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JS-6 / REMAND

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

NICOLAS ORIHUELA, et al.,

Plaintiffs,

v.

RAAFAT ABU SUMAIA, et al.,

Defendants.

Case No.: CV 17-3677-DMG (RAOx)

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

I.

FACTUAL BACKGROUND

Plaintiffs Nicolas Orihuela and Agustin Orihuela (“Plaintiffs”) filed an unlawful detainer action in Los Angeles County Superior Court against Defendants Raafat Abu Sumaia and Sara Franco on April 14, 2017. Notice of Removal (“Removal”) and Attached Complaint for Unlawful Detainer (“Compl.”) and Answer. Dkt. No. 1. Defendants are allegedly holdover tenants of real property located in South Gate, California (“the property”). Compl., ¶¶ 1, 3, 6-7. Plaintiffs are the owners of the property. *Id.* at ¶¶ 1, 4.

Defendant Raafat Abu Sumaia (“Defendant”) filed a Notice of Removal on May 16, 2017, invoking the Court’s federal question jurisdiction on the basis of a violation of The Protecting Tenants at Foreclosure Act of 2009 (“PTFA”), 12

1 U.S.C. § 5220. Removal at 2. The same day, Defendant filed an application to
2 proceed without prepaying fees or costs. Dkt. No. 3.

3 II.

4 DISCUSSION

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

20 Defendant asserts that this Court has subject matter jurisdiction due to the
21 existence of a federal question. Removal at 2-3. Section 1441 provides, in relevant
22 part, that a defendant may remove to federal court a civil action in state court of
23 which the federal court has original jurisdiction. *See* 28 U.S.C. § 1441(a). Section
24 1331 provides that federal “district courts shall have original jurisdiction of all civil
25 actions arising under the Constitution, laws, or treaties of the United States.” *See*
26 *id.* § 1331.

27 Here, the Court’s review of the Notice of Removal and attached Complaint
28 and Answer makes clear that this Court does not have federal question jurisdiction

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

10 Second, there is no merit to Defendant’s contention that federal question
11 jurisdiction exists because the Complaint failed to comply with the requirements of
12 the PTFA. Removal at 2-3. The PTFA does not create a private right of action;
13 rather, it provides a defense to state law unlawful detainer actions. *See Logan v.*
14 *U.S. Bank Nat. Ass’n*, 722 F.3d 1163, 1164 (9th Cir. 2013) (affirming dismissal of
15 the complaint because the PTFA “does not create a private right of action allowing
16 [plaintiff] to enforce its requirements”). It is well settled that a “case may not be
17 removed to federal court on the basis of a federal defense . . . even if the defense is
18 anticipated in the plaintiff’s complaint, and even if both parties concede that the
19 federal defense is the only question truly at issue.” *Caterpillar, Inc. v. Williams*,
20 482 U.S. 386, 393, 107 S.Ct. 2425, 2430, 96 L.Ed.2d 318 (1987). Thus, to the
21 extent Defendant’s defenses to the unlawful detainer action are based on alleged
22 violations of federal law, those defenses do not provide a basis for federal question
23 jurisdiction. *See id.* Because Plaintiffs’ complaint does not present a federal
24 question, either on its face or as artfully pled, the court lacks jurisdiction under 28
25 U.S.C. § 1331.

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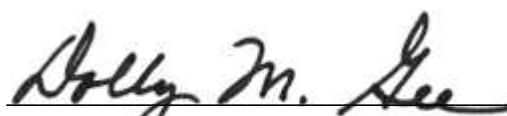
III.
CONCLUSION

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: May 19, 2017



DOLLY M. GEE
UNITED STATES DISTRICT JUDGE

Presented by:

ROZELLA A. OLIVER
UNITED STATES MAGISTRATE JUDGE