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

8449 PALMETTO AVE., LLC,)	CASE NO. EDCV15-01230 MMM (AJWx)
)	
Plaintiff,)	
)	ORDER REMANDING CASE TO STATE
vs.)	COURT
)	
ELENA MERCADO, et al.,)	
)	
Defendant(s).)	
_____)	

The Court sua sponte REMANDS this action to California Superior Court for the County of San Bernardino 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 Protection, Inc. v. Henson, 537 U.S. 28, 32 (2002) (quoting Great Northern R. Co. v. Alexander, 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) (per curiam).

Unless otherwise 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 original jurisdiction.” 28 U.S.C. § 1441(a); Dennis v. Hart, 724 F.3d 1249, 1252 (9th Cir. 2013). The removing defendant bears the burden of establishing federal jurisdiction. Abrego Abrego v. Dow Chem. Co., 443 F.3d 676, 682 (9th

1 Cir. 2006); Gaus, 980 F.2d at 566-567. “Under the plain terms of § 1441(a), in order properly to
2 remove [an] action pursuant to that provision, [the removing defendant] must demonstrate that original
3 subject-matter jurisdiction lies in the federal courts.” Syngenta Crop Protection, 537 U.S. at 33. Failure
4 to do so requires that the case be remanded because “[s]ubject matter jurisdiction may not be waived,
5 and . . . the district court must remand if it lacks jurisdiction.” Kelton Arms Condo. Owners Ass’n v.
6 Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003). “If at any time before final judgment it
7 appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C.
8 § 1447(c). It is “elementary that the subject matter jurisdiction of the district court is not a waivable
9 matter and may be raised at anytime by one of the parties, by motion or in the responsive pleadings, or
10 sua sponte by the trial or reviewing court.” Emrich v. Touche Ross & Co., 846 F.2d 1190, 1194 n.2 (9th
11 Cir. 1988).

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

- 14 ☒ No basis for federal question jurisdiction has been identified.
- 15 ☒ The Complaint does not include any claim “arising under the Constitution, laws,
16 or treaties of the United States.” 28 U.S.C. § 1331.
- 17 ☒ Removing defendant(s) asserts that the affirmative defenses at issue give rise to
18 federal question jurisdiction, but “the existence of federal jurisdiction depends
19 solely on the plaintiff’s claims for relief and not only anticipated defenses to
20 those claims.” ARCO Envtl. Remediation, L.L.C. v. Dept. of Health & Envtl.
21 Quality, 213 F.3d 1108, 1113 (9th Cir. 2000). An “affirmative defense based on
22 federal law” does not “render[] an action brought in state court removable.”
23 Berg v. Leason, 32 F.3d 422, 426 (9th Cir. 1994). A “case may not be removed
24 to federal court on the basis of a federal defense . . . even if the defense is
25 anticipated in the plaintiff’s complaint, and even if both parties admit that the
26 defense is the only question truly at issue in the case.” Franchise Tax Bd. v.
27 Constr. Laborers Vacation Tr., 463 U.S. 1, 14 (1983).
- 28 ☒ The underlying action is an unlawful detainer proceeding, arising under and
governed by the laws of the State of California.
- ☒ 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 the removing
defendant(s) has not shown, by a preponderance of the evidence, that the amount

1 in controversy requirement has been met. 28 U.S.C. § 1332(a); Abrego Abrego,
2 443 F.3d at 683. [See page 3 of Unlawful Detainer Complaint attached to Notice
of Removal; the remainder of the Complaint is not attached].

- 3 The underlying unlawful detainer action is a limited civil action that does not
4 exceed \$10,000. [See page 3 of Unlawful Detainer Complaint attached to Notice
of Removal; the remainder of the Complaint is not attached].

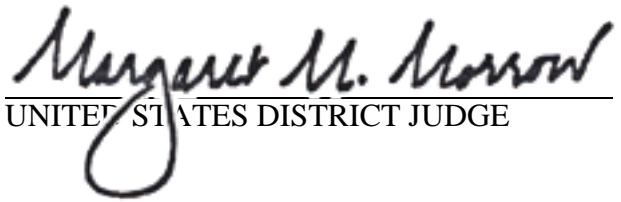
5 In addition, to the extent that the removing defendant(s) alleges or attempt to allege that removal
6 jurisdiction exists under 28 U.S.C. § 1443(1), the Notice of Removal fails to meet the removing
7 defendant's burden to demonstrate that this action may be removed pursuant to that provision for "civil
8 rights cases." "[T]he ground for removal [under section 1443(1)] is both specific and extremely
9 narrow." Davis v. Super. Ct. of State of Cal., 464 F.2d 1272, 1273 (9th Cir. 1972). A removal petition
10 under section 1443(1) must satisfy a two-part test. "First, the petitioners must assert, as a defense to
11 the prosecution, rights that are given to them by explicit statutory enactment protecting equal racial civil
12 rights. Second, petitioners must assert that the state courts will not enforce that right, and that allegation
13 must be supported by reference to a state statute or a constitutional provision that purports to command
14 the state courts to ignore the federal rights." Patel v. Del Taco, Inc., 446 F.3d 996, 999 (9th Cir. 2006)
15 (quoting California v. Sandoval, 434 F.2d 635, 636 (9th Cir.1970) (per curiam)); see Johnson v.
16 Mississippi, 421 U.S. 213, 219 (1975).

17 The Notice of Removal alleges that plaintiff and plaintiff's attorney violated the California Code
18 of Civil Procedure and state evidence rules, that plaintiff's attorney has "in effect" used his or her
19 "knowledge of the law" in an attempt to "prevent Defendant from fully and accurately presenting his
20 case," that defendant's equal protection rights are "non-existent in state court unlawful detainer
21 actions," and therefore that plaintiff's counsel and the state courts have deprived defendant of his
22 Fourteenth Amendment due process and equal protection rights. [Notice of Removal 3-4]. Those
23 conclusory allegations fail to satisfy the "specific and extremely narrow" requirements of section
24 1443(a). See Patel, 446 F.3d at 999 (remanding where the removing defendants "point[ed] to no formal
25 expression of state law that prohibits them from enforcing their civil rights in state court nor . . . to
26 anything that suggests that the state court would not enforce their civil rights in the state court
27 proceedings"); see also Sandoval, 434 F.2d at 636 ("Bad experiences with the particular court will not
28 suffice."); Golden Union Prop., LLC v. Amesquita, 2011 WL 321095, at *4 (C.D. Cal. Jan. 26, 2011)

1 (remanding the case to state court because the defendant's allegation that his "[c]onstitutionally
2 guaranteed rights to due process and a fair hearing" were "abrogated or rendered non-existent" by an
3 unlawful detainer action were "insufficient to invoke the court's jurisdiction under § 1443").

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

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7 Date: June 30, 2015


UNITED STATES DISTRICT JUDGE

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