UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

IDEAN, INC., et al.,	No. 2:18-cv-00397-JAM-CKD
Plaintiffs,	
v.	**SUA SPONTE ORDER REMANDING ACTION TO STATE COURT**
ADRIAN LAMONT ROSS,	
Defendant.	

The undersigned revokes any actual or anticipated referral to a Magistrate Judge for the purposes of Findings and Recommendations in this case. See Local Rule 302(d) ("Notwithstanding any other provision of this Rule, a Judge may retain any matter otherwise routinely referred to a Magistrate Judge.").

On February 21, 2018, Defendant Adrian Lamont Ross filed a Notice of Removal with this Court, seeking to remove an action from the Superior Court for the County of Sacramento.[1] Notice of

---

[1] Defendant previously removed the same case in November 2017, where it was sua sponte remanded by Judge Garland Burrell. Idean, Inc. et al v. Ross, 2:17-cv-02397-GEB-DB (E.D. Cal., Nov. 27, 2017).

1

1 Removal, ECF No. 1. For the following reasons, the Court sua

2 sponte REMANDS this case to the Superior Court of California for

3 the County of Sacramento.

4 Under 28 U.S.C. § 1441(a), a defendant may remove an action

5 to federal court if the district court has original jurisdiction.

6 Hunter v. Phillip Morris USA, 582 F.3d 1039, 1042 (9th Cir. 2009)

7 (quoting Ansley v. Ameriquest Mortg. Co., 340 F.3d 858, 861 (9th

8 Cir. 2003)). If at any time before final judgment it appears

9 that the district court lacks subject matter jurisdiction, the

10 case shall be remanded. 28 U.S.C. § 1447(c). Generally, a

11 defendant seeking to remove an action to federal court must file

12 a notice of removal within thirty days of receiving a copy of the

13 initial pleading. 28 U.S.C. § 1446(b). The defendant seeking

14 removal of an action to federal court has the burden of

15 establishing federal jurisdiction in the case. California ex

16 rel. Lockyer v. Dynegy, Inc., 375 F.3d 831, 838 (9th Cir. 2004).

17 Defendant is attempting to remove an unlawful detainer

18 action based on diversity jurisdiction and federal subject matter

19 jurisdiction. Notice of Removal at 2-4. Federal courts are

20 courts of limited jurisdiction and lack inherent or general

21 subject matter jurisdiction. Federal courts can adjudicate only

22 those cases authorized by the United States Constitution and

23 Congress. Generally, those cases involve diversity of

24 citizenship or a federal question, or cases in which the United

25 States is a party. Kokkonen v. Guardian Life Ins. Co., 511 U.S.

26 375 (1994); Finley v. United States, 490 U.S. 545 (1989).

27 Federal courts are presumptively without jurisdiction over civil

28 actions. Kokkonen, 511 U.S. at 377. Lack of subject matter

2

jurisdiction is never waived and may be raised by the Court sua sponte. Attorneys Trust v. Videotape Computer Prods., Inc., 93 F.3d 593, 594-95 (9th Cir. 1996). "Nothing is to be more jealously guarded by a court than its jurisdiction. Jurisdiction is what its power rests upon. Without jurisdiction it is nothing." In re Mooney, 841 F.2d 1003, 1006 (9th Cir. 1988).

The Ninth Circuit has held that the removal statute should be strictly construed in favor of remand and against removal. Harris v. Bankers Life and Cas. Co., 425 F.3d 689, 698 (9th Cir. 2005). The "strong presumption" against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper. Nishimoto v. Federman-Bachrach & Assocs., 903 F.2d 709, 712 n.3 (9th Cir. 1990); Emrich v. Touche Ross & Co., 846 F.2d 1190, 1195 (9th Cir. 1988). 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).

In this case, Defendant is unable to establish subject matter jurisdiction before this Court because the complaint filed in the state court apparently contains a single cause of action for unlawful detainer based on California Code of Civil Procedure section 1161a. Unlawful detainer actions are strictly within the province of state court. A defendant's attempt to create federal subject matter jurisdiction by adding claims or defenses to a notice of removal will not succeed. Vaden v. Discover Bank, 556 U.S. 49, 50 (2009) (federal question jurisdiction cannot "rest upon an actual or anticipated counterclaim"); Valles v. Ivy Hill Corp., 410 F.3d 1071, 1075 (9th Cir. 2005) ("A federal law

3

1 defense to a state-law claim does not confer jurisdiction on a

2 federal court, even if the defense is that of federal preemption

3 and is anticipated in the plaintiff's complaint.").

4   In determining the presence or absence of federal

5 jurisdiction in removal cases, the "well-pleaded complaint rule"

6 applies, "which provides that federal jurisdiction exists only

7 when a federal question is presented on the face of the

8 plaintiff's properly pleaded complaint." Caterpillar Inc. v.

9 Williams, 482 U.S. 386, 392 (1987). Moreover, "it is well

10 established that plaintiff is the 'master of her complaint' and

11 can plead to avoid federal jurisdiction." Lowdermilk v. U.S.

12 Bank Nat'l Ass'n, 479 F.3d 994, 998-99 (9th Cir. 2007); Metro.

13 Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987) (citing Gully v.

14 First Nat'l Bank, 299 U.S. 109 (1936)) ("It is long settled law

15 that a cause of action arises under federal law only when the

16 plaintiff's well-pleaded complaint raises issues of federal

17 law.").

18   Plaintiffs' complaint raises a single state law claim. The

19 face of a properly-pled state law unlawful detainer action does

20 not present a federal question. Therefore, Plaintiffs' complaint

21 avoids federal question jurisdiction. Defendant cannot inject a
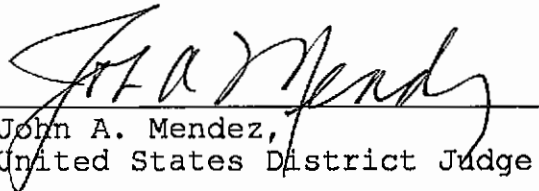
22 federal issue through his answer.

23   Additionally, Defendant cannot establish diversity

24 jurisdiction because he asserted that all parties are California

25 citizens, and thus there is no diversity of citizenship.

26 Furthermore, the amount in controversy does not exceed $75,000.

27   Accordingly, the Court REMANDS this case to the Superior

28 Court for the County of Sacramento for all future proceedings.

Defendant's motion to proceed in forma pauperis, ECF No. 2, is DENIED as moot.

Dated: February 21, 2018

_____
John A. Mendez,
United States District Judge