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3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA  
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7 WELLS FARGO BANK, N.A.,

8 Plaintiff,

No. C 12-2814 PJH

9 v.

**ORDER REMANDING CASE**

10 MARK PINEDA, et al.,

11 Defendants.  
12 \_\_\_\_\_/13 Maria L. Pineda, one of the defendants in the above-entitled action, removed this  
14 case from the Superior Court of California, County of Santa Clara, on June 1, 2012.15 This is an unlawful detainer action brought by Wells Fargo Bank, N.A. ("Wells  
16 Fargo"), against Mark Pineda and Maria L. Pineda following an August 19, 2011, non-  
17 judicial foreclosure sale of residential property previously owned by the defendants. On  
18 August 22, 2011, Wells Fargo served a written notice to vacate the premises.19 The occupants failed to vacate the premises at the end of the three-day period. On  
20 October 3, 2011, Wells Fargo filed the unlawful detainer complaint. Wells Fargo seeks  
21 restitution and possession of the subject property.22 On January 27, 2012, Maria L. Pineda filed a notice of removal. The case was  
23 removed to this court as case No. C-12-0433, and was assigned to Magistrate Judge  
24 Howard R. Lloyd. Also on January 27, 2012, Wells Fargo filed a motion to remand the  
25 case for lack of subject matter jurisdiction. On February 13, 2012, Judge Lloyd ordered  
26 that the case be reassigned to a district judge, and also recommended that the case be  
27 remanded for lack of subject matter jurisdiction. On March 13, 2012, the undersigned  
28 district judge issued an order remanding the case.

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On June 1, 2012, Maria L. Pineda again filed a notice of removal of the same unlawful detainer action. The case was removed to this court as case No C-12-2814.

For the reasons previously stated in Judge Lloyd's Report and Recommendation, which was adopted by the undersigned, the court finds that the case must be remanded for lack of subject matter jurisdiction. No federal question appears on the face of the complaint. Thus, there is no federal question jurisdiction. See Toumajian v. Frailey, 135 F.3d 648, 853 n.2 (9th Cir. 1998). Jurisdiction may not be based on a claim raised as a defense or a counterclaim. See Smith v. Grimm, 534 F.2d 1346, 1350 (9th Cir. 1976).

In addition, to the extent that defendant is attempting to assert diversity jurisdiction, the complaint specifies that the demand is "under \$10,000." Thus, the amount-in-controversy requirement is not met. See 28 U.S.C. § 1332(a). Moreover, removal through diversity jurisdiction is not available to defendants that are citizens of the state in which the state action was brought. 28 U.S.C. § 1441(b).

Accordingly, the case is REMANDED to the Santa Clara Superior Court. The clerk is hereby instructed that no futher notices of removal shall be accepted from Maria L. Pineda or Mark Pineda for filing without the approval of a district court judge.

**IT IS SO ORDERED.**

Dated: June 15, 2012



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PHYLLIS J. HAMILTON  
United States District Judge