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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

U.S. BANK TRUST, N.A., AS TRUSTEE  
FOR LSF9 MASTER PARTICIPATION  
TRUST,

Plaintiff,

v.

SCOTT ALAN LUKOWSKI,

Defendant.

Case No. [17-cv-03112-JSW](#)

**ORDER TO SHOW CAUSE TO  
DEFENDANT WHY MOTION TO  
REMAND SHOULD NOT BE GRANTED  
AND DENYING ORDER TO SHORTEN  
TIME AS MOOT**

Re: Dkt. Nos. 7, 9

On May 31, 2017, Defendant removed this unlawful detainer action from Humboldt County Superior Court, and he filed an application to proceed *in forma pauperis*. (Dkt. Nos. 1, 2.) On June 29, 2017, Plaintiff filed a motion to remand, was scheduled for a hearing on August 8, 2017, and a motion asking that the Court hear the motion to remand on shortened time. Although Plaintiff consented to proceed before Magistrate Judge Vadas, to whom the case initially was assigned, Defendant did not file notice of consent. Accordingly, on July 25, 2017, the case was reassigned to the undersigned Judge.

Plaintiff moves to remand the case to Humboldt County Superior Court on the basis that the Court lacks subject matter jurisdiction. Under the Northern District Civil Local Rules, Defendant's opposition to the motion would have been due by no later than July 17, 2017. Defendant has not filed an opposition to the motion to remand.

"[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

United States District Court  
Northern District of California

1 U.S.C. § 1441(a). However, federal courts are courts of limited jurisdiction. *See, e.g., Kokkonen*  
2 *v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Accordingly, the burden of  
3 establishing federal jurisdiction for purposes of removal is on the party seeking removal, and the  
4 removal statute is strictly construed against removal jurisdiction. *Valdez v. Allstate Ins. Co.*, 372  
5 F.3d 1115, 1117 (9th Cir. 2004); *see also Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).  
6 “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first  
7 instance.” *Gaus*, 980 F.2d at 566.

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

15 It appears that Defendant is a resident of California, which would preclude removal under  
16 28 U.S.C. section 1441(b)(2). In addition, this action is an unlawful detainer action and, thus,  
17 federal law does not create the cause of action. Moreover, notwithstanding the assertions in  
18 Defendant’s notice of removal, the claim will not necessarily depend on the resolution of a  
19 substantial question of federal law, because Plaintiff need not prove compliance with any  
20 provision of Title 42 of the United States Code in order to establish its claim. *See, e.g., Grable &*  
21 *Sons Metal Prods. v. Darue Eng. & Mfg.*, 545 U.S. 308, 314-15 (2005). To the extent Defendant  
22 believes that a provision of Title 42 will be relevant or essential in mounting a defense to the  
23 unlawful detainer action, this is an insufficient basis for federal subject matter jurisdiction.  
24 *Franchise Tax Bd.*, 463 U.S. at 10, 14; *see also Caterpillar*, 482 U.S. at 393 (“[I]t is now settled  
25 law that a case may not be removed to federal court on the basis of a federal defense . . . even if  
26 the defense is anticipated in the plaintiff’s complaint and even if both parties concede that the  
27 federal defense is the only question truly at issue.”).

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1 In his notice of removal, Defendant also cites 28 U.S.C. section 1443 as a basis for  
2 jurisdiction. Section 1443 provides, in part, that:

3 [a]ny of the following civil actions or criminal prosecutions,  
4 commenced in a State court may be removed by the defendant to the  
5 district court of the United States for the district and division  
6 embracing the place wherein it is pending:

7 (1) Against any person who is denied or cannot enforce in the courts  
8 of such State a right under any law providing for the equal civil  
9 rights of citizens of the United States, or of all persons within the  
10 jurisdiction thereof[.]

11 28 U.S.C. § 1443(1).

12 A party seeking to remove a case pursuant to Section 1443(1) must satisfy a two-part test.  
13 *See Patel v. Del Taco, Inc.*, 446 F.3d 996, 999 (9th Cir. 2006). The first requirement is that the  
14 party ““must assert, as a defense to the prosecution, rights that are given to them by explicit  
15 statutory enactment protecting equal racial civil rights.”” *Id.* (quoting *California v. Sandoval*, 434  
16 F.2d 635, 636 (9th Cir. 1970)). The second requirement is that the party ““must assert that the  
17 state courts will not enforce that right, and that allegation must be supported by reference to a state  
18 statute or a constitutional provision that purports to command the state courts to ignore the federal  
19 rights.”” *Id.* (quoting *Sandoval*, 434 F.2d at 636).

20 The Court has reviewed Defendant’s notice of removal, and the assertion that jurisdiction  
21 exists under Section 1443(1) is largely conclusory and unsupported by facts from which the Court  
22 can discern that this case falls within the scope of Section 1443(1). *See, e.g., Ariza v. Skinner*, No.  
23 17-cv-00546-DMR, 2017 WL 939019, at \*2-\*3 (N.D. Cal. Feb. 16, 2017), *report and*  
24 *recommendation adopted by* 2017 WL 929561 (N.D. Cal. Mar. 9, 2017); *Wells Fargo Bank, N.A.*  
25 *v. Vann*, No. 13-cv-01148-YGR, 2013 WL 1856711, at \*4 (N.D. Cal. May 2, 2013) (“Similar to  
26 28 U.S.C. section 1343, section 1443(1) will not provide jurisdiction where allegations of  
27 discrimination are conclusory and lacking factual basis.”).

28 It thus appears that this Court lacks subject matter jurisdiction to hear this matter, that  
Plaintiff’s motion to remand should be granted, and that this action should be remanded back to  
Humboldt County Superior Court. *See* 28 U.S.C. § 1447(c); *see also Maniar v. FDIC*, 979 F.2d  
782, 785 (9th Cir. 1992). Rather than granting Plaintiff’s motion as unopposed, the Court will

1 provide Defendant with a final opportunity to address the issue of jurisdiction.

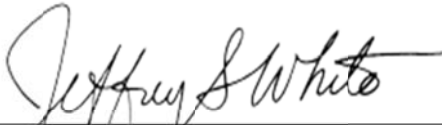
2 Accordingly, the Court HEREBY ORDERS Defendant TO SHOW CAUSE why this case  
3 should not be remanded to Humboldt County Superior Court. Defendant’s response to this Order  
4 to Show Cause shall be due by no later than August 14, 2017. In light of the length of time that  
5 has elapsed since it was filed, the Court DENIES, AS MOOT, Plaintiff’s motion to have the  
6 motion to remand heard on shortened time. The Court will permit Plaintiff to submit a response to  
7 Defendant’s order to show cause, which shall be due by no later than August 21, 2017. At that  
8 time, the Court will take the matter under submission and will rule on the issue of jurisdiction  
9 without a hearing.

10 If Defendant fails to respond to this Order to Show Cause by August 14, 2017, the Court  
11 will remand the case for lack of subject matter jurisdiction.

12 Finally, the Court advises Defendant that that a Handbook for Pro Se Litigants, which  
13 contains helpful information about proceeding without an attorney, is available through the  
14 Court’s website or in the Clerk’s office. The Court also advises Defendant that he may seek  
15 assistance from the Legal Help Center. Defendant may seek such assistance by calling the Legal  
16 Help Center at 415-782-8982 or by signing up for a free appointment with an attorney who may be  
17 able to provide basic legal help, but not legal representation, on the 15th Floor of the San  
18 Francisco Courthouse, 450 Golden Gate Avenue, Room 2796, San Francisco, California, or on the  
19 4th Floor of the Oakland Courthouse, 1301 Clay Street, Room 470S, Oakland, California.

20 **IT IS SO ORDERED.**

21 Dated: July 28, 2017

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24 JEFFREY S. WHITE  
25 United States District Judge  
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