

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

8 **JOE ARRIAGA,**

9 **Plaintiff**

10 **v.**

11 **DAVID JOHNSON, JR., and DOES 1-10,**  
12 **inclusive,**

13 **Defendants**

**CASE NO. 1:17-CV-0023 AWI JLT**

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

14  
15 Defendant removed this case from the Superior Court of Kern County on January 6, 2017.  
16 See Court’s Docket Doc. No. 1. Defendant asserts that the basis for removal is the presence of a  
17 federal question. Specifically, Defendant contends that the complaint encompasses 12 U.S.C. §  
18 5220. It is through the invocation of 12 U.S.C. § 5220 that Defendant asserts that federal question  
19 jurisdiction exists. See id.

20 A district court has “a duty to establish subject matter jurisdiction over the removed action  
21 *sua sponte*, whether the parties raised the issue or not.” United Investors Life Ins. Co. v. Waddell  
22 & Reed, Inc., 360 F.3d 960, 967 (9th Cir. 2004). The removal statute (28 U.S.C. § 1441) is  
23 strictly construed against removal jurisdiction. Geographic Expeditions, Inc. v. Estate of Lhotka,  
24 599 F.3d 1102, 1107 (9th Cir. 2010); Provincial Gov’t of Marinduque v. Placer Dome, Inc., 582  
25 F.3d 1083, 1087 (9th Cir. 2009). It is presumed that a case lies outside the limited jurisdiction of  
26 the federal courts, and the burden of establishing the contrary rests upon the party asserting  
27 jurisdiction. Geographic Expeditions, 599 F.3d at 1106-07; Hunter v. Philip Morris USA, 582  
28 F.3d 1039, 1042 (9th Cir. 2009). “The strong presumption against removal jurisdiction” means

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

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

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

26 Here, Defendant has not shown that removal was appropriate. The complaint filed by  
27 Plaintiff is an unlawful detainer action that is based entirely on state law. In numerous unlawful  
28 detainer actions, courts have recognized that 12 U.S.C. § 5220 is not a valid basis for removal.

1 E.g. Creekside Holdings, LTD v. Hernandez, 2016 U.S. Dist. LEXIS 176855, \*2-\*4 (S.D. Cal.  
2 Dec. 21, 2016); Jeet v. Henderson, 2016 U.S. Dist. LEXIS 152152, \*2-\*4 (E.D. Cal. Nov. 2,  
3 2016); Richardson v. Haygood, 2016 U.S. Dist. LEXIS 44065, \*2-\*3 (C.D. Cal. Mar. 26, 2016).  
4 As the complaint is only one for an unlawful detainer, the defensive invocation of § 5220 is  
5 insufficient. See id.; see also Vaden, 129 S.Ct. at 1278. Therefore, because there is no federal  
6 question appearing in Plaintiff's complaint, Defendant has failed to invoke this Court's  
7 jurisdiction. Remand to the Kern County Superior Court is appropriate and mandatory. 28 U.S.C.  
8 § 1447(c); Geographic Expeditions, 599 F.3d at 1107; Bruns, 122 F.3d at 1257; Page, 45 F.3d at  
9 133.

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

13  
14 IT IS SO ORDERED.

15 Dated: January 9, 2017

  
\_\_\_\_\_  
16 SENIOR DISTRICT JUDGE  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28