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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

U.S. FINANCIAL L.P.,	)	Civil No. 09cv1962 L(WMc)
	)	
Plaintiff,	)	<b>ORDER REMANDING ACTION TO</b>
	)	<b>STATE COURT</b>
v.	)	
	)	
JERRY L. BERNEATHY,	)	
	)	
Defendant.	)	
_____	)	

On September 8, 2009, defendant Jerry L. Berneathy, appearing *pro se*, removed this action from the Superior Court for the State of California, County of San Diego, North County Division. In his notice of removal, defendant contends that the action is properly removed on the basis of federal question, diversity, and the Court’s admiralty jurisdiction. For the reasons which follow, the action is **REMANDED**.

**DISCUSSION**

“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution or a statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction and the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). “Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original

1 jurisdiction, may be removed by the defendant or the defendants, to the district court of the  
2 United States for the district and division embracing the place where such action is pending." 28  
3 U.S.C. §1441(a).

4 Consistent with the limited jurisdiction of federal courts, the removal statute is strictly  
5 construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992);  
6 *see also Sygenta Crop Prot. v. Henson*, 537 U.S. 28, 32 (2002); *O'Halloran v. University of*  
7 *Wash.*, 856 F.2d 1375, 1380 (9th Cir. 1988). "Federal jurisdiction must be rejected if there is  
8 any doubt as to the right of removal in the first instance." *Gaus*, 980 F.2d at 566. "The strong  
9 presumption against removal jurisdiction means that the defendant always has the burden of  
10 establishing that removal is proper." *Id.*; *see also Nishimoto v. Federman-Bachrach & Assoc.*,  
11 903 F.2d 709, 712 n.3 (9th Cir. 1990); *O'Halloran*, 856 F.2d at 1380; *Rockwell Int'l Credit*  
12 *Corp. v. U.S. Aircraft Ins. Group*, 823 F.2d 302, 304 (9th Cir. 1987), *overruled on other*  
13 *grounds, Partington v. Gedan*, 923 F.2d 686 (9th Cir. 1991). "The traditional rule of burden  
14 allocation in determining removal jurisdiction was meant to comport with what the Supreme  
15 Court has termed '[t]he dominant note in the successive enactments of Congress relating to  
16 diversity jurisdiction,' that is, 'jealous restriction, of avoiding offense to state sensitiveness, and  
17 of relieving the federal courts of the overwhelming burden of business that intrinsically belongs  
18 to the state courts in order to keep them free for their distinctive federal business.'" *Abrego*  
19 *Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 685 (9th Cir. 2006) (quoting *Indianapolis v.*  
20 *Chase Nat'l Bank*, 314 U.S. 63, 76 (1941)).

## 21 **1. FEDERAL QUESTION**

22 "Any civil action of which the district courts have original jurisdiction founded on a claim  
23 or right arising under the Constitution, treaties or laws of the United States shall be removable  
24 without regard to the citizenship or residence of the parties." 28 U.S.C. § 1441(b).

25 The Court has consistently interpreted jurisdictional statutes with an  
26 "arising under" qualification . . . as "giv[ing] the lower federal courts  
27 jurisdiction to hear, originally or by removal from a state court, only those  
28 cases in which a well-pleaded complaint establishes either that [1] federal  
law creates the cause of action or that [2] the plaintiff's right to relief  
necessarily depends on resolution of a substantial question of federal law."

1 *Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage Leasehold and Easement*,  
2 524 F.3d 1090, 1100 (9th Cir. 2008)(quoting *Franchise Tax Bd. v. Constr. Laborers Vacation*  
3 *Trust*, 463 U.S. 1, 27-28 (1983)); *see also Empire Healthchoice Assurance, Inc. v. McVeigh*, 547  
4 U.S. 677, 690 (2006).

5 Defendant contends “the state court complaint pleads and alleges claims ‘arising under’  
6 Federal Law and there is no absolute expressed prohibition against removal of the federal claims  
7 set for [sic] therein.” (Notice of Removal at 2.) A review of the complaint does not bear out the  
8 claim of federal question jurisdiction. Plaintiff U.S. Financial is the owner of certain real  
9 property located in California that was purchased at a trustee’s sale following foreclosure  
10 proceedings. Defendant, the prior owner of the property, has remained on the property without  
11 plaintiff’s consent or authorization. Plaintiff seeks to have defendant removed.

12 Without question, federal law does not create the purely state law claim of unlawful  
13 detainer asserted in U.S. Financial’s complaint.

14 “[F]or a state law claim to provide a basis for federal jurisdiction, the state law claim must  
15 ‘turn on substantial questions of federal law,’ and ‘really and substantially involv[e] a dispute or  
16 controversy respecting the validity, construction or effect of [federal] law.’” *Williston Basin*  
17 *Interstate Pipeline*, 524 F.3d at 1102 (quoting *Grable & Sons Metal Prods., Inc. v. Darue Eng’g*  
18 *& Mfg.*, 545 U.S. 308, 312 (2005)). Here, plaintiff alleges a single cause of action based  
19 exclusively on state court law – unlawful detainer. Neither the complaint nor defendant’s notice  
20 of removal provides any indication that the unlawful detainer claim involves a dispute or  
21 controversy regarding the validity, construction or effect of federal law.

22 Based on the foregoing, defendant fails to meet his burden of establishing federal  
23 question jurisdiction. This action is therefore remanded to the San Diego County Superior  
24 Court.

## 25 **2. DIVERSITY JURISDICTION**

26 Original jurisdiction exists in cases of complete diversity where each of the plaintiffs is a  
27 citizen of a different state than each of the defendants, and the amount in controversy exceeds  
28 \$75,000. 28 U.S.C. §1332; *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

1           The Court is constitutionally required to raise issues related to federal subject matter  
2 jurisdiction and may do so *sua sponte*. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83,  
3 93-94 (1998); *see Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990). A  
4 federal court must satisfy itself of its jurisdiction over the subject matter before proceeding to the  
5 merits of the case. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577, 583 (1999).

6           In the context of removal, the defendant bears the burden of demonstrating that  
7 jurisdiction is properly before the court. *See Thornhill Publ'g Co. v. General Tel. & Elec. Corp.*,  
8 594 F.2d 730, 733 (9th Cir. 1979). As part of that burden, defendant must affirmatively allege  
9 the state of citizenship of each party. *Bautista v. Pan Am. World Airlines, Inc.*, 828 F.2d 546,  
10 551 (9th Cir. 1987); *see also Kanter v. Warner-Lambert, Co.*, 265 F.3d 853 (9th Cir. 2001).

11           For diversity purposes, “a corporation shall be deemed to be a citizen of any State by  
12 which it has been incorporated and of the State where it has its principal place of business . . . .”  
13 28 U.S.C. § 1332(c)(1). Here, defendant does not make *any* allegation concerning the  
14 citizenship of plaintiff U.S. Financial L.P.

15           Defendant alleges he is a California resident. However, for diversity purposes, a person  
16 is a citizen of a state in which he or she is domiciled. *Kanter*, 265 F.3d at 857. Plaintiff does not  
17 allege where he is domiciled. “[T]he diversity jurisdiction statute, 28 U.S.C. § 1332, speaks of  
18 citizenship, not of residency.” *Id.* “A person residing in a given state is not necessarily  
19 domiciled there, and thus is not necessarily a citizen of that state.” *Id.* Accordingly, plaintiff has  
20 failed to adequately allege his own citizenship for purposes of diversity jurisdiction. *See id.*

21           Finally, the complaint does not allege damages in excess of \$75,000. To determine  
22 whether the amount in controversy has been met on removal, “[t]he district court may consider  
23 whether it is ‘facially apparent’ from the complaint that the jurisdictional amount is in  
24 controversy.” *Abrego Abrego*, 443 F.3d at 690, quoting *Singer v. State Farm Mut. Auto. Ins.*  
25 *Co.*, 116 F.3d 373, 377 (9th Cir. 1997). Based on the allegations in the complaint, this is not  
26 “facially apparent.” *See Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) (when  
27 the complaint falls short of seeking the threshold amount, it is not facially apparent that the  
28 amount in controversy requirement has been met.) In the present case, the complaint specifically

1 states that it is a limited civil case with damages under \$10,000.

2 Because the complaint does not allege the facts necessary to establish minimal diversity  
3 as required by 28 U.S.C. § 1332(d)(2)(A), the complaint is remanded to state court for lack of  
4 subject matter jurisdiction.

### 5 **3. ADMIRALTY JURISDICTION**

6 In response to the complaint, defendant filed in the state court what he called an “Answer  
7 in Affidavit in Negative Averment, Opportunity to Cure and Counterclaim in Admiralty.” It  
8 appears that defendant somehow believes that by labeling a document as arising “in Admiralty,”  
9 he has invoked the Court’s admiralty jurisdiction. Defendant is incorrect and such an averment  
10 is frivolous.

11 The United States Constitution grants original jurisdiction to federal courts to hear  
12 admiralty claims. *See* U.S. CONST. art. III, § 2, cl. 1. This jurisdiction, codified at 28 U.S.C. §  
13 1333(1), allows the filing of claims related to maritime contracts and maritime torts. A party  
14 seeking to invoke federal admiralty jurisdiction “over a tort claim must satisfy both a location  
15 test and a connection test.” *Gruver v. Lesman Fisheries Inc.*, 489 F.3d 978, 982 (9th Cir. 2007)  
16 (citing *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995)).  
17 The tort must occur on navigable waters and bear a “significant relationship to traditional  
18 maritime activity.” *Foremost Ins. Co. v. Richardson*, 457 U.S. 668, 674 (1982). Thus the  
19 “location” prong focuses on “whether the tort occurred on navigable water or whether injury  
20 suffered on land was caused by a vessel on navigable water.” *Grubart*, 513 U.S. at 534. The  
21 “connection” or “nexus” test “raises two issues.” *Id.* “A court, first, must ‘assess the general  
22 features of the type of incident involved’ to determine whether the incident has ‘a potentially  
23 disruptive impact on maritime commerce.’” *Id.* (quoting *Sisson v. Ruby*, 497 U.S. 358, 363  
24 (1990)). “Second, a court must determine whether ‘the general character’ of the ‘activity giving  
25 rise to the incident’ shows a ‘substantial relationship to traditional maritime activity.’ ” *Id.*  
26 (quoting *Sisson*, 497 U.S. at 364 & n. 2, 365).

27 There is absolutely nothing in the complaint or defendant’s “Answer” that remotely  
28 suggests any type of incident occurred on navigable waters or has any relationship to maritime

1 activities. Indeed, plaintiff's unlawful detainer action concerns real property located in Valley  
2 Center, California. Under these circumstances, it is beyond disingenuous to attempt to invoke  
3 the Court's admiralty jurisdiction. Accordingly, the case must be **remanded** to state court for  
4 lack of subject matter jurisdiction.

5 **CONCLUSION**

6 Defendant has failed to meet his burden of establishing removal jurisdiction. "If at any  
7 time before final judgment it appears that the district court lacks subject matter jurisdiction, the  
8 case shall be remanded." 28 U.S.C. § 1447(c). Accordingly, this action is **REMANDED** to the  
9 Superior Court of the State of California for the County of San Diego.

10 **IT IS SO ORDERED.**

11 DATED: September 10, 2009

12   
13 M. James Lorenz  
United States District Court Judge

14 COPY TO:

15 HON. WILLIAM McCURINE, JR.  
16 UNITED STATES MAGISTRATE JUDGE

17 ALL PARTIES/COUNSEL  
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