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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 U.S. NATIONAL BANK ASSOCIATION,
12 Plaintiff,
13 v.
14 ROTONDA LLOPIS,
15 GERARLD LLOPIS,
Defendants.
No. 2:14-cv-1585-TLN-EFB PS
ORDER AND FINDINGS AND
RECOMMENDATIONS

ORDER AND FINDINGS AND RECOMMENDATIONS

18 Defendants were ordered to appear before the court on August 27, 2014, to show cause
19 why sanctions should not be imposed for filing successive removals of an unlawful detainer
20 action. At the August 27 hearing, attorney Gary Decker appeared on behalf of plaintiff; attorney
21 Mark Ketcherside specially appeared on behalf of defendants.¹ As stated on the record and for
22 the reasons set forth below, it is recommended that defendants be required to reimburse plaintiff
23 the reasonable costs incurred in resolving this action. It is further recommended that this matter
24 be remanded and defendants be ordered not to file any further removal petitions and/or notices of
25 this unlawful detainer action.

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¹ This case, in which defendants were proceeding pro se, is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). See 28 U.S.C. § 636(b)(1).

1 Defendant Rotonda Llopis, proceeding pro se, filed a notice of removal of this unlawful
2 detainer action from the Superior Court of the State of California for the County of Solano. ECF
3 No. 1. In the notice of removal, defendant argue that this court has federal question jurisdiction
4 over this action pursuant 28 U.S.C. § 1331. ECF No. 1 at 3. However, as defendants including
5 Rotonda Llopis are well aware, this court lacks subject matter jurisdiction to resolve this unlawful
6 detainer action. Defendants first removed this unlawful detainer action to this court on January 9,
7 2012. *See U.S. Bank National Association v. Llopis*, 2:12-cv-50-MCE-KJM. The assigned
8 magistrate judge issued detailed findings and recommendations explaining the contours of federal
9 subject matter jurisdiction. *Id.*, ECF No. 6. Defendants were informed that this court lacked both
10 federal question jurisdiction and diversity jurisdiction over the unlawful detainer action. Federal
11 question jurisdiction was absent because the complaint filed by plaintiff in state court asserted as
12 single state law claim for unlawful detainer. *See* 28 U.S.C. § 1331. Diversity jurisdiction was
13 also lacking because the complaint unequivocally stated the amount of damages at issue was less
14 than \$10,000 and defendants had failed to allege facts establishing the citizenship of the parties.
15 *Id.* *See* 28 U.S.C. § 1332. This was all clearly explained and with no basis for jurisdiction, on
16 July 9, 2012, the action was remanded to state court and the federal case was closed. *Llopis*,
17 2:12-cv-50-MCE-KJM, ECF No. 7.

18 The court's reasoning was ignored. Since the first removal, defendants have filed seven
19 notices of removal in addition to the instant one, all seeking to remove the same unlawful detainer
20 action. *See* 2:12-cv-1289-MCE-EFB, 2:12-cv-1558-JAM-EFB, 2:12-cv-2864-GEB-GGH, 2:13-
21 cv-163-KJM-DAD, 2:13-cv-1762-JAM-AC, 2:13-cv-2288-MCE-AC, and 2:14-cv-0843-KJM-
22 CKD. In each of these cases, with the exception of one, the court explained to defendants that
23 this court lacks subject matter jurisdiction over the unlawful detain action. Defendants are now
24 abusing the court's processes.

25 Undeterred, defendants have now filed their ninth notice of removal. ECF No. 1. As has
26 been previously explained to defendants on numerous occasions, there is no basis for jurisdiction
27 over this unlawful detainer action. For the reasons stated in the prior remand order, this court
28 lacks jurisdiction over this case.

1 In light of defendants' abusive removal practices in violation of Federal Rule of Civil
2 Procedure 11, and for the reasons stated at the August 27 hearing, defendants are ordered to
3 reimburse plaintiff the reasonable expenses incurred in litigating the instant removal to this court.
4 As ordered by the court at the hearing, James Lee, counsel for plaintiff, submitted a declaration
5 detailing the expenses plaintiff incurred in this action. Having considered the declaration, ECF
6 No. 13, the court finds defendants shall reimburse plaintiff in the amount of \$1,365.00.

7 Furthermore, the court finds that a pre-filing order is necessary to prevent defendants from
8 engaging in further abusive conduct. Litigants who abuse the judicial process by repeatedly filing
9 "unmeritorious motions, pleadings, or other papers," or engaging "in other tactics that are
10 frivolous or solely intended to cause unnecessary delay" are vexatious litigants. Cal. Civ. Proc.
11 Code § 391 (West 2013) (adopted in the Eastern District of California by L.R. 151(b)). District
12 courts are empowered "to file restrictive pre-filing orders against vexatious litigants with abusive
13 and lengthy histories of litigation" under the All Writs Act, 28 U.S.C. § 1651(a). *Weissman v.*
14 *Quail Lodge, Inc.*, 179 F.3d 1194, 1197 (9th Cir. 1999). These orders may prevent litigants from
15 filing further actions until certain requirements are met, such as obtaining leave of court or filing
16 supporting declarations. *Id.* Additionally, "the federal district courts have inherent power to
17 require plaintiffs to post security for costs." *Simulnet E. Assocs. v. Ramada Hotel Operating Co.*,
18 37 F.3d 573, 574 (9th Cir. 1994). The plaintiff may also be required to formally move the court
19 and obtain a court order approving the action before being permitted to continue. *Id.* The Ninth
20 Circuit has said, however, that restricting access to the court system is an "extraordinary remedy
21 that should be narrowly tailored and rarely used." *Moy v. United States*, 906 F.2d 467, 470 (9th
22 Cir. 1990).

23 To issue a pre-filing order, the Ninth Circuit requires four condition be satisfied: (1) the
24 party must have adequate notice to oppose the order; (2) an adequate record must be provided,
25 listing the pleadings that led to the court's decision a vexatious litigant order was necessary; (3)
26 the court must make substantive findings that the filings were frivolous or harassing; and (4) the
27 order must be narrowly tailored. *See DeLong v. Hennessey*, 912 F.2d 1144, 1147-48 (9th Cir.
28 1990); *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057-58 (9th Cir. 2007). The court

1 considers “both the number and content of the filings as indicia” when deciding whether a
2 litigant’s claims are frivolous. *DeLong*, 912 F.2d at 1148.

3 Here, all four conditions have been met. At the hearing, the court informed defendants’
4 counsel of its intention to impose an order preventing further removal of the instant unlawful
5 detainer action. Counsel did not state any objection to such an order. Further, as discussed
6 above, the record shows that defendants have removed the same unlawful detainer action on nine
7 separate occasions notwithstanding this court’s numerous findings that it lacks jurisdiction over
8 the matter.

9 Lastly, the pre-filing order can be narrowly tailored. Defendants should be ordered not to
10 file any more removal petitions and/or notices of removal of this unlawful detainer action or
11 related action involving the same subject matter. To enforce that order, the Clerk of the Court
12 should not accept from defendants any further filings during the pendency of the state court
13 unlawful detainer action until those filings have been screened by a judge of this court to
14 determine whether the filing is another removal of this same case or another case involving the
15 same subject matter. This screening requirement should remain in effect until the state court
16 unlawful detainer litigation is finally resolved. The plaintiff in that action should be ordered to
17 file a notice under this case caption informing the court that the state court litigation has been
18 completed and include with the notice a copy of the document showing that the case has been
19 finally resolved. Such an order is narrowly tailored to prevent further abuse conduct by
20 defendants, while not unnecessarily limiting access to the court.

21 Accordingly, it is hereby ORDERED that defendants shall reimburse plaintiff for the
22 reasonable expenses incurred in this action in the amount of \$1,365.00. Such payment shall be
23 made within fourteen (14) days from the date of this order.

24 Furthermore, it is hereby RECOMMENDED that:

25 1. Defendants be ordered not to file any more removal petitions and/or notices of removal
26 of this unlawful detainer action or related action involving the same subject matter;

27 2. If defendants submit any further removal petitions and/or notices of removal in this
28 court, the Clerk shall lodge the petition and/or notice and accompanying documents. The Clerk

1 shall not file the documents until it is reviewed by a judge of this court to determine whether the
2 filing is another removal of this same case or another case involving the same subject matter.
3 This screening requirement shall remain in effect until the state court unlawful detainer litigation
4 is finally resolved.

5 3. The plaintiff in the state court action file a notice under this case caption informing the
6 court that the state court litigation has been completed. Such notice shall include a copy of the
7 document(s) showing that the case has been finally resolved.

8 4. This matter be remanded to the Superior Court of the State of California in and for the
9 County of Solano.

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 days
12 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.” Failure to file objections
15 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
16 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

17 DATED: January 20, 2015.

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19 EDMUND F. BRENNAN
20 UNITED STATES MAGISTRATE JUDGE
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