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

MOSSER COMPANIES, INC.,
Plaintiff,

No. C 17-05713 JSW

v.

ORDER TO SHOW CAUSE

ROBERT EBERWEIN and
CHALEDEEANNKA DEBORAH ANN
GOYENS,
Defendants.

Federal courts have a duty to raise and decide issues of subject matter jurisdiction *sua sponte* at any time it appears subject matter jurisdiction may be lacking. Fed. R. Civ. P. 12; *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983). It appears that this Court lacks jurisdiction to hear this matter.

Attached to the notice of removal is a state court judgment dated October 2, 2017 in an unlawful detainer action before the Superior Court for the County of San Francisco against Defendant Robert Eberwein and Chaledееannika Deborah Ann Goyens (“Defendants”). (*See* Notice of Removal.) On October 3, 2017, Defendants removed the State Court action on the basis that jurisdiction. (*See id.*) “[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.

1 However, federal courts are courts of limited jurisdiction. *See, e.g., Kokkonen v. Guardian*
2 *Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Accordingly, the burden of establishing federal
3 jurisdiction for purposes of removal is on the party seeking removal, and the removal statute is
4 strictly construed against removal jurisdiction. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th
5 Cir. 2004); *see also Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). “Federal jurisdiction
6 must be rejected if there is any doubt as to the right of removal in the first instance.” *Gaus*, 980 F.2d
7 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 avoid
11 federal jurisdiction by exclusive reliance on state law.” *Id.* Thus, under the well-pleaded complaint
12 rule, federal-question jurisdiction arises where the “complaint establishes either that federal law
13 creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a
14 substantial question of federal law.” *Franchise Tax Bd.*, 463 U.S. 1, 27-28 (1983).

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

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

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Accordingly, the Court HEREBY ISSUES this order to show cause to Defendants to respond in writing by no later than **November 27, 2017** why this case should not be remanded to the Superior Court of the State of California for the County of San Francisco. Should Defendants fail to respond, this case shall be remanded for lack of subject matter jurisdiction.

IT IS SO ORDERED.

Dated: October 30, 2017



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

