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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEUTSCHE BANK NATIONAL TRUST
COMPANY,

Plaintiff,

v.

FREDRICK D. PATTERSON, et al.,

Defendants.

No. 2:13-cv-02669-KJM-KJN PS

FINDINGS AND RECOMMENDATIONS

On December 30, 2013, defendants Fredrick D. Patterson and Eliza C. Patterson (“defendants”), who are both proceeding without counsel, removed this unlawful detainer action from the San Joaquin County Superior Court.¹ (ECF No. 1.)

A federal court has an independent duty to assess whether federal subject matter jurisdiction exists, whether or not the parties raise the issue. See United Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004) (stating that “the district court had a duty to establish subject matter jurisdiction over the removed action *sua sponte*, whether the parties raised the issue or not”); accord Rains v. Criterion Sys., Inc., 80 F.3d 339, 342 (9th Cir. 1996). Because subject matter jurisdiction may not be waived by the parties, a district court must remand a case if it lacks jurisdiction over the matter. Kelton Arms Condominium Owners Ass’n, Inc. v.

¹ This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003) (citing Sparta Surgical Corp. v. Nat’l
2 Ass’n of Sec. Dealers, Inc., 159 F.3d 1209, 1211 (9th Cir. 1998)); see also 28 U.S.C. § 1447(c)
3 (“If at any time before final judgment it appears that the district court lacks subject matter
4 jurisdiction, the case shall be remanded”). For the reasons outlined below, the court finds that it
5 lacks subject matter jurisdiction over the action and recommends that the action be remanded to
6 state court.

7 In relevant part, the federal removal statute provides:

8 (a) Except as otherwise expressly provided by Act of Congress, any
9 civil action brought in a State court of which the district courts of
10 the United States have original jurisdiction, may be removed by the
11 defendant or the defendants, to the district court of the United
States for the district and division embracing the place where such
action is pending.

12 28 U.S.C. § 1441(a). “The defendant bears the burden of establishing that removal is proper.”
13 Provincial Gov’t of Marinduque v. Placer Dome, Inc., 582 F.3d 1083, 1087 (9th Cir. 2009). “The
14 removal statute is strictly construed against removal jurisdiction,” id., and removal jurisdiction
15 “must be rejected if there is any doubt as to the right of removal in the first instance,” Geographic
16 Expeditions, Inc. v. Estate of Lhotka, 599 F.3d 1102, 1107 (9th Cir. 2010) (citation and quotation
17 marks omitted).

18 A federal district court generally has original jurisdiction over a civil action when: (1) a
19 federal question is presented in an action “arising under the Constitution, laws, or treaties of the
20 United States” or (2) there is complete diversity of citizenship and the amount in controversy
21 exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332(a).

22 In regards to federal question jurisdiction, federal courts have “jurisdiction to hear,
23 originally or by removal from a state court, only those cases in which a well-pleaded complaint
24 establishes either that federal law creates the cause of action, or that the plaintiff’s right to relief
25 necessarily depends on resolution of a substantial question of federal law.” Franchise Tax Bd. v.
26 Constr. Laborers Vacation Trust, 463 U.S. 1, 27-28 (1983); see also Republican Party of Guam v.
27 Gutierrez, 277 F.3d 1086, 1088-89 (9th Cir. 2002). “[T]he presence or absence of federal-
28 question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which provides that

1 federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's
2 properly pleaded complaint.” Placer Dome, Inc., 582 F.3d at 1091 (citation and quotation marks
3 omitted). “In determining the existence of removal jurisdiction, based upon a federal question,
4 the court must look to the complaint as of the time the removal petition was filed.” Abada v.
5 Charles Schwab & Co., 300 F.3d 1112, 1117 (9th Cir. 2002) (citation and quotation marks
6 omitted). Mere reference to federal law is insufficient to permit removal. See Smith v. Indus.
7 Valley Title Ins. Co., 957 F.2d 90, 93 (3d Cir. 1992) (“[T]he mere presence of a federal issue in a
8 state cause of action does not automatically confer federal question jurisdiction”). Also, defenses
9 and counterclaims cannot provide a sufficient basis to remove an action to federal court. See
10 Vaden v. Discover Bank, 556 U.S. 49, 60 (2009); Berg v. Leason, 32 F.3d 422, 426 (9th Cir.
11 1994); Takeda v. Northwestern Nat’l Life Ins. Co., 765 F.2d 815, 821-22 (9th Cir. 1985).

12 Here, removal cannot be based on federal question jurisdiction.² The state court pleadings
13 and papers accompanying the removal notice establish that the state court action is nothing more
14 than an unlawful detainer action, and is titled as such. (See ECF No. 1 at 5-19.) Plaintiff, the
15 apparent owner of the subject real property in San Joaquin County, California, filed suit in San
16 Joaquin Superior Court on or about October 24, 2013, seeking to evict defendants from the
17 property. (Id.) This court has no jurisdiction over unlawful detainer actions, which are brought
18 pursuant to state law and fall strictly within the province of the state court.

19 Defendants contend (ECF No. 1 at 2-3) that federal question jurisdiction exists because
20 plaintiff’s claim is purportedly based on, and draws into the controversy of this action, the
21 Protecting Tenants at Foreclosure Act (“PTFA”). See 12 U.S.C. § 5201; Pub. L. No. 111-22, §
22 702, 123 Stat. 1632 (2009). The PTFA “provides certain protections to tenants who reside in
23 properties subject to foreclosure,” including the requirement that a 90-day notice to vacate be
24 given to bona fide tenants. SD Coastline LP v. Buck, 2010 WL 4809661, at *1-2 (S.D. Cal. Nov.
25 19, 2010) (unpublished). The PTFA provides protections to tenants who reside in properties
26 subject to foreclosure, including the requirement that a 90-day notice to vacate be given to bona

27 ² Defendants argue that removal is appropriate given the existence of a federal question;
28 defendants have not argued that there is a basis for diversity jurisdiction. (ECF No. 1 at 2-3.)

1 fide tenants. However, plaintiff's complaint itself is strictly an action based on the California
2 unlawful detainer statutes, and defendants' reference to the PTFA is best characterized as a
3 potential defense or counterclaim, neither of which is considered in evaluating whether a federal
4 question appears on the face of a plaintiff's complaint. While defendants argue that plaintiff's
5 pleading implicates the PTFA insofar as it attaches forms referring to that statute, a review of the
6 allegations within the pleading reveals only a single claim for unlawful detainer. Accordingly, it
7 cannot be said that plaintiff's complaint for unlawful detainer asserts claims under federal law.

8 Any defenses based on federal law must generally be raised in the state court action and
9 do not provide a basis for removal. "A case may not be removed to federal court on the basis of a
10 federal defense . . . even if the defense is anticipated in the plaintiff's complaint, and even if both
11 parties admit that the defense is the only question truly at issue in the case." ARCO Env'tl.
12 Remediation, LLC v. Dep't. of Health & Env'tl. Quality of the State of Montana, 213 F.3d 1108,
13 1113 (9th Cir. 2000) (citation and quotation marks omitted); see also Valles v. Ivy Hill Corp., 410
14 F.3d 1071, 1075 (9th Cir. 2005) ("A federal law defense to a state-law claim does not confer
15 jurisdiction on a federal court, even if the defense is that of federal preemption and is anticipated
16 in the plaintiff's complaint.") Indeed, federal courts have consistently rejected attempts to
17 premise federal subject matter jurisdiction on the 90-day notice provision of the PTFA. See, e.g.,
18 Parkland Sec., Inc. v. Carey, 2012 WL 159621, at *2 (E.D. Cal. Jan. 18, 2012) (unpublished),
19 adopted by 2012 WL 458433 (E.D. Cal. Feb. 10, 2012) (unpublished); Wescom Credit Union v.
20 Dudley, 2010 WL 4916578, at **2-3 (C.D. Cal. Nov. 22, 2010) (unpublished) ("The PTFA's
21 provisions requiring that notice be given ninety days in advance and preventing termination of a
22 bona fide lease unless a purchaser will occupy the unit as a primary residence, see P.L. No. 111-
23 22 § 702(a)(2)(A), offer [the removing party] a federal defense to an unlawful detainer action
24 where the plaintiff fails to comply with these requirements. A federal defense, however, does not
25 support federal-question jurisdiction."); SD Coastline LP, 2010 WL 4809661, at **2-3; Aurora
26 Loan Servs., LLC v. Martinez, 2010 WL 1266887, at *1 (N.D. Cal. Mar. 29, 2010) (unpublished).
27 Such rejection is based on the fact that an argument relying on the PTFA's notice provision is an

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1 attempt to premise the court's subject matter jurisdiction on a defense or counterclaim.³

2 Based on the foregoing analysis, the court finds that it lacks subject matter jurisdiction
3 over plaintiff's unlawful detainer action brought pursuant to California law.

4 Accordingly, for the foregoing reasons, IT IS HEREBY RECOMMENDED that:

5 1. The action be REMANDED to the San Joaquin County Superior Court.


6 2. The Clerk of Court be directed to serve a certified copy of the order on the Clerk of the
7 San Joaquin County Superior Court, and to reference the state case number (No. 39-02013-
8 00303329-CL-UD-STK) in the proof of service.

9 3. The Clerk of Court be directed to close this case and vacate all dates.

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
12 days after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Such a document should be captioned
14 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
15 shall be served on all parties and filed with the court within fourteen (14) days after service of the
16 objections. The parties are advised that failure to file objections within the specified time may
17 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
18 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

19 IT IS SO ORDERED AND RECOMMENDED.

20 Dated: January 7, 2014

21 
22 KENDALL J. NEWMAN
23 UNITED STATES MAGISTRATE JUDGE

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25
26 ³ Additionally, federal district courts have concluded that the PTFA does not create a federal
27 private right of action, but provides directives to state courts. See, e.g., Deutsche Bank Nat'l
28 Trust Co. v. Jora, 2010 WL 3943584, at *1 n.3 (E.D. Cal. Oct. 1, 2010) (unpublished); Zalemba
v. HSBC Bank, USA, Nat'l Ass'n, 2010 WL 3894577, at **2-4 (S.D. Cal. Oct. 1, 2010)
(unpublished).