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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

WELLS FARGO BANK, N.A., fka  
WACHOVIA MORTGAGE FSB,

Plaintiff,

v.

DANIEL E. CARO; LETICIA CARO,

Defendants.

Civil No. 11cv2810 L (BLM)

**ORDER REMANDING THIS  
ACTION**

Defendants removed this unlawful detainer action on December 2, 2011, from the Superior Court of the State of California, in and for the County of San Diego. The removal is premised on the Court's diversity jurisdiction.

Having reviewed defendants notice of removal and the operative complaint, the Court finds it does not have subject matter jurisdiction over this action and the removal is procedurally defective. The Court therefore will remand the case to the San Diego County Superior Court.

The federal court is one of limited jurisdiction. *Lowdermilk v. U.S. Bank Nat'l Ass'n*, 479 F.3d 994, 997 (9th Cir. 2007). It possesses only that power authorized by the Constitution or a statute. *See Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). It is constitutionally required to raise issues related to federal subject matter jurisdiction, and may do so *sua sponte*. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93-94 (1998); *see Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990).

1 Removal jurisdiction is governed by 28 U.S.C. § 1441 *et seq.* A state court action can  
2 only be removed if it could have originally been brought in federal court. *Caterpillar, Inc. v.*  
3 *Williams*, 482 U.S. 386, 392 (1987); *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996).  
4 Thus, for an action to be removed on the basis of federal question jurisdiction, the complaint  
5 must establish either that federal law creates the cause of action or that the plaintiff's right to  
6 relief necessarily depends on the resolution of substantial questions of federal law. *Franchise*  
7 *Tax Board of Cal. v. Construction Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1, 10-11,  
8 103 S. Ct. 2841 (1983). Alternatively, a federal court has jurisdiction over an action involving  
9 citizens of different states and the amount in controversy exceeds \$75,000.00. 28 U.S.C. § 1332.

10 "The burden of establishing federal jurisdiction is on the party seeking removal, and the  
11 removal statute is strictly construed against removal jurisdiction." *Nishimoto v. Federman-*  
12 *Bachrach & Assoc.*, 903 F.2d 709, 712 n.3 (9th Cir. 1990). "Federal jurisdiction must be rejected  
13 if there is any doubt as to the right of removal in the first instance." *Gaus v. Miles, Inc.*, 980  
14 F.2d 564, 566 (9th Cir. 1992).

15 Whether federal jurisdiction exists is governed by the well-pleaded complaint rule.  
16 *Caterpillar*, 482 U.S. at 392. The well-pleaded complaint rule is a "powerful doctrine [that]  
17 severely limits the number of cases in which state law 'creates the cause of action' that may be  
18 initiated in or removed to federal district court . . ." *Franchise Tax Bd.*, 463 U.S. at 9-10. Under  
19 this rule, the federal question must be "presented on the face of the plaintiff's properly pleaded  
20 complaint." *Id.*; *accord Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002).

21  
22 As noted above, in order to establish diversity jurisdiction, the amount in controversy  
23 must exceed \$75,000.00. 28 U.S.C. § 1332. The removing party has the burden of establishing  
24 removal jurisdiction. *Lowdermilk*, 479 F.3d at 997; *see Abrego Abrego*, 443 F.3d at 682-83 (the  
25 removing defendant has " 'always' borne the burden of establishing federal jurisdiction,  
26 including any applicable amount in controversy requirement"), (quoting *Gaus*, 980 F.2d at 566)  
27 ("Normally, this burden is satisfied if the plaintiff claims a sum greater than the jurisdictional  
28 requirement"); *see also Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir.2007). The

1 amount in controversy is determined at the time of removal and is to be decided based on the  
2 allegations in the operative pleading. *Lowdermilk*, 479 F.3d at 994.

3 Plaintiff's complaint states that it is entitled to immediate possession of the premises and  
4 is being damaged in the amount of \$73.33 per day for defendants' use and occupancy of the  
5 premises. The written notice requiring and demanding that defendants quit and deliver  
6 possession of the property was served on November 18, 2011. It is clear that the amount  
7 demanded is under the \$75,000.00 amount in controversy requirement. Although defendants  
8 contend the amount in controversy exceeds the jurisdictional amount of \$75,000 because the  
9 Adjustable Rate Mortgage Note lists the amount of the loan at \$466,000, the issue is whether  
10 *plaintiff's claim* for unlawful detainer in the operative pleading, *i.e.*, the complaint filed in state  
11 court, meets the amount in controversy requirement. Here, it does not. As a result, diversity  
12 jurisdiction has not been established.

13 Defendants have not shown that the state court action could have originally been brought  
14 in federal court; therefore, the Court must remand this action.

15 Based on the forgoing, **IT IS ORDERED** remanding this action to the Superior Court of  
16 the State of California, in and for the County of San Diego.

17 **IT IS SO ORDERED.**

18 DATED: December 12, 2011

19   
20 M. James Lorenz  
United States District Court Judge

21 COPY TO:

22 HON. BARBARA L. MAJOR  
23 UNITED STATES MAGISTRATE JUDGE

24 ALL PARTIES/COUNSEL  
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