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28United States District Court
For the Northern District of CaliforniaIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIAFEDERAL HOME LOAN MORTGAGE
CORPORATION,

Plaintiff,

v.

LORENA TAPIA, et al.,

Defendants.

No. C-10-1611 MMC

**ORDER REMANDING ACTION;
GRANTING DEFENDANT'S
APPLICATION TO PROCEED IN FORMA
PAUPERIS**

Before the Court is defendant Victor Lopez's ("Lopez") notice of removal, filed April 15, 2010.¹ Also before the Court is Lopez's application to proceed in forma pauperis.² The instant notice of removal is defendant Lopez's second attempt to have the matter heard in district court. As set forth below, Lopez's second effort fares no better than the first.

Plaintiff Federal Home Loan Mortgage Corporation's ("FHLMC") sole claim is a claim for unlawful detainer, which claim arises under state law. On March 4, 2010, Lopez filed a notice of removal, asserting therein that the Court had diversity jurisdiction over FHLMC's state law claim. By order filed March 11, 2010, the Court found it lacked diversity jurisdiction, and remanded the action to state court. (See Order, filed March 11, 2010, in

¹A second defendant, Lorena Tapia, has not joined in the notice of removal.

²Because it appears from the application that Lopez lacks sufficient funds to pay the filing fee, the application to proceed in forma pauperis is hereby GRANTED.

1 Civil Case No. 10-0929 MMC.)

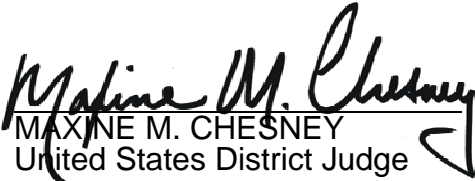
2 In the instant notice of removal, Lopez now argues the Court has federal question
3 jurisdiction over FHLMC's state law claim. Specifically, Lopez argues that because he has
4 alleged a federal defense in his answer filed in state court, he is entitled to remove the
5 instant action. Contrary to Lopez's argument, however, a defendant cannot create federal
6 question jurisdiction by alleging a federal defense to a claim arising under state law. See
7 Caterpillar Inc. v. Williams, 482 U.S. 386, 399 (1987) (holding "federal defenses do not
8 provide a basis for removal"). Consequently, the Court lacks federal question jurisdiction
9 over FHLMC's state law claim.

10 Accordingly, the instant action is hereby REMANDED to the Superior Court of
11 California, in and for the County of Madera.

12 The Clerk shall close the file.

13 **IT IS SO ORDERED.**

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15 Dated: April 20, 2010

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17 MAXINE M. CHESNEY
18 United States District Judge

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