

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

U.S. Bank, National Association,
Plaintiff,
v.
Tony Valdez, et al.,
Defendants.

NO. C 10-01259 JW

ORDER REMANDING CASE TO STATE COURT; VACATING CASE MANAGEMENT CONFERENCE

This case is scheduled for a Case Management Conference on June 28, 2010. Defendant Jose Lopez (“Lopez”) filed a Case Management Conference Statement.¹ Upon review of the Notice of Removal and the Complaint, the Court *sua sponte* finds that the case should be remanded for lack of subject matter jurisdiction.

The federal removal statute permits the removal from state court to federal court of cases that might have been filed in federal court originally. See 28 U.S.C. § 1441(a). Under section 1441(b), an action may be removed if the complaint alleges “a claim or right arising under the Constitution, treaties or laws of the United States” Alternatively, an action may be removed only “if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b). A district court has “a duty to establish subject matter jurisdiction over the removed action sua sponte, whether the parties raised the issue or not.” United Investors Life Ins. Co. v. Waddell & Reed, Inc., 360 F.3d 960, 967 (9th Cir. 2004). A district court

¹ (Docket Item No. 8.) Plaintiff has failed to join in Defendant’s Statement or file their own Statement.

1 must remand a case to state court “if at any time before the final judgment it appears that the district
2 court lacks subject matter jurisdiction.” 28 U.S.C. § 1447(c); Gaus v. Miles, Inc., 980 F.2d 564, 566
3 (9th Cir. 1992). “The burden of establishing federal jurisdiction is on the party seeking removal, and
4 the removal statute is strictly construed against removal jurisdiction.” Prize Frize Inc. v. Matrix
5 Inc., 167 F.3d 1261, 1265 (9th Cir. 1999).

6 It is well settled that a complaint that is based entirely on state law is not removable by virtue
7 of anticipated federal defenses or counterclaims. See Louisville & Nashville R.R. Co., v. Motley,
8 211 U.S. 149, 152 (1908); Takeda v. Northwestern Nat'l Life Ins. Co., 765 F.2d 815, 821 (9th Cir.
9 1985); Vaden v. Discover Bank, 129 S.Ct. 1262, 1272 (2009) (citation omitted).

10 Here, Defendant Lopez removed the action on the ground that the Court has original
11 jurisdiction pursuant to 28 U.S.C. § 1331, citing vague congressional statutes as the basis of his
12 counterclaims. (Notice of Removal at 1, Docket Item No. 1.) However, the original Complaint filed
13 in state Court only asserts state law claims against Defendant, namely, unlawful detainer and other
14 related claims. (Notice of Removal at 64.) Thus, Defendant’s removal was improper. Further,
15 Defendant was served with the Complaint on or about December 8, 2009, but did not remove this
16 action until March 25, 2010. (See Notice of Removal at 6.) Since Defendant removed this action
17 more than 30 days after being served with the Complaint, removal is untimely. See 28 U.S.C. §
18 1446(b).

19 Accordingly, the Court VACATES the June 28 Case Management Conference and
20 REMANDS the case to the Superior Court of California for the County of Santa Clara.

21 The Clerk of Court shall immediately remand this case and close the file.²

22

23 Dated: June 24, 2010



JAMES WARE
United States District Judge

24

25

26

27 ² Since the Court REMANDS the case *sua sponte*, the Court DENIES as moot Defendant
28 Lopez’s Motion for Leave to Proceed *in Forma Pauperis*. (Docket Item No. 2.)

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Randall David Naiman Randall@Naimanlaw.com

3 Jose Lopez
4 3283 Hostetter Road
5 San Jose, CA 95123

6

7

Dated: June 24, 2010

Richard W. Wieking, Clerk

8

9

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28