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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA

6 JOANNA MODACURE,  
7 Plaintiff,

8 v.

9 B&B VEHICLE PROCESSING, INC., et  
10 al.,  
11 Defendants.

Case No. [16-cv-06022-DMR](#)

**ORDER GRANTING IFP  
APPLICATION AND REMANDING TO  
ALAMEDA COUNTY SUPERIOR  
COURT**

Re: Dkt. Nos. 1, 2

12  
13 Plaintiff Joanna Modacure filed a notice of removal and an application to proceed in forma  
14 pauperis (“IFP”). [Docket Nos. 1, 2.] Having considered Plaintiff’s papers, the court grants the  
15 application to proceed IFP and remands this action to Alameda County Superior Court.<sup>1</sup>

16 **I. DISCUSSION**

17 **A. IFP Application**

18 A court may allow a plaintiff to prosecute an action in federal court without prepayment of  
19 fees or security if the plaintiff submits an affidavit showing that he or she is unable to pay such  
20 fees or provide such security. See 28 U.S.C. § 1915(a). Having evaluated Plaintiff’s financial  
21 affidavit, the court finds that she has satisfied the economic eligibility requirement of 28 U.S.C. §  
22 1915(a) and grants the application to proceed IFP.

23 **B. Removal Jurisdiction**

24 The court’s grant of Plaintiff’s application to proceed IFP, however, does not mean that  
25 she may continue to prosecute her complaint. A court is under a continuing duty to dismiss a case

26  
27 <sup>1</sup> All parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. §  
28 636(c)(1). On November 17, 2016, Defendants filed a joint motion to remand this case to state  
court. [Docket No. 15.]

1 filed without the payment of the filing fee whenever it determines that the action “(i) is frivolous  
2 or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief  
3 against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii).

4 Plaintiff removed this action pursuant to 28 U.S.C. §§ 1441 and 1446. Notice of Removal  
5 ¶ 10. Attached to the notice of removal is a complaint filed by Plaintiff in Alameda County  
6 Superior Court against Defendants B & B Vehicle Processing Inc., City of Oakland Police  
7 Department, Oakland Parking Citation Assistance Center, and Paylock. Notice of Removal at 13-  
8 19. It appears that Plaintiff complains that Defendants wrongfully towed her car and that Plaintiff  
9 seeks to prevent Defendants from selling her car. Plaintiff asserts that Defendants’ actions violate  
10 various California Vehicle and Civil Code provisions as well as her federal and state constitutional  
11 rights. See *id.*

12 Pursuant to 28 U.S.C. § 1441, “any civil action brought in a State court of which the  
13 district courts of the United States have original jurisdiction, may be removed by the defendant or  
14 other defendants, to the district court of the United States for the district and division embracing  
15 the place where such action is pending.” 28 U.S.C. § 1441(a). “If the district court at any time  
16 determines that it lacks jurisdiction over the removed action, it must remedy the improvident grant  
17 of removal by remanding the action to state court.” *Cal. ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d  
18 831, 838 (9th Cir.), *opinion amended on denial of reh’g*, 387 F.3d 966 (9th Cir. 2004) (citing 28  
19 U.S.C. § 1447). “The removal statute is strictly construed against removal jurisdiction, and the  
20 burden of establishing federal jurisdiction falls to the party invoking the statute.” *Id.* Under 28  
21 U.S.C. § 1441, the right to remove a case to federal court is vested exclusively in the defendant or  
22 defendants, not in the plaintiff. See 28 U.S.C. § 1441(a). A plaintiff is precluded from removing  
23 actions to federal court, even to defend against a counterclaim or cross-claim. See *Progressive*  
24 *West Ins. Co. v. Preciado*, 479 F.3d 1014, 1017-18 (9th Cir. 2007) (discussing “longstanding rule”  
25 from *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100 (1941)), that “a plaintiff/cross-defendant  
26 cannot remove an action to federal court”). Therefore, Plaintiff has no right to remove this action  
27 from state court.  
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**II. CONCLUSION**

For the foregoing reasons, Plaintiff's IFP application is granted and this action is remanded to Alameda County Superior Court. Defendants' motion to remand is denied as moot.

**IT IS SO ORDERED.**

Dated: December 5, 2016



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DONNA M. RYU  
United States Magistrate Judge

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Case No. [4:16-cv-06022-DMR](#)

**CERTIFICATE OF SERVICE**

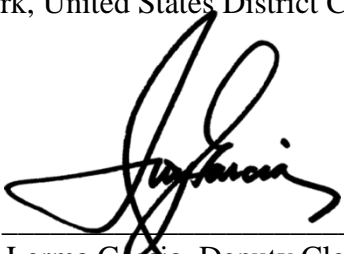
9  
10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
District Court, Northern District of California.

11 That on 12/5/2016, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
13 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.

14  
15 Joanna Modacure  
15 1501 37th Ave., B1  
16 Oakland, CA 94601

17  
18 Dated: 12/5/2016

19  
20 Susan Y. Soong  
Clerk, United States District Court

21  
22  
23  
24 By:   
Ivy Lerma Garcia, Deputy Clerk to the  
25 Honorable DONNA M. RYU  
26  
27  
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