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

CENTRAL MORTGAGE COMPANY  
D/B/A CENTRAL MORTGAGE  
LOAN SERVICING COMPANY,  
  
Plaintiff,  
  
vs.  
  
DUANE ANDERSON and DOES 1 to  
X, Inclusive,  
  
Defendants.

CASE NO. 13-CV-2660 BEN (WMc)  
**ORDER REMANDING  
ACTION TO STATE COURT  
FOR LACK OF SUBJECT  
MATTER JURISDICTION**

This action is an unlawful detainer action initially filed in the Superior Court of California, County of San Diego. The Complaint, dated August 23, 2011, alleges that Plaintiff Central Mortgage Company has title to real property located at 1007 Capra Way, Fallbrook, CA 92028. Plaintiff alleges it served Defendant Duane Anderson with written notice to vacate the property on July 27, 2011, but Anderson unlawfully continues in possession of the property. Plaintiff seeks restitution and possession of the property, and damages at the rate of \$47.27 per day for use and occupancy of the property and premises from August 2, 2011 until judgment is rendered. Defendant was served with the summons on September 19, 2011. On November 5, 2013, Defendant removed the action to this Court.

Congress has authorized a defendant to remove a civil action from state court to federal court. 28 U.S.C. § 1441. However, the removing party "always has the burden


1 of establishing that removal was proper.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th  
2 Cir. 1992). The district court must remand any case previously removed from a state  
3 court “if at any time before final judgment it appears that the district court lacks subject  
4 matter jurisdiction.” 28 U.S.C. § 1447(c). Moreover, there is a strong presumption  
5 against removal jurisdiction; doubts as to whether the federal court has subject matter  
6 jurisdiction must be resolved in favor of remand. *See Duncan v. Stuetzle*, 76 F.3d  
7 1480, 1485 (9th Cir. 1996); *see also Gaus*, 980 F.2d at 566 (“Federal jurisdiction must  
8 be rejected if there is any doubt as to the right of removal in the first instance.”). A  
9 defense based on federal law is not sufficient to remove an action to federal court.  
10 *Berg v. Leason*, 32 F.3d 422, 426 (9th Cir. 1994) (“[N]either an affirmative defense  
11 based on federal law . . . nor one based on federal preemption . . . renders an action  
12 brought in state court removable.”).

13 This Court does not have subject matter jurisdiction over the present action.  
14 Because the Complaint does not allege violation of any federal law, this Court does not  
15 have federal question jurisdiction. *See* 28 U.S.C. 1331 (“The district courts shall have  
16 original jurisdiction of all civil actions arising under the Constitution, laws, or treaties  
17 of the United States.”). In addition, because the Complaint seeks less than \$10,000 in  
18 damages, this Court does not have diversity jurisdiction. *See* 28 U.S.C. § 1332(a)  
19 (“The district courts shall have original jurisdiction of all civil actions where the matter  
20 in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and  
21 is between—(1) citizens of different States.”).

22 This Court lacks subject matter jurisdiction. Accordingly, the Court **REMANDS**  
23 this action to the Superior Court of California, County of San Diego.

24 **IT IS SO ORDERED.**

25  
26 DATED: November 08, 2013

27   
28 HON. ROGER T. BENITEZ  
United States District Court Judge