

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

RALPH PARTNERS II, LLC,  
Plaintiff,  
v.  
JESSIE M. TATE,  
Defendant.

Case No. 18-cv-03030-LB

**ORDER GRANTING MOTION TO  
REMAND AND REMANDING ACTION  
TO STATE COURT**

Re: ECF No. 1

**OVERVIEW**

Plaintiff Ralph Partners II, LLC, the owner of a residential property, filed an unlawful-detainer case against a tenant, the defendant Jessie M. Tate, in the Superior Court of California, County of Napa.<sup>1</sup> Mr. Tate, representing himself, removed the action from state court on May 22, 2018, asserting federal-question and diversity jurisdiction.<sup>2</sup> Ralph Partners moved to remand the case back to state court.<sup>3</sup> Mr. Tate’s deadline to file a response to Ralph Partners’ motion to remand

<sup>1</sup> Notice of Removal – ECF No. 1 at 5–8. Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

<sup>2</sup> *Id.* at 2; Civil Cover Sheet – ECF No. 1-1.

<sup>3</sup> Mot. to Remand – ECF No. 8.

1 was June 8, 2018.<sup>4</sup> Mr. Tate did not file a response.<sup>5</sup> Both parties consented to magistrate-judge  
2 jurisdiction.<sup>6</sup>

3 Mr. Tate has not identified any federal question, and no basis for federal-court jurisdiction  
4 appears on the face of the complaint. Additionally, there is not diversity jurisdiction. Remand to  
5 state court therefore is appropriate.

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### ANALYSIS

8 Generally, a defendant may remove a case from state court to federal court if there is either  
9 diversity or federal-question jurisdiction. 28 U.S.C. § 1441(a)–(c). The burden is on the removing  
10 defendant to establish the basis for the federal court’s jurisdiction. *Shizuko Nishimoto v.*  
11 *Federman-Bachrach & Assocs.*, 903 F.2d 709, 712 (9th Cir. 1990).

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#### 1. Federal-Question Jurisdiction

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14 Mr. Tate claims that this case presents federal-question jurisdiction.<sup>7</sup> He argues in his Notice  
15 of Removal that federal question exists because “[p]laintiffs are in violation of 12 USC § 3708,  
16 Implementing Regulation, § 1.1-1, Title 24 C.F.R. 220.814.”<sup>8</sup> The complaint does not present any  
17 federal questions and only states a state-law unlawful-detainer claim. Unlawful-detainer claims do  
18 not arise under federal law and, without more, the court lacks federal-question jurisdiction. *See,*  
19 *e.g., Fed. Nat’l Mortg. Assoc. v. Lopez*, No. 3:11-cv-00451-WHA, 2011 WL 1465678, at \*1 (N.D.  
20 Cal. Apr. 15, 2011); *GMAC Mortg. LLC v. Rosario*, No. 4:11-cv-01894-PJH, 2011 WL 1754053,  
21 at \*2 (N.D. Cal. May 9, 2011); *Wescom Credit Union v. Dudley*, No. CV 10-8203 GAF (SSx),  
22 2010 WL 4916578, at \*2 (C.D. Cal. Nov. 22, 2010). As for Mr. Tate’s argument that his demurrer

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<sup>4</sup> See Docket.

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<sup>5</sup> *Id.*

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<sup>6</sup> Consents – ECF Nos. 6, 10.

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<sup>7</sup> Notice of Removal – ECF No. 1 at 1–3.

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<sup>8</sup> *Id.* at 2.

1 presents federal questions, the “well-pleaded complaint” rule requires a federal question to be  
2 presented on the face of the plaintiff’s complaint at the time of removal for federal-question  
3 jurisdiction to exist. A federal question raised only in a response to a complaint is not sufficient to  
4 establish jurisdiction. *See Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987); *Duncan v.*  
5 *Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996). Because the defendant has not identified any federal  
6 question in the complaint in his Notice of Removal, the case must be remanded to state court.

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8 **2. Diversity Jurisdiction**

9 Mr. Tate asserts that this case presents diversity jurisdiction.<sup>9</sup> Federal courts have original  
10 jurisdiction where the opposing parties are citizens of different states and the amount in  
11 controversy exceeds \$75,000. 28 U.S.C. § 1441. Here there is no diversity of citizenship as the  
12 parties reside in California.<sup>10</sup> Also, the amount in controversy does not exceed \$75,000.<sup>11</sup> In  
13 unlawful-detainer actions, the right to possession of the property is contested, not title to the  
14 property, and the plaintiff may collect only damages that are incidental to that unlawful  
15 possession. *See Litton Loan Servicing, L.P. v. Villegas*, No. 10-CV-5478-PJH, 2011 WL 204322,  
16 at \*2 (N.D. Cal. Jan. 21, 2011) (citing *Evans v. Super. Ct.*, 67 Cal. App. 3d 162, 170 (1977)). The  
17 plaintiff seeks only restitution, possession of the premises, costs of suit, and \$116.67 per day from  
18 December 5, 2017, until it obtains a judgment or recovery of possession of the premises.<sup>12</sup> The  
19 damages do not exceed \$75,000, and there is no diversity jurisdiction.

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<sup>9</sup> Notice of Removal – ECF No. 1 at 2; Civil Cover Sheet – ECF No. 1-1.

<sup>10</sup> Mot. to Remand – ECF No. 8 at 2; Civil Cover Sheet – ECF No. 1-1.

<sup>11</sup> Mot. to Remand – ECF No. 8 at 2–3.

<sup>12</sup> *Id.* at 3.

1 **CONCLUSION**

2 The court directs the clerk of court to remand this action to the Superior Court of California,  
3 County of Napa, for want of federal subject-matter jurisdiction. *See* 28 U.S.C. § 1447(c) (“If at  
4 any time before final judgment it appears that the district court lacks subject matter jurisdiction,  
5 the case shall be remanded.”).

6 **IT IS SO ORDERED.**

7 Dated: July 1, 2018



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9 LAUREL BEELER  
United States Magistrate Judge