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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MG CANYON VILLA APARTMENTS
BSR, LLC,

Plaintiff,

v.
RAFAEL AVILA,

Defendant.

Case No.: 3:17-CV-1221-CAB-JLB

**ORDER OF REMAND TO STATE
COURT**

[Doc. No. 2]

On April 18, 2017, MG Canyon Villa Apartments BSR, LLC filed a complaint for unlawful detainer against Defendant Rafael Avila in San Diego County Superior Court. [Doc. No. 1 at 6.] On June 16, 2017, Avila, proceeding *pro se*, removed the action to this court [Doc. No. 1], and filed an application to proceed *in forma pauperis* (“IFP”) [Doc. No. 2. After reviewing the application, the notice of removal and the underlying complaint, the Court finds that the Court lacks subject matter jurisdiction over this case. Accordingly, the motion to proceed IFP is **DENIED AS MOOT**, and the Court **REMANDS** this action to state court.

A suit filed in state court may be removed to federal court by the defendant or defendants if the federal court would have had original subject matter jurisdiction over that suit. 28 U.S.C. § 1441(a); *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1243

1 (9th Cir. 2009). On the other hand, “[i]f at any time before final judgment it appears that
2 the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C.
3 § 1447(c); *see also Kelton Arms Condo. Owners Ass’n, Inc. v. Homestead Ins. Co.*, 346
4 F.3d 1190, 1192 (9th Cir. 2003) (“Subject matter jurisdiction may not be waived, and,
5 indeed, we have held that the district court must remand if it lacks jurisdiction.”). The
6 Court may remand *sua sponte* or on motion of a party. *Snell v. Cleveland, Inc.*, 316 F.3d
7 822, 826 (9th Cir. 2002) (“Federal Rule of Civil Procedure 12(h)(3) provides that a court
8 may raise the question of subject matter jurisdiction, *sua sponte*, at any time during the
9 pendency of the action . . .”). “The defendant bears the burden of establishing that removal
10 was proper.” *Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087
11 (9th Cir. 2009). “The removal statute is strictly construed, and any doubt about the right
12 of removal requires resolution in favor of remand.” *Moore-Thomas*, 553 F.3d at 1244.

13 Generally, subject matter jurisdiction is based on the presence of a federal question,
14 *see* 28 U.S.C. § 1331, or on complete diversity between the parties, *see* 28 U.S.C. § 1332.
15 In the notice of removal, Avila argues only that this Court has federal-question jurisdiction.
16 “The presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded
17 complaint rule,’ which provides that federal jurisdiction exists only when a federal question
18 is presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar Inc. v.*
19 *Williams*, 482 U.S. 386, 392 (1987). The complaint must establish “either that federal law
20 creates the cause of action or that the plaintiff’s right to relief necessarily depends on
21 resolution of a substantial question of federal law.” *Franchise Tax Bd. v. Constr. Laborers*
22 *Vacation Trust*, 463 U.S. 1, 27-28 (1983).

23 Here, federal question jurisdiction is absent because no “federal question is
24 presented on the face of plaintiff’s properly pleaded complaint.” *Caterpillar*, 482 U.S. at
25 392. Plaintiff’s complaint asserts a single claim for unlawful detainer, a cause of action
26 that is purely a matter of state law. *See Muhammad v. N. Richmond Senior Hous., Inc.*,
27 No. 15-CV-00629-WHO, 2015 WL 1154209, at *2 (N.D. Cal. Mar. 13, 2015) (“California
28 federal courts have repeatedly held that unlawful detainer cases brought under California’s

1 unlawful detainer statute do not raise federal questions.”); *Fed. Nat’l. Mortg. Ass’n v.*
2 *Enshiwat*, No. 12-631 CAS (CWx), 2012 WL 683106, at *1 (C.D. Cal. Mar. 2, 2012)
3 (“Unlawful detainer actions are strictly within the province of state court.”) (quotations
4 omitted). Accordingly, the face of the complaint does not present a federal question
5 justifying removal.

6 Avila argues that federal question jurisdiction exists because the demurrer he filed
7 in state court depended on the determination of his rights and Plaintiff’s duties under
8 federal law. The notice of removal does not specify what specific federal laws are
9 implicated, but regardless, “a case may not be removed to federal court on the basis of a
10 federal defense. . . .” *Franchise Tax Bd.*, 463 U.S. at 14. Thus, “Defendant cannot create
11 federal subject matter jurisdiction by attempting to raise a defense or a counterclaim under
12 the federal constitution or other body of federal law.” *Colfin A1-CA4 LLC v. Clark*, No.
13 EDCV 13-1162-CAS SPX, 2013 WL 3967656, at *1 (C.D. Cal. Aug. 1, 2013).

14 Based on the foregoing, the Court lacks subject matter jurisdiction over this matter
15 and therefore **REMANDS** the case to San Diego County Superior Court.

16 It is **SO ORDERED**.

17 Dated: June 16, 2017



18
19 Hon. Cathy Ann Bencivengo
20 United States District Judge