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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEUTSCH BANK NATIONAL TRUST
COMPANY,

Plaintiff,

v.

WALTER HARRELL, et al.,

Defendants.

Case No. 17-cv-04980-KAW

**ORDER REASSIGNING CASE TO A
DISTRICT JUDGE; REPORT AND
RECOMMENDATION TO REMAND
TO STATE COURT; ORDER
GRANTING IN FORMA PAUPERIS
APPLICATION**

Re: Dkt. Nos. 1, 2

On August 28, 2017, Defendant Walter Harrell removed this unlawful detainer action from San Mateo County Superior Court, and applied to proceed *in forma pauperis*. (Not. of Removal, Dkt. No. 1; IFP Appl., Dkt. No. 2.)

As removal is clearly improper, and the parties have not consented to the undersigned, for the reasons set forth below, the Court reassigns this case to a district judge and recommends that the case be remanded to state court. Additionally, the Court grants Defendant's application to proceed *in forma pauperis*.

I. BACKGROUND

Plaintiff Deutsche Bank National Trust Company commenced this unlawful detainer action against Defendant in San Mateo County Superior Court on or around June 5, 2017. (Not. of Removal at 8.¹) The complaint contains a single cause of action for unlawful detainer. *Id.* The case is a "limited civil case," in which Plaintiff seeks immediate possession of a certain property located in Montara, California, which Defendant occupies.

Plaintiff alleges that Defendants Walter Harrell and Bonnie Harrell defaulted on the

¹ The page numbers refer to the ECF header.

1 payment of a promissory note, resulting in the property being sold to Plaintiff at public auction on
2 January 17, 2017 to satisfy the obligations secured by the deed of trust. *Id.* at 9. On April 17,
3 2017, after Plaintiff's title was perfected, Plaintiff allegedly served a written notice on Defendants
4 to quit within three days. *Id.* at 10. On June 5, 2017, Plaintiff filed the instant unlawful detainer
5 suit in state court, and summons was issued. (Not. of Removal at 8.) On August 28, 2017,
6 Defendant Walter Harrell removed the action to federal court on the grounds that it presents a
7 federal question. (*Id.* at 2.)

8 **II. LEGAL STANDARD**

9 Federal courts exercise limited jurisdiction. A "federal court is presumed to lack
10 jurisdiction in a particular case unless the contrary affirmatively appears." *Stock W., Inc. v.*
11 *Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citation omitted). A defendant may
12 remove a civil action from state court to federal court if original jurisdiction would have existed at
13 the time the complaint was filed. *See* 28 U.S.C. § 1441(a). "[R]emoval statutes are strictly
14 construed against removal." *Luther v. Countrywide Homes Loans Servicing, LP*, 533 F.3d 1031,
15 1034 (9th Cir. 2008). "Federal jurisdiction must be rejected if there is any doubt as to the right of
16 removal in the first instance," such that courts must resolve all doubts as to removability in favor
17 of remand. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The burden of establishing that
18 federal jurisdiction exists is on the party seeking removal. *See id.* at 566-67.

19 Federal district courts have original jurisdiction over actions that present a federal question
20 or those based on diversity jurisdiction. *See Wayne v. DHL Worldwide Express*, 294 F.3d 1179,
21 1183 & n.2 (9th Cir. 2002). Federal district courts have federal question jurisdiction over "all civil
22 actions arising under the Constitution, laws or treaties of the United States." 28 U.S.C. § 1331.
23 Federal question jurisdiction is governed by the well-pleaded complaint rule, which provides that
24 the basis for federal jurisdiction must appear on the face of the properly pleaded complaint, either
25 because the complaint directly raises an issue of federal law or because the plaintiff's "right to
26 relief under state law requires resolution of a substantial question of federal law in dispute
27 between the parties." *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*,
28 463 U.S. 1, 13 (1983). "[A] case may not be removed to federal court on the basis of a federal

1 defense . . . , even if the defense is anticipated in the plaintiff's complaint" *Caterpillar Inc. v.*
2 *Williams*, 482 U.S. 386, 393 (1987) (citation omitted).

3 **III. DISCUSSION**

4 Defendant removed this unlawful detainer action from state court on the grounds that the
5 district court has jurisdiction because the case presents a federal question.

6 **A. Federal Question Jurisdiction**

7 Defendant claims that a federal question exists because Plaintiff violated the federal Real
8 Estate Settlement Procedures Act ("RESPA"). (Not. of Removal at 2.) Defendant purports to
9 bring a lawsuit against Plaintiff based on this violation. *Id.* Defendant's counterclaims in an
10 unlawful detainer action, however, are irrelevant for purposes of determining federal question
11 jurisdiction. The well-pleaded complaint rule prevents the Court from considering any additional
12 claims, such that a defendant cannot create federal question jurisdiction by adding claims or
13 defenses to a notice of removal. *See Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582
14 F.3d 1083, 1086 (9th Cir. 2009); *see also McAtee v. Capital One, F.S.B.*, 479 F.3d 1143, 1145 (9th
15 Cir. 2007) (even previously asserted counterclaims raising federal issue will not permit removal).
16 Accordingly, Defendant's claim that Plaintiff violated RESPA does not establish federal question
17 jurisdiction in this matter. Thus, Defendant's contention that there are federal questions at issue in
18 this litigation is misplaced.

19 Lastly, the limited scope of unlawful detainer proceedings precludes cross-complaints or
20 counterclaims. *See Knowles v. Robinson*, 60 Cal. 2d 620, 626-27 (1963). Thus, to the extent that
21 Defendants' assertions could be contained in any such filing, they would, nonetheless, fail to
22 introduce a basis for federal question jurisdiction.

23 **B. Diversity Jurisdiction**

24 District courts also have original jurisdiction over all civil actions "where the matter in
25 controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between .
26 . . . citizens of different States." 28 U.S.C. § 1332(a). When federal subject-matter jurisdiction is
27 predicated on diversity of citizenship, complete diversity must exist between the opposing parties.
28 *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373-74 (1978). Under the forum defendant

1 rule, “a civil action otherwise removable solely on the basis of [diversity jurisdiction] may not be
2 removed if any of the parties in interest properly joined and served as defendants is a citizen of the
3 State in which such action is brought.” 28 U.S.C. § 1441(b). Here, Plaintiff’s citizenship is
4 unknown, and Defendant is a citizen of California. (Not. of Removal at 2.) Thus, the forum
5 defendant rule applies, and the action is not removable on the basis of diversity jurisdiction. *See*
6 28 U.S.C. § 1441(b).

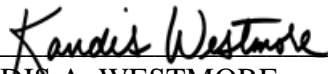
7 **IV. CONCLUSION**

8 For the reasons set forth above, the Court REASSIGNS this action to a district judge with
9 the recommendation that the action be REMANDED to state court for further proceedings. The
10 Court GRANTS Defendant’s request to proceed *in forma pauperis*.

11 Any party may file objections to this report and recommendation with the district judge
12 within 14 days of being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); N.D.
13 Civil L.R. 72-3. The parties are advised that failure to file objections within the specified time
14 may waive the right to appeal the district court’s order. *IBEW Local 595 Trust Funds v. ACS*
15 *Controls Corp.*, No. C-10-5568, 2011 WL 1496056, at *3 (N.D. Cal. Apr. 20, 2011).

16 IT IS SO RECOMMENDED.

17 Dated: September 1, 2017

18 
KANDIS A. WESTMORE
United States Magistrate Judge