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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

2015-3 IOH2 BORROWER, L.P.,
Plaintiff,
v.
LICHELLE WALTON,
Defendant.

No. 2:17-cv-02294-MCE-EFB

ORDER

On November 1, 2017, Defendant LICHELLE WALTON, proceeding pro se, filed a Notice of Removal of this unlawful detainer action from the Sacramento County Superior Court.¹ ECF No. 1. This Court has an independent duty to ascertain its jurisdiction and may remand sua sponte for lack of subject matter jurisdiction. See 28 U.S.C. § 1447(c). “The burden of establishing federal jurisdiction is on the party seeking removal, and the removal statute is strictly construed against removal jurisdiction.” Emrich v. Touche Ross & Co., 846 F.2d 1190, 1195 (9th Cir. 1988) (internal citation omitted). “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). As explained below, Defendant has failed to meet that burden.

¹ Despite Defendant's pro se status, the undersigned revokes any actual or anticipated referral to a Magistrate Judge. See L.R. 302(c)(21).

1 The Notice of Removal is premised on the argument that this Court has federal
2 jurisdiction pursuant to 28 U.S.C. § 1331, federal question, and § 1332, diversity of
3 citizenship. ECF No. 1 at 1. However, a review of the Complaint reveals that Plaintiff
4 does not allege any federal claims; instead, Plaintiff alleges only unlawful detainer under
5 state law. ECF No. 1 at Ex. A.

6 “The presence or absence of federal-question jurisdiction is governed by the ‘well-
7 pleaded complaint rule,’ which provides that federal jurisdiction exists only when a
8 federal question is presented on the fact of plaintiff’s properly pleaded complaint.”
9 Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987). This is the case where the
10 complaint “establishes either that [1] federal law creates the cause of action or that
11 [2] the plaintiff’s right to relief necessarily depends on resolution of a substantial question
12 of federal law.” Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage
13 Leasehold & Easement, 524 F.3d 1090, 1100 (9th Cir. 2008) (quoting Franchise Tax
14 Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 27-28 (1983)).

15 Here, Plaintiff’s one cause of action is for unlawful detainer under state law. At
16 most, Defendant argues that they have a defense and/or a counterclaim under federal
17 law. “A case may not be removed to federal court on the basis of a federal defense . . .
18 even if the defense is anticipated in the plaintiff’s complaint, and even if both parties
19 admit that the defense is the only question truly at issue in the case.” ARCO Env’tl.
20 Remediation, LLC v. Dep’t. of Health & Env’tl. Quality of the State of Montana, 213 F.3d
21 1108, 1113 (9th Cir. 2000) (citation and quotation marks omitted); see also Wells Fargo
22 Bank, NA v. Hunt, No. C-10-04965 JCS, 2011 WL 445801 (N.D. Cal. Feb. 3, 2011)
23 (“Defendants’ assertion of affirmative defenses and/or counterclaims based on alleged
24 violations of federal law do not provide a basis for federal jurisdiction. . . . the well-
25 pleaded complaint rule does not allow courts to consider affirmative defenses or
26 counterclaims in determining whether federal question jurisdiction exists.). Therefore,
27 this Court lacks jurisdiction under 28 U.S.C. § 1331.

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