

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LYNN F. SMITH,  
Plaintiff,  
v.  
EHAB ALHINDI,  
Defendant.

No. 2:19-cv-02000

**SUA SPONTE ORDER REMANDING  
ACTION TO STATE COURT**

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

21 On October 3, 2019 Ehab Alhindi filed a Notice of Removal  
22 with this Court, seeking to remove an action from San Joaquin  
23 County Superior Court. Notice of Removal, ECF No. 1. For the  
24 following reasons, the Court sua sponte REMANDS this case to San  
25 Joaquin County Superior Court.

26 Under 28 U.S.C. § 1441(a), a defendant may remove an action  
27 to federal court if the district court has original jurisdiction.  
28 Hunter v. Phillip Morris USA, 582 F.3d 1039, 1042 (9th Cir. 2009)

1 (quoting Ansley v. Ameriquest Mortg. Co., 340 F.3d 858, 861 (9th  
2 Cir. 2003)). If at any time before final judgment it appears  
3 that the district court lacks subject matter jurisdiction, the  
4 case shall be remanded. 28 U.S.C. § 1447(c). Generally, a  
5 defendant seeking to remove an action to federal court must file  
6 a notice of removal within thirty days of receiving a copy of the  
7 initial pleading. 28 U.S.C. § 1446(b). A defendant seeking  
8 removal of an action to federal court has the burden of  
9 establishing federal jurisdiction in the case. California ex  
10 rel. Lockyer v. Dynegy, Inc., 375 F.3d 831, 838 (9th Cir. 2004).

11 Federal courts are courts of limited jurisdiction and lack  
12 inherent or general subject matter jurisdiction. Federal courts  
13 can adjudicate only those cases authorized by the United States  
14 Constitution and Congress. Generally, those cases involve  
15 diversity of citizenship or a federal question, or cases in which  
16 the United States is a party. Kokkonen v. Guardian Life Ins.  
17 Co., 511 U.S. 375 (1994); Finley v. United States, 490 U.S. 545  
18 (1989). Federal courts are presumptively without jurisdiction  
19 over civil actions. Kokkonen, 511 U.S. at 377. Lack of subject  
20 matter jurisdiction is never waived and may be raised by the  
21 Court sua sponte. Attorneys Trust v. Videotape Computer Prods.,  
22 Inc., 93 F.3d 593, 594-95 (9th Cir. 1996). "Nothing is to be  
23 more jealously guarded by a court than its jurisdiction.  
24 Jurisdiction is what its power rests upon. Without jurisdiction  
25 it is nothing." In re Mooney, 841 F.2d 1003, 1006 (9th Cir.  
26 1988).

27 The Ninth Circuit has held that the removal statute should  
28 be strictly construed in favor of remand and against removal.

1       Harris v. Bankers Life and Cas. Co., 425 F.3d 689, 698 (9th Cir.  
2 2005). The "strong presumption" against removal jurisdiction  
3 means that the defendant always has the burden of establishing  
4 that removal is proper. Nishimoto v. Federman-Bachrach &  
5 Assocs., 903 F.2d 709, 712 n.3 (9th Cir. 1990); Emrich v. Touche  
6 Ross & Co., 846 F.2d 1190, 1195 (9th Cir. 1988). Federal  
7 jurisdiction must be rejected if there is any doubt as to the  
8 right of removal in the first instance. Gaus v. Miles, Inc., 980  
9 F.2d 564, 566 (9th Cir. 1992).

10       Here, Defendant attempts to remove an unlawful detainer  
11 action based on federal subject matter jurisdiction. He cites 28  
12 U.S.C. § 1332 and 12 U.S.C. § 2605.13 in support of his  
13 jurisdictional argument. Defendant is unable to establish  
14 subject matter jurisdiction before this Court because the  
15 complaint filed in the state court contains a single cause of  
16 action for unlawful detainer based on California Code of Civil  
17 Procedure § 1161a. Unlawful detainer actions are strictly within  
18 the province of state court. A defendant's attempt to create  
19 federal subject matter jurisdiction by adding claims or defenses  
20 to a notice of removal will not succeed. Vaden v. Discover Bank,  
21 556 U.S. 49, 50 (2009) (federal question jurisdiction cannot  
22 "rest upon an actual or anticipated counterclaim"); Valles v. Ivy  
23 Hill Corp., 410 F.3d 1071, 1075 (9th Cir. 2005) ("A federal law  
24 defense to a state-law claim does not confer jurisdiction on a  
25 federal court, even if the defense is that of federal preemption  
26 and is anticipated in the plaintiff's complaint.").

27       In determining the presence or absence of federal  
28 jurisdiction in removal cases, the "well-pleaded complaint rule"

1 applies, "which provides that federal jurisdiction exists only  
2 when a federal question is presented on the face of the  
3 plaintiff's properly pleaded complaint." Caterpillar Inc. v.  
4 Williams, 482 U.S. 386, 392 (1987). Moreover, "it is well  
5 established that plaintiff is the 'master of her complaint' and  
6 can plead to avoid federal jurisdiction." Lowdermilk v. U.S.  
7 Bank Nat'l Ass'n, 479 F.3d 994, 998-99 (9th Cir. 2007); Metro.  
8 Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987) (citing Gully v.  
9 First Nat'l Bank, 299 U.S. 109 (1936)) ("It is long settled law  
10 that a cause of action arises under federal law only when the  
11 plaintiff's well-pleaded complaint raises issues of federal  
12 law." ).

13 Plaintiff's complaint raises a single state law claim. The  
14 face of a properly-pled state law unlawful detainer action does  
15 not present a federal question. Therefore, Plaintiff's complaint  
16 avoids federal question jurisdiction. Defendant cannot inject a  
17 federal issue through his answer or demurrer.

18 The Court REMANDS this case to San Joaquin County Superior  
19 Court for all future proceedings. Defendant's motion to proceed  
20 in forma pauperis, ECF No. 2, is DENIED as moot.

21 Dated: October 3, 2019

22 /s/ John A. Mendez

23 United States District Court Judge

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