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FILED

12 JUL 17 PM 4:00

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: 

DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

THE BANK OF NEW YORK MELLON
AS TRUSTEE FOR THE CERTIFICATE
HOLDERS OF THE CWMBS INC., CHL
MORTGAGE PASS-THROUGH TRUST
2007-HY6 FORMERLY KNOWN AS
THE BANK OF NEW YORK,

Plaintiff,

vs.

RUTH KINSER,

Defendant.

CASE NO. 12cv01168 WQH BGS

ORDER

HAYES, Judge:

On February 22, 2012, Plaintiff initiated this action by filing a Complaint for Unlawful Detainer in the Superior Court of California for the County of San Diego, where it was assigned case number 37-2012-00033870-CL-UD-EC. (ECF No. 1 at 18-22). The Complaint alleges that Plaintiff is entitled to possession of real property located at 3547 Hartzel Drive, Spring Valley, California. *Id.* The Complaint alleges that Plaintiff served Defendant with written notice requiring her to vacate the property and that Defendant failed to vacate the property. *Id.* The Complaint alleges a single claim for unlawful detainer under California law seeking possession of the property and damages that “[do] not exceed \$10,000.” *Id.*

On May 14, 2012, Defendant, proceeding pro se, removed the action to this Court. (ECF No. 1). The Notice of Removal alleges that federal question jurisdiction exists because “Defendant filed a demurrer to the Complaint based on a defective notice, i.e., the Notice to Occupants to Vacate Premises,” alleging that the Notice “failed to comply with The Protecting Tenants at Foreclosure Act (12 U.S.C. § 5220).” *Id.* at 3. According to Defendant, “[f]ederal

1 question jurisdiction exists because Defendant's demurrer... depend[ed] on the determination
2 of Defendant's rights and Plaintiff's duties under federal law." *Id.*

3 On May 31, 2012, Plaintiff filed a Motion to Remand to State Court, seeking remand
4 to state court on the grounds that this Court lacks subject matter jurisdiction over the matter.
5 (ECF No. 3). Defendant has not filed an opposition to the Motion to Remand.


6 A defendant may remove a civil action from state court to federal court based on either
7 federal question or diversity jurisdiction. *See* 28 U.S.C. § 1441. "The presence or absence of
8 federal-question jurisdiction is governed by the well-pleaded complaint rule, which provides
9 that federal jurisdiction exists only when a federal question is presented on the face of the
10 plaintiff's properly pleaded complaint... [T]he existence of a defense based upon federal law
11 is insufficient to support jurisdiction." *Wayne v. DHL Worldwide Express*, 294 F.3d 1179,
12 1183 (9th Cir. 2002) (quotation and citation omitted). "The removal statute is strictly
13 construed, and any doubt about the right of removal requires resolution in favor of remand."
14 *Moore-Thomas v. Alaska Airline, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (citation omitted).
15 The presumption against removal means that "the defendant always has the burden of
16 establishing that removal is proper." *Id.*

17 In this case, the sole basis for federal jurisdiction referenced in the Notice of Removal
18 is that Defendant has a defense to the Complaint based upon Plaintiff's alleged failure to
19 comply with a federal statute. "[T]he existence of a defense based upon federal law is
20 insufficient to support jurisdiction." *Wayne*, 294 F.3d at 1183. The Notice of Removal does
21 not adequately state a basis for federal subject-matter jurisdiction.

22 Pursuant to 28 U.S.C. § 1447(c), this action is REMANDED for lack of subject-matter
23 jurisdiction to the Superior Court of California for the County of San Diego, where it was
24 originally filed and assigned case number 37-2012-00033870-CL-UD-EC.

25 IT IS SO ORDERED.

26
27 DATED: 7/17/12


William Q. Hayes
United States District Judge