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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GORDON CLAUSEN,

Plaintiff,

v.

ROBERT SELLING,

Defendant.

Case No. 17-cv-1180-BAS(JLB)

ORDER:

- (1) REMANDING ACTION TO STATE COURT FOR LACK OF SUBJECT MATTER JURISDICTION; AND**
- (2) TERMINATING DEFENDANT’S MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* AS MOOT**

On April 3, 2017, Plaintiff Gordon Clausen commenced this unlawful-detainer action against Defendant Robert Selling, who is proceeding *pro se*, in the San Diego Superior Court. Over two months later, Defendant removed this action to federal court pursuant to 28 U.S.C. §§ 1331 and 1441, and concurrently filed a motion to proceed *in forma pauperis* (“IFP”).

For the following reasons, the Court finds Defendant’s Notice of Removal is deficient and **REMANDS** this action to the San Diego Superior Court for lack of subject matter jurisdiction.

1 **I. LEGAL STANDARD**

2 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life*
3 *Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). “They possess only that power authorized
4 by Constitution or a statute, which is not to be expanded by judicial decree.” *Id.*
5 (internal citations omitted). “It is to be presumed that a cause lies outside this limited
6 jurisdiction and the burden of establishing the contrary rests upon the party asserting
7 jurisdiction.” *Id.* (internal citations omitted); *see also Abrego Abrego v. The Dow*
8 *Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006).

9 Consistent with the limited jurisdiction of federal courts, the removal statute is
10 strictly construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
11 (9th Cir. 1992); *see also Sygenta Crop Prot. v. Henson*, 537 U.S. 28, 32 (2002);
12 *O’Halloran v. Univ. of Wash.*, 856 F.2d 1375, 1380 (9th Cir. 1988). “The strong
13 presumption against removal jurisdiction means that the defendant always has the
14 burden of establishing that removal is proper.” *Gaus*, 980 F.2d at 566; *see also*
15 *Nishimoto v. Federman-Bachrach & Assoc.*, 903 F.2d 709, 712 n.3 (9th Cir. 1990);
16 *O’Halloran*, 856 F.2d at 1380. “Federal jurisdiction must be rejected if there is any
17 doubt as to the right of removal in the first instance.” *Gaus*, 980 F.2d at 566.

18 It is well-established that “a district court’s duty to establish subject matter
19 jurisdiction is not contingent upon the parties’ arguments.” *See United Investors Life*
20 *Ins. Co. v. Waddell & Reed Inc.*, 360 F.3d 960, 966 (9th Cir. 2004). Courts may
21 consider the issue *sua sponte*. *Demery v. Kupperman*, 735 F.2d 1139, 1149 n.8 (9th
22 Cir. 1984). Indeed, the Supreme Court has emphasized that “district courts have an
23 ‘independent obligation to address subject-matter jurisdiction *sua sponte*.’” *Grupo*
24 *Dataflux v. Atlas Global Grp., L.P.*, 541 U.S. 567, 593 (2004) (quoting *United States*
25 *v. S. Cal. Edison Co.*, 300 F. Supp. 2d 964, 972 (E.D. Cal. 2004)).

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1 **II. ANALYSIS**

2 In order to invoke this Court’s federal-question jurisdiction, the defendant
3 must demonstrate that the civil action “aris[es] under the Constitution, laws, or
4 treaties of the United States.” 28 U.S.C. § 1331. “Only state-court actions that
5 originally could have been filed in federal court may be removed to federal court by
6 the defendant.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). “It is settled
7 that the answer to this jurisdictional question must be determined solely from the face
8 of the complaint unaided by the answer, petition for removal or other papers.”
9 *Farmco Stores, Inc. v. Newmark*, 315 F. Supp. 396, 397 (E.D. Cal. 1970) (citing
10 *Gully v. F. Nat’l Bank*, 299 U.S. 109, 113 (1936); *Stauffer v. Exley*, 184 F.2d 962,
11 967 (9th Cir. 1950)).

12 “[T]he presence or absence of federal-question jurisdiction is governed by the
13 ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only
14 when a federal question is presented on the face of the plaintiff’s properly pleaded
15 complaint.” *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475
16 (1998) (quoting *Caterpillar*, 482 U.S. 386, 392 (1987)). A federal “defense is not
17 part of a plaintiff’s properly pleaded statement of his or her
18 claim.” *Id.* (citing *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, (1987)). A case,
19 therefore, may not be removed to federal court based on a federal defense “even if
20 the defense is anticipated in the plaintiff’s complaint, and even if both parties admit
21 that the defense is the only question truly at issue in the case.” *Franchise Tax Bd. of*
22 *State of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 14 (1983); *see*
23 *also Rivet*, 522 U.S. at 475.

24 There is no federal question apparent on the face of the complaint, which only
25 asserts a simple unlawful-detainer cause of action pursuant to California Code of
26 Civil Procedure § 1161. *See Wescom Credit Union v. Dudley*, No. CV 10-8203
27 GAF(SSx), 2010 WL 4916578, at *2 (C.D. Cal. Nov. 22, 2010) (“An unlawful
28 detainer action does not arise under federal law.”); *IndyMac Fed. Bank, F.S.B. v.*

1 *Ocampo*, No. EDCV 09-2337 PA(DTBx), 2010 WL 234838, at *2 (C.D. Cal. Jan.
2 13, 2010) (remanding an action to state court for lack of subject matter jurisdiction
3 where plaintiff’s complaint contained only an unlawful-detainer claim). Therefore,
4 this action arises exclusively under California state law. *See* 28 U.S.C. § 1331.

5 Furthermore, Defendant is presumably a California resident, given that the
6 property from which he is being evicted is located in Vista, California. (Removal
7 Notice ¶ 3.) Though the Removal Notice does not allege Plaintiff’s citizenship, the
8 unlawful-detainer complaint indicates that Plaintiff’s address is also in Vista,
9 California. Thus, even assessing subject matter jurisdiction through the lens of
10 diversity jurisdiction, Defendant fails to provide an adequate basis to pursue this
11 action in federal court because there is no complete diversity between the parties. *See*
12 28 U.S.C. § 1332.

13 Having reviewed the unlawful-detainer complaint, the Court finds that there is
14 no jurisdictional basis for the removal. *See Wells Fargo Bank NA v. Zimmerman*, No.
15 2:15-cv-08268-CAS-MRWx, 2015 WL 6948576, at *4 (C.D. Cal. Nov. 10, 2015)
16 (remanding unlawful-detainer action to state court); *McGee v. Seagraves*, No. 06-
17 CV-0495-MCE-GGH-PS, 2006 WL 2014142, at *3 (E.D. Cal. July 17, 2006) (same)

18 19 **III. CONCLUSION & ORDER**

20 Because Plaintiff does not assert a claim that presents a federal question as
21 required by 28 U.S.C. § 1331, and because there are no factual allegations in the
22 complaint or the notice of removal necessary to establish diversity jurisdiction as
23 required by 28 U.S.C. § 1332, the Court **REMANDS** this action to the San Diego
24 Superior Court for lack of subject matter jurisdiction. *See* 28 U.S.C. § 1447(c) (“If
25 at any time before final judgment it appears that the district court lacks subject matter
26 jurisdiction, the case shall be remanded.”). The Court also **TERMINATES AS**
27 **MOOT** Defendant’s motion to proceed *in forma pauperis*. (ECF No. 2.)

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

9 **IT IS SO ORDERED.**

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11 **DATED: June 14, 2017**


Hon. Cynthia Bashant
United States District Judge