

1 Inc., 582 F.3d 1083, 1087 (9th Cir. 2009). It is presumed that a case lies outside the limited
2 jurisdiction of the federal courts, and the burden of establishing the contrary rests upon the party
3 asserting jurisdiction. Geographic Expeditions, 599 F.3d at 1106-07; Hunter v. Philip Morris
4 USA, 582 F.3d 1039, 1042 (9th Cir. 2009). “The strong presumption against removal
5 jurisdiction” means that “the court resolves all ambiguity in favor of remand to state court.”
6 Hunter, 582 F.3d at 1042; Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). That is, federal
7 jurisdiction over a removed case “must be rejected if there is any doubt as to the right of removal
8 in the first instance.” Geographic Expeditions, 599 F.3d at 1107; Duncan v. Stuetzle, 76 F.3d
9 1480, 1485 (9th Cir. 1996); Gaus, 980 F.2d at 566. “If at any time prior to judgment it appears
10 that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. §
11 1447(c); Gibson v. Chrysler Corp., 261 F.3d 927, 932 (9th Cir. 2001). Remand under 28 U.S.C.
12 § 1447(c) “is mandatory, not discretionary.” Bruns v. NCUA, 122 F.3d 1251, 1257 (9th Cir.
13 1997); see California ex. rel. Lockyer v. Dynegy, Inc., 375 F.3d 831, 838 (9th Cir. 2004). That
14 is, the court “must dismiss a case when it determines that it lacks subject matter jurisdiction,
15 whether or not a party has filed a motion.” Page v. City of Southfield, 45 F.3d 128, 133 (6th Cir.
16 1995).

17 “The presence or absence of federal question jurisdiction is governed by the ‘well-
18 pleaded complaint rule,’ which provides that federal jurisdiction exists only when a federal
19 question is presented on the face of the plaintiff’s properly pleaded complaint.” California v.
20 United States, 215 F.3d 1005, 1014 (9th Cir. 2000); see Dynegy, 375 F.3d at 838; Duncan, 76
21 F.3d at 1485. Under the “well-pleaded complaint” rule, courts look to what “necessarily appears
22 in the plaintiff’s statement of his own claim in the bill or declaration, unaided by anything in
23 anticipation of avoidance of defenses which it is thought the defendant may interpose.”
24 California, 215 F.3d at 1014. Accordingly, “a case may not be removed on the basis of a federal
25 defense . . . even if the defense is anticipated in the plaintiff’s complaint and both parties concede
26 that the federal defense is the only question truly at issue.” Caterpillar, Inc. v. Williams, 482
27 U.S. 386, 392 (1987); Wayne v. DHL Worldwide Express, 294 F.3d 1179, 1183 (9th Cir. 2002);
28 see also Vaden v. Discover Bank, 129 S. Ct. 1262, 1278 (2009) (“It does not suffice to show that

1 a federal question lurks somewhere inside the parties' controversy, or that a defense or
2 counterclaim would arise under federal law.”).

3 Here, Schweitzer has not shown that removal was appropriate. The complaint filed by
4 Plaintiff is an unlawful detainer action that is based entirely on state law. As mentioned above,
5 Schweitzer relies on his demurrer to establish federal jurisdiction. Schweitzer is attempting to
6 remove this case on the basis of a federal defense. This is improper, as the defensive invocation
7 of 28 U.S.C. § 5220 cannot form the basis of this Court's jurisdiction. See Vaden 129 S.Ct. at
8 1278; Caterpillar, 482 U.S. at 392; Wayne, 294 F.3d at 1183; California, 215 F.3d at 1014; Oates
9 Revocable Trust Dated June 23, 2003 v. Rizon, 2011 U.S. Dist. LEXIS 95547 (C.D. Cal. Aug.
10 23, 2011). Because there is no federal question appearing in Plaintiff's complaint, Defendant has
11 failed to invoke this Court's jurisdiction. Remand to the Tulare County Superior Court is
12 appropriate and mandatory. 28 U.S.C. § 1447(c); Geographic Expeditions, 599 F.3d at 1107;
13 Bruns, 122 F.3d at 1257; Page, 45 F.3d at 133.

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15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Per 28 U.S.C. § 1447(c), due to this Court's lack of subject matter jurisdiction, this case
17 is REMANDED forthwith to the Superior Court of Tulare County; and
18 2. Defendant's motion to proceed in forma pauperis (Doc. No. 4) is DENIED as moot.

19 IT IS SO ORDERED.

20 Dated: September 13, 2013



21 SENIOR DISTRICT JUDGE
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