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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PARKVIEW EDGE PROPERTIES, LLC,
Plaintiff,
v.
RICHARD JOHN DICKSON,
Defendant.

No. 2:15-cv-0853 KJM DAD PS

ORDER & FINDINGS AND
RECOMMENDATIONS

By Notice of Removal filed April 20, 2015, this unlawful detainer action was removed from the Sacramento County Superior Court by defendant Richard Dickson, who is proceeding pro se. Accordingly, the matter has been referred to the undersigned for all purposes encompassed by Local Rule 302(c)(21). On April 24, 2015, plaintiff filed a motion to remand (Dkt. No. 4) and a motion to designate defendant as a vexatious litigant (Dkt. No. 6), noticing those motions for hearing before the undersigned on May 29, 2015.¹

It is well established that the statutes governing removal jurisdiction must be “strictly construed against removal.” Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir. 1979) (citing Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108 (1941)). See also Syngenta

¹ In light of these findings and recommendations, plaintiff’s motions will be denied without prejudice to their renewal in the event these findings and recommendations are not adopted by the assigned District Judge.

1 Crop Prot., Inc. v. Henson, 537 U.S. 28, 32 (2002); Provincial Gov't of Martinduque v. Placer
2 Dome, Inc., 582 F.3d 1083, 1087 (9th Cir. 2009). “Federal jurisdiction must be rejected if there
3 is any doubt as to the right of removal in the first instance.” Gaus v. Miles, Inc., 980 F.2d 564,
4 566 (9th Cir. 1992). ““The burden of establishing federal jurisdiction falls on the party invoking
5 removal.”” Harris v. Provident Life & Accident Ins. Co., 26 F.3d 930, 932 (9th Cir. 1994)
6 (quoting Gould v. Mut. Life Ins. Co., 790 F.2d 769, 771 (9th Cir.1986)). See also Provincial
7 Gov't of Martinduque, 582 F.3d at 1087. In addition, “the existence of federal jurisdiction
8 depends solely on the plaintiff’s claims for relief and not on anticipated defenses to those claims.”
9 ARCO Envtl. Remediation, LLC v. Dep’t of Health & Envtl. Quality, 213 F.3d 1108, 1113 (9th
10 Cir. 2000). Where it appears, as it does here, that the district court lacks subject matter
11 jurisdiction over a removed case, “the case shall be remanded.” 28 U.S.C. § 1447(c).

12 In removing this action, defendant asserts that this court has original jurisdiction over the
13 action “because it is a civil action arising under federal law and in which a federal statute is
14 drawn in controversy.” (Notice of Removal (Dkt. No. 1) at 2.) In this regard, defendant asserts
15 that “[p]laintiff’s claim is based upon . . . the ‘Protecting Tenants at Foreclosure Act of 2009,’ 12
16 U.S.C. § 5201.” (Id.)

17 However, it is evident from a reading of plaintiff’s complaint filed in the Sacramento
18 County Superior Court that this is nothing more than a garden-variety unlawful detainer action
19 filed against the former owner of real property located in California and that it is based wholly on
20 California law without reference to any claim under federal law. (Id. at 11.) As such, the
21 complaint does not involve any “claim or right arising under the Constitution, treaties or laws of
22 the United States” that would have permitted plaintiff to file this action originally in federal court.
23 See 28 U.S.C. § 1441(b). It is also evident from defendant’s Notice of Removal that any federal
24 claims that could conceivably be presented in this action arise solely from defendant’s own
25 affirmative defenses and not from the plaintiff’s unlawful detainer complaint. See ARCO Envtl.
26 Remediation, LLC, 213 F.3d at 1113. Thus, the defendant has failed to meet his burden of
27 establishing a basis for federal jurisdiction over this action.

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1 Finally, the undersigned notes that this is the second time defendant has improperly
2 removed this action to this federal court. Defendant first removed this action to this court on
3 January 5, 2015. See Parkview Edge Properties, LLC v. Richard John Dickson, No. 2:15-cv-
4 0003 JAM AC PS. That action was summarily remanded to the Sacramento County Superior
5 Court, for the same reasons as noted above, in an order signed February 27, 2015.

6 In light of this history, defendant is cautioned that any future attempts to remove this
7 action to this court will likely result in the imposition of sanctions against him. See Ryan Family
8 Trust v. Chairez, No. 2:14-cv-0958 JAM KJN PS, 2014 WL 1665004, at *3 (E.D. Cal. Apr. 22,
9 2014) (“Defendant is cautioned that any future improper removals may result in an award of costs
10 and expenses to Plaintiff, and/or the imposition of any other appropriate sanctions”); Wells Fargo
11 Bank, N.A. v. Lombera, No. C12-3496 HRL, 2012 WL 3249497, at *2 (N.D. Cal. Aug. 7, 2012)
12 (recommending the imposition of sanctions where “defendants’ litigation history establishes a
13 troubling record of repeated removals of the same unlawful detainer action, in apparent disregard
14 of the court’s prior remand orders”); U.S. Bank Nat’l Ass’n v. Mikels, No. C12-00047 CW, 2012
15 WL 506565, at *2 (N.D. Cal. Feb. 15, 2012) (awarding fees against a pro se defendant where the
16 court had already remanded the case once, and then defendant removed the case a second time
17 just before the state court was to hear summary judgment motions); see also 28 U.S.C. § 1447(c)
18 (“[a]n order remanding the case may require payment of just costs and any actual expenses,
19 including attorney fees, incurred as a result of the removal.”).

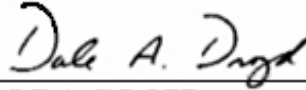
20 Accordingly, IT IS ORDERED that plaintiff’s April 24, 2015 motion to remand (Dkt. No.
21 4) and motion to designate defendant a vexatious litigant (Dkt. No. 6) are denied without
22 prejudice to the renewal of those motions if appropriate and they are dropped from the court’s
23 May 29, 2015 law and motion calendar.

24 It is also HEREBY RECOMMENDED that this action be summarily remanded to the
25 Sacramento County Superior Court and that this case be closed.

26 These findings and recommendations will be submitted to the United States District Judge
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
28 after being served with these findings and recommendations, any party may file written

1 objections with the court and serve a copy on all parties. A document presenting objections
2 should be titled "Objections to Magistrate Judge's Findings and Recommendations." Any reply
3 to objections shall be filed and served within seven days after service of the objections. The
4 parties are advised that failure to file objections within the specified time may waive the right to
5 appeal the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

6 Dated: April 28, 2015

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9 DALE A. DROZD
10 UNITED STATES MAGISTRATE JUDGE

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