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28IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AURORA LOAN SERVICES LLC,

No. C 09-1791 CRB

Plaintiff,

**ORDER REMANDING CASE TO
STATE COURT**

v.

NELSON OLIS,

Defendant.
_____ /

Now pending before the Court is defendant's "Petition for Removal." Plaintiff filed this unlawful detainer action after it took title to defendant's foreclosed home. Courts in the Ninth Circuit "strictly construe the removal statute against removal jurisdiction." Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). "Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." Id. Defendant, as the removing party, bears the burden of establishing that removal was proper. See id.

In order for this Court to have federal question jurisdiction of the removed complaint, the face of the complaint must show that federal law creates the cause of action or the *plaintiff's* right to relief must necessarily depend on a resolution of a question of federal law. Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 27-28 (1983). No such grounds appear from the face of the unlawful detainer complaint. Moreover, "the existence of a defense based on federal law is insufficient to support jurisdiction." Wayne v. DHL Worldwide Express, 294 F.3d 1179, 1183 (9th Cir.2002). A defendant also cannot

1 make a state law complaint removable by pleading a federal question in a counter-claim.
2 Takeda v. Northwestern Nat. Life Ins. Co., 765 F.2d 815, 822 (9th Cir. 1985). Thus,
3 defendant's contention that his due process rights were violated during the foreclosure does
4 not create federal jurisdiction of plaintiff's unlawful detainer complaint.

5 Plaintiff's assertion of diversity jurisdiction also fails. The unlawful detainer
6 complaint seeks damages in the amount of \$30.00 per day from February 16, 2009 until
7 defendant vacates the property. Accordingly, the amount in controversy on plaintiff's
8 complaint does not come close to meeting the \$75,000.00 threshold for jurisdiction.

9 As the pleadings demonstrate that this Court lacks removal jurisdiction, this action is
10 REMANDED to the Superior Court of the State of California, County of Contra Costa.

11 **IT IS SO ORDERED.**

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13 Dated: April 29, 2009



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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE