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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

HUMBERTO YEVERINO,

Plaintiff,

v.

ESTEBAN MUNOZ,

Defendants.

No. 1:14-cv-1167 --- GSA

ORDER REMANDING ACTION
(Doc. 1)

INTRODUCTION

Pro se Defendant, Esteban Munoz ("Defendant"), filed a Notice of Removal of an unlawful detainer action brought against him in the Fresno County Superior Court. (Doc. 1). Defendant's papers fail to invoke this Court's subject matter jurisdiction. Accordingly, the case will be remanded to the Fresno County Superior Court.

DISCUSSION

Removal

28 U.S.C. § 1441(a) empowers a defendant to remove an action to federal court if the district court has original jurisdiction. *Catpillar, Inc. v. Williams*, 482 U.S. 286, 392 (1987). The removal statute provides:

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

7 28 U.S.C. § 1441(a).

8 A removing party must file a notice of removal of a civil action within 30 days of receipt of a
9 copy of the initial pleading. 28 U.S.C. § 1446(b). Removal statutes are strictly construed with doubts
10 resolved in favor of state court jurisdiction and remand. *See Gaus v. Miles*, 980 F.2d 564, 566 (9th
11 Cir. 1992). The removing party bears the burden to prove propriety of removal. *Abrego v. Dow*
12 *Chem. Co.*, 443 F.3d 676, 683-685 (9th Cir. 2006); *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir.
13 1996); *see also Calif. ex. rel. Lockyer v. Dynege, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004) (“the burden
14 of establishing federal jurisdiction falls to the party invoking the statute”). A district court may
15 remand an action to state court for lack of subject matter jurisdiction or a defect in the removal
16 procedure. 28 U.S.C. § 1447(c).

17 Here, the Notice of Removal and accompanying documents indicate that Defendant was
18 served with the unlawful detainer action on June 23, 2014. (Doc. 1, pgs. 14 and 23). However,
19 Defendant did not remove this action to this Court until July 28, 2014, which is 35 days after he
20 received a copy of the pleading. Therefore, the removal is untimely.

21 Moreover, generally, subject matter jurisdiction can be established in three ways: 1) a
22 federal question is presented, 2) diversity of citizenship is established (the matter in controversy
23 exceeds \$75,000 and is between citizens of different states), or 3) the United States is a party. 28
24 U.S.C. §§ 1331 and 1332; *See also, Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994);
25 *Finley v. United States*, 490 U.S. 545, 109 S.Ct. 2003, 2008 (1989). As discussed below,
26 Defendant has failed to establish that federal jurisdiction is proper. The United States is not a
27 party to this action. Similarly, Defendant cannot establish jurisdiction is proper because no federal
28 question has been presented and diversity jurisdiction does not exist.

1 **Federal Question Jurisdiction**

2 District courts have “original jurisdiction of all civil actions arising under the Constitution,
3 laws, or treaties of the United States.” 28 U.S.C. § 1331. Determination of federal question
4 jurisdiction “is governed by the well-pleaded complaint rule, which provides that federal jurisdiction
5 exists only when a federal question is presented on the face of plaintiff’s properly pleaded complaint.”
6 *Catepillar*, 482 U.S. at 392. To invoke federal question jurisdiction, a complaint must establish
7 “either that (1) federal law creates the cause of action or that, (2) plaintiff’s right to relief necessarily
8 depends on resolution of a substantial question of federal law.” *Williston Basin Interstate Pipeline Co.*
9 *v. An Exclusive Gas Storage & Easement*, 524 F.3d 1090, 1100 (9th Cir. 2008).

11 Under the “well-pleaded complaint” rule, courts look to what “necessarily appears in the
12 plaintiff’s statement of his own claim in the bill or declaration, unaided by anything in anticipation of
13 avoidance of defenses which it is thought the defendant may interpose.” *California v. United States*,
14 215 F.3d 1005, 1014 (9th Cir. 2000). Thus, “a case may not be removed on the basis of a federal
15 defense . . . even if the defense is anticipated in the plaintiff’s complaint and both parties concede that
16 the federal defense is the only question truly at issue.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392
17 (1987); *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002); *see also Vaden v.*
18 *Discover Bank*, 129 S. Ct. 1262, 1278 (2009) (“It does not suffice to show that a federal question
19 lurks somewhere inside the parties’ controversy, or that a defense or counterclaim would arise under
20 federal law.”).

22 Here, the crux of Defendant’s claims is a violation of due process because he alleges the judge
23 in the unlawful detainer proceeding is biased against the parties. However, this allegation does not
24 establish this Court’s jurisdiction in a removal proceeding, as this claim was not pled in the
25 underlying complaint Plaintiff filed in state court. In other words, Defendant cannot add new claims
26 to Plaintiff’s complaint in the underlying state action to establish this establish this Court’s
27 jurisdiction in a removal proceeding.
28

1 In this case, the record indicates that Eseban Munoz is a named Defendant in a state court
2 complaint seeking unlawful detainer relief, which arises under state law. *See Fannie Mae v. Suarez*,
3 2011 U.S. Dist. LEXIS 82300, at *6 (E.D. Cal. 2011) (“Unlawful detainer actions are strictly the
4 province of state court”); *Deutsche Bank Nat’l Trust Co. v. Leonardo*, 2011 U.S. Dist. LEXIS 83854,
5 at * 2 (C.D. Cal. 2011) (“the complaint only asserts a claim for unlawful detainer, a cause of action
6 that is purely a matter of state law”). Therefore, this unlawful detainer action fails to invoke federal
7 question jurisdiction and is not properly before this Court.
8

9 **Diversity Jurisdiction**

10 28 U.S.C. § 1332(a) establishes diversity of citizenship jurisdiction and provides in pertinent
11 part:

12 The district courts shall have original jurisdiction of all civil actions where the matter in
13 controversy exceeds the sum or value of \$75,000 . . . and is between –

14 (1) citizens of different States . . .

15 Here, the complaint indicates that all parties are citizens of California rather than of different
16 states. Accordingly, diversity jurisdiction does not exist.
17

18 **CONCLUSION AND ORDER**

19 For the reasons discussed above, Defendants’ papers fail to invoke this Court’s subject matter
20 jurisdiction. Accordingly, this case is REMANDED forthwith to the Fresno County Superior Court.
21

22 IT IS SO ORDERED.

23 Dated: August 1, 2014

/s/ Gary S. Austin
24 UNITED STATES MAGISTRATE JUDGE
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