

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 BRECKENRIDGE PROPERTY FUND  
12 2016, LLC,  
13 Plaintiff,  
14 v.  
15 IGOR SALVA, AND DOES 1 TO 10,  
16 Defendants.

Case No.: 18-cv-00357-AJB-MDD

**ORDER:**

**(1) SUA SPONTE REMANDING  
ACTION TO STATE COURT FOR  
LACK OF SUBJECT MATTER  
JURISDICTION; AND**

**(2) DENYING AS MOOT  
PLAINTIFF'S MOTION FOR  
LEAVE TO PROCEED IN FORMA  
PAUPERIS**

(Doc. Nos. 1, 3)

17  
18  
19  
20  
21  
22 On February 15, 2018, Defendant Igor Salva ("Removing Defendant") filed a notice  
23 to remove an unlawful detainer action filed in San Diego Superior Court to this Court.  
24 (Doc. No. 1.) The removal was based on federal question jurisdiction pursuant to 12 U.S.C.  
25 § 5201 the "Protecting Tenants at Foreclosure Act of 2009." (*Id.* at 2–3.) For the reasons  
26 set forth below, the Court *sua sponte* **REMANDS** the action for lack of subject matter  
27 jurisdiction and **DENIES AS MOOT** Removing Defendant's motion to proceed in forma  
28 pauperis. (Doc. Nos. 1, 3.)

1 **DISCUSSION**

2 **A. Subject Matter Jurisdiction**

3 After a review of Plaintiff Breckenridge Property Fund 2016, LLC’s (“Plaintiff”)   
4 complaint and Removing Defendant’s notice of removal, the Court notes that the only   
5 cause of action asserted in the present matter is for unlawful detainer. (*See generally* Doc.   
6 No. 1-2.) Accordingly, the Court finds it lacks subject matter jurisdiction.

7 Federal courts are courts of limited jurisdiction, having subject matter jurisdiction   
8 only over matters authorized by the Constitution and Congress. *See Kokkonen v. Guardian*   
9 *Life Ins. Co.*, 511 U.S. 375, 377 (1994). A defendant may remove a civil action from state   
10 court to federal court only if the district court could have original jurisdiction over the   
11 matter. 28 U.S.C. § 1441(a). “[R]emoval statutes are strictly construed against removal.”   
12 *Luther v. Countrywide Home Loan Serv., L.P.*, 533 F.3d 1031, 1034 (9th Cir. 2008).   
13 Moreover, there is a “strong presumption” against removal jurisdiction and the party   
14 seeking removal always has the burden of establishing that removal is proper. *Gaus v.*   
15 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Remand is necessary if it appears from the   
16 face of the complaint that the court lacks subject matter jurisdiction over the removed   
17 action. *See id.* (“Federal jurisdiction must be rejected if there is any doubt as to the right of   
18 removal in the first instance.”).

19 Here, the Court finds that Plaintiff is bringing a single cause of action against   
20 Removing Defendant for unlawful detainer. (*See generally* Doc. No. 1-2.) Thus, because   
21 this is a purely state law cause of action, the Court does not have federal question   
22 jurisdiction and must remand the matter. *See Galileo Fin. v. Miin Sun Park*, No. EDCV 09-   
23 1660 PSG, 2009 WL 3157411, at \*1 (C.D. Cal. Sept. 24, 2009) (“Here, the complaint only   
24 asserts a claim for unlawful detainer, a cause of action that is purely a matter of state law.   
25 Thus, from the face of the complaint, it is clear that no basis for federal question jurisdiction   
26 exists.”).

27 Removing Defendant attempts to argue that the complaint was properly removed as   
28 it expressly references the “Protecting Tenants at Foreclosure Act of 2009.” (Doc. No. 1 at

1 2–3.) Unfortunately, no such reference to the Act is clearly made on the face of the  
2 complaint. Thus, the Court is not persuaded that this case “arises under” federal law. *See*  
3 *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (explaining that the determination  
4 as to whether a case “arises under” federal law is governed by the “well-pleaded complaint  
5 rule,” which provides that “federal jurisdiction exists only when a federal question is  
6 presented on the face of the plaintiff’s properly pleaded complaint.”).


7 In addition, the face of the complaint clearly shows that this Court does not possess  
8 diversity jurisdiction over the matter. For a federal court to exercise diversity jurisdiction  
9 there must be “complete diversity” between the parties and the amount in controversy  
10 requirement of \$75,000 must be met. *See* 28 U.S.C. § 1332(a). Here, the complaint clearly  
11 states that the demand does not exceed \$10,000. (Doc. No. 1-2 at 1.) Moreover, even  
12 calculating the damages that Plaintiff seeks—\$91.67 per day in damages beginning on  
13 October 25, 2017—it only amounts to a little over \$10,000 as of the date of this Order,  
14 which is far less than the \$75,000 needed to employ diversity jurisdiction. (*Id.* at 6.)  
15 Further, the notice of removal illustrates that both parties do business or reside within  
16 California. (Doc. No. 1 at 3.) Thus, the Court also lacks diversity jurisdiction in the present  
17 case. *See* 28 U.S.C. § 1332(a)(1).

### 18 CONCLUSION

19 Accordingly, for the reasons set forth above, the Court *sua sponte* **REMANDS** the  
20 action for lack of subject matter jurisdiction to the San Diego Superior Court.  
21 Consequently, Removing Defendant’s motion to proceed in forma pauperis is **DENIED**  
22 **AS MOOT.**

23 **IT IS SO ORDERED.**

24 Dated: February 20, 2018

25   
26 Hon. Anthony J. Battaglia  
27 United States District Judge  
28