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JS-6

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

LEON AFTALION and HAYM  
AFTALION,

Plaintiffs,

v.

MARCIEL DIAZ and HECTOR  
DIAZ,

Defendants.

Case No. CV 17-03073-MWF  
(RAOx)

**ORDER REMANDING ACTION,  
AND DENYING APPLICATION  
TO PROCEED WITHOUT  
PREPAYING FEES OR COSTS**

**I.**

**FACTUAL BACKGROUND**

Plaintiff s Leon Aftalion and Haym Aftalion (“Plaintiffs”) filed an unlawful detainer action in Los Angeles County Superior Court against Defendants Marciel Diaz, Hector Diaz, and Does 1-10, on February 23, 2017. Notice of Removal (“Removal”) and Attached Complaint for Unlawful Detainer (“Compl.”) and Demurrer and Answer. Dkt. No. 1. Defendants are allegedly tenants of real property located in Los Angeles, California (“the property”). Compl., ¶¶ 3, 6. Plaintiffs are the owners of the property. *Id.* at ¶¶ 1, 4.

Defendant Hector Diaz (“Defendant”) filed a Notice of Removal on April 24, 2017, invoking the Court’s federal question jurisdiction based on Protecting

1 Tenants at Foreclosure Act of 2009 (“PTFA”), 12 U.S.C. § 5220. Removal at 2.  
2 The same day, Defendant filed an application to proceed without prepaying fees or  
3 costs. Dkt. No. 2.

4 **II.**  
5 **DISCUSSION**

6 Federal courts are courts of limited jurisdiction, having subject matter  
7 jurisdiction only over matters authorized by the Constitution and statute. *See, e.g.,*  
8 *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128  
9 L.Ed.2d 391 (1994). It is this Court’s duty always to examine its own subject  
10 matter jurisdiction, *see Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S. Ct. 1235,  
11 163 L.Ed.2d 1097 (2006), and the Court may remand a case summarily if there is  
12 an obvious jurisdictional issue. *Cf. Scholastic Entm’t, Inc. v. Fox Entm’t Grp., Inc.*,  
13 336 F.3d 982, 985 (9th Cir. 2003) (“While a party is entitled to notice and an  
14 opportunity to respond when a court contemplates dismissing a claim on the merits,  
15 it is not so when the dismissal is for lack of subject matter jurisdiction.”) (omitting  
16 internal citations). A defendant attempting to remove an action from state to  
17 federal court bears the burden of proving that jurisdiction exists. *See Scott v.*  
18 *Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). Further, a “strong presumption”  
19 against removal jurisdiction exists. *See Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th  
20 Cir. 1992).

21 Defendant asserts that this Court has subject matter jurisdiction due to the  
22 existence of a federal question. Removal at 2. Section 1441 provides, in relevant  
23 part, that a defendant may remove to federal court a civil action in state court of  
24 which the federal court has original jurisdiction. *See* 28 U.S.C. § 1441(a). Section  
25 1331 provides that federal “district courts shall have original jurisdiction of all civil  
26 actions arising under the Constitution, laws, or treaties of the United States.” *See*  
27 *id.* § 1331.

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1 Here, the Court’s review of the Notice of Removal and attached Complaint,  
2 Demurrer, and Answer makes clear that this Court does not have federal question  
3 jurisdiction over the instant matter under 28 U.S.C. § 1331. First, there is no  
4 federal question apparent from the face of the Complaint, which appears to allege  
5 only a simple unlawful detainer cause of action. *See Wescom Credit Union v.*  
6 *Dudley*, No. CV 10-8203 GAF (SSx), 2010 WL 4916578, \*2 (C.D.Cal. Nov. 22,  
7 2010) (“An unlawful detainer action does not arise under federal law.”) (citation  
8 omitted); *IndyMac Federal Bank, F.S.B. v. Ocampo*, No. EDCV 09-2337  
9 PA(DTBx), 2010 WL 234828, at \*2 (C.D.Cal. Jan. 13, 2010) (remanding an action  
10 to state court for lack of subject matter jurisdiction where plaintiff’s complaint  
11 contained only an unlawful detainer claim).

12 Second, there is no merit to Defendant’s contention that federal question  
13 jurisdiction exists because the Complaint failed to comply with the requirements of  
14 the PTFA. Removal at 2. It is well settled that a “case may not be removed to  
15 federal court on the basis of a federal defense . . . even if the defense is anticipated  
16 in the plaintiff’s complaint, and even if both parties concede that the federal defense  
17 is the only question truly at issue.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393,  
18 107 S.Ct. 2425, 2430, 96 L.Ed.2d 318 (1987). Thus, to the extent Defendant’s  
19 defenses to the unlawful detainer action are based on alleged violations of federal  
20 law, those defenses do not provide a basis for federal question jurisdiction. *See id.*  
21 Because Plaintiffs’ complaint does not present a federal question, either on its face  
22 or as artfully pled, the court lacks jurisdiction under 28 U.S.C. § 1331.

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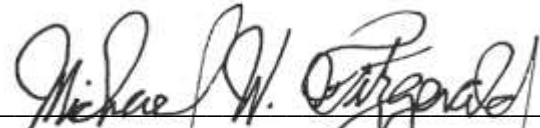
**III.**  
**CONCLUSION**

Accordingly, IT IS ORDERED that this case is REMANDED to the Superior Court of California, County of Los Angeles, forthwith.

IT IS FURTHER ORDERED that Defendant's Application to Proceed Without Prepaying Fees or Costs is DENIED as moot.

IT IS SO ORDERED.

DATED: April 28, 2017

  
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MICHAEL W. FITZGERALD  
UNITED STATES DISTRICT JUDGE

Presented by:

  
\_\_\_\_\_  
ROZELLA A. OLIVER  
UNITED STATES MAGISTRATE JUDGE