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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RECHT FAMILY PARTNERSHIP,

Plaintiff,

v.

GERARD FURLONG, *et al.*,

Defendants.

Case No. 16-cv-01461-BAS(RBB)

ORDER:

**(1) GRANTING MOTION FOR
LEAVE TO PROCEED *IN*
FORMA PAUPERIS; AND**

**(2) REMANDING ACTION FOR
LACK OF SUBJECT MATTER
JURISDICTION**

[ECF No. 2]

On June 13, 2016, Defendant Gerard Furlong (“Defendant”) removed this matter to federal court pursuant to 28 U.S.C. §§ 1441 & 1446 based on federal question jurisdiction under 28 U.S.C. § 1331. (ECF No. 1.) On the same day, Defendant also filed a motion seeking leave to proceed *in forma pauperis* (“IFP”). (ECF No. 2.)

Under 28 U.S.C. § 1915, a litigant who because of indigency is unable to pay the required fees or security to commence a legal action may petition the court to proceed without making such payment. The determination of indigency falls within the district court’s discretion. *Cal. Men’s Colony v. Rowland*, 939 F.2d 854, 858 (9th

1 Cir. 1991), *rev'd on other grounds*, 506 U.S. 194 (1993) (holding that “Section 1915
2 typically requires the reviewing court to exercise its sound discretion in determining
3 whether the affiant has satisfied the statute’s requirement of indigency”). Having read
4 and considered Defendant’s application, the Court finds that Defendant meets the
5 requirements for IFP status under 28 U.S.C. § 1915. Accordingly, the Court
6 **GRANTS** Defendant’s motion to proceed IFP (ECF No. 2).

7 Although the Court finds Defendant meets the requirements for IFP status, this
8 determination does not mean that Defendant may defend this action in federal court.
9 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins.*
10 *Co. of Am.*, 511 U.S. 375, 377 (1994). “They possess only that power authorized by
11 Constitution and statute, which is not to be expanded by judicial decree.” *Id.* (internal
12 citations omitted). “It is to be presumed that a cause lies outside this limited
13 jurisdiction, and the burden of establishing the contrary rests upon the party asserting
14 jurisdiction.” *Id.* (internal citations omitted); *see also Abrego Abrego v. The Dow*
15 *Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006).

16 Consistent with the limited jurisdiction of federal courts, the removal statute is
17 strictly construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
18 (9th Cir. 1992); *see also Sygenta Crop Prot. v. Henson*, 537 U.S. 28, 32
19 (2002); *O’Halloran v. Univ. of Wash.*, 856 F.2d 1375, 1380 (9th Cir. 1988). “The
20 ‘strong presumption’ against removal jurisdiction means that the defendant always
21 has the burden of establishing that removal is proper.” *Gaus*, 980 F.2d at 566; *see*
22 *also Nishimoto v. Federman–Bachrach & Assoc.*, 903 F.2d 709, 712 n.3 (9th Cir.
23 1990); *O’Halloran*, 856 F.2d at 1380. “Federal jurisdiction must be rejected if there
24 is any doubt as to the right of removal in the first instance.” *Gaus*, 980 F.2d at 566.

25 It is well-established that “a district court’s duty to establish subject matter
26 jurisdiction is not contingent upon the parties’ arguments.” *See United Investors Life*
27 *Ins. Co. v. Waddell & Reed Inc.*, 360 F.3d 960, 966 (9th Cir. 2004). Courts may
28 consider the issue *sua sponte*. *Demery v. Kupperman*, 735 F.2d 1139, 1149 n.8 (9th

1 Cir. 1984). Indeed, the Supreme Court has emphasized that “district courts have an
2 ‘independent obligation to address subject-matter jurisdiction *sua sponte*.’” *Grupo*
3 *Dataflux v. Atlas Global Grp., L.P.*, 541 U.S. 567, 593 (2004) (quoting *United States*
4 *v. S. Cal. Edison Co.*, 300 F. Supp. 2d 964, 972 (E.D. Cal. 2004)).

5 Here, Defendant seeks to remove this action from state court based upon
6 federal question jurisdiction under 28 U.S.C. § 1331. Section 1331 provides that
7 “district courts shall have original jurisdiction of all civil actions arising under the
8 Constitution, laws, or treaties of the United States.” “[T]he presence or absence of
9 federal-question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which
10 provides that federal jurisdiction exists only when a federal question is presented on
11 the face of the plaintiff’s properly pleaded complaint.” *Rivet v. Regions Bank of*
12 *La.*, 522 U.S. 470, 475 (1998) (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386,
13 392 (1987)). A federal “defense is not part of a plaintiff’s properly pleaded statement
14 of his or her claim.” *Id.* (citing *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58,
15 (1987)). A case, therefore, may not be removed to federal court based on a federal
16 defense “even if the defense is anticipated in the plaintiff’s complaint, and even if
17 both parties admit that the defense is the only question truly at issue in the
18 case.” *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Trust for S.*
19 *Cal.*, 463 U.S. 1, 14 (1983); *see also Rivet*, 522 U.S. at 475.

20 The case removed here is a residential unlawful detainer action. (Complaint –
21 Unlawful Detainer, Notice of Removal Ex. A, ECF No. 1-2.) It contains one cause
22 of action for unlawful detainer brought pursuant to California Code of Civil
23 Procedure Section 1161(2). (*Id.*) Therefore, the action arises exclusively under
24 California state law. Defendant argues in his notice of removal that federal question
25 jurisdiction exists because “Defendant withheld rent due to Plaintiff discriminating
26 against defendant by violating [the] Fair Housing Act and 42 U.S.C. [§]
27 3604(f)(3)(A)” and other federal housing discrimination statutes. (*See* Notice of
28 Removal ¶¶ 5–7, ECF No. 1.) Yet, because the only possible federal issues in this

1 case involve a defense invoked by Defendant, federal question jurisdiction is lacking
2 under the well-pleaded complaint rule. *See Rivet*, 522 U.S. at 475; *see also, e.g., Wells*
3 *Fargo Bank NA v. Zimmerman*, No. 2:15-cv-08268-CAS-MRWx, 2015 WL
4 6948576, at *4 (C.D. Cal. Nov. 10, 2015) (remanding unlawful detainer action to
5 state court); *McGee v. Seagraves*, No. 06-CV-0495-MCE-GGH-PS, 2006 WL
6 2014142, at *3 (E.D. Cal. July 17, 2006) (same).

7 Accordingly, Defendant has failed to meet his burden of establishing this
8 Court's jurisdiction under 28 U.S.C. § 1331. Therefore, this Court **REMANDS** this
9 action to the San Diego Superior Court for lack of subject matter jurisdiction. *See* 28
10 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district
11 court lacks subject matter jurisdiction, the case shall be remanded.").

12 **In addition, the Court warns Defendant that any further attempt to**
13 **remove this action without an "objectively reasonable basis for removal" may**
14 **result in an award of attorneys' fees for Plaintiff.** *See Martin v. Franklin Capital*
15 *Corp.*, 546 U.S. 132, 136 (2005); 28 U.S.C. § 1447(c); *see also Wells Fargo Bank*
16 *Nat. Ass'n v. Vann*, No. 13-cv-01148-YGR, 2013 WL 1856711, at *2 (N.D. Cal.
17 May 2, 2013) (awarding \$5,000.00 in attorneys' fees pursuant to 28 U.S.C. § 1447(c)
18 following defendant's third attempt to remove unlawful detainer action despite the
19 court's two prior orders remanding the action).

20 **IT IS SO ORDERED.**

21
22 **DATED: June 22, 2016**

23 
24 **Hon. Cynthia Bashant**
25 **United States District Judge**