

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

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4 U.S. BANK, NATIONAL ASSOCIATION,  
5 SUCCESSOR TRUSTEE TO BANK OF  
6 AMERICA, N.A., SUCCESSOR TRUSTEE  
7 TO LASALLE BANK, N.A., TRUSTEE  
8 FOR THE HOLDERS OF THE MERRILL  
9 LYNCH FIRST FRANKLIN MORTGAGE  
10 LOAN TRUST, MORTGAGE LOAN ASSET-  
11 BACKED CERTIFICATES, SERIES 2006-  
12 FF18,

13                                    Plaintiff,

14                                    v.

15 JOSE HUMBERTO ZECENA and DOES 1  
16 through X, Inclusive,

17                                    Defendant.  
18 \_\_\_\_\_/

No. C 12-1566 CW

ORDER GRANTING  
PLAINTIFF'S MOTION  
FOR REMAND, Docket  
No. 10, and  
DENYING AS MOOT  
DEFENDANT'S MOTION  
FOR LEAVE TO  
PROCEED IN FORMA  
PAUPERIS, Docket  
No. 3.

19                                    This case pertains to an unlawful detainer action that was  
20 filed in San Mateo County Superior Court on January 6, 2012. On  
21 March 29, 2012, pro se Defendant Jose Humberto Zecena filed a  
22 notice of removal and submitted an application to proceed in forma  
23 pauperis. On June 15, 2012, Plaintiff moved to remand the action  
24 on the grounds that Zecena filed an untimely notice of removal and  
25 this Court lacks subject matter jurisdiction. Although Zecena's  
26 motion to proceed in forma pauperis is pending, and he has not  
27 opposed the motion to remand, Plaintiff's request for remand is  
28 well taken.

                                  A defendant may remove a civil action filed in state court to  
federal district court so long as the district court could have  
exercised original jurisdiction over the matter. 28 U.S.C.  
§ 1441(a). Title 28 U.S.C. § 1447 provides that if at any time

1 before judgment it appears that the district court lacks subject  
2 matter jurisdiction over a case previously removed from state  
3 court, the case must be remanded. 28 U.S.C. § 1447(c). On a  
4 motion to remand, the scope of the removal statute must be  
5 strictly construed. See Gaus v. Miles, Inc., 980 F.2d 564, 566  
6 (9th Cir. 1992). "The 'strong presumption' against removal  
7 jurisdiction means that the defendant always has the burden of  
8 establishing that removal is proper." Id. (internal citation  
9 omitted). Courts should resolve doubts as to removability in  
10 favor of remanding the case to state court. See id. Ordinarily,  
11 federal question jurisdiction is determined by examining the face  
12 of the plaintiff's properly plead complaint. Caterpillar Inc. v.  
13 Williams, 482 U.S. 386, 392 (1987).

14 From the Notice of Removal, it appears that Zecena sought  
15 federal jurisdiction based on federal law he intended to rely on  
16 to defend against the unlawful detainer action. Specifically,  
17 Zecena cited the Federal Fair Debt Collection Practices Act. A  
18 federal defense, however, is not part of a plaintiff's properly  
19 plead statement of his or her claim. Id. Thus, the requirements  
20 of federal question jurisdiction are not satisfied and the Court  
21 does not have subject matter jurisdiction to hear the case.<sup>1</sup>

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27 <sup>1</sup> Because the Court remands this action to state court based  
28 on a lack of a federal question, it need not address Plaintiff's  
argument that removal was untimely.

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The Court grants Plaintiff's request to remand the action to state court. The Clerk shall remand the file to San Mateo County Superior Court. Zecena's motion for leave to proceed in forma pauperis is denied as moot.

IT IS SO ORDERED.

Dated: 7/23/2012

  
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CLAUDIA WILKEN  
United States District Judge