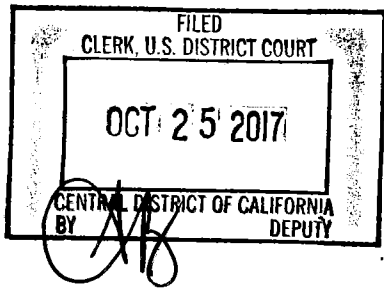


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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BRECKENRIDGE PROPERTY
FUND 2016, LLC,

Plaintiff,

v.

LEONARD McCRAE, et al.,

Defendants.

Case No. CV 17-07652-PSG (RAOx)

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

**I.
FACTUAL BACKGROUND**

Plaintiff Breckenridge Property Fund 2016, LLC (“Plaintiff”), filed an unlawful detainer action in Los Angeles County Superior Court against Defendants Leonard McCrae and Does 1-10, on or about September 1, 2017. Notice of Removal (“Removal”) and Attached Complaint (“Compl.”), Dkt. No. 1. Defendants are allegedly holdover occupants of real property located in Whittier, California (“the property”). Compl. ¶¶ 3, 8, 17. Plaintiff is the owner of the property, which was acquired after a Trustee’s Sale following foreclosure proceedings. *Id.* at ¶¶ 4-8. Plaintiff has filed the unlawful detainer action demanding that defendants quit and deliver up possession of the property. *Id.*

1 at ¶¶ 12-13. Plaintiff also seeks monetary damages. *Id.* at ¶¶ 14-16, Prayer for
2 Relief.

3 Defendant Leonard McCrae (“Defendant”) filed a Notice of Removal on
4 October 19, 2017, invoking the Court’s federal question jurisdiction. Removal at 2-
5 3, 5-6.

6 The same day, Defendant filed an Application to Proceed Without Prepaying
7 Fees or Costs. Dkt. No. 3.

8 **II.**
9 **DISCUSSION**

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

25 Defendant asserts that this Court has subject matter jurisdiction due to the
26 existence of a federal question. Removal at 2-3, 5-6. Section 1441 provides, in
27 relevant part, that a defendant may remove to federal court a civil action in state
28 court of which the federal court has original jurisdiction. *See* 28 U.S.C. § 1441(a).

1 Section 1331 provides that federal “district courts shall have original jurisdiction of
2 all civil actions arising under the Constitution, laws, or treaties of the United
3 States.” *See id.* § 1331.

4 Here, the Court’s review of the Notice of Removal and attached Complaint
5 makes clear that this Court does not have federal question jurisdiction over the
6 instant matter under 28 U.S.C. § 1331. First, there is no federal question apparent
7 from the face of the Complaint, which appears to allege only a simple unlawful
8 detainer cause of action. *See Wescom Credit Union v. Dudley*, No. CV 10-8203
9 GAF (SSx), 2010 WL 4916578, *2 (C.D.Cal. Nov. 22, 2010) (“An unlawful
10 detainer action does not arise under federal law.”) (citation omitted); *IndyMac*
11 *Federal Bank, F.S.B. v. Ocampo*, No. EDCV 09-2337 PA(DTBx), 2010 WL
12 234828, at *2 (C.D.Cal. Jan. 13, 2010) (remanding an action to state court for lack
13 of subject matter jurisdiction where plaintiff’s complaint contained only an
14 unlawful detainer claim).

15 Second, there is no merit to Defendant’s contention that federal question
16 jurisdiction exists because defenses to the unlawful detainer involve federal issues
17 of fair housing, retaliatory discrimination, and civil rights. Removal at 5-6. It is
18 well settled that a “case may not be removed to federal court on the basis of a
19 federal defense . . . even if the defense is anticipated in the plaintiff’s complaint,
20 and even if both parties concede that the federal defense is the only question truly at
21 issue.” *Caterpillar*, 482 U.S. at 393, 107 S. Ct. at 2430. Thus, to the extent
22 Defendant’s defenses to the unlawful detainer action are based on alleged violations
23 of federal law, those defenses do not provide a basis for federal question
24 jurisdiction. *See id.* Because Plaintiff’s complaint does not present a federal
25 question, either on its face or as artfully pled, the Court lacks jurisdiction under 28
26 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: 12/5/17



PHILIP S. GUTIERREZ
UNITED STATES DISTRICT JUDGE

Presented by:



ROZELLA A. OLIVER
UNITED STATES MAGISTRATE JUDGE