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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GMS LIBERTY LLC,
Plaintiff,
v.
LINDA M. HIB, et al.,
Defendants.

NO. CV 18-0766-PSG (AGR)

ORDER REMANDING ACTION
TO STATE COURT

The Court *sua sponte* REMANDS this action to the California Superior Court for the County of San Joaquin 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 Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002) (quoting *Great N. Ry. Co. v. Alexander*, 246 U.S. 276, 280 (1918)). Generally, where Congress has acted to create a right of removal, those statutes are strictly construed against removal jurisdiction. *Id.*; *Nevada v. Bank of Am. Corp.*, 672 F.3d 661, 667 (9th Cir. 2012); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

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

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

22 No basis for federal question jurisdiction has been identified. The
23 removing defendant relies principally on diversity jurisdiction, discussed below.
24 Although the removing defendant cites civil-rights removal pursuant to 28 U.S.C.
25 § 1443, defendant has not alleged facts sufficient to show that the statute's
26 requirements are satisfied. Section 1443(1) provides for the removal of a civil
27 action filed "[a]gainst any person who is denied or cannot enforce in the courts of
28 such State a right under any law providing for the equal civil rights of citizens of

1 the United States" Even assuming that the removing defendant has
2 asserted rights provided "by explicit statutory enactment protecting equal racial
3 civil rights," *Patel v. Del Taco, Inc.*, 446 F.3d 996, 999 (9th Cir. 2006) (citation
4 omitted), defendant(s) has not identified any "state statute or a constitutional
5 provision that purports to command the state courts to ignore the federal rights"
6 or pointed "to anything that suggests that the state court would not enforce
7 [defendant's] civil rights in the state court proceedings." *Id.* (citation omitted); see
8 also *Bogart v. California*, 355 F.2d 377, 381-82 (9th Cir. 1966) (holding that
9 conclusionary statements lacking any factual basis cannot support removal under
10 § 1443(1)). Nor does § 1443(2) provide any basis for removal, as it "confers a
11 privilege of removal only upon federal officers or agents and those authorized to
12 act with or for them in affirmatively executing duties under any federal law
13 providing for equal civil rights" and on state officers who refuse to enforce
14 discriminatory state laws. *City of Greenwood v. Peacock*, 384 U.S. 808, 824 &
15 824 n.22 (1966).

16 Diversity jurisdiction is lacking as well. Even if the Court assumes that all
17 parties are diverse in citizenship, 28 U.S.C. § 1332(a)(1), the removed unlawful-
18 detainer complaint does not allege damages exceeding \$75,000, and the
19 removing defendant has not plausibly alleged that the amount in controversy
20 requirement has been met. 28 U.S.C. 1332(a); see *Dart Cherokee Basin*
21 *Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014). On the contrary, the plaintiff
22 in the removed action has indicated on the form complaint that the amount at
23 issue does not exceed \$10,000.

24 IT IS THEREFORE ORDERED that this matter be, and hereby is,
25 REMANDED to the Superior Court of California for San Joaquin County for lack
26 of subject matter jurisdiction.
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DATED:

7/6/14



PHILIP S. GUTIERREZ
United States District Judge

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