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**** E-filed January 12, 2012 ****

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BAY VALLEY PROFESSIONAL
CENTER, LLC,

No. C11-06253 HRL

Plaintiff,

**ORDER THAT CASE BE
REASSIGNED TO A DISTRICT
COURT JUDGE**

v.

REPORT AND RECOMMENDATION

JONATHAN ORCINE; ABRAHAM B.
ORCINE; et al.,

[Re: Docket No. 1]

Defendants.

_____ /

INTRODUCTION

On August 17, 2011, defendants Jonathan and Abraham Orcine (collectively, "Defendants"), proceeding pro se, removed this case from Santa Clara County Superior Court. Docket No. 1 ("Notice of Removal"). Plaintiff Bay Valley Professional Center ("Bay Valley") moves to remand and seeks immediate relief by requesting that the motion be heard one week after it was filed. Dkt. Nos. 4, 5. Because none of the parties have consented to the undersigned's jurisdiction, this court is unable to provide the dispositive relief sought. For the reasons stated below, the undersigned DENIES the Motion to Shorten Time, ORDERS that this case be reassigned to a district judge, and RECOMMENDS that this action be summarily remanded to state court.

DISCUSSION

United States District Court
For the Northern District of California

1 Bay Valley filed this unlawful detainer action against defendants on October 18, 2011 in
2 Santa Clara County Superior Court. Notice of Removal, Exh. A (“Complaint”). According to the
3 complaint, Bay Valley acquired the subject property, a San Jose residence, through a foreclosure
4 trustee’s sale on September 12, 2011, in accordance with California Civil Code section 2924. Id. at ¶
5 4. On September 16, Bay Valley served defendants with a three-day Notice to Quit. Id. at ¶ 6.
6 Defendants did not respond to the Notice, nor did they vacate the property. Id. at ¶ 7.

7 Removal to federal court is proper where the federal court would have had original subject
8 matter jurisdiction over the complaint. 28 U.S.C. § 1441. Removal jurisdiction can be based on
9 diversity of citizenship or on the existence of a federal question. Caterpillar Inc. v. Williams, 482
10 U.S. 386, 392 (1987). If, after a court’s prompt review of a notice of removal, “it clearly appears on
11 the face of the notice and any exhibits annexed thereto that removal should not be permitted, the
12 court shall make an order for summary remand.” 28 U.S.C. § 1446(c)(4) (emphasis added). These
13 removal statutes are strictly construed against removal and place the burden on the defendant to
14 demonstrate that removal was proper. Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1244
15 (9th Cir. 2009) (citing Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)).

16 Here, defendants assert that removal is proper based on federal question jurisdiction. See
17 Notice of Removal ¶ 6. Federal courts have original jurisdiction over civil actions “arising under the
18 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. A claim “arises under”
19 federal law if, based on the “well-pleaded complaint rule,” the plaintiff alleges a federal cause of
20 action. Vaden v. Discovery Bank, 129 S. Ct. 1262, 1272 (2009). Alternatively, the complaint may
21 establish that the plaintiff’s right to relief “necessarily depends on resolution of a substantial
22 question of federal law.” Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage
23 Leasehold & Easement, 524 F.3d 1090, 1100 (9th Cir. 2008) (quoting Franchise Tax Bd. v. Constr.
24 Laborers Vacation Trust, 463 U.S. 1, 27–28 (1983). Defenses and counterclaims asserting a federal
25 question do not satisfy this requirement. Discovery Bank, 129 S. Ct. at 1272.

26 Defendants assert that Bay Valley’s unlawful detainer claim fails because it violated the
27 federal Protecting Tenants at Foreclosure Act, 12 U.S.C. § 5220. Notice of Removal at ¶¶ 6-9.
28 However, the defendants raised this alleged violation in a demurrer, a responsive pleading, and – as

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IT IS SO ORDERED.

Dated: January 12, 2012



HOWARD R. BOYD
UNITED STATES MAGISTRATE JUDGE

1 **C11-06253 HRL Notice will be electronically mailed to:**

2 Todd Bennett Rothbard
3 Richard Allen McBride allspanish@sbcglobal.net

4 **Notice will be mailed to:**

5 Jonathan Orcine
6 1572 Hillsdale Avenue
7 San Jose, CA 95118

8 Abraham B Orcine
9 1572 Hillsdale Avenue
10 San Jose, CA 95118

11 **Counsel are responsible for distributing copies of this document to co-counsel who have not**
12 **registered for e-filing under the court's CM/ECF program.**

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