

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KAMAL LAL, TRUSTEE OF THE LAL
FAMILY TRUST OF 1998,

Plaintiff,

v.

RICHARD DEAN AANERUD,

Defendant.

No. 1:16-cv-01290-DAD-SAB

ORDER SUA SPONTE REMANDING
MATTER TO THE STANISLAUS COUNTY
SUPERIOR COURT AND DENYING AS
MOOT MOTION TO PROCEED IN FORMA
PAUPERIS

(Doc. Nos. 1–2)

This is an unlawful detainer action brought under California state law by plaintiff Kamal Lal against defendant Richard Dean Aanerud. On August 31, 2016, defendant removed this case from the Stanislaus County Superior Court. (Doc. No. 1.) Defendant asserts that the basis for removal is the presence of a federal question because he filed an answer to plaintiff’s unlawful detainer complaint, and the answer “depend[s] on the determination of Defendant’s rights and Plaintiff’s duties under federal law.” (Id. at 2.) A review of the answer indicates that defendant, by way of affirmative defense, is contending that plaintiff discriminated against him in violation of federal law. (See id. at 9.) On the same day, defendant filed a motion to proceed in forma pauperis in this court. (Doc. No. 2.)

A district court has “a duty to establish subject matter jurisdiction over the removed action sua sponte, whether the parties raised the issue or not.” *United Investors Life Ins. Co. v. Waddell*

1 & Reed, Inc., 360 F.3d 960, 967 (9th Cir. 2004). The removal statute, 28 U.S.C. § 1441, is
2 strictly construed against removal jurisdiction. *Geographic Expeditions, Inc. v. Estate of Lhotka*,
3 599 F.3d 1102, 1107 (9th Cir. 2010); *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582
4 F.3d 1083, 1087 (9th Cir. 2009). It is presumed that a case lies outside the limited jurisdiction of
5 the federal courts, and the burden of establishing the contrary rests upon the party asserting
6 jurisdiction. *Geographic Expeditions*, 599 F.3d at 1106–07; *Hunter v. Philip Morris USA*, 582
7 F.3d 1039, 1042 (9th Cir. 2009). In addition, “the existence of federal jurisdiction depends solely
8 on the plaintiff’s claims for relief and not on anticipated defenses to those claims.” *ARCO Envtl.*
9 *Remediation, LLC v. Dep’t of Health & Envtl. Quality*, 213 F.3d 1108, 1113 (9th Cir. 2000).
10 “The strong presumption against removal jurisdiction” means that “the court resolves all
11 ambiguity in favor of remand to state court.” *Hunter*, 582 F.3d at 1042; *Gaus v. Miles, Inc.*, 980
12 F.2d 564, 566 (9th Cir. 1992). That is, federal jurisdiction over a removed case “must be rejected
13 if there is any doubt as to the right of removal in the first instance.” *Geographic Expeditions*, 599
14 F.3d at 1107; *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996); *Gaus*, 980 F.2d at 566. “If
15 at any time prior to judgment it appears that the district court lacks subject matter jurisdiction, the
16 case shall be remanded.” 28 U.S.C. § 1447(c); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 932 (9th
17 Cir. 2001). Remand under 28 U.S.C. § 1447(c) “is mandatory, not discretionary.” *Bruns v.*
18 *NCUA*, 122 F.3d 1251, 1257 (9th Cir. 1997). See also *California ex. rel. Lockyer v. Dynegy, Inc.*,
19 375 F.3d 831, 838 (9th Cir. 2004). Where it appears, as it does here, that the district court lacks
20 subject matter jurisdiction over a removed case, “the case shall be remanded.” 28 U.S.C.
21 § 1447(c).

22 “The presence or absence of federal question jurisdiction is governed by the ‘well-pleaded
23 complaint rule,’ which provides that federal jurisdiction exists only when a federal question is
24 presented on the face of the plaintiff’s properly pleaded complaint.” *California v. United States*,
25 215 F.3d 1005, 1014 (9th Cir. 2000). See also *Dynegy*, 375 F.3d at 838; *Duncan*, 76 F.3d at
26 1485. Under the well-pleaded complaint rule, courts look to what “necessarily appears in the
27 plaintiff’s statement of his own claim in the bill or declaration, unaided by anything in
28 anticipation of avoidance of defenses which it is thought the defendant may interpose.”

1 California, 215 F.3d at 1014. Accordingly, “a case may not be removed on the basis of a federal
2 defense . . . even if the defense is anticipated in the plaintiff’s complaint and both parties concede
3 that the federal defense is the only question truly at issue.” *Caterpillar, Inc. v. Williams*, 482 U.S.
4 386, 392 (1987); *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002). See
5 also *Vaden v. Discover Bank*, 556 U.S. 49, 70 (2009) (“It does not suffice to show that a federal
6 question lurks somewhere inside the parties’ controversy, or that a defense or counterclaim would
7 arise under federal law.”).

8 Defendant Richard Dean Aanerud has not shown that removal of this action to this federal
9 court is appropriate. Plaintiff’s complaint presents a straight-forward unlawful detainer action
10 that is based entirely on state law. As noted, defendant relies solely on his answer to the
11 complaint in attempting to establish federal jurisdiction. Therefore, defendant is seeking to base
12 removal on what appears to be a type of federal defense. This is improper, since the defensive
13 invocation of federal law cannot form the basis of this court’s jurisdiction. See *Vaden*, 556 U.S.
14 at 70; *Caterpillar*, 482 U.S. at 392; *Wayne*, 294 F.3d at 1183; *California*, 215 F.3d at 1014.

15 Because there is no federal question appearing in plaintiff’s complaint, defendant has
16 failed to properly invoke this court’s jurisdiction. Remand to the Stanislaus County Superior
17 Court is appropriate and mandatory. 28 U.S.C. § 1447(c); *Geographic Expeditions*, 599 F.3d at
18 1107; *Bruns*, 122 F.3d at 1257.

19 Accordingly,

- 20 1. This action is remanded forthwith to the Stanislaus County Superior Court, pursuant to
21 28 U.S.C. § 1447(c), for lack of subject matter jurisdiction;
- 22 2. Defendant’s motion to proceed in forma pauperis (Doc. No. 2) is denied as having
23 been rendered moot by this order; and
- 24 3. The Clerk of the Court is directed to close this action.

25 IT IS SO ORDERED.

26 Dated: September 1, 2016

27 
28 _____
UNITED STATES DISTRICT JUDGE