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E-Filed 11/9/10

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

HSBC BANK USA, National Association, as
Trustee for Wells Fargo Asset Securities
Cooperation, Mortgage Asset Backed Pass-Through
Certificates Series 2007-PA2,

Plaintiff,

v.

TERESA N TRAN, and DOES 1 to 10, Inclusive,

Defendants.

Case Number 5:10-cv-03069-JF/PVT
ORDER¹ REMANDING ACTION TO
SANTA CLARA SUPERIOR COURT

On May 13, 2010, Plaintiff HSBC Bank USA (“HSBC”) filed the instant unlawful detainer action in the Santa Clara Superior Court. On July 18, 2010, Defendant Teresa N. Tran (“Tran”), proceeding *pro se*, removed the action to this Court, and subsequently filed a cross-complaint, alleging, *inter alia*, violations of the Truth in Lending Act (TILA). HSBC then moved to remand, to strike the cross complaint, and for monetary sanctions. Tran has not filed opposition to the motion. The Court concludes that the motion is appropriate for determination without oral argument and will vacate the hearing date of November 12, 2010. *See Civ. L.R. 7-1(b)*.

¹ This disposition is not designated for publication in the official reports.

1 Removal to federal court is proper where the federal court would have original subject
2 matter jurisdiction over the complaint. 28 U.S.C. § 1441. A claim “arises under” federal law if,
3 based on the “well-pleaded complaint rule,” the plaintiff alleges a federal cause of action. *Vaden*
4 *v. Discovery Bank*, 129 S. Ct. 1262, 1272 (2009). Defenses and counterclaims asserting a federal
5 question do not satisfy this requirement. *Id.* at 1273. Removal statutes are strictly construed
6 against removal, and the burden is on the defendant to demonstrate that removal was proper.
7 *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (citing *Gaus v.*
8 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)).

9 Tran offers no support for her assertion that this action arises under federal law. The
10 complaint’s only cause of action is for unlawful detainer under California law.² Defenses or
11 counterclaims under TILA or other federal statutes do not create federal question jurisdiction,
12 nor does the complaint on its face suggest that the Court might have diversity jurisdiction. 28
13 U.S.C. § 1441(b) (stating that an action is removable for diversity “only if none of the parties in
14 interest properly joined and served as defendants is a citizen of the State in which such action is
15 brought”).

16 Plaintiff requests attorney’s fees pursuant to 28 U.S.C. § 1447(c), which provides that
17 “[a]n order remanding the case may require payment of just costs and any actual expenses,
18 including attorney fees, incurred as a result of the removal.” “Absent unusual circumstances,
19 courts may award attorney’s fees under § 1447(c), only where the removing party lacked an
20 objectively reasonable basis for seeking removal.” *Martin v. Franklin Capital Corp.*, 546 U.S.
21 132, 141, 126 S. Ct. 704, 163 L. Ed. 2d 547 (2005). While removal is inappropriate where a
22 complaint rests solely on state law claims, in light of Tran’s *pro se* status and her apparent intent
23 to assert a claim under TILA, the Court declines to award fees here. *See HSBC Bank USA, N.A.*
24 *v. Bryant*, No. 09-1659, 2009 U.S. Dist. LEXIS 104684, at *5 (S.D. Cal. Nov. 10, 2009) (a *pro*
25 *se* defendant is “entitled to more leeway in his attempt to comply with the removal statute, as
26

27 ² In addition, Tran failed to sign her cross-complaint or respond to HSBC’s motion. *See*
28 Fed. R. Civ. Pro. 11(a) (“The court must strike an unsigned paper unless the omission is
promptly corrected after being called to the . . . party’s attention.”).

1 long as it was not objectively unreasonable”).

2 Good cause therefor appearing, the motion to remand is GRANTED. The motion for
3 attorneys’ fees is DENIED, and the motion to strike is terminated without prejudice as moot. The
4 Clerk shall transmit the file to the Santa Clara Superior Court.

5 IT IS SO ORDERED.

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7 DATED: 11/9/10

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JEREMY FOGEL
United States District Judge

1 This Order was served on the following persons:

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