

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PHUC LE, et al.,  
Plaintiffs,  
v.  
DORA GONZALEZ,  
Defendant.

Case No. [5:17-cv-04514-HRL](#)

**ORDER FOR REASSIGNMENT TO A  
DISTRICT JUDGE  
REPORT AND RECOMMENDATION  
RE REMAND TO STATE COURT**

Defendant Dora Gonzalez seeks to remove this unlawful detainer action from the Santa Clara County Superior Court. Having reviewed the record, and for the reasons stated below, the undersigned recommends that this matter be remanded to the state court for lack of federal subject matter jurisdiction.

Removal to federal court is proper where the federal court would have original subject matter jurisdiction over the complaint. 28 U.S.C. § 1441. The removal statutes are strictly construed against removal and place the burden on the defendant to demonstrate that removal is proper. Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1244 (9th Cir. 2009) (citing Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)). Additionally, the court has a continuing duty to determine whether it has subject matter jurisdiction. Fed. R. Civ. P. 12(h). A case must be remanded to the state court if it appears at any time before final judgment that the court lacks

1 subject matter jurisdiction. 28 U.S.C. § 1447(c).

2 Federal Question Jurisdiction

3 Defendant fails to show that removal is proper based on any federal law. Federal courts  
4 have original jurisdiction over civil actions “arising under the Constitution, laws, or treaties of the  
5 United States.” 28 U.S.C. § 1331. A claim “arises under” federal law if, based on the “well-  
6 pleaded complaint rule,” the plaintiff alleges a federal claim for relief. Vaden v. Discovery Bank,  
7 129 S. Ct. 1262, 1272 (2009). Defenses and counterclaims asserting a federal question do not  
8 satisfy this requirement. Id. Here, the notice of removal says that defendant’s civil rights have  
9 been violated. However, allegations in a removal notice or in a response to the complaint cannot  
10 provide this court with federal question jurisdiction. Plaintiffs’ complaint presents a claim arising  
11 only under state law. It does not allege any federal claims whatsoever.

12 Diversity Jurisdiction

13 Defendant does not invoke the court’s diversity jurisdiction under 28 U.S.C. § 1332, and  
14 this court finds no basis for it anyway. Federal district courts have jurisdiction over civil actions  
15 in which the matter in controversy exceeds the sum or value of \$75,000 (exclusive of interest and  
16 costs) and is between citizens of different states. 28 U.S.C. § 1332. As a California defendant,  
17 Gonzalez cannot remove this case here. Spencer v. U.S. Dist. Ct. for Northern Dist. of California,  
18 393 F.3d 867, 870 (9th Cir. 2004) (“It is thus clear that the presence of a local defendant at the  
19 time removal is sought bars removal.”); 28 U.S.C. § 1441(b)(2) (stating that a case “may not be  
20 removed if any of the parties in interest properly joined and served as defendants is a citizen of the  
21 State in which such action is brought.”). In any event, the complaint indicates that the amount in  
22 controversy does not exceed \$10,000. Moreover, unlawful detainer actions involve the right to  
23 possession alone, not title to the property. So, the fact that the subject property may be worth  
24 more than \$75,000 is irrelevant. MOAB Investment Group, LLC v. Moreno, No. C14-0092EMC,  
25 2014 WL 523092 at \*1 (N.D. Cal., Feb. 6, 2014); Maxwell Real Estate Investment LLC v.  
26 Bracho, No. C12-02774RMW, 2012 WL 2906762 at \*1 (N.D. Cal., July 13, 2012).

27 Civil Rights Removal Jurisdiction

28 Defendant nevertheless argues that removal is proper under 28 U.S.C. § 1443(1), which

1 “provides an exception to the well-pleaded complaint rule, allowing a party to remove an  
2 otherwise unremovable action where the party is asserting a federal claim of race discrimination  
3 that ‘cannot [be] enforce[d]’ in the state courts.” Deutsche Bank Nat’l Trust Co. v. Young, No. C-  
4 14-3170 EMC, 2014 WL 7336696, at \*1 (N.D. Cal., Dec. 23, 2014) (citing 28 U.S.C. § 1443(1)  
5 and City of Greenwood, Miss. v. Peacock, 384 U.S. 808, 824-28 (1966)).<sup>1</sup> A successful petition  
6 for removal under Section 1443(1) must satisfy a two-part test. First, the petitioner must assert, as  
7 a defense, “rights that are given to [her] by explicit statutory enactment protecting equal racial  
8 civil rights.” Patel v. Del Taco, Inc., 446 F.3d 996, 999 (9th Cir. 2006) (citations omitted).  
9 “Second, petitioners must assert that the state courts will not enforce that right, and that allegation  
10 must be supported by reference to a state statute or a constitutional provision that purports to  
11 command the state courts to ignore the federal rights.” Id.

12 Here, defendant seems to assert that plaintiffs have violated California Code of Civil  
13 Procedure § 128.7, which “provides that when an attorney or party presents a pleading, motion, or  
14 similar paper to the court, an implied ‘certification’ as to its legal and factual merit is made, and is  
15 subject to sanctions for violation of this certification.” Canterbury Lots 68, LLC v. De La Torre,  
16 No. CV 13–00712 MMM (RZx), 2013 WL 781974 at \*4 (C.D. Cal., Feb. 28, 2013) (citation  
17 omitted). Defendant further states that “rules of evidence and civil procedure are applied without  
18 equal protection” and that the “State Court is typically backed by the appellate department in  
19 similar matters . . .” (Dkt. 1, Notice of Removal at ECF pp. 2, 3). And, she says this case  
20 involves “violations of Defendant’s civil rights on the basis of [her] national origin, namely  
21 Hispanic (as a US citizen).” (Id. at p. 3).

22 Defendant’s attempt to remove under 28 U.S.C. § 1443(1) fails because she does not  
23 identify any “state statute or a constitutional provision that purports to command the state courts to  
24 ignore [her] federal rights” or any “formal expression of state law that prohibits [her] from

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26 <sup>1</sup> Defendant does not claim that removal of this matter is based on 28 U.S.C. § 1443(2), and there  
27 is nothing to indicate that defendant has any right of removal under that subsection of the statute  
28 anyway. See Peacock, 384 U.S. at 824 (holding that § 1443(2) “confers a privilege of removal  
only upon federal officers or agents and those authorized to act with or for them in affirmatively  
executing duties under any federal law providing for equal civil rights”).

1 enforcing [her] civil rights in state court . . .” Patel, 446 F.3d at 999 (emphasis added); see also  
2 Canterbury Lots 68, LLC, 2013 WL 781974 at \*5 (remanding an unlawful detainer action where  
3 the defendant “does not, and cannot, identify any California state law or constitutional provision  
4 that commands state courts to ignore an amendment to the U.S. Constitution.”); Fed. Home Loan  
5 Mortgage Corp. v. Cantillano, No. CV 12-01641 GAF (CMx), 2012 WL 1193613 at \*3 (C.D.  
6 Cal., Apr. 9, 2012) (remanding an unlawful detainer action where the defendants did “not identify  
7 any California state law or California constitutional provision that denies them the opportunity to  
8 raise their civil rights in the California courts” and instead “argue[d] only that these rights were  
9 denied in their case and that unspecified provisions of the California Civil Code governing non-  
10 judicial foreclosures and judicial evictions cause the violation of Hispanics’ civil rights in all  
11 unlawful detainer proceedings.”). Moreover, defendant’s allegations, which are entirely  
12 conclusory, are insufficient to invoke federal jurisdiction. Gross Mortgage Corp. v. Al-Mansur,  
13 No. C12-cv-03508-YGR, 2012 WL 3237183 at \*4 (N.D. Cal., Aug. 6, 2012) (stating that “section  
14 1443(1) “will not provide jurisdiction where allegations of discrimination are conclusory and  
15 lacking factual basis.”).

16 Accordingly, this court finds that there is no basis for removal. Defendant is advised that  
17 repeated attempts to remove this matter may result in sanctions.

18 Because the parties have yet to consent to the undersigned’s jurisdiction, this court  
19 ORDERS the Clerk of the Court to reassign this case to a District Judge. The undersigned further  
20 RECOMMENDS that the newly assigned judge remand the case to the Santa Clara County  
21 Superior Court. Any party may serve and file objections to this Report and Recommendation  
22 within fourteen days after being served. 28 U.S.C. § 636(b)(1)(B), (C); Fed. R. Civ. P. 72.

23 Dated: August 14, 2017

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HOWARD R. LLOYD  
United States Magistrate Judge

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5:17-cv-04514-HRL Notice has been electronically mailed to:

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Todd Bennett Rothbard toddrothbard@att.net