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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES,

Petitioner,

v.

DIRECTOR, CALIFORNIA OFFICE OF
ADMINISTRATIVE HEARINGS, et al.,

Respondents.

Case No. 1:13-cv-01858-LJO-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT PETITIONER'S
MOTION TO REMAND BE GRANTED

ECF NO. 13

On December 13, 2013, Petitioner California Department of Health Care Services (“DHCS”) filed a motion to remand this action back to state court. (ECF No. 13.) The motion was referred to the undersigned magistrate judge for findings and recommendations pursuant to 28 U.S.C. §636(b).

The hearing on Plaintiff’s motion took place on February 19, 2014. For the reasons set forth below, the Court recommends that Plaintiff’s motion to remand be granted.

I.

BACKGROUND

This action was removed from the Superior Court of California for the County of Santa Clara on November 14, 2013. (ECF No. 1.) The action was removed by “Real Parties in Interest, Parents of Student.” (Notice of Removal 1:24-27.) This action was removed on the

1 grounds that the action involves questions of federal law under the Individuals with Disabilities
2 Education Act (“IDEA”).

3 DHCS initiated this action by filing a Petition for Writ of Mandate in state court on
4 October 10, 2013. DHCS sought a writ of mandate directed to the Office of Administrative
5 Hearings (“OAH”) to set aside OAH’s decision issued on July 15, 2013. OAH is named as the
6 respondent to the Petition for Writ of Mandate. The real parties in interest are a student who
7 attends a public school within the Sonora Elementary School District (“Student”), Student’s
8 parents (“Parents”), and the Tuolumne County Office of Education.

9 The underlying dispute concerns the free, appropriate public education (“FAPE”)
10 required under the IDEA for children with disabilities. A dispute arose between Student and
11 Parents, on one hand, and Tuolumne County Children’s Services Program (“CCS”) concerning
12 the physical therapy and occupational therapy services that must be provided to Student under
13 the IDEA.

14 On July 15, 2013, OAH held a hearing and determined that CCS denied Student a FAPE
15 by reducing Student’s physical therapy and occupational therapy without going through the
16 individualized education program (“IEP”) process. OAH required CCS to restore Student’s
17 physical therapy and occupational therapy services to the pre-reduction levels and provide
18 Student with 40 hours of compensatory occupational therapy and 50 hours of compensatory
19 physical therapy. DHCS’s petition for writ of mandate contends that OAH exceeded its
20 jurisdiction and abused its discretion with its order.

21 DHCS now seeks remand of this action and contends that the Court lacks jurisdiction
22 because this case does not arise under federal law. DHCS also contends that removal was
23 procedurally defective because Respondent OAH has not joined in or consented to removal.
24 Student and Parents oppose remand.

25 **II.**

26 **LEGAL STANDARDS FOR MOTIONS TO REMAND**

27 Removal of actions from state court to federal court are generally governed by 28 U.S.C.
28 § 1441, which states, in pertinent part:

1 (a) Generally.--Except as otherwise expressly provided by Act
2 of Congress, any civil action brought in a State court of which the
3 district courts of the United States have original jurisdiction, may
4 be removed by the defendant or the defendants, to the district court
5 of the United States for the district and division embracing the
6 place where such action is pending.

Motions to remand are governed by 28 U.S.C. § 1447(c), which states, in pertinent part:

7 If at any time before final judgment it appears that the district court
8 lacks subject matter jurisdiction, the case shall be remanded. An
9 order remanding the case may require payment of just costs and
10 any actual expenses, including attorney fees, incurred as a result of
11 the removal.

12 Removal statutes must be construed narrowly in favor of remand to protect the
13 jurisdiction of state courts. Harris v. Bankers Life and Cas. Co., 425 F.3d 689, 698 (9th Cir.
14 2005). “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in
15 the first instance.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (citing Libhart v. Santa
16 Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir. 1979)).

17 III.

18 DISCUSSION

19 A. Federal Question Jurisdiction

20 DHCS argues that this Court lacks jurisdiction over this action because it does not arise
21 under federal law. DHCS contends that the underlying dispute is not whether the services
22 ordered by the OAH are required to provide Student with a FAPE in accordance with state or
23 federal law. Instead, DHCS contends that the underlying dispute is whether DHCS can be
24 ordered to provide and pay for such services, as opposed to the local entity, in a manner that
25 differs from and contradicts state law. DHCS argues that this issue arises solely under state law
26 and not under the IDEA or any other federal law.

27 District courts have original jurisdiction over “all civil actions arising under the
28 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. “The well-pleaded-
complaint rule has long governed whether a case ‘arises under’ federal law for purposes of §
1331.” Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc., 535 U.S. 826, 830 (2002).
“[F]ederal jurisdiction generally exists ‘only when a federal question is presented on the face of

1 the *plaintiff's* properly pleaded complaint.” Id. (quoting Caterpillar Inc. v. Williams, 482 U.S.
2 386, 392 (1987) (italics in original). “The rule makes the plaintiff the master of the claim; he or
3 she may avoid federal jurisdiction by exclusive reliance on state law.” Caterpillar Inc. v.
4 Williams, 482 U.S. 386, 393 (1987). Moreover, “[i]t is a ‘long-settled understanding that the
5 mere presence of a federal issue in a state cause of action does not automatically confer federal-
6 question jurisdiction.”” Lippitt v. Raymond James Financial Services, Inc., 340 F.3d 1033, 1040
7 (9th Cir. 2003) (quoting Merrell Dow Pharmaceuticals, Inc. v. Thompson, 478 U.S. 804, 808
8 (1986)).

9 However, “[t]he artful pleading doctrine is a corollary to the well-pleaded complaint
10 rule, and provides that “[a]lthough the plaintiff is master of his own pleadings, he may not avoid
11 federal jurisdiction by omitting from the complaint allegations of federal law that are essential to
12 the establishment of his claim.”” Lippitt, 340 F.3d at 1041 (quoting Hansen v. Blue Cross of
13 California, 891 F.2d 1384, 1389 (9th Cir. 1989)). “Under the artful pleading doctrine, ‘a plaintiff
14 may not defeat removal by omitting to plead necessary federal questions to a complaint.’” Id.
15 (quoting Franchise Tax Bd. of State of Cal. v. Construction Laborers Vacation Trust for
16 Southern California, 463 U.S. 1, 22 (1983)). “Courts should ‘invoke the doctrine “only in
17 limited circumstances as it raises difficult issues of state and federal relationships and often
18 yields unsatisfactory results.”” Id. (quoting Sullivan v. First Affiliated Securities, Inc., 813 F.2d
19 1368, 1373 (9th Cir. 1987)).

20 “[T]he artful pleading doctrine allows federal courts to retain jurisdiction over state law
21 claims that implicate a substantial federal question. A state law claim falls within this ...
22 category when (1) a substantial, disputed question of federal law is a *necessary* element of ... the
23 well-pleaded state claim ... or the claim is an ‘inherently federal claim’ articulated in state-law
24 terms, or (2) the right to relief depends on the resolution of a substantial, disputed federal
25 question.” Lippitt, 340 F.3d at 1042 (internal quotations and citations omitted).

26 DHCS’s petition for writ of mandate does not raise any causes of action where a disputed
27 question of federal law is a necessary element of its claim. Three causes of actions are asserted
28 by DHCS: (1) for a writ of administrative mandate pursuant to California Code of Civil

1 Procedure section 1094.5, (2) for a writ of ordinary mandamus pursuant to California Code of
2 Civil Procedure 1085, and (3) for declaratory relief pursuant to California Code of Civil
3 Procedure 1085. All three causes of action are provided for under California law and authorize
4 writs to be issued to inquire into the validity of administrative decisions. None of the three
5 causes of action necessarily requires a violation of federal law to be cognizable. Therefore, the
6 artful pleading doctrine would only apply if DHCS's right of relief depends on the resolution of a
7 substantial, disputed federal question.

8 In its opposition to the motion to remand, Student and Parents identify two federal issues
9 relevant to DHCS's petition. First, DHCS challenges OAH's determination that it had
10 jurisdiction to resolve the dispute because California Government Code section 7586 states that
11 all state departments and their designated local agencies are governed by the procedural
12 safeguards set forth in 20 U.S.C. § 1415. Second, Student and Parents contend that a substantial
13 federal question exists because OAH concluded that Student was denied a free appropriate public
14 education, which is a conclusion that is determined by federal and state statutes and case law.

15 "The 'strong presumption' against removal jurisdiction means that the defendant always
16 has the burden of establishing that removal is proper." Gaus v. Miles, Inc., 980 F.2d 564, 566
17 (9th Cir. 1992). The Court finds that Student and Parents have not met their burden in
18 demonstrating that removal was proper. Student and Parents have only demonstrated that a
19 federal question may arise in this action because DHCS is challenging the OAH's administrative
20 order and some aspects of the administrative order arose from federal law. However, DHCS's
21 petition does not definitively plead any federal questions and it is entirely possible that this
22 action is resolved without determining any federal issues. Given the strong presumption against
23 removal jurisdiction, the Court recommends that this action be remanded to state court.

24 Student and Parents assert two additional arguments in opposition to remand. First,
25 Student and Parents contend that federal question jurisdiction is appropriate because DHCS
26 should have appealed OAH's decision pursuant to 20 U.S.C. § 1415(i)(2)(A) rather than via
27 petition for writ of mandamus pursuant to California Code of Civil Procedure § 1094.5. As an
28 initial matter, the Court notes that the opinions from the case cited by Student and Parents in

1 support of the proposition that writs for mandamus pursuant to Section 1094.5 are precluded by
2 Section 1415 civil actions are dicta, as the court in San Francisco Unified School Dist. v. State of
3 California, 131 Cal. App. 3d 54 (1982) expressly declined to decide which method of appeal was
4 proper. Id. at 65 (“...we find it unnecessary to decide which method of appeal is proper....”)
5 Furthermore, whether DHCS’s petition is not cognizable under Section 1094.5 is an issue that is
6 more appropriately asserted by Student and Parents as a defense before the state court, as it
7 appears to be a novel state law issue. The possibility that DHCS does not state a cognizable
8 claim under Section 1094.5 does not confer federal question jurisdiction over this action.

9 Student and Parents contend that this Court should retain jurisdiction over this action
10 because Student and Parents filed a counterclaim in this Court and if Plaintiff’s case is remanded,
11 Student and Parents will be forced to litigate in two separate forums and the two separate actions
12 may run the risk of inconsistent judgments. However, federal jurisdiction may not rest upon an
13 actual or anticipated counterclaim. Vaden v. Discover Bank, 556 U.S. 49, 60 (2009). Moreover,
14 Student and Parents cite no authority, and the Court is unaware of any such authority, that federal
15 jurisdiction and removal are proper based upon the risk of inconsistent judgments associated
16 with a counterclaim asserted in federal court or based upon judicial economy concerns.

17 At the hearing, Student and Parents identified a decision from the Northern District,
18 Douglas v. Director, California Office of Administrative Hearings, Case No. C-13-05306-RMW,
19 where remand was denied on what Student and Parents contend were similar circumstances as in
20 this case. Another district’s opinion is not binding on this Court, Hart v. Massanari, 266 F.3d
21 1155, 1176 (9th Cir. 2001) and Douglas appears to be distinguishable. As noted in Douglas, the
22 “petition arises under federal law if it could have been originally filed in the district court.”
23 Douglas at pg. 3. However, in this case, as noted above, the claims are entirely state-claims,
24 which could not have been filed in federal court, and it is perfectly appropriate for a plaintiff to
25 avoid federal jurisdiction by pleading solely state-law claims. Balcorta v. Twentieth Century-
26 Fox Film Corp. 208 F.3d 1102, 1106 (9th Cir. 2000) (“this rule makes a plaintiff the master of
27 his complaint: it allows him to avoid federal jurisdiction by relying exclusively on state law”).
28 As discussed above, DHCS’s petition does not raise any federal claims on its face and Student

1 and Parents have not persuasively demonstrated that federal issues will predominate over this
2 action.

3 Based upon the foregoing, the Court finds that Student and Parents have failed to carry
4 their burden in demonstrating that removal was proper based upon the existence of federal
5 question jurisdiction. The Court recommends that this action be remanded to state court.

6 **B. Procedural Defects in Removal**

7 DHCS contends that remand is appropriate because of a procedural defect in removal—
8 namely that Student and Parents failed to join OAH in its removal petition and therefore violated
9 the unanimity requirement for removal. See Hewitt v. City of Stanton, 798 F.2d 1230, 1232-33
10 (9th Cir. 1986) (“All defendants must join in a removal petition with the exception of nominal
11 parties.”). In light of the Court’s findings that federal question jurisdiction has not been
12 established, the Court declines to address DHCS’s arguments pertaining to the unanimity
13 requirement.

14 **IV.**

15 **CONCLUSION AND ORDER**

16 Based upon the foregoing, the Court finds that Student and Parents have failed to carry
17 their burden in demonstrating that removal was proper based upon the existence of federal
18 question jurisdiction.

19 Accordingly, it is HEREBY RECOMMENDED that:

- 20 1. DHCS’s motion to remand be GRANTED; and
- 21 2. That this action be remanded to state court.

22 These findings and recommendations are submitted to the district judge assigned to this
23 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within fourteen
24 (14) days of service of this recommendation, any party may file written objections to these
25 findings and recommendations with the Court and serve a copy on all parties. Such a document
26 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The
27 district judge will review the magistrate judge’s findings and recommendations pursuant to 28
28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified

1 time may waive the right to appeal the district judge's order. Martinez v. Ylst, 951 F.2d 1153
2 (9th Cir. 1991).

3
4 IT IS SO ORDERED.

5 Dated: February 20, 2014


UNITED STATES MAGISTRATE JUDGE

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