



## **(UD) (PS) Wilmington Trust National Association v. Harms et al**

2021 | Cited 0 times | E.D. California | December 2, 2021

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

WILMINGTON TRUST NATIONAL ASSOCIATION,

Plaintiff, v. LAURIE HARMS, et al,

Defendants.

No. 2:21-cv-02201-JAM-JDP

SUA SPONTE ORDER REMANDING ACTION TO STATE COURT

The undersigned revokes any actual or anticipated referral to a Magistrate Judge for the purposes of Findings and Recommendations in this case. See Local Rule 302(d)

retain any matter otherwise routinely referred to a Magistrate

On November 30, 2021, Defendant Gavin Mehl filed a Notice of Removal with this Court, seeking to remove an action from Sacramento County Superior Court. Notice of Removal, ECF No. 1. For the following reasons, the Court sua sponte REMANDS this case to Sacramento County Superior Court.

Under 28 U.S.C. § 1441(a), a defendant may remove an action to federal court if the district court has original jurisdiction. *Hunter v. Phillip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009) (quoting *Ansley v. Ameriquet Mortg. Co.*, 340 F.3d 858, 861 (9th Cir. 2003)). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. 28 U.S.C. § 1447(c). Generally, a defendant seeking to remove an action to federal court must file a notice of removal within thirty days of receiving a copy of the initial pleading. 28 U.S.C. § 1446(b). The defendant seeking removal of an action to federal court has the burden of establishing federal jurisdiction in the case. *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004). Federal courts are courts of limited jurisdiction and lack inherent or general subject matter jurisdiction. Federal courts can adjudicate only those cases authorized by the United States Constitution and Congress. Generally, those cases involve diversity of citizenship or a federal question, or cases in which the United States is a party. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994); *Finley v. United States*, 490 U.S. 545 (1989).



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Here, Defendant is attempting to remove an unlawful detainer action based on federal subject matter jurisdiction and diversity jurisdiction. Notice of Removal at 3-4. However, the Ninth Circuit has held that the removal statute should be strictly construed in favor of remand and against removal. *Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689, 698 (9th Cir. 2005).

the defendant always has the burden of establishing that removal is proper. *Nishimoto v. Federman Bachrach & Assocs.*, 903 F.2d 709, 712 n.3 (9th Cir. 1990); *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988). Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

In determining the presence or absence of federal -

when a federal question is presented on the face of the *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987).

*Lowdermilk v. U.S.*, 479 F.3d 994, 998-99 (9th Cir. 2007); *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987) (citing *Gully v.*

that a cause of action arises under federal law only when the plaintiff's well-pleaded complaint raises issues of federal

Plaintiff's complaint raises a single state law claim. The face of a properly-pled state law unlawful detainer action does not present a federal question. Therefore, Plaintiff's complaint avoids federal question jurisdiction. Defendant cannot inject a federal issue through his answer. See *Vaden v. Discover Bank*, 556 U.S. 49, 50 (2009) (federal question jurisdiction cannot *Valles v. Ivy*

*Hill Corp.* defense to a state-law claim does not confer jurisdiction on a federal court, even if the defense is that of federal preemption and is anticipated in the plaintiff Defendant is also unable to establish subject matter jurisdiction before this Court based on diversity jurisdiction. Removal based on diversity jurisdiction requires that the parties be completely diverse and that the amount in controversy exceed \$ 75,000. 28 U.S.C. § 1332(a)(1). In unlawful detainer actions,

[is] involved *Litton Loan Servicing, L.P. v. Villegas*, No. C 10-05478 PJH, 2011 WL 204322, at \*2 (N.D. Cal. Jan. 21, 2011) (quoting *Evans v. Superior Ct.*,

sought in the complaint, not the value of the subject real Id.

Defendant has failed to prove that the amount in controversy requirement is met. Plaintiff seeks \$162.66 per day from the expiration of the demand for surrender, June 2, 2021, through the date of which Defendants relinquish possession. Thus far, this would equal \$ 29,278.80. See *London v. Argonaut Ins. Co.*, 264 F. Supp. 2d 926, 932 n.1 (N.D. Cal. 2003) (amount in controversy determined at



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the time of removal). Because the damages sought from the unlawful possession of the property do not exceed \$75,000, diversity jurisdiction is lacking. Moreover, in removal cases where the purported basis of jurisdiction is diversity, removal is not permitted where a defendant is a citizen of the state in which

the plaintiff originally brought the action. See 28 U.S.C. § 1441(b). Thus, Defendant, a citizen of California cannot properly remove this action. Furthermore, Defendant has failed to establish that 28 U.S.C. § 1443 warrants removal. 28 U.S.C. § 1443(a)(1) provides that a defendant may remove from the state court any action

courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jur state court denied equal access to the court by not allowing certain tenants to participate in the action. Notice of Removal at 5. However, section 1443 is interpreted narrowly. Bank of n v. German, 19-cv-0969-GPC(KSC), 2019 WL 2353630, at \*3 (S.D. Cal. June 4, 2019). A party petitioning for removal under section 1443 must meet a two-part test:

. .] rights that are given to them by explicit statutory enactment protecting equal racial civil rights [. . .] Second, petitioners must assert that the state courts will not enforce that right, and that allegation must be supported by reference to a statute or a constitutional provision that purports to command the state courts to ignore the

Patel v. Del Taco, Inc., 446 F.3d 996, 998-99 (9th Cir. 2006) (internal quotation marks and citation omitted). Here, Defendant has not identified a state law or constitutional provision that rights.

Accordingly, the Court REMANDS this case to Sacramento County Superior Court for all future proceedings. Dated: December 1, 2021

