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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALVERNAZ PARTNERS, LLC,
Plaintiff,
v.
MARIA PITTS,
Defendant.

No. 2:21-cv-00011-JAM-CKD

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

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 January 4, 2021, Defendant Maria Pitts filed a Notice of Removal with this Court, seeking to remove an action from San Joaquin County Superior Court. Notice of Removal, ECF No. 1. For the following reasons, the Court sua sponte REMANDS this case

1 to San Joaquin County Superior Court.

2 Under 28 U.S.C. § 1441(a), a defendant may remove an action
3 to federal court if the district court has original jurisdiction.
4 Hunter v. Phillip Morris USA, 582 F.3d 1039, 1042 (9th Cir. 2009)
5 (quoting Ansley v. Ameriquest Mortg. Co., 340 F.3d 858, 861 (9th
6 Cir. 2003)). If at any time before final judgment it appears
7 that the district court lacks subject matter jurisdiction, the
8 case shall be remanded. 28 U.S.C. § 1447(c). Generally, a
9 defendant seeking to remove an action to federal court must file
10 a notice of removal within thirty days of receiving a copy of the
11 initial pleading. 28 U.S.C. § 1446(b). The defendant seeking
12 removal of an action to federal court has the burden of
13 establishing federal jurisdiction in the case. California ex
14 rel. Lockyer v. Dynegy, Inc., 375 F.3d 831, 838 (9th Cir. 2004).
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17 Defendant is attempting to remove an unlawful detainer
18 action based on federal subject matter jurisdiction. Notice of
19 Removal at 2. Federal courts are courts of limited jurisdiction
20 and lack inherent or general subject matter jurisdiction.
21 Federal courts can adjudicate only those cases authorized by the
22 United States Constitution and Congress. Generally, those cases
23 involve diversity of citizenship or a federal question, or cases
24 in which the United States is a party. Kokkonen v. Guardian Life
25 Ins. Co., 511 U.S. 375 (1994); Finley v. United States, 490 U.S.
26 545 (1989). Federal courts are presumptively without
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1 jurisdiction over civil actions. Kokkonen, 511 U.S. at 377.
2 Lack of subject matter jurisdiction is never waived and may be
3 raised by the Court sua sponte. Attorneys Trust v. Videotape
4 Computer Prods., Inc., 93 F.3d 593, 594-95 (9th Cir. 1996).
5 "Nothing is to be more jealously guarded by a court than its
6 jurisdiction. Jurisdiction is what its power rests upon. Without
7 jurisdiction it is nothing." In re Mooney, 841 F.2d 1003, 1006
8 (9th Cir. 1988).
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10 The Ninth Circuit has held that the removal statute should
11 be strictly construed in favor of remand and against removal.
12 Harris v. Bankers Life and Cas. Co., 425 F.3d 689, 698 (9th Cir.
13 2005). The "strong presumption" against removal jurisdiction
14 means that the defendant always has the burden of establishing
15 that removal is proper. Nishimoto v. Federman-Bachrach &
16 Assocs., 903 F.2d 709, 712 n.3 (9th Cir. 1990); Emrich v. Touche
17 Ross & Co., 846 F.2d 1190, 1195 (9th Cir. 1988). Federal
18 jurisdiction must be rejected if there is any doubt as to the
19 right of removal in the first instance. Gaus v. Miles, Inc., 980
20 F.2d 564, 566 (9th Cir. 1992).
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22 In this case, Defendant is unable to establish subject
23 matter jurisdiction before this Court because the complaint filed
24 in the state court apparently contains a single cause of action
25 for unlawful detainer. Unlawful detainer actions are strictly
26 within the province of state court. A defendant's attempt to
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1 create federal subject matter jurisdiction by adding claims or
2 defenses to a notice of removal will not succeed. Vaden v.
3 Discover Bank, 556 U.S. 49, 50 (2009) (federal question
4 jurisdiction cannot “rest upon an actual or anticipated
5 counterclaim”); Valles v. Ivy Hill Corp., 410 F.3d 1071, 1075
6 (9th Cir. 2005) (“A federal law defense to a state-law claim does
7 not confer jurisdiction on a federal court, even if the defense
8 is that of federal preemption and is anticipated in the
9 plaintiff’s complaint.”).

11 In determining the presence or absence of federal
12 jurisdiction in removal cases, the “well-pleaded complaint rule”
13 applies, “which provides that federal jurisdiction exists only
14 when a federal question is presented on the face of the
15 plaintiff’s properly pleaded complaint.” Caterpillar Inc. v.
16 Williams, 482 U.S. 386, 392 (1987). Moreover, “it is well
17 established that plaintiff is the ‘master of her complaint’ and
18 can plead to avoid federal jurisdiction.” Lowdermilk v. U.S.
19 Bank Nat’l Ass’n, 479 F.3d 994, 998-99 (9th Cir. 2007); Metro.
20 Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987) (citing Gully v.
21 First Nat’l Bank, 299 U.S. 109 (1936)) (“It is long settled law
22 that a cause of action arises under federal law only when the
23 plaintiff’s well-pleaded complaint raises issues of federal
24 law.”).

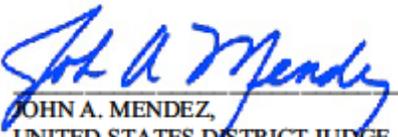
27 Plaintiff’s complaint raises a single state law claim. The
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1 face of a properly-pled state law unlawful detainer action does
2 not present a federal question. Therefore, Plaintiff's complaint
3 avoids federal question jurisdiction. Defendant cannot inject a
4 federal issue through her answer.

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6 Accordingly, the Court REMANDS this case to San Joaquin
7 County Superior Court for all future proceedings.

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

10 Dated: January 7, 2021

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13 JOHN A. MENDEZ,
14 UNITED STATES DISTRICT JUDGE
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