

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Yan v. Vdovicenco, et al.

Yan v. Vdovicenco · No. 25-cv-09993-LJC · Decided January 12, 2026

OPINION

Yan

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 WEIQING YAN, Case No. 25-cv-09993-LJC Plaintiff, 8

ORDER GRANTING MOTION TO

9 v. REMAND; GRANTING IN PART

REQUEST FOR FEES

10 RUSLAN VDOVICENCO, et al., Re: Dkt. No. 4 Defendants. 11 12 Before the Court is
Plaintiff Weiqing Yan's Motion to Remand this matter to Alameda 13 County Superior Court and
request for attorney's fees against Defendant Ruslan Vdovicenco. 14 ECF No. 4. This matter is
suitable for resolution without oral argument and the hearing set for

15 January 27, 2026 is hereby VACATED. See Civil L. R. 7-1(b). Having considered the record in
16 this case, the arguments presented by the parties, and the relevant legal authorities, Plaintiff's
17 Motion to Remand is GRANTED. Her request for attorney's fees is GRANTED in part.

18 I. BACKGROUND

19 Plaintiff filed an unlawful detainer action against Defendants Equaan Smith and Russell 20
Robinson in Alameda County Superior Court to evict them from 6646 Saroni Drive, Oakland, 21
California (the Property). See ECF No. 4-1 at 4-6 (Compl.). Plaintiff asserts that she purchased 22
the Property in January 2025 at a trustee's sale following foreclosure, and that she is the rightful
23 owner of the Property. Id. Ruslan Vdovicenco filed a prejudgment claim of right to possession,
24 asserting that he was a tenant at the Property, thus adding himself as a defendant in the matter.
25 See id. at 30. He then removed the action to federal court, contending that federal question 26
jurisdiction existed because Plaintiff violated the Protecting Tenants at Foreclosure Act (PTFA).
27 The first federal case, proceeding under case number 25-cv-06481, was assigned to Judge
Donato. 1 remand, which Judge Donato granted. See Yan v. Smith, No. 25-cv-06481-JD, 2025
WL 3199417, 2 at *1 (N.D. Cal. Oct. 21, 2025). In relevant part, Judge Donato determined that
the operative 3 "complaint did not furnish a basis for federal question jurisdiction" and
"Vdovicenco's belief that 4 the PTFA may be a defense to unlawful detainer is not grounds for

removal to federal court,” as 5 “[a] federal defense to a state law claim does not create federal question jurisdiction.” Id. Judge 6 Donato also determined that the Court “cannot exercise diversity jurisdiction” over the matter. Id. 7 He denied Plaintiff’s request for attorneys’ fees, finding that Vdovicenco, a pro se litigant facing 8 eviction, was “entitled to some benefit of the doubt.” Id. at 2. 9 The matter was remanded back to state court. Vdovicenco then removed it again, asserting 10 for a second time that this court has subject matter jurisdiction over the case. See ECF No. 1 11 (Notice of Removal) ¶ O. As in his first Notice of Removal, Vdovicenco asserts that Plaintiff’s 12 attempt to evict him violates the PTFA, and this provides a basis for federal question jurisdiction. 13 Id. ¶¶ Q-T. 14 Plaintiff proceeded to file the instant Motion to Remand, arguing that Vdovicenco’s second 15 Notice of Removal was untimely and the Court does not have subject matter jurisdiction over the 16 matter. ECF No. 4 at 4-7. Plaintiff requests \$5,265 in attorneys’ fees. See id. at 7; ECF No. 4-2 17 (Romeo Decl.) ¶ 4. Vdovicenco opposed the Motion to Remand and filed counterclaims against 18 Plaintiff and Defendant Russell Robinson. ECF Nos. 11, 22. In relevant part, Vdovicenco’s 19 counterclaims assert that Plaintiff violated the PTFA. ECF No. 22 ¶¶ 28-34. Plaintiff filed a reply 20 in support of her Motion to Remand, and, without leave of the Court, Vdovicenco filed a sur- 21 reply. ECF Nos. 14, 17.

22 II. MOTION TO REMAND

23 A. Legal Standard 24 District courts are courts of limited jurisdiction and thus may only hear cases that they 25 have subject matter jurisdiction over. There are two primary sources of original subject matter 26 jurisdiction: federal question jurisdiction and diversity jurisdiction. District courts have federal 27 question jurisdiction over cases “arising under the Constitution, laws, or treaties of the United 1 and is between citizens of different states. 28 U.S.C. §§ 1331, 1332(a). Civil actions filed in state 2 court “may be removed by the defendant ... to the district court of the United States for the district 3 and division embracing the place where such action is pending” if the district court has original 4 jurisdiction—by way of federal question jurisdiction or diversity jurisdiction—over the matter. 28 5 U.S.C. § 1441(a). The defendant removing the case from state court has “the burden of 6 establishing federal jurisdiction.” *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 7 (9th Cir. 2004), opinion amended on denial of reh’g, 387 F.3d 966 (9th Cir. 2004). 8 Cases must be removed from state court to federal court within thirty days of the 9 defendant receiving “a copy of the initial pleading setting forth the claim for relief upon which 10 such action or proceeding is based,” except that if the initial pleading is not removable, the case 11 may be removed “within thirty days after receipt by the defendant ... of a copy of an amended 12 pleading, motion, order or other paper from which it may first be ascertained” that the case is 13 removable. 28 U.S.C. § 1446(b). 14 Once a case has been removed to federal court, a party opposing removal may file a 15 motion to remand the matter back to state court. 28 U.S.C. § 1447(c). Motions to remand based 16 on defects “other than lack of subject matter jurisdiction” must be filed within thirty days of 17 removal, but cases may be remanded due to lack of subject matter jurisdiction “at any time.” Id. 18 B. Analysis 19 Plaintiff argues that this matter must be

remanded to state court because Vdovicenco's 20 second removal was untimely under 28 U.S. Code Section 1446(b) and because the Vdovicenco 21 has not established that the Court has subject matter jurisdiction over this case. The Court agrees 22 with both arguments. 23 If a case is removable based on the initial pleading, it must be removed to federal court 24 within thirty days of the defendant receiving a copy of the pleading. See 28 U.S.C. § 1446(b). 25 Vdovicenco asserts that the Court has federal question jurisdiction over this matter, and thus that 26 removal is warranted, based on Plaintiff's violation of the PTFA. Notice of Removal ¶¶ G-H. He 27 claims that "Plaintiff Yan's complaint indicates a federal question exists and that this matter 1 was apparent from the original Complaint, Vdovicenco was required to file his notice of removal 2 within thirty days receiving a copy of the Complaint. See *id.*; 28 U.S.C. § 1446(b). Although it is 3 not entirely clear when Vdovicenco first received a copy of the Complaint, given that he had filed 4 a motion to strike the Complaint by June 2025 and filed his answer in July 2025, he clearly 5 received a copy of the Complaint more than thirty days before November 20, 2025. See Notice of 6 Removal ¶ C; ECF No. 4-1 at 25-40 (State Court Register of Actions).1 His notice of removal, 7 filed on November 20, 2025, was thus untimely under 28 U.S. Code Section 1446(b). Remand is 8 thus warranted. 9 Remand is also warranted because Vdovicenco has not shown that the Court has subject 10 matter jurisdiction over this case. See *Lockyer*, 375 F.3d at 838. Vdovicenco argues that federal 11 question jurisdiction exists because Plaintiff has violated a federal statute, the PTFA. Notice of 12 Removal ¶¶ G-K, Q; see 12 U.S.C. § 5201 et seq. But, as Judge Donato explained, Vdovicenco's 13 "belief that the PTFA may be a defense to unlawful detainer is not grounds for removal to federal 14 court." *Yan v. Smith*, 2025 WL 3199417, at *1. "The presence or absence of federal-question 15 jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal 16 jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly 17 pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (quoting *Gully v. First 18 National Bank*, 299 U.S. 109, 112-113 (1936)); see 28 U.S.C. § 1331. "[A] case may not be 19 removed to federal court on the basis of a federal defense" or federal counterclaim. *Caterpillar*, 20 299 U.S. at 393; see *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009) ("Federal jurisdiction cannot 21 be predicated on an actual or anticipated defense ... Nor can federal jurisdiction rest upon an 22 actual or anticipated counterclaim."). 23 Plaintiff's Complaint asserts one claim for unlawful detainer under California Code of 24 25 1 Plaintiff requests that the Court take judicial notice of the Complaint and register of actions in the state court action (*Yan v. Smith*, Case No. 25CV117337, Alameda County Superior Court), and 26 filings and the First Order to Remand in the first federal case (*Yan v. Smith*, Case No. 25-cv- 06481, N.D. Cal.) As the Court may take judicial notice facts that are "not subject to reasonable 27 dispute" because they "can be accurately and readily determined from sources whose accuracy 1 Civil Procedure Section 1161a. See ECF No. 4-1 at 4-6. Plaintiff asserts no claims under federal 2 law. See *id.* Thus, the Complaint provides no basis for federal question jurisdiction, and 3 Vdovicenco cannot create federal question jurisdiction by invoking federal law as a defense or 4 counterclaim. See

Caterpillar, 482 U.S. at 392. 5 The Court concludes that it lacks subject matter jurisdiction over this case.2 This matter is 6 accordingly REMANDED to Alameda County Superior Court. See 28 U.S.C. § 1447(c).

7 III. REQUEST FOR ATTORNEY'S FEES

8 28 U.S. Code Section 1447(c) provides that “[a]n order remanding the case may require 9 payment of just costs and any actual expenses, including attorney fees, incurred as a result of the 10 removal.” “Absent unusual circumstances, courts may award attorney’s fees under § 1447(c) only 11 where the removing party lacked an objectively reasonable basis for seeking removal.” Martin v. 12 Franklin Cap. Corp., 546 U.S. 132, 141 (2005). “[D]istrict courts retain discretion to consider 13 whether unusual circumstances warrant a departure from [this] rule.” Id. The touchstone for 14 determining if an award of attorneys’ fees is warranted is the reasonableness of the removal. See 15 id.; Gardner v. UICI, 508 F.3d 559, 562 (9th Cir. 2007). 16 Plaintiff requests \$5,265 in attorney’s fees, for 7.7 hours spent reviewing the case and 17 drafting the Motion to Remand and for an anticipated 4.0 hours “reviewing any opposition,” 18 drafting a reply, and “attending court on the hearing of this matter.” ECF No. 4 at 7; Romeo Decl. 19 ¶ 4. Plaintiff’s counsel, Mark Romeo, attests that his hourly rate is \$450, that he has practiced “in 20 the area of lending, bankruptcy and secured real estate financing” for 40 years, and that his rate “is 21 well within limits for work of this type.” Romeo Decl. ¶¶ 4-5. Vdovicenco argues that an award 22 of attorney’s fees is improper because Plaintiff’s Motion to Remand did “not give proper notice as 23 to who she requests monetary sanctions from,” the grounds for removal were reasonable, Mr. 24 Romeo’s may not recover fees for anticipated work, and Mr. Romeo failed to meet and confer 25 with Vdovicenco as required by the Northern District’s Civil Local Rules 7-8 and 54-5. ECF No. 26 11 at 3-4. 27 1 Vdovicenco’s first argument—that Plaintiff did not give notice of who she requested fees 2 from—is unavailing, as Plaintiff is requesting fees from Vdovicenco himself. It is untenable to 3 credit Vdovicenco’s contention that he did not receive notice of Plaintiff’s fee request when 4 Vdovicenco has filed an opposition brief objecting to any requirement that he pay Plaintiff’s 5 attorneys’ fees, and this issue was already litigated previously as part of Plaintiff’s original request 6 to remand the action. 7 His second argument is similarly unpersuasive. Again, this is Vdovicenco’s second 8 attempt to remove this action. Judge Donato previously remanded this case back to state court, 9 explaining to Vdovicenco that there was no basis for federal question jurisdiction. See Yan v. 10 Smith, 2025 WL 3199417, at *1. Judge Donato declined to award attorney’s fees, concluding that 11 although Vdovicenco’s removal lacked merit, attorney’s fees were not warranted as Vdovicenco 12 was proceeding pro se and facing eviction. Id. at 2. Vdovicenco has now removed this action 13 again, reviving the same arguments that Judge Donato rejected. As Vdovicenco was previously 14 informed that the Complaint did not provide a basis for federal question jurisdiction and his claim 15 that Plaintiff violated the PTFA could not create a federal question, the undersigned concludes that 16 Vdovicenco’s removal on these same bases was unreasonable. See Martin, 546 U.S. at 141. 17 Although the Court is sympathetic to the

challenges Vdovicenco faces as a pro se litigant, given 18 his “apparent disregard of the court’s prior remand orders,” the Court concludes that an award of 19 attorney’s fees is warranted. Wells Fargo Bank, N.A. v. Lombera, No. C12-03496, 2012 WL 20 3249497, at *2 (N.D. Cal. Aug. 7, 2012); see Clements v. Ivory, No. 24-cv-04601, 2025 WL 21 753200, at *1 (N.D. Cal. Feb. 18, 2025) (awarding attorney fees “for work performed related to 22 removal” where plaintiff’s “[r]epeated removals on the same basis were a tactic to delay 23 proceedings in state court”); cf. AvalonBay Communities, Inc. v. LaRosa, No. 24-cv-03044, 2024 24 WL 3740123, at *3 (N.D. Cal. July 18, 2024), recommendation adopted, 2025 WL 1489715 (N.D. 25 Cal. May 23, 2025) (determining that there was no objectively reasonable basis for removal but 26 declining to award attorney fees as it was the pro se plaintiff’s first removal to federal court). 27 Vdovicenco’s third argument against Plaintiff’s request for attorney’s fees fares better. 1 the hearing on this motion. Romeo Decl. ¶ 4. It would be illogical for Mr. Romeo to be able to 2 recover fees for a hearing the Court has vacated. Reducing his fee award is thus appropriate. See 3 Smith v. Smith, No. 21-cv-08691, 2021 WL 5585717, at *1 (N.D. Cal. Nov. 30, 2021) (declining 4 to award attorney’s fees for anticipated work); Clements, 2025 WL 753200, at *2 (“As the Court 5 vacated the hearing on this motion it declines to award the anticipated fees.”) (citation omitted). 6 Vdovicenco lastly argues that Plaintiff’s request for attorney’s fees must be denied because 7 Plaintiff did not comply with Civil Local Rules 7-8 and 54-5. Rule 7-8 addresses motions for 8 sanctions and does not apply to Plaintiff’s request for attorney’s fees pursuant to 28 U.S. Code

9 Section 1447(c). Rule 54-5, which, in relevant part, requires a statement “that counsel have met 10 and conferred for the purpose of attempting to resolve any disputes with respect to” motions for 11 attorney’s fees, addresses motions for attorney’s fees filed after the entry of judgment. Although 12 there is some support for Plaintiff’s argument that the meet and confer requirement of Rule 54-5 13 applies to requests for attorney’s fees under 28 U.S. Code Section 1447(c), see Clements, 2025 14 WL 753200, at *1, the undersigned reads Rule 54-5 as applying specifically to motions for 15 attorney’s fees filed after entry of judgment and does not impose its meet-and-confer requirements 16 to requests for attorney’s fees filed pursuant to 28 U.S. Code Section 1447(c). The Court 17 accordingly concludes that Plaintiff was not required to comply with the procedural requirements 18 of Local Rule 54-5. 19 Mr. Romeo requests attorney’s fees for 11.7 hours of billable time at a rate of \$450 per 20 hour. Romeo Decl. ¶ 4. The Court finds that Mr. Romeo’s hourly rate is reasonable, given his 21 experience and the prevailing rate in the relevant legal community, but finds that the number of 22 hours claimed is excessive. First, as discussed above, Mr. Romeo requests fees for time spent 23 preparing for and attending a hearing the Court has vacated. Second, Mr. Romeo’s generalized 24 statement that he spent 7.7 hours preparing “the instant motion and related papers” is insufficient 25 to show the hours worked are reasonable, as he provides no documentation of the time spent on 26 particular tasks and “the issues raised in the motion are not complicated and thus should not have 27 taken an undue amount of time to address,” particularly given that this motion in large part 1 || Prop. & Cas. Co., No. 25-cv-09689,

2025 WL 3774987, at *3 (N.D. Cal. Dec. 31, 2025); see 2 || Hensley v. Eckerhart, 461 U.S. 424, 433 (1983) (explaining that the party “seeking an award of 3 fees should submit evidence supporting the hours worked,” and, where documentation is 4 || inadequate, courts “may reduce the award accordingly”). The undersigned finds that it would be 5 || reasonable to spend four hours on this matter, including evaluation of the opposition and 6 || preparation of the reply brief. See id.; Moore v. Permanente Medical Group, Inc., 981 F.2d 443, 7 || 447 (th Cir. 1992) (courts have “wide discretion” to award attorney’s fees under Section 8 1447(c)). At an hourly rate of \$450, this amounts to a fee award of \$1,800.

9 || IV. CONCLUSION

10 For the foregoing reasons, Plaintiff’s Motion to Remand is GRANTED. Her request for 11 attorney’s fees is GRANTED in part. The Clerk of Court shall remand this case to Alameda 12 || County Superior Court. 13 IT IS SO ORDERED. 14 Dated: January 12, 2026 jo 16 am | He nited States Magistrate Judge 18 19 20 21 22 23 24 25 26 27 28