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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 DEUTSCHE BANK NATIONAL TRUST AS  
9 TRUSTEE FOR WAMU MORTGAGE PASS-  
10 THROUGH CERTIFICATES SERIES 2005-  
AR11 TRUST,

No. C-11-00357 EDL

**REPORT AND RECOMMENDATION  
RE: PLAINTIFF'S MOTION TO  
REMAND**

11 Plaintiff,

12 v.

13 HORTENSIA L. MORALES, et al.,

14 Defendants.

15 Plaintiff has filed a motion to remand this unlawful detainer complaint to Contra Costa  
16 County Superior Court following Defendants' improper removal. Defendants have not opposed the  
17 remand motion or consented to this Court's jurisdiction pursuant to 28 U.S.C. § 636(c). Because the  
18 motion is unopposed and federal jurisdiction is lacking, the Court recommends granting the motion  
19 to remand.

20 **Background**

21 This action began as a residential unlawful detainer case filed by Plaintiff in Contra Costa  
22 County on January 3, 2011. Plaintiff alleges that it is the owner of and entitled to immediate  
23 possession of the real property located at 1213 Oak Haven Way in Antioch. Compl. ¶¶ 1(b), 5. The  
24 property was allegedly sold in accordance with California law under a power of sale contained in a  
25 deed of trust executed by Defendant Morales. Compl. ¶ 6.

26 Plaintiff alleges that on September 22, 2010, a licensed process server served Defendants  
27 with a 90-day written notice to quit and deliver up possession of the property to Plaintiff. Compl. ¶  
28 7; Ex. A. Defendants did not deliver up possession of the property, and remain in possession of the  
property without Plaintiff's consent. Compl. ¶¶ 8, 9. Plaintiff alleges that Defendants are not

1 tenants or subtenants. Compl. ¶ 10. The reasonable rental value of the property is at least \$50.00  
2 per day. Compl. ¶ 11.

### 3 **Legal Standard**

4 “Except as otherwise expressly provided by Act of Congress, any civil action brought in a  
5 State court of which the district courts of the United States have original jurisdiction, may be  
6 removed by the defendant or the defendants, to the district court of the United States for the district  
7 and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a). “If at any  
8 time before final judgment, it appears that the district court lacks subject matter jurisdiction, the case  
9 shall be remanded.” 28 U.S.C. § 1447(c).

10 The Ninth Circuit “strictly construe[s] the removal statute against removal jurisdiction.”  
11 Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (citations omitted). Thus, “[f]ederal  
12 jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” Id.  
13 (citation omitted). “The ‘strong presumption’ against removal jurisdiction means that the defendant  
14 always has the burden of establishing that removal is proper.” Id.; see also Abrego v. Dow  
15 Chemical Co., 443 F.3d 676, 685 (9th Cir. 2006). Removal jurisdiction may be based on diversity  
16 of citizenship or on the existence of a federal question. 28 U.S.C. § 1441. Whether removal  
17 jurisdiction exists must be determined by reference to the well-pleaded complaint. Merrell Dow  
18 Pharmaceuticals, Inc. v. Thompson, 478 U.S. 804, 808 (1986).

### 19 **Discussion**

#### 20 **A. No Federal Court Jurisdiction**

##### 21 **1. No Federal Question Jurisdiction**

22 Defendants based removal on federal question jurisdiction, arguing that Plaintiff’s  
23 allegations are claims brought under “the Federal Fair Debt Collection Practices Act, the Real Estate  
24 Settlement Procedures Act, the Truth in Lending Act, Generally Accepted Accounting Principals,  
25 the Universal Commercial Code, and thereby specifically causing the enforcement of the invalid  
26 subject Deed of Trust, and for wrongful foreclosure by a party without standing to foreclose.”  
27 Notice of Removal at 1-2. Plaintiff points out that the complaint only alleged a single, state law  
28 unlawful detainer claim.

1           Where a civil action over which the federal courts have original jurisdiction is brought in  
2 state court, the defendant may remove the action to federal district court. See 28 U.S.C. § 1441. A  
3 case may be removed pursuant to 28 U.S.C. § 1441 only where a federal question appears on the  
4 face of the properly pleaded complaint. See Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987);  
5 Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826, 830 (2002) (“The  
6 well-pleaded-complaint rule has long governed whether a case “arises under” federal law for  
7 purposes of § 1331.”); see also Wayne v. DHL Worldwide Express, 294 F.3d 1179, 1183 (9th Cir.  
8 2002) (“The presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded  
9 complaint rule,’ which provides that federal jurisdiction exists only when a federal question is  
10 presented on the face of the plaintiff’s properly pleaded complaint.”). This rule makes the plaintiff  
11 the master of its claim in that the plaintiff may avoid federal jurisdiction by exclusive reliance on  
12 state law. Id. Further, whether a case arises under federal law does not depend upon matters raised  
13 in the answer. Holmes, 535 U.S. at 830-31 (“ . . . whether a case arises under federal patent law  
14 ‘cannot depend upon the answer.’ Moreover, we have declined to adopt proposals that ‘the answer  
15 as well as the complaint ... be consulted before a determination [is] made whether the case “ar[ises]  
16 under” federal law ... .’”) (internal citations omitted); Phillips Petroleum Co. v. Texaco, Inc., 415  
17 U.S. 125, 127-28 (1974) (“The federal questions ‘must be disclosed upon the face of the complaint,  
18 unaided by the answer.’ Moreover, ‘the complaint itself will not avail as a basis of jurisdiction in so  
19 far as it goes beyond a statement of the plaintiff’s cause of action and anticipates or replies to a  
20 probable defense.’”).

21           Here, the face of the complaint, which asserts one state law claim only, does not provide any  
22 ground for removal. To the extent that Defendants may have raised federal law issues in the answer,  
23 those issues do not provide a basis for removal. Therefore, remand is proper because the complaint,  
24 on its face, does not arise under federal law.

## 25                           2.       No Diversity Jurisdiction

26           Although Defendants did not base removal on diversity jurisdiction, Plaintiff argues that  
27 diversity jurisdiction also does not exist. Pursuant to 28 U.S.C. § 1332, this Court has diversity  
28 jurisdiction where the parties are diverse and “the matter in controversy exceeds the sum or value of

1 \$75,000, exclusive of interests and costs.” Defendants have not opposed the motion or made any  
2 other effort to show that the statutory minimum of \$75,000 has been met, and the face of the  
3 complaint shows that it has not been met. The cover page of the complaint states in the caption,  
4 “AMOUNT DEMANDED DOES NOT EXCEED \$10,000.” Naiman Decl. Ex. A. Therefore, the  
5 case was not removable as a diversity action and remand is appropriate.

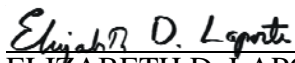
6 **C. The Court need not reach the abstention issue**

7 Plaintiff alternatively argues that the Court should remand this case based on abstention  
8 principles because this unlawful detainer action is a purely local state action. Quackenbush v.  
9 Allstate Ins. Co., 517 U.S. 706, 718 (1996) (abstention focuses on the federal court’s power to  
10 refrain from hearing cases based on “scrupulous regard for the rightful independence of the state  
11 governments’ and for the smooth working of the federal judiciary.”) (quoting Railroad Comm’n of  
12 Texas v. Pullman Co., 312 U.S. 496, 500-01 (1941)). Because remand is appropriate as described  
13 above, the Court need not reach the abstention issue.

14 **Conclusion**

15 Accordingly, the Court recommends granting Plaintiff’s Motion to Remand. Any party may  
16 serve and file specific written objections to this recommendation within fourteen (14) days after  
17 being served with a copy. See 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); Civil Local Rule 72-  
18 3. Failure to file objections within the specified time may waive the right to appeal the District  
19 Court's order.

20 Dated: March 15, 2011

21   
22 ELIZABETH D. LAPORTE  
23 United States Magistrate Judge  
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