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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FPA4 ARBOR RIDGE LLC, doing
business as The Enclave

Plaintiff,

v.

MYA MONTGOMERY,

Defendant.

No. 1:17-cv-01689-DAD-BAM

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 FPA 4 Arbor Ridge LLC against defendant Mya Montgomery. On December 15, 2017, defendant Mya Montgomery removed this case to this federal court from the Fresno County Superior Court. (Doc. No. 1.) Defendant asserts that the basis for removal is that defendant’s answer “depend[s] on a determination of Defendant’s right and Plaintiff’s duties under federal law.” (*Id.* at 2.) Defendant filed a motion to proceed *in forma pauperis* on the same date, December 15, 2017. (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 & Reed, Inc.*, 360 F.3d 960, 967 (9th Cir. 2004). The removal statute, 28 U.S.C. § 1441, is strictly construed against removal jurisdiction. *Geographic Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d 1102, 1107 (9th Cir. 2010); *Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582

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

19 “The presence or absence of federal question jurisdiction is governed by the ‘well-pleaded
20 complaint rule,’ which provides that federal jurisdiction exists only when a federal question is
21 presented on the face of the plaintiff’s properly pleaded complaint.” *California v. United States*,
22 215 F.3d 1005, 1014 (9th Cir. 2000); *see also Dynege*, 375 F.3d at 838; *Duncan*, 76 F.3d at 1485.
23 Under the well-pleaded complaint rule, courts look to what “necessarily appears in the plaintiff’s
24 statement of his own claim in the bill or declaration, unaided by anything in anticipation of
25 avoidance of defenses which it is thought the defendant may interpose.” *California*, 215 F.3d at
26 1014. Accordingly, “a case may not be removed on the basis of a federal defense . . . even if the
27 defense is anticipated in the plaintiff’s complaint and both parties concede that the federal defense
28 is the only question truly at issue.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987);

1 *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002); *see also Vaden v.*
2 *Discover Bank*, 556 U.S. 49, 70 (2009) (“It does not suffice to show that a federal question lurks
3 somewhere inside the parties’ controversy, or that a defense or counterclaim would arise under
4 federal law.”).

5 Here, defendants have not shown that removal of this action to this federal court is
6 appropriate. Plaintiff’s complaint is a straight-forward unlawful detainer action that is based
7 entirely on state law. As stated above, defendant suggests her contemplated defense relies on
8 unspecified federal law. Even assuming defendant can assert a federal defense, they cannot use
9 such a defense as the basis for removal because the defensive invocation of federal law cannot
10 form the basis of this court’s jurisdiction. *See Vaden*, 556 U.S. at 70; *Caterpillar*, 482 U.S. at
11 392; *Wayne*, 294 F.3d at 1183; *California*, 215 F.3d at 1014.

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

16 Accordingly,

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

22 IT IS SO ORDERED.

23 Dated: December 20, 2017

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26 UNITED STATES DISTRICT JUDGE
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