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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WU HUNG TONY SHIH,

Plaintiff,

v.

WILLIE L ANDERSON, JR.,

Defendant.

No. 2:16-cv-02485-GEB-EFB

SUA SPONTE REMAND ORDER*

On October 18, 2016, Defendant filed a Notice of Removal removing this unlawful detainer action from the Superior Court of California for San Joaquin County. (Notice of Removal ("NOR"), ECF No. 1.) For the following reasons, the Court *sua sponte* remands this case to the Superior Court of California for San Joaquin County for lack of subject matter jurisdiction.

"There is a 'strong presumption against removal jurisdiction,' and the removing party has the burden of establishing that removal is proper." Lindley Contours, LLC v. AABB Fitness Holdings, Inc., 414 F. App'x 62, 64 (9th Cir. 2011) (quoting Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)). "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). "The court may - indeed must -

* The undersigned judge revokes any actual or anticipated referral of this matter to a Magistrate Judge for the purposes of Findings and Recommendations.

1 remand an action *sua sponte* if it determines that it lacks
2 subject matter jurisdiction." GFD, LLC v. Carter, No. CV 12-08985
3 MMM (FFMx), 2012 WL 5830079, at *2 (C.D. Cal. Nov. 15, 2012)
4 (citing Kelton Arms Condo. Owners Ass'n v. Homestead Ins. Co.,
5 346 F.3d 1190, 1192 (9th Cir. 2003)).

6 Defendant alleges in the Notice of Removal that federal
7 question jurisdiction justifies removal. (NOR ¶¶ 5-6.)
8 Specifically, Defendant contends that the "'Protecting Tenants at
9 Foreclosure Act 2009,' 12 U.S.C. [§] 5220," governs this case,
10 (NOR ¶ 6), because "in order to evict a bona fide residential
11 tenant of a foreclosed Landlord, Plaintiff was required to state
12 a cause of action under the [Act]." (NOR ¶ 7.)

13 However, review of the Complaint reveals Plaintiff
14 alleges "one [claim] . . . for unlawful detainer under state law,
15 and under the well-pleaded complaint rule, a defendant's claims
16 or defenses may not serve as a basis for removal." Polymatic
17 Props., Inc. v. Mack, No. 2:12-cv-2848-LKK-EFB PS, 2012 WL
18 5932618, at *1 (E.D. Cal. Nov. 27, 2012) (citing Takeda v. Nw.
19 Nat'l Life Ins. Co., 765 F.2d 815, 822 (9th Cir. 1985); see also
20 Deutsche Bank Nat'l Trust Co. v. Ghosal, No. 14cv2582-GPC(WVG),
21 2014 WL 5587199, at *2 (S.D. Cal. Nov. 3, 2014) (remanding
22 unlawful detainer action *sua sponte*). Therefore, Defendant has
23 not shown the existence of federal question removal jurisdiction.

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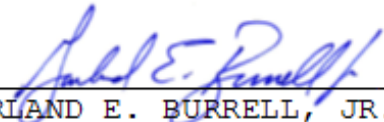
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For the stated reasons, this case is remanded to the Superior Court of California for San Joaquin County.

Dated: October 19, 2016



GARLAND E. BURRELL, JR.
Senior United States District Judge