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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CATAMOUNT PROPERTIES 2018, LLC,
Plaintiff,
v.
MARVIN R. WENNEKAMP,
Defendant.

No. 1:19-cv-01414-DAD-EPG

ORDER SUA SPONTE REMANDING
ACTION TO STANISLAUS COUNTY
SUPERIOR COURT

This is an unlawful detainer action brought under California state law by plaintiff Catamount Properties 2018, LLC against defendant Marvin R. Wennekamp. On October 7, 2019, defendant removed this case to this federal court from the Stanislaus County Superior Court. (Doc. No. 1.) Defendant appears to assert two bases for removal: (1) diversity jurisdiction; and (2) “Denial of due process in Unlawful Detainer: Eviction after foreclosure and/or rental lease and ejection, in that the rules of evidence and civil procedure are applied without equal protection.” (*Id.* at 2.) For the reasons that follow, however, the court remands this action back to the superior court.

DISCUSSION

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*,
3 559 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*, 559 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*, 559
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. Dynege, 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 Defendant first seeks removal of this action to this court based on diversity jurisdiction
23 pursuant to 28 U.S.C. § 1332. Federal courts may exercise diversity jurisdiction when the parties
24 are in complete diversity, *i.e.* that citizenship of each plaintiff is different from that of each
25 defendant, and the amount in controversy exceeds \$75,000. *See Hunter v. Philip Morris USA*,
26 582 F.3d 1039, 1043 (9th Cir. 2009); *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089,
27 1090 (9th Cir. 2003); *see also* 28 U.S.C. § 1332(a). “Absent unusual circumstances, a party
28 seeking to invoke diversity jurisdiction should be able to allege affirmatively the actual

1 citizenship of the relevant parties.” *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir.
2 2002). Where it is “not facially evident from the complaint that more than \$75,000 is in
3 controversy,” defendants in the state action are required to prove, “by a preponderance of the
4 evidence, that the amount in controversy [met] the jurisdictional threshold.” *Valdez v. Allstate*
5 *Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004).

6 Here, defendant does not properly invoke this court’s diversity jurisdiction. Having
7 reviewed defendant’s notice of removal, the court concludes that defendant has: (1) failed to
8 allege that the parties are in complete diversity; and (2) failed to provide facts necessary to
9 establish the requisite amount in controversy by a preponderance of the evidence, *Valdez*, 372
10 F.3d at 1117. Accordingly, the court concludes that defendant cannot remove this action to this
11 court based on diversity jurisdiction.

12 Next, defendant seeks removal of this action to this court by relying on 28 U.S.C. § 1443.
13 A party removing an action under § 1443 must satisfy the following two-part test: (1) the court
14 must determine that the right allegedly being denied the removal petitioner in state court arises
15 under a federal law providing for specific civil rights stated in terms of equality; and (2) the court
16 must determine that the removal petitioner cannot enforce the specified federal right in state
17 court. *Johnson v. Mississippi*, 421 U.S. 213, 220 (1975); *Georgia v. Rachel*, 383 U.S. 780, 792,
18 794–99 (1966). “The ground for removal under section 1443[] is both specific and extremely
19 narrow.” *Deo v. Guzman*, No. 2:15-cv-1824-TLN-KJN, 2015 WL 5330445, at *2 (E.D. Cal.
20 Sept. 11, 2015) (internal quotation marks and citation omitted).

21 Here, defendant contends that plaintiff and its counsel “are not proceeding in the manner
22 required by the [California] Code of Civil Procedure, and particularly the rules in evidence.”
23 (Doc. No. 1 at 2.) Defendant argues that he “is, therefore, being denied his due process rights and
24 equal protection under the 14th Amendment.” (*Id.* at 3.) Defendant also contends in conclusory
25 fashion that plaintiff violated his civil rights. (*Id.*) These allegations are insufficient to meet the
26 first prong of the applicable test because defendant has (1) failed to allege specific facts
27 substantiating his claims that his federal rights have been violated and (2) failed to identify the
28 explicit statutory enactment that is violated by the state court’s action(s). Moreover, even if

1 defendant could satisfy the first prong of the test, he cannot meet the second. A defendant has no
2 inherent right to a federal forum to adjudicate a federal right absent exclusive federal jurisdiction.
3 *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 10–12 (1983).

4 [T]he vindication of the defendant’s federal rights is left to the state
5 courts except in the rare situations where it can clearly be predicted
6 by reason of the operation of a pervasive and explicit state law or
7 federal law that those rights will inevitably be denied by the very act
8 of bringing the defendant to trial in the state court.

9 *City of Greenwood v. Peacock*, 384 U.S. 808, 828 (1966). This showing normally requires that
10 “the denial be manifest in a formal expression of state law.” *Rachel*, 384 U.S. at 803; *see also*
11 *Johnson*, 421 U.S. at 220. Here, defendant has not demonstrated that he will be denied his rights
12 under federal law if this matter remains in state court. Indeed, state courts are bound to uphold
13 the federal constitution, and defendant has presented no reason to doubt that the state court in this
14 matter will do so. Accordingly, the court concludes that defendant also cannot remove this action
15 to this federal court under 28 U.S.C. § 1443.

14 CONCLUSION

15 For the reasons set forth above,

- 16 1. This action is remanded forthwith to the Stanislaus County Superior Court,
17 pursuant to 28 U.S.C. § 1447(c), for lack of subject matter jurisdiction; and
- 18 2. The Clerk of the Court is directed to close this case.

19 IT IS SO ORDERED.

20 Dated: October 8, 2019

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23 UNITED STATES DISTRICT JUDGE
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