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

9 THE BANK OF NEW YORK, AS  
10 SUCCESSOR INDENTURE TRUSTEE UNDER  
NOVASTAR MORTGAGE FUNDING TRUST  
SERIES 2006-1,

No. C 11-5474 CW

ORDER GRANTING  
PLAINTIFF'S MOTION  
TO REMAND AND  
GRANTING  
DEFENDANT'S  
APPLICATION TO  
PROCEED IN FORMA  
PAUPERIS

Plaintiff,

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14 LUIS GUEVARA-MARTINEZ,

15 Defendant.

On November 10, 2011, Defendant Luis Guevara-Martinez removed this case from the Alameda County Superior Court and moved for leave to proceed in forma pauperis (IFP). From the face of the application it appears that Defendant meets the financial requirements to proceed IFP and the application to proceed IFP is granted.

24 On December 8, 2011, Defendant Bank of New York moved for  
25 remand. Opposition to the motion to remand was due on December  
26 22, 2011, but has not been filed. The Court has reviewed the  
removed complaint and concludes that it must be remanded.

1       A defendant may remove a civil action filed in state court to  
2 federal district court so long as the district court could have  
3 exercised original jurisdiction over the matter. 28 U.S.C.  
4 § 1441(a). For removal to be proper, there must be federal  
5 question jurisdiction or diversity jurisdiction. Franchise Tax  
6 Bd. of State of California v. Construction Laborers Vacation Trust  
7 for Southern California, 463 U.S. 1, 10 (1983). District courts  
8 have federal question jurisdiction over civil actions arising  
9 under the United States Constitution, laws or treaties of the  
10 United States. 28 U.S.C. § 1331. District courts have diversity  
11 jurisdiction over civil actions when they are between citizens of  
12 different states and the amount in controversy exceeds \$75,000.  
13 28 U.S.C. § 1332(a).

14       Title 28 U.S.C. § 1447(c) provides that if, at any time  
15 before judgment, it appears that the district court lacks subject  
16 matter jurisdiction over a case previously removed from state  
17 court, the case must be remanded. On a motion to remand, the  
18 scope of the removal statute must be strictly construed. Gaus v.  
19 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). "The 'strong  
20 presumption' against removal jurisdiction means that the defendant  
21 always has the burden of establishing that removal is proper."  
22 Id. Courts should resolve doubts as to removability in favor of  
23 remanding the case to state court. Id.

24       This removed case is a residential unlawful detainer action  
25 following a judicial foreclosure. It contains one cause of action  
26 for unlawful detainer, which arises exclusively under state law.  
27 In his notice of removal, Defendant argues that federal question  
28 jurisdiction exists because Plaintiff has violated the federal

1 Protecting Tenants at Foreclosure Act of 2009 which "raises  
2 questions as to what rights tenants have because of the effect of  
3 foreclosure." However, "[t]he presence or absence of federal-  
4 question jurisdiction is governed by the well-pleaded complaint  
5 rule, which provides that federal jurisdiction exists only when a  
6 federal question is presented on the face of the plaintiff's  
7 properly pleaded complaint.'" Rivet v. Regions Bank of La., 522  
8 U.S. 470, 475 (1998) (quoting Caterpillar Inc. v. Williams, 482  
9 U.S. 386 (1987)). A federal defense is not part of a plaintiff's  
10 properly pleaded statement of his or her claim. Id. (citing  
11 Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987)). A  
12 case, therefore, may not be removed to the federal court based on  
13 a federal defense "even if the defense is anticipated in the  
14 plaintiff's complaint, and even if both parties admit that the  
15 defense is the only question truly at issue in the case."  
16 Franchise Tax Bd., 463 U.S. at 14; see Rivet, 522 U.S. at 475.  
17 Because the only possible federal issue in this case involves a  
18 defense, federal question jurisdiction is lacking.

19 The complaint alleges that Plaintiff seeks damages in an  
20 amount not to exceed \$10,000. Because the amount in controversy  
21 is less than \$75,000, diversity jurisdiction is lacking. See St.  
22 Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 291 (1938)  
23 (the status of the case as disclosed by the plaintiff's complaint  
24 is controlling for purposes of removal).

25 Because there is no federal question or diversity  
26 jurisdiction, this Court lacks subject matter jurisdiction over  
27 this case and it must be remanded.

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CONCLUSION

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For the foregoing reasons, the Court grants Defendant's  
motion to remand this case to the Alameda County Superior Court  
and grants Plaintiff's application to proceed IFP.

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IT IS SO ORDERED.

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Dated: 1/9/2012

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CLAUDIA WILKEN  
United States District Judge

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