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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GSP PROPERTIES, INC.,

 Plaintiff,

 v.

ROSEMARY BORUNDA and
SOLOMON BORUNDA,

 Defendants.

No. 1:17-cv-01585-DAD-SKO

ORDER *SUA SPONTE* REMANDING CASE
TO FRESNO COUNTY SUPERIOR COURT
AND DENYING MOTIONS TO PROCEED
IN FORMA PAUPERIS AS MOOT

(Doc. Nos. 3, 4)

This is an unlawful detainer action brought under California state law by plaintiff GSP Properties, Inc. against defendants Rosemary and Solomon Borunda. On November 29, 2017, defendant Rosemary Borunda removed this case to this federal court from the Fresno County Superior Court. (Doc. No. 1.) Defendant Rosemary Borunda¹ asserts that the basis for removal is that she withheld rent under the Fair Housing Act, 42 U.S.C. § 3604, because the landlord had refused to modify the premises to allow for its use and enjoyment by defendant’s roommate and co-tenant, who is handicapped. (*Id.* at 2.) Defendants filed motions to proceed *in forma pauperis* on the same date, November 29, 2017.

¹ Although both defendants filed motions seeking leave to proceed *in forma pauperis*, the removal notice is signed only by defendant Rosemary Borunda, and does not reflect that defendant Solomon Borunda has consented to the removal. See 28 U.S.C. § 1446(b)(2)(A). However, since the case must be remanded to state court on other grounds, for the reasons discussed in this order, the court need not decide whether remand is required on this basis.

1 A district court has “a duty to establish subject matter jurisdiction over the removed action
2 *sua sponte*, whether the parties raised the issue or not.” *United Investors Life Ins. Co. v. Waddell*
3 *& Reed, Inc.*, 360 F.3d 960, 967 (9th Cir. 2004). The removal statute, 28 U.S.C. § 1441, is
4 strictly construed against removal jurisdiction. *Geographic Expeditions, Inc. v. Estate of Lhotka*,
5 599 F.3d 1102, 1107 (9th Cir. 2010); *Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582
6 F.3d 1083, 1087 (9th Cir. 2009). It is presumed that a case lies outside the limited jurisdiction of
7 the federal courts, and the burden of establishing the contrary rests upon the party asserting
8 jurisdiction. *Geographic Expeditions*, 599 F.3d at 1106–07; *Hunter v. Philip Morris USA*, 582
9 F.3d 1039, 1042 (9th Cir. 2009). In addition, “the existence of federal jurisdiction depends solely
10 on the plaintiff’s claims for relief and not on anticipated defenses to those claims.” *ARCO Envtl.*
11 *Remediation, LLC v. Dep’t of Health & Envtl. Quality*, 213 F.3d 1108, 1113 (9th Cir. 2000).
12 “The strong presumption against removal jurisdiction” means that “the court resolves all
13 ambiguity in favor of remand to state court.” *Hunter*, 582 F.3d at 1042; *Gaus v. Miles, Inc.*, 980
14 F.2d 564, 566 (9th Cir. 1992). That is, federal jurisdiction over a removed case “must be rejected
15 if there is any doubt as to the right of removal in the first instance.” *Geographic Expeditions*, 599
16 F.3d at 1107; *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996); *Gaus*, 980 F.2d at 566. “If
17 at any time prior to judgment it appears that the district court lacks subject matter jurisdiction, the
18 case shall be remanded.” 28 U.S.C. § 1447(c); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 932 (9th
19 Cir. 2001). Remand under 28 U.S.C. § 1447(c) “is mandatory, not discretionary.” *Bruns v.*
20 *NCUA*, 122 F.3d 1251, 1257 (9th Cir. 1997); *see also California ex. rel. Lockyer v. Dynege, Inc.*,
21 375 F.3d 831, 838 (9th Cir. 2004). Where it appears, as it does here, that the district court lacks
22 subject matter jurisdiction over a removed case, “the case shall be remanded.” 28 U.S.C.
23 § 1447(c).

24 “The presence or absence of federal question jurisdiction is governed by the ‘well-pleaded
25 complaint rule,’ which provides that federal jurisdiction exists only when a federal question is
26 presented on the face of the plaintiff’s properly pleaded complaint.” *California v. United States*,
27 215 F.3d 1005, 1014 (9th Cir. 2000); *see also Dynege*, 375 F.3d at 838; *Duncan*, 76 F.3d at 1485.
28 Under the well-pleaded complaint rule, courts look to what “necessarily appears in the plaintiff’s

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

10 Here, defendants have not shown that removal of this action to this federal court is
11 appropriate. Plaintiff’s complaint is a straight-forward unlawful detainer action that is based
12 entirely on state law. As stated above, defendants rely solely on a contemplated defense under
13 the Fair Housing Act in attempting to establish federal jurisdiction. Even assuming defendants
14 can assert such a defense, they cannot use that anticipated defense as the basis for removal
15 because the defensive invocation of federal law cannot form the basis of this court’s jurisdiction.
16 *See Vaden*, 556 U.S. at 70; *Caterpillar*, 482 U.S. at 392; *Wayne*, 294 F.3d at 1183; *California*,
17 215 F.3d at 1014.

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

22 Accordingly,

- 23 1. This action is remanded forthwith to the Fresno County Superior Court, pursuant to 28
24 U.S.C. § 1447(c), for lack of subject matter jurisdiction;
- 25 2. Defendants’ motions to proceed *in forma pauperis* (Doc. Nos. 3, 4) are denied as
26 having been rendered moot by this order; and

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3. The Clerk of the Court is directed to close this action.

IT IS SO ORDERED.

Dated: November 29, 2017


UNITED STATES DISTRICT JUDGE