
2 because the complaint filed in the state court apparently contains a single cause of action for unlawful  
3 detainer based on California Code of Civil Procedure section 1161a. Unlawful detainer actions are  
4 strictly within the province of state court. Defendants’ attempt at creating federal subject matter  
5 jurisdiction by adding claims or defenses to a notice of removal will not succeed. *Vaden v. Discover*  
6 *Bank*, 556 U.S. 49, 50 (2009) (federal question jurisdiction cannot “rest upon an actual or anticipated  
7 counterclaim”); *Valles v. Ivy Hill Corp.*, 410 F.3d 1071, 1075 (9th Cir. 2005) (“A federal law defense to  
8 a state-law claim does not confer jurisdiction on a federal court, even if the defense is that of federal  
9 preemption and is anticipated in the plaintiff’s complaint.”).

10 In determining the presence or absence of federal jurisdiction in removal cases, the “well-  
11 pleaded complaint rule” applies, “which provides that federal jurisdiction exists only when a federal  
12 question is presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar Inc. v.*  
13 *Williams*, 482 U.S. 386, 392 (1987). Moreover, “it is well established that plaintiff is the ‘master of her  
14 complaint’ and can plead to avoid federal jurisdiction.” *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d  
15 994, 998-99 (9th Cir. 2007); *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987) (citing *Gully v. First*  
16 *Nat’l Bank*, 299 U.S. 109 (1936)) (“It is long settled law that a cause of action arises under federal law  
17 only when the plaintiff’s well-pleaded complaint raises issues of federal law”).

18 Plaintiff’s complaint raises a single state law claim. The face of a properly-pled state law  
19 unlawful detainer action does not present a federal question. Therefore, Plaintiff’s complaint avoids  
20 federal question jurisdiction.

21 The next possible basis for this Court’s jurisdiction is diversity jurisdiction. District courts have  
22 diversity jurisdiction over “all civil actions where the matter in controversy exceeds the sum or value of  
23 \$75,000, exclusive of interests and costs,” and the action is between “(1) citizens of different States; (2)  
24 citizens of a State and citizens or subjects of a foreign state; (3) citizens of different States and in which  
25 citizens or subjects of a foreign state are additional parties; and (4) a foreign state . . . as plaintiff and

1 citizens of a State or of different States.” 28 U.S.C. § 1332; *see also Geographic Expeditions, Inc. v.*  
2 *Estate of Lhotka*, 599 F.3d 1102, 1106 (9th Cir. 2010).

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

14 Accordingly, the Court REMANDS this case to the Superior Court for the County of Sacramento  
15 for all future proceedings.

16 DATED: July 29, 2015

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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE