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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-10-2016 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 May 10, 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 third attempt to have the matter heard in district court. As set forth below, Lopez's third effort fares no better than his prior attempts.

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 his first notice of removal of the instant action, and asserted therein that the Court had diversity jurisdiction over FMLMC'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

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 Order, filed March 11, 2010, in Civil Case No. 10-0929 MMC.) On April 15, 2010, Lopez
2 filed his second notice of removal, this time asserting that a federal question was
3 presented because he had alleged a federal defense in his answer filed in state court. By
4 order filed April 20, 2010, the Court found it lacked jurisdiction for the reason that a federal
5 defense to a state law claim does not create federal question jurisdiction, and, again,
6 remanded the action to state court. (See Order, filed April 20, 2010, in Civil Case No. 10-
7 1611 MMC.)

8 In the instant notice of removal, Lopez's third attempt to remove FHLMC's state law
9 claim against him, Lopez repeats his argument that the Court has federal question
10 jurisdiction over FHLMC's state law claim because he has alleged a federal defense in his
11 answer filed in state court. Indeed, the Notice of Removal filed April 15, 2010 and the
12 instant Notice of Removal are, in all material respects, identical.

13 Accordingly, for the reasons stated in the Court's Order of April 20, 2010, filed in
14 Civil Case No. 10-1611 MMC, the instant action is hereby REMANDED to the Superior
15 Court of California, in and for the County of Madera.

16 Finally, Lopez is hereby advised that the filing of repetitive notices of removal of the
17 same action, i.e., the unlawful detainer action filed by FHLMC against him, may result in the
18 imposition of sanctions.

19 **IT IS SO ORDERED.**

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21 Dated: June 17, 2010


MAXINE M. CHESNEY
United States District Judge

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