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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

YING WU, et al.,

Plaintiffs,

v.

MARIE ANNETTE, et al.,

Defendants.

Case No. 18-cv-07825-KAW

**ORDER REASSIGNING CASE TO A
DISTRICT JUDGE; REPORT AND
RECOMMENDATION TO REMAND
TO STATE COURT; ORDER
GRANTING IN FORMA PAUPERIS
APPLICATION**

Re: Dkt. Nos. 1, 3, 4

On January 31, 2019, Defendant Marie Annette removed this unlawful detainer action from San Mateo County Superior Court, and applied to proceed in forma pauperis. (Not. of Removal, Dkt. No. 1; IFP Appl., Dkt. No. 3.) On January 2, 2019, Plaintiff Ying Wu filed a motion to remand. (Dkt. No. 4.)

As removal is clearly improper, and the parties have not consented to the undersigned, for the reasons set forth below, the Court reassigns this case to a district judge and recommends that the case be remanded to state court. Additionally, the Court grants Defendant's application to proceed in forma pauperis.

I. BACKGROUND

On June 18, 2018, Plaintiff allegedly served a written notice on Defendant to pay rent or quit within three days. (Not. of Removal at 11.) Plaintiffs commenced this unlawful detainer action against Defendant in San Mateo County Superior Court on or around June 27, 2018. (Id. at 10.) The complaint contains a single cause of action for unlawful detainer. (Id.) The case is a "limited civil case," in which Plaintiff seeks immediate possession of a certain property located in Foster City, California, which Defendant occupies. (Id.)

On August 20, 2018, Defendant Steve Hoskins first removed the case to federal court,

1 asserting federal question jurisdiction. (Case No. 18-cv-5073-YGR, Dkt. No. 1 at 2.) On October
2 17, 2018, Judge Corley recommended that the motion be remanded back to state court due to lack
3 of subject matter jurisdiction. (Case No. 18-cv-5073-YGR, Dkt. No. 16 at 2.) On November 8,
4 2018, the report and recommendation to remand was adopted and the case remanded to state court.
5 (Case No. 18-cv-5073-YGR, Dkt. No. 20 at 1.)

6 On December 31, 2018, Defendant Annette filed the instant removal of the action to
7 federal court on the grounds that it presents a federal question. (Not. of Removal at 2.) The notice
8 of removal was almost identical to the August 20, 2018 notice of removal filed by Defendant
9 Hoskins in the prior case.

10 On January 2, 2019, Plaintiffs filed a motion to remand. (Dkt. No. 4.)

11 **II. LEGAL STANDARD**

12 Federal courts exercise limited jurisdiction. A “federal court is presumed to lack
13 jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock W., Inc. v.*
14 *Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citation omitted). A defendant may
15 remove a civil action from state court to federal court if original jurisdiction would have existed at
16 the time the complaint was filed. See 28 U.S.C. § 1441(a). “[R]emoval statutes are strictly
17 construed against removal.” *Luther v. Countrywide Homes Loans Servicing, LP*, 533 F.3d 1031,
18 1034 (9th Cir. 2008). “Federal jurisdiction must be rejected if there is any doubt as to the right of
19 removal in the first instance,” such that courts must resolve all doubts as to removability in favor
20 of remand. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The burden of establishing that
21 federal jurisdiction exists is on the party seeking removal. See *id.* at 566-67.

22 Federal district courts have original jurisdiction over actions that present a federal question
23 or those based on diversity jurisdiction. See *Wayne v. DHL Worldwide Express*, 294 F.3d 1179,
24 1183 & n.2 (9th Cir. 2002). Federal district courts have federal question jurisdiction over "all civil
25 actions arising under the Constitution, laws or treaties of the United States." 28 U.S.C. § 1331.
26 Federal question jurisdiction is governed by the well-pleaded complaint rule, which provides that
27 the basis for federal jurisdiction must appear on the face of the properly pleaded complaint, either
28 because the complaint directly raises an issue of federal law or because the plaintiff's "right to

1 relief under state law requires resolution of a substantial question of federal law in dispute
2 between the parties." *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*,
3 463 U.S. 1, 13 (1983). "[A] case may not be removed to federal court on the basis of a federal
4 defense . . . , even if the defense is anticipated in the plaintiff's complaint" *Caterpillar Inc. v.*
5 *Williams*, 482 U.S. 386, 393 (1987) (citation omitted).

6 **III. DISCUSSION**

7 Defendant removed this unlawful detainer action from state court on the grounds that the
8 district court has jurisdiction because the case presents a federal question.

9 Defendant claims that a federal question exists because she asserts that the complaint is
10 actually based on the Protecting Tenants Act, 15 U.S.C. § 5220. (Not. of Removal at 2.) As
11 previously explained by Judge Corley:

12 [T]he removed complaint makes only a state-law claim for unlawful
13 detainer. Defendant[']s allegation in his notice of removal that
14 federal question jurisdiction exists under the Protecting Tenants Act,
15 12 U.S.C. § 5220 (the "PTFA") is unavailing--"federal jurisdiction
16 exists only when a federal question is presented on the face of the
17 plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*,
18 482 U.S. 386, 393 (1987) ("[I]t is now settled law that a case may
not be removed to federal court on the basis of a federal defense[.]");
see also *Deutsche Bank Nat. Tr. Co. v. Eaddy*, No. 12-CV-01845
YGR, 2012 WL 4173987, at *1 (N.D. Cal. Sept. 18, 2012) ("PTFA
is intended to be used for protection in state court but does not create
a private right of action or a basis for subject matter jurisdiction.").

19 (Case No. 18-cv-5073-YGR, Dkt. No. 16 at 2.) Accordingly, Defendant's claim that there are
20 issues under the Protecting Tenants Act does not establish federal question jurisdiction in this
21 matter.

22 Lastly, the limited scope of unlawful detainer proceedings precludes cross-complaints or
23 counterclaims. See *Knowles v. Robinson*, 60 Cal. 2d 620, 626-27 (1963). Thus, to the extent that
24 Defendants' assertions could be contained in any such filing, they would, nonetheless, fail to
25 introduce a basis for federal question jurisdiction.

26 **IV. CONCLUSION**

27 For the reasons set forth above, the Court REASSIGNS this action to a district judge with
28 the recommendation that the action be REMANDED to state court for further proceedings. In

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light of the recommendation of remand sua sponte, the court further recommends that Plaintiff's motion to remand be terminated as moot. The Court GRANTS Defendant's request to proceed in forma pauperis.

Any party may file objections to this report and recommendation with the district judge within 14 days of being served with a copy. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); N.D. Civil L.R. 72-3. The parties are advised that failure to file objections within the specified time may waive the right to appeal the district court's order. *IBEW Local 595 Trust Funds v. ACS Controls Corp.*, No. C-10-5568, 2011 WL 1496056, at *3 (N.D. Cal. Apr. 20, 2011).

IT IS SO RECOMMENDED.

Dated: January 8, 2019


KANDIS A. WESTMORE
United States Magistrate Judge