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

KRPM INVESTMENT GROUP, INC.,)
Plaintiff,)
v.)
KEITH LEVATO, et al.,)
Defendants.)

Case No. SA CV 15-1282 DOC (JCGx)
**ORDER SUMMARILY REMANDING
IMPROPERLY REMOVED ACTION**

The Court will summarily remand this unlawful detainer action to state court because Defendant removed it improperly.

On August 12, 2015, Defendant Keith Levato, having been sued in what appears to be a routine unlawful detainer action in California state court, lodged a Notice of Removal of that action in this Court (“Notice”) and also presented an application to proceed *in forma pauperis*. [Dkt. Nos. 1, 4.] The Court has denied the latter application under separate cover because the action was improperly removed. To prevent the action from remaining in jurisdictional limbo, the Court issues this Order to remand the action to state court.

Simply stated, Plaintiff could not have brought this action in federal court in the first place, in that Defendant does not competently allege facts supplying either

1 diversity or federal question jurisdiction, and therefore removal is improper. 28 U.S.C.
2 § 1441(a); *see Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Notably, even if
3 complete diversity of citizenship exists, Defendant cannot properly remove the action
4 because Defendant resides in the forum state. (*See* Notice at 1); *see also* 28 U.S.C.
5 § 1441(b)(2). Moreover, Defendant does not even purport to argue that Plaintiff’s
6 unlawful detainer action raises a federal legal question. *See* 28 U.S.C. §§ 1331,
7 1441(a).

8 Thus, there is no basis for removal under 28 U.S.C. § 1441.

9 Separately, Defendant contends that removal is proper under 28 U.S.C.
10 § 1443(1) on the grounds that, in the state court action, “rules of evidence and civil
11 procedure” are being applied in a manner that deprives Defendant of due process and
12 equal protection. (Notice at 2-4.)

13 As a rule, a successful petition for removal under 28 U.S.C. § 1443(1) must
14 satisfy the two-part test articulated by the Supreme Court in *Georgia v. Rachel*, 384
15 U.S. 780 (1966), and *City of Greenwood, Miss. v. Peacock*, 384 U.S. 808 (1966).
16 “First, the petitioners must assert, as a defense to the prosecution, rights that are given
17 to them by explicit statutory enactment protecting equal racial civil rights.” *Patel v.*
18 *Del Taco, Inc.*, 446 F.3d 996, 999 (9th Cir. 2006). “Second, petitioners must assert
19 that the state courts will not enforce that right, and that allegation must be supported by
20 reference to a state statute or a constitutional provision that purports to command the
21 state courts to ignore the federal rights.” *Id.*

22 Here, Defendant’s Notice fails to satisfy either requirement. First, Defendant
23 fails to identify a right given to him “by explicit statutory enactment protecting equal
24 racial civil rights.” *See id.* Second, Defendant fails to identify a California state law or
25 constitutional provision that purports to command state courts to ignore any such
26 federal right. *See id.*; *see also, e.g., HSBC Bank USA, N.A. v. Kubik*, 2013 WL
27 1694670, at *2-3 (C.D. Cal. Apr. 16, 2013).

28 Thus, there is no basis for removal under 28 U.S.C. § 1443(1).

1 Accordingly, IT IS ORDERED that: (1) this matter be REMANDED to the
2 Superior Court of California, County of Orange, Central Justice Center, 700 Civic
3 Center Drive West, Santa Ana, CA 92701, for lack of subject matter jurisdiction
4 pursuant to 28 U.S.C. § 1447(c); (2) the Clerk send a certified copy of this Order to the
5 state court; and (3) the Clerk serve copies of this Order on the parties.
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8 DATED: August 13, 2015

David O. Carter

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10 HON. DAVID O. CARTER
11 UNITED STATES DISTRICT JUDGE
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