

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

O
JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

HSBC Bank USA, N.A.,
Plaintiff,
v.
Jesus M. Gutierrez and Does 1 through 5,
inclusive,
Defendants.

Case No. CV 11-9359-ODW (SSx)
Order **REMANDING** Case to Los Angeles County Superior Court

The Court is in receipt of Defendant Jesus M. Gutierrez’s (“Defendant”) Notice of Removal. Having carefully considered the papers filed in conjunction with the Notice, however, the Court determines that it lacks subject matter jurisdiction over this case. Accordingly, the case is hereby **REMANDED** to Los Angeles Superior Court.

“Any civil action brought in a [s]tate court of which the district courts . . . have original jurisdiction, may be removed by the defendant or the defendants, to the district court . . . embracing the place where such action is pending . . .” 28 U.S.C. § 1441(a). The party seeking removal bears the burden of establishing federal jurisdiction. *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006) (citing *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)). Here, Defendant seeks removal of a state-law unlawful detainer action, alleging that this Court has subject matter jurisdiction over the

1 case pursuant to myriad federal claims he raises in defense to Plaintiff HSBC Bank USA,
2 N.A.’s (“Plaintiff”) state-law action. (Dkt. No. 1.) As Defendant seeks removal of this
3 case based on federal claims and effectively concedes a lack of diversity (*see* Petition for
4 Removal § 1), the Court construes Defendant’s petition for removal as one premised on
5 federal question jurisdiction as governed by 28 U.S.C. § 1331.

6 “The presence or absence of federal-question jurisdiction is governed by the ‘well-
7 pleaded complaint rule,’ which provides that federal jurisdiction exists only when a
8 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”
9 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). “Thus, the plaintiff is the master
10 of his complaint and may avoid federal jurisdiction by relying exclusively on state law.
11 It is settled law that a case may not be removed to federal court on the basis of a federal
12 defense” *Hunter v. Phillip Morris USA*, 582 F.3d 1039, 1042–43 (9th Cir. 2009)
13 (citations omitted); *see also Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation*
14 *Trust*, 463 U.S. 1, 10 (1983) (an actual or anticipated federal defense is not sufficient to
15 confer jurisdiction).

16 A case removed from state court should be remanded if it appears that it was
17 removed improvidently. 28 U.S.C. § 1447(c). “Because the ‘removal statutes are strictly
18 construed against removal,’ doubts about removal must be resolved in favor of remand.”
19 *Dodd v. John Hancock Mut. Life Ins. Co.*, 688 F. Supp. 564, 566 (E.D. Cal. 1988)
20 (quoting *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)); *see*
21 *also Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.1992).

22 With regards to Defendant’s argument that the Court has jurisdiction over this case
23 pursuant to § 1331, “because this is an unlawful detainer action, a federal question does
24 not present itself.” *Aurora Loan Servs. v. De La Rosa*, No. 11-912, 2011 U.S. Dist.
25 LEXIS 69217, at *3 (C.D. Cal. June 27, 2011); *see also IndyMac Federal Bank, F.S.B.*
26 *v. Ocampo*, No. 09-2337, 2010 WL 234828, at *2 (C.D. Cal. Jan. 13, 2010) (sua sponte
27 remanding an action to state court for lack of subject matter jurisdiction where plaintiff’s
28 complaint contained only an unlawful detainer claim); *Galileo Fi. v. Miin Sun Park*, No.

1 09-1660, 2009 WL 3157411, at *1 (C.D. Cal. Sept. 24, 2009) (“Here, the complaint only
2 asserts a claim for unlawful detainer, a cause of action that is purely a matter of state law.
3 Thus, from the face of the complaint, it is clear that no basis for federal question
4 jurisdiction exists.”). Additionally, the Complaint does not allege any other federal
5 question, and any federal defense raised by Defendant is irrelevant with regard to
6 jurisdiction. Therefore, the Court does not have jurisdiction over this case under § 1331.

7 In light of the foregoing, the Court hereby **REMANDS** this case to the Los
8 Angeles County Superior Court. The Clerk of Court shall close this case.

9 **IT IS SO ORDERED.**

10

11 January 25, 2012

12

13

14

15

16

17

18

19

20

21

22

23

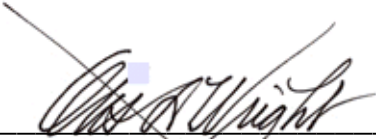
24

25

26

27

28



HON. OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE