

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
7

8 **CARPOOL INVESTMENTS 17, LLC,**

9 **Plaintiff**

10 **v.**

11 **TERRY LYNN WARRIE,**

12 **Defendant**
13

CASE NO. 1:16-CV-341 AWI SKO

**ORDER SUA SPONTE REMANDING
MATTER TO THE FRESNO COUNTY
SUPERIOR COURT**

14
15 Defendant removed this case from the Superior Court of Fresno County on March 11,
16 2016. See Court’s Docket Doc. No. 1. Defendant asserts that the basis for removal is the
17 presence of a federal question. Specifically, Defendant contends that she filed an answer to
18 Plaintiff’s unlawful detainer complaint that alleged Plaintiff failed to follow the strict notice
19 requirements of California Code of Civil Procedure § 1161. See id. Defendant contends that her
20 answer depends on the determination of her rights and Plaintiff’s duties under federal law.

21 A district court has “a duty to establish subject matter jurisdiction over the removed action
22 *sua sponte*, whether the parties raised the issue or not.” United Investors Life Ins. Co. v. Waddell
23 & Reed, Inc., 360 F.3d 960, 967 (9th Cir. 2004). The removal statute (28 U.S.C. § 1441) is
24 strictly construed against removal jurisdiction. Geographic Expeditions, Inc. v. Estate of Lhotka,
25 599 F.3d 1102, 1107 (9th Cir. 2010); Provincial Gov’t of Marinduque v. Placer Dome, Inc., 582
26 F.3d 1083, 1087 (9th Cir. 2009). It is presumed that a case lies outside the limited jurisdiction of
27 the federal courts, and the burden of establishing the contrary rests upon the party asserting
28 jurisdiction. Geographic Expeditions, 599 F.3d at 1106-07; Hunter v. Philip Morris USA, 582

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

13 “The presence or absence of federal question jurisdiction is governed by the ‘well-pleaded
14 complaint rule,’ which provides that federal jurisdiction exists only when a federal question is
15 presented on the face of the plaintiff’s properly pleaded complaint.” California v. United States,
16 215 F.3d 1005, 1014 (9th Cir. 2000); see Dynegy, 375 F.3d at 838; Duncan, 76 F.3d at 1485.

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

27 Here, Defendant has not shown that removal was appropriate. The complaint filed by
28 Plaintiff is an unlawful detainer action that is based entirely on state law. As mentioned above,

1 Defendant relies on her answer to establish federal jurisdiction. However, the answer merely
2 alleges defective notice under *state* law; there is no federal law invoked in the answer whatsoever.
3 A California statute cannot form the basis for federal question jurisdiction. See 28 U.S.C. § 1331.
4 Moreover, even if a federal defense was actually pled in Defendants' answer, the invocation of a
5 federal defense cannot form the basis of this Court's jurisdiction. See Vaden, 129 S.Ct. at 1278;
6 Caterpillar, 482 U.S. at 392; Wayne, 294 F.3d at 1183; California, 215 F.3d at 1014.¹ Because
7 there is no federal question appearing in Plaintiff's complaint, Defendant has failed to invoke this
8 Court's jurisdiction. Remand to the Madera County Superior Court is appropriate and mandatory.
9 28 U.S.C. § 1447(c); Geographic Expeditions, 599 F.3d at 1107; Bruns, 122 F.3d at 1257; Page,
10 45 F.3d at 133.

11 Accordingly, IT IS HEREBY ORDERED that, per 28 U.S.C. § 1447(c), due to this Court's
12 lack of subject matter jurisdiction, this case is REMANDED forthwith to the Superior Court of
13 Fresno County.

14 IT IS SO ORDERED.

15 Dated: March 11, 2016


16 _____
17 SENIOR DISTRICT JUDGE

18
19
20
21
22
23
24
25
26 _____
27 ¹ To the extent that Defendant may have been attempting to invoke portions of 12 U.S.C. § 5201 *et seq.* (the
28 Protecting Tenants Against Foreclosure Act), the defensive invocation of § 5201 does not establish federal
jurisdiction. Deutsche Bank Nat'l Trust Co. v. Eaddy, 2012 U.S. Dist. LEXIS 133415, *3-*4 (N.D. Cal. Sept. 18,
2012); Oates Revocable Trust Dated June 23, 2003 v. Rizon, 2011 U.S. Dist. LEXIS 95547 (C.D. Cal. Aug. 23,
2011).