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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. 2:10-cv-02438 WBS KJN PS

v.

MARIA LOPEZ,

Defendant.

ORDER

_____/

Presently before the court is defendant’s motion for leave to proceed without the prepayment of fees, or in forma pauperis. (Dkt. No. 2.) As discussed below, the undersigned will: (1) grant defendant’s motion to proceed in forma pauperis, and (2) set a briefing schedule with respect to plaintiff’s motion to remand to the Superior Court of California for Sacramento County (“Superior Court”).

I. BACKGROUND

On May 11, 2010, plaintiff filed a Verified Complaint for Unlawful Detainer (“Complaint”) in the Superior Court seeking to recover possession of the property at issue, which is alleged to be situated in the County of Sacramento. (Compl. ¶ 2, attached to Notice of Removal, Dkt. No. 1 at 12-15.) The Complaint alleges that plaintiff purchased the subject property at a trustee’s sale that occurred in accordance with California state law, that plaintiff’s

1 title pursuant to that sale has been perfected, and that plaintiff is entitled to immediate possession
2 of the property. (Id. ¶¶ 4-5.) It further alleges that plaintiff provided defendant, who previously
3 rented and still occupies the property, with notice to vacate the premises and deliver possession
4 of the property within 90 days, and that defendant failed to vacate and deliver possession. (Id.
5 ¶¶ 6-7.) Through this action, plaintiff seeks: (1) restitution and possession of the subject
6 property, and (2) damages at a rate of \$30.00 per day from May 10, 2010, until the date of entry
7 of judgment for each day that defendant remains in possession of the property.¹ (Compl. at 3.)

8 On August 12, 2010, defendant removed this matter to the United States District
9 Court for the Northern District of California, and that court eventually transferred the case to this
10 district. (Dkt. No. 1.) Defendant removed this case pursuant to 28 U.S.C. § 1446(a), and
11 asserted that this court has subject matter jurisdiction over plaintiff’s claims pursuant to, in part,
12 28 U.S.C § 1331. (Notice of Removal at 1, 7.) Specifically, defendant asserts that this court has
13 federal question jurisdiction based on the “Protecting Tenants Against Foreclosure Act of 2009,”
14 and contends that plaintiff “failed to provide the defendant with a 90 day notice to quit” that is
15 purportedly required by that statute. (See Notice of Removal at 2-3.) Defendant’s Notice of
16 Removal also asserts that “[t]his action is a civil action of which this Court has original
17 jurisdiction under 28 U.S.C. § 1332(c)(1).”² (Notice of Removal at 7.) The Notice of Removal
18 contains no specific allegations in support of defendant’s claim that diversity jurisdiction exists
19 pursuant to 28 U.S.C. § 1332. Defendant filed her motion for leave to proceed in forma pauperis
20 concurrently with her Notice of Removal. (Dkt. No. 2.)

21 On August 24, 2010, while the case was still pending in the Northern District of

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23 ¹ Plaintiff filed this action as a limited civil action in the Superior Court, and the caption
24 of the Complaint states: “AMOUNT DEMANDED DOES NOT EXCEED \$10,000.” (Compl.
at 1.)

25 ² Defendant also claims that “[t]his Court has supplemental jurisdiction over all other
26 claims asserted by plaintiff in accordance with 28 U.S.C. § 1367(a).” (Notice of Removal at 7.)
However, plaintiff’s Complaint states a single claim for unlawful detainer, and, thus, there do not
appear to be “other claims” that would invoke the court’s supplemental jurisdiction.

1 California, plaintiff filed and served on defendant a motion to remand this matter to the Superior
2 Court, which argues that defendant has not and cannot establish the existence of federal subject
3 matter jurisdiction. (See Dkt. No. 4.) That same day, United States Magistrate Judge Laurel
4 Beeler signed an order transferring plaintiff's action to this court. (Dkt. No. 5.) Magistrate Judge
5 Beeler did not address defendant's motion for leave to proceed in forma pauperis or plaintiff's
6 motion for an order of remand.

7 II. DISCUSSION

8 A. Motion for Leave to Proceed In Forma Pauperis

9 Defendant's application in support of her request to proceed in forma pauperis
10 makes the showing required by 28 U.S.C. § 1915(a)(1). (See Dkt. No. 2.) Accordingly, the
11 undersigned will grant defendant's request to proceed in forma pauperis.

12 B. Plaintiff's Motion to Remand

13 As noted above, plaintiff filed a motion to remand this matter to the Superior
14 Court (Dkt. No. 4), which was not resolved while this case was pending in the Northern District
15 of California. The undersigned will order that defendant file with the court, and serve on
16 plaintiff, a written opposition or statement of non-opposition to plaintiff's motion, in accordance
17 with Eastern District Local Rule 230, on or before October 14, 2010. Plaintiff may file and
18 serve a written reply brief on or before October 21, 2010. The court will not set a hearing on
19 plaintiff's motion to remand at this time, but may do so if it determines that one is necessary.

20 III. CONCLUSION

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Defendant's motion for leave to proceed in forma pauperis (Dkt. No. 2) is
23 granted.
- 24 2. Defendant shall file and serve a written opposition to plaintiff's motion to
25 remand, or statement of non-opposition, on or before October 14, 2010.
- 26 3. Plaintiff may file and serve a reply to defendant's opposition brief, if any,


1 on or before October 21, 2010.

2 4. The court will set a hearing on plaintiff's motion for remand if it
3 determines that one is necessary.

4 IT IS SO ORDERED.

5 DATED: September 28, 2010

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE