

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA

3
4 GLORIA A. CARRILLO,
5 Plaintiff,
6 v.
7 LUIS I. ALDERETE,
8 Defendant.

No. 2:17-cv-01522-GEB-AC

SUA SPONTE REMAND ORDER

9
10 Defendant, proceeding in propria persona, filed a
11 Notice of Removal on July 21, 2017, removing this unlawful
12 detainer action from the Superior Court of California in the
13 County of Sacramento. Notice of Removal ("NOR") 1, ECF No. 1.
14 However, this case will be remanded to the Superior Court of
15 California because the federal court lacks subject matter
16 jurisdiction over this case.

17 "There is a 'strong presumption against removal
18 jurisdiction,' and the removing party has the burden of
19 establishing that removal is proper." Lindley Contours, LLC v.
20 AABB Fitness Holdings, Inc., 414 F. App'x 62, 64 (9th Cir. 2011)
21 (quoting Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)).
22 "If at any time before final judgment it appears that the
23 district court lacks subject matter jurisdiction, the case shall
24 be remanded." 28 U.S.C. § 1447(c). "The court may – indeed must
25 – remand an action *sua sponte* if it determines that it lacks
26 subject matter jurisdiction." GFD, LLC v. Carter, No. CV 12-
27 08985 MMM (FFMx), 2012 WL 5830079, at *2 (C.D. Cal. Nov. 15,
28 2012) (citing Kelton Arms Condo. Owners Ass'n v. Homestead Ins.

1 Co., 346 F.3d 1190, 1192 (9th Cir. 2003)).

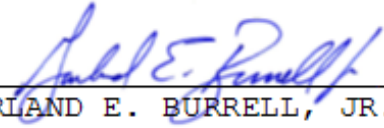
2 Defendant contends in the Notice of Removal that
3 diversity of citizenship of the parties in this case justifies
4 removal. NOR at 7. The pertinent part of the diversity of
5 citizenship statute prescribes in 28 U.S.C. § 1332: "The district
6 courts shall have original jurisdiction of all civil actions
7 where the matter in controversy exceeds the sum or value of
8 \$75,000, exclusive of interests and costs," and the action is
9 between "citizens of different States"

10 Plaintiff alleges in the Complaint that the "[a]mount
11 demanded does not exceed \$10,000." NOR at 2. When a state court
12 complaint affirmatively alleges that the amount in controversy is
13 less than the jurisdictional threshold, a removing defendant has
14 the "burden of proof . . . to establish the amount in controversy
15 [under] the preponderance of the evidence standard." Rodriguez
16 v. AT&T Mobility Servs. LLC, 728 F.3d 975, 977 (9th Cir. 2013).
17 Defendant does not challenge the amount Plaintiff alleges is in
18 controversy. Nor has Defendant demonstrated that the parties are
19 citizens of different States.

20 Therefore, this case is remanded to the Superior Court
21 of California in the County of Sacramento.

22 IT IS SO ORDERED.

23 Dated: July 25, 2017

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27 GARIAND E. BURRELL, JR.
28 Senior United States District Judge