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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HSBC BANK USA,

Plaintiff,

No. C 10-02158 JSW

v.

KENNY KIEU,

Defendant.

**ORDER DENYING  
APPLICATION TO PROCEED *IN  
FORMA PAUPERIS* AND  
REMANDING CASE**

On May 19, 2010, Defendant Kenny Kieu filed a notice of removal and an application to proceed *in forma pauperis*. For the reasons set forth in the remainder of this Order, the Court HEREBY DENIES Defendant's application to proceed *in forma pauperis* and REMANDS this action to the Santa Clara County Superior Court.

On February 23, 2010, Plaintiff filed a complaint for unlawful detainer in Santa Clara County Superior Court against Defendant (the "State Court action"). (*See* Notice of Removal.) Defendant removed the State Court action on the basis that jurisdiction is premised upon a federal question. (*See* Notice of Removal.) "[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant ... to the district court of the United States for the district and division embracing the place where such action is pending." *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 7-8 (1983) (citation omitted); *see also* 28 U.S.C. § 1441.

However, federal courts are courts of limited jurisdiction. *See, e.g., Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Accordingly, the burden of

1 establishing federal jurisdiction for purposes of removal is on the party seeking removal, and  
2 the removal statute is strictly construed against removal jurisdiction. *Valdez v. Allstate Ins. Co.*,  
3 372 F.3d 1115, 1117 (9th Cir. 2004); *see also Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.  
4 1992). “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in  
5 the first instance.” *Gaus*, 980 F.2d at 566.

6 “The presence or absence of federal-question jurisdiction is governed by the ‘well-  
7 pleaded complaint rule.’” *Caterpillar Inc. v. Williams*, 482 U.S. 382, 392 (1987). The well-  
8 pleaded complaint rule recognizes that the plaintiff is the master of his or her claim. “[H]e or  
9 she may avoid federal jurisdiction by exclusive reliance on state law.” *Id.* Thus, under the  
10 well-pleaded complaint rule, federal-question jurisdiction arises where the “complaint  
11 establishes either that federal law creates the cause of action or that the plaintiff’s right to relief  
12 necessarily depends on resolution of a substantial question of federal law.” *Franchise Tax Bd.*,  
13 463 U.S. 1, 27-28 (1983).

14 The State Court action is an unlawful detainer action and, thus, federal law does not  
15 create the cause of action. Moreover, the Court concludes that the claim will not necessarily  
16 depend upon the resolution of a substantial question of federal law, because Plaintiff need not  
17 prove compliance with the federal law relied upon by Defendants to establish its claim. *See*,  
18 *e.g., Grable & Sons Metal Prods. v. Darue Eng. & Mfg.*, 545 U.S. 308, 314-15 (2005).

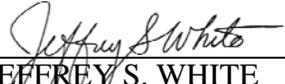
19 Furthermore, a court cannot exercise removal jurisdiction on the ground that the  
20 complaint gives rise to a potential or an anticipated *defense* that might raise a federal question,  
21 even if the defense is the only question truly at issue in the case. *Franchise Tax Board*, 463  
22 U.S. at 10, 14; *see also Caterpillar*, 482 U.S. at 393 (“[I]t is now settled law that a case may *not*  
23 be removed to federal court on the basis of a federal defense, including the defense of pre-  
24 emption, even if the defense is anticipated in the plaintiff’s complaint, and even if both parties  
25 concede that the federal defense is the only question truly at issue.”) (emphasis in original).  
26 Therefore, the Court finds that it lacks subject matter jurisdiction to hear this matter and must  
27 remand to the state court. *See* 28 U.S.C. § 1447(c); *see also Maniar v. FDIC*, 979 F.2d 782,  
28 785 (9th Cir. 1992).

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Accordingly, the Court REMANDS this case to Alameda County Superior Court. The Court DENIES Defendant's application to proceed *in forma pauperis*.

**IT IS SO ORDERED.**

Dated: July 20, 2010

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

Case Number: CV10-02158 JSW  
**CERTIFICATE OF SERVICE**

HSBC BANK USA,  
Plaintiff,

v.

KENNY KIEU et al,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 20, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kenny Kieu  
493 Verano Court  
San Jose, CA 95111

Dated: July 20, 2010



Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk