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

BARBARA THOMEN, et. al.,

CASE NO. 5:13-cv-05762 EJD

**ORDER REMANDING CASE**

Plaintiff(s),

v.

MARCO BREW, et. al.,

Defendant(s).

**I. INTRODUCTION**

Defendants Marco Brew and Maritza Brew (collectively, “Defendants”) removed the instant unlawful detainer action filed in Santa Clara County Superior Court by Plaintiffs Patricia Rae and Barbara Thomen (collectively, “Plaintiffs”). See Docket Item No. 1. According to the state court Complaint, Plaintiffs, who are the owner and agent of residential property rented to Defendants, seek possession of the property upon expiration of a fixed term lease as well as unpaid rents. See id., at Ex. 1.

As is its obligation, the court has reviewed this action to determine whether federal jurisdiction exists. See Mashiri v. Dep’t of Educ., 724 F.3d 1028, 1031 (9th Cir. 2013). It does not. Accordingly, this action will be remanded to the state court from which it originated.

**II. DISCUSSION**

Removal jurisdiction is a creation of statute. See Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir. 1979) (“The removal jurisdiction of the federal courts is derived entirely

1 from the statutory authorization of Congress.”). Only those state court actions that could have been  
2 originally filed in federal court may be removed. 28 U.S.C. § 1441(a) (“Except as otherwise  
3 expressly provided by Act of Congress, any civil action brought in a State court of which the district  
4 courts of the United States have original jurisdiction, may be removed by the defendant.”); see also  
5 Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987) (“Only state-court actions that originally  
6 could have been filed in federal court may be removed to federal court by defendant.”).  
7 Accordingly, the removal statute provides two basic ways in which a state court action may be  
8 removed to federal court: (1) the case presents a federal question, or (2) the case is between citizens  
9 of different states and the amount in controversy exceeds \$75,000. 28 U.S.C. §§ 1441(a), (b).

10 The Notice of Removal reveals that Defendants have removed this action based on diversity.  
11 As noted, federal courts have original jurisdiction on this ground only where (1) opposing parties are  
12 citizens of different states and (2) the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a).  
13 But even if these two elements are met, removal based on diversity is not permitted if a defendant in  
14 the case is a citizen of the state in which the plaintiff originally brought the action, even if the  
15 opposing parties are diverse. See 28 U.S.C. § 1441(b).

16 Here, removal is improper based on diversity jurisdiction because this case was originally  
17 filed in a California state court and Defendants, as they readily admit, are citizens of California. See  
18 Docket Item No. 1. Thus, even assuming the parties are diverse and the amount in controversy  
19 requirement is met (which it is not), 28 U.S.C. § 1441(b) prohibits removal by Defendants on this  
20 basis.<sup>1</sup>

### 21 III. ORDER

22 Based on the foregoing, the court concludes that it lacks subject matter jurisdiction over this  
23 action.

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25 <sup>1</sup> It is also worth noting that unlawful detainer claims themselves do not arise under federal  
26 law and, therefore, cannot support federal-question jurisdiction either. See, e.g., Fed. Nat’l Mortg.  
27 Assoc. v. Lopez, No. C 11-00451 WHA, 2011 U.S. Dist. LEXIS 44818, at \*1, 2011 WL 1465678  
(N.D. Cal. Apr. 15, 2011); GMAC Mortg. LLC v. Rosario, No. C 11-1894 PJH, 2011 U.S. Dist.  
28 LEXIS 53643, at \*2, 2011 WL 1754053 (N.D. Cal. May 9, 2011); Wescom Credit Union v. Dudley,  
No. CV 10-8203 GAF (SSx), 2010 U.S. Dist. LEXIS 130517, at \*2, 2010 WL 4916578 (C.D. Cal.  
Nov. 22, 2010).

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Accordingly, the Clerk shall remand the case to Santa Clara County Superior Court and close the file.

**IT IS SO ORDERED.**

Dated: December 31, 2013

  
EDWARD J. DAVILA  
United States District Judge