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JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BEVERLY HILLS PROPERTIES, LLC,

Plaintiff,

v.

BRANDI KI CONLEY, et al.,

Defendants.

CASE NO. 17-1388-MWF (AGRx)

ORDER REMANDING CASE TO  
STATE COURT

The Court sua sponte **REMANDS** this action to the California Superior Court for the County of Los Angeles for lack of subject matter jurisdiction, as set forth below.

“The right of removal is entirely a creature of statute and ‘a suit commenced in a state court must remain there until cause is shown for its transfer under some act of Congress.’” Syngenta Corp Protection, Inc. v. Henson, 537 U.S. 28, 32 (2002) (quoting Great Northern R. Co. v. Alenxander, 246 U.S. 276, 280 (1918)). Where Congress has acted to create a right of removal, those statutes are strictly construed against removal jurisdiction. Id.; Nevada v. Bank of America Corp., 672 F.3d 661, 667 (9th Cir. 2012); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

Unless otherwise expressly provided by Congress, a defendant may remove “any civil action brought in a State court of which the district courts of the United States have

1 original jurisdiction.” 28 U.S.C. § 1441(a); Dennis v. Hart, 724 F.3d 1249, 1252 (9th Cir.  
2 2013). The removing defendant bears the burden of establishing federal jurisdiction.  
3 Abrego Abrego v. Dow Chemical Co., 443 F3d 676, 682 (9th Cir. 2006); Gaus, 980 F2d  
4 at 566-67. “Under the plain terms of § 1441(a), in order properly to remove [an] action  
5 pursuant to that provision, [the removing defendant] must demonstrate that original  
6 subject-matter jurisdiction lies in the federal court.” Syngenta Crop Protection, 537 U.S.  
7 at 33. Failure to do so requires that the case be remanded, as “[s]ubject matter  
8 jurisdiction may not be waived, and . . . the district court must remanded if it lacks  
9 jurisdiction.” Kelton Arms Condo. Owner’s Ass’n v Homestead Ins. Co., 346 F3d 1190,  
10 1192 (9th Cir. 2003). “If at any time before final judgment it appears tha the district court  
11 lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C § 1447(c). It is  
12 “it is elementary that the subject matter jurisdiction of the district court is not a waivable  
13 matter and may be raised at anytime by one of the parties, by motion or in the responsive  
14 pleadings, or *sua sponte* by the trial or reviewing court.” Emrich v. Touche Ross & Co.,  
15 846 F.2d 1190, 1194 n.2 (9th Cir. 1988).

16 From a review of the Notice of Removal and the state court records provided, it is  
17 evident that the Court lacks subject matter jurisdiction over the instant case, for the  
18 following reasons.

- 19 ☒ No basis for federal question jurisdiction has been identified:
- 20 ☒ The Complaint does not include any claim “arising under the Constitution,  
21 laws, or treaties of the United States.” 28 U.S.C. § 1331.<sup>1</sup>
  - 22 ☒ Removing defendant(s) asserts that the affirmative defenses at issue give rise to  
23 federal question jurisdiction, but “the existence of federal jurisdiction depends  
24 solely on the plaintiff’s claims for relief and not on anticipated defenses to  
25 those claims.” ARCO Env’tl. Remediation, L.L.C. v. Dept. of Health and  
26 Env’tl. Quality, 213 F.3d 1108, 1113 (9th Cir. 2000). An “affirmative defense  
27 based on federal law” does not “render[] an action brought in state court  
28 removable.” Berg v. Leason, 32 F.3d 422, 426 (9th Cir. 1994). A “case may

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<sup>1</sup> The Protecting Tenants at Foreclosure Act does not create a private right to action.  
Logan v. US Bank N.A., 722 F3d 1163, 1169-73 (9th Cir. 2013).

1 not be removed to federal court on the basis of a federal defense . . . even if  
2 the defense is anticipated in the plaintiff's complaint, and even if both parties  
3 admit that the defense is the only question truly at issue in the case.”  
4 Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 14  
5 (1983).

6  The underlying action is an unlawful detainer proceeding, arising under and  
7 governed by the laws of the State of California.

8  No basis for Removal under 28 U.S.C. § 1443(1).

9 Defendant asserts that she has performed a civil rights removal pursuant to 28  
10 U.S.C. § 1443(1). “A petition for removal under § 1443(1) must satisfy the  
11 two-part test articulated by the Supreme Court in *Georgia v. Rachel*, 384 U.S.  
12 780, 788-92, 794-804 (1966) and *City of Greenwood, Miss. v. Peacock*, 384  
13 U.S. 808, 824-28 (1966). ‘First, the petitioners must assert, as a defense to the  
14 prosecution, rights that are given to them by explicit statutory enactment  
15 protecting equal racial civil rights.’ *California v. Sandoval*, 434 F.2d 635, 636  
16 (9th Cir.1970). ‘Second, petitioners must assert that the state courts will not  
17 enforce that right, and that allegation must be supported by reference to a state  
18 statute or a constitutional provision that purports to command the state courts to  
19 ignore the federal rights.’ *Id.*” *Patel v. Del Taco, Inc.*, 446 F.3d 996, 998-99  
20 (9th Cir. 2006.)

21 Whether or not Defendant’s petition for removal satisfies the first part of the  
22 § 1443(1) removal test, it clearly does not satisfy the second Like the removing  
23 defendants in *Patel*, she “point[s] to no formal expression of state law that  
24 prohibits [him] from enforcing [his] civil rights in state court[,] nor do[es] [he]  
25 point to anything that suggests that the state court would not enforce [his] civil  
26 rights in the state court proceedings.” *Id.* at 999. She simply states in  
27 conclusory fashion that Cal. Civil Code section 2924 prevents her from  
28 enforcing “her equal rights to contract for and secure real property in the  
Superior Courts of the State of California on account of” that statute, “which  
specifically violates the equal protection of the laws and equal access to the  
courts and to due process of law . . . .” The statute does nothing of the sort.  
Bearing the long title, “Transfer as security deemed mortgage or pledge;  
power of sale; requirements prior to sale; trustee liability; evidence of  
compliance; privileged communications; rebuttable presumption,” the  
statute defines what a “mortgage” and a “pledge” are, what the contents of a  
Notice of Default must be, and other technical provisions relating to  
mortgages. The statute says nothing that reasonably could be construed as  
requiring or permitting any denial of equal protection or due process. On  
the contrary, much of the statute states what process is due when a borrower  
defaults on a mortgage.

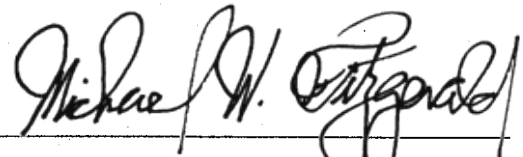
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- ☒ Diversity jurisdiction is lacking:
- ☒ Every defendant is not alleged to be diverse from every plaintiff. 28 U.S.C. § 1332(a).
- ☒ The Complaint does not allege damages in excess of \$75,000, and removing defendant(s) has not plausibly alleged that the amount in controversy requirement has been met. Id.; see Dart Cherokee Basin Operating Co., LLC v. Owens, No. 13-719, 2014 WL 7010692, at \*6 (U.S. Dec. 15, 2014).
- ☒ The underlying unlawful detainer action is a limited civil action that does not exceed \$25,000.

IT IS THEREFORE ORDERED that this matter be, and hereby is, REMANDED to the Superior Court of California listed above, for lack of subject matter jurisdiction.

**IT IS SO ORDERED.**

Date: February 27, 2017



MICHAEL W. FITZGERALD  
United States District Judge