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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

D & A INTERMEDIATE-TERM
MORTGAGE FUND III LP,

Plaintiff,

v.

IAN ANTHONY SUITE, DOES 1 to
10, INCLUSIVE

Defendants.

Case No. SACV 17-00214-AG (KESx)

ORDER REMANDING CASE
TO STATE COURT

I.

BACKGROUND

On July 26, 2016, Plaintiff filed an unlawful detainer action against Defendants in the Orange County Superior Court. (Notice of Removal, Ex. 1 [state court complaint.]) On January 2, 2017, Defendant Ian Anthony Suite filed a Notice of Removal of that action in this Court, accompanied by a request to proceed in forma pauperis (“IFP”). See D & A Intermediate-Term Mortgage Fund III LP v. Ian Anthony Suite, et al., 8:17-sacv-00003-DOC-KESx. Defendant Suite’s request for IFP was denied and the matter remanded to state court on January 5, 2017. (Id. at Dkts. 6, 7.)

On February 7, 2017, Michael Anthony Garcia, an interested party in the

1 same unlawful detainer action, filed the Notice of Removal and IFP request now
2 before this Court.¹ Mr. Garcia contends that he is a defendant in this case, and that
3 “Plaintiff failed to contact Defendant [Garcia] to work out any agreement and filed
4 an Unlawful Detainer case against Defendant [Suite] excluding Defendant [Garcia]
5 from the law suit under deceit.” (Notice of Removal at 5.)

6 Mr. Garcia alleges that removal is proper under federal question jurisdiction
7 because Plaintiff violated the federal Protecting Tenants at Foreclosure Act. (Id. at
8 1-3.) Alternatively, he contends that removal is proper under 28 U.S.C. § 1443
9 because he has been deprived of his constitutional rights by the application of
10 California statutory provisions authorizing evictions in unlawful detainer
11 proceedings. (Id. at 7.) Defendant, in conclusory language, also lists the First, Fifth,
12 Ninth, and Fourteenth Amendments, “the Article I guarantee against state
13 ‘impairment of the obligations of contract,” and 42 U.S.C. §§ 1981, 1982, 1983,
14 and 1985 in support of federal jurisdiction. (Id. at 8-9.)

15 The Court sua sponte REMANDS this action to the California Superior Court
16 for the County of Orange for lack of subject matter jurisdiction, as set forth below.

17 **II.**
18 **DISCUSSION**

19 “The right of removal is entirely a creature of statute and ‘a suit commenced
20 in a state court must remain there until cause is shown for its transfer under some

21 ¹ Pursuant to Porter v. Ollison, 620 F.3d 952, 954-55 (9th Cir. 2010) (noting
22 that it is proper to take judicial notice of “any state court dockets or pleadings that
23 have been located (including on the internet”), the court takes judicial notice of the
24 Superior Court of Orange County’s website. On February 2, 2017, Michael
25 Anthony Garcia was added to this case as an interested party. See
26 www.ocapps.occourts.org. The Court notes that only defendants may remove a case
27 from state court. 28 U.S.C. § 1441(a). However, because it appears that the
28 Superior Court of Orange County has treated Mr. Garcia identically to the named
Defendants in this case, the Court will assume that Mr. Garcia is a proper
Defendant and proceed with the traditional removal analysis.

1 act of Congress.” Syngenta Crop Protection, Inc. v. Henson, 537 U.S. 28, 32
2 (2002) (quoting Great Northern R. Co. v. Alexander, 246 U.S. 276, 280 (1918)).
3 Where Congress has acted to create a right of removal, those statutes are strictly
4 construed against removal jurisdiction. Id.; Nevada v. Bank of Am. Corp., 672 F.3d
5 661, 667 (9th Cir. 2012); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

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

24 **A. Federal Question Jurisdiction.**

25 The underlying action is an unlawful detainer proceeding, arising under and
26 governed by the laws of the State of California. The state-court Complaint does not
27 include any claim “arising under the Constitution, laws, or treaties of the United
28 States.” 28 U.S.C. § 1331. Federal defenses or federal counterclaims do not provide

1 a basis to remove an action which does not otherwise establish federal jurisdiction.
2 “[T]he existence of federal jurisdiction depends solely on the plaintiff’s claims for
3 relief and not on anticipated defenses to those claims.” ARCO Env’tl. Remediation,
4 L.L.C. v. Dept. of Health and Env’tl. Quality, 213 F.3d 1108, 1113 (9th Cir. 2000).
5 An “affirmative defense based on federal law” does not “render[] an action brought
6 in state court removable.” Berg v. Leason, 32 F.3d 422, 426 (9th Cir. 1994). A
7 “case may not be removed to federal court on the basis of a federal defense ... even
8 if the defense is anticipated in the plaintiff’s complaint, and even if both parties
9 admit that the defense is the only question truly at issue in the case.” Franchise Tax
10 Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 14 (1983). There is no
11 basis for federal question jurisdiction.

12 **B. Diversity Jurisdiction.**

13 There is also no basis for diversity jurisdiction. Every defendant is not
14 alleged to be diverse from every plaintiff. 28 U.S.C. § 1332(a). The Complaint does
15 not allege damages in excess of \$75,000; to the contrary, it is a limited civil action
16 in which the amount in controversy does not exceed \$10,000.

17 **C. Jurisdiction under 28 U.S.C. § 1443.**

18 Section 1443(1) permits a defendant in state cases to remove the proceedings
19 to the federal district courts when a defendant is “denied or cannot enforce in the
20 courts of such State a right under any law providing for the equal civil rights of
21 citizens in the United States.” In order to successfully remove, the defendant must
22 satisfy a two-prong test: 1) the rights allegedly denied must arise under a federal
23 law providing for specific civil rights stated in terms of racial equality; and 2) the
24 defendant must be denied or unable to enforce the rights in state courts. Johnson v.
25 Mississippi, 421 U.S. 213, 219 (1975); City of Greenwood, Miss. v. Peacock, 384
26 U.S. 808, 827-28 (1966); Georgia v. Rachel, 384 U.S. 780, 792 (1966). Under the
27 first prong, constitutional or statutory provisions of general applicability or under
28 statutes not protecting against racial discrimination will not suffice. Johnson, 421

1 U.S. at 219. Under the second prong, a defendant’s federal rights are left to the state
2 courts except in rare situations where it can be clearly predicted that those rights
3 will inevitably be denied by the very act of bringing the defendant to trial in state
4 court. Peacock, 384 U.S. at 828.

5 Defendant’s conclusory invocation of 28 U.S.C. § 1443 does not satisfy
6 either prong of the test. Defendant alleges that his constitutional rights are
7 “systematically trampled in state courts” and that state laws are preventing him
8 from raising his federal claims. (Notice of Removal at 7.) He also claims that the
9 “pervasive state statutory program” discriminates against pro se litigants and
10 therefore “directly violates Federal U.S. laws guaranteeing equality of access to the
11 courts.” (Notice of Removal at 9.) These bare assertions are insufficient to invoke
12 the Court’s jurisdiction. Defendant “must assert that the state courts will not enforce
13 [a specified federal] right, and that allegation must be supported by reference to a
14 state statute or a constitutional provision that purports to command the state courts
15 to ignore the federal rights.” People of State of California v. Sandoval, 434 F.2d
16 635, 636 (9th Cir. 1970). Defendant has failed to identify any specific state statute
17 or constitutional provision that commands the state courts to ignore her federal
18 rights. See HSBC Bank USA v. Kubik, No. 13-1692, 2013 WL 1694670, at *3
19 (C.D. Cal. Apr. 16, 2013) (“Defendant Kubik does not, and cannot, identify any
20 California state law or constitutional provision that commands state courts to ignore
21 an amendment to the U.S. Constitution.”). Moreover, the allegations he does make
22 are entirely conclusory in nature. Section 1443(1) will not provide jurisdiction
23 where allegations of discrimination are conclusory and lacking factual basis. See
24 Bogart v. California, 355 F.2d 377, 380-81 (9th Cir. 1966). Consequently, removal
25 is not proper under § 1443(1).

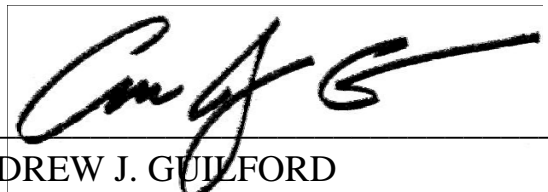
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III.
CONCLUSION

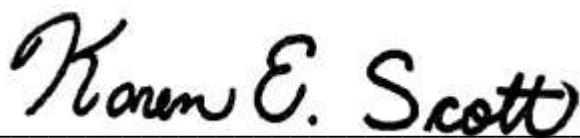
This Court does not have subject matter jurisdiction over this case. IT IS THEREFORE ORDERED that this matter be REMANDED to the Superior Court of the State of California for the County of Orange.

DATED: February 9, 2017



ANDREW J. GUILFORD
UNITED STATES DISTRICT JUDGE

Presented by:



KAREN E. SCOTT
United States Magistrate Judge