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

ERNESTINA GONZALEZ
KREUTZKAMP,

Plaintiff,

v.

LETICIA VEGA, *et al.*,

Defendants.

Case No. 17-cv-01265-BAS-KSC
ORDER:
**(1) REMANDING ACTION FOR
LACK OF SUBJECT MATTER
JURISDICTION; AND**
**(2) TERMINATING MOTIONS
TO PROCEED *IN FORMA*
PAUPERIS (ECF Nos. 2, 4, 5)**

20 On June 21, 2017, Defendants Lila Galindo, Damariez Vega, and Leticia Vega
21 removed this matter to federal court pursuant to 28 U.S.C. §§ 1441 and 1446 based
22 on federal question jurisdiction under 28 U.S.C. § 1331. (ECF No. 1.) On the same
23 day, Defendants filed motions seeking leave to proceed *in forma pauperis*. (ECF Nos.
24 2, 4, 5.)

25 A court addresses the issue of subject matter jurisdiction first, as “[t]he
26 requirement that jurisdiction be established as a threshold matter ‘spring[s] from the
27 nature and limits of the judicial power of the United States and is ‘inflexible and
28 without exception.’ ” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94–95

1 (1998) (quoting *Mansfield, C. & L.M. Ry. Co. v. Swan*, 111 U.S. 379, 382 (1884)).
2 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins.*
3 *Co. of Am.*, 511 U.S. 375, 377 (1994). “They possess only that power authorized by
4 Constitution and statute, which is not to be expanded by judicial decree.” *Id.* (internal
5 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. Dow Chem.*
8 *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
12 (2002); *O’Halloran v. Univ. of Wash.*, 856 F.2d 1375, 1380 (9th Cir. 1988). “The
13 ‘strong presumption’ against removal jurisdiction means that the defendant always
14 has the burden of establishing that removal is proper.” *Gaus*, 980 F.2d at 566; *see*
15 *also Nishimoto v. Federman–Bachrach & Assoc.*, 903 F.2d 709, 712 n.3 (9th Cir.
16 1990); *O’Halloran*, 856 F.2d at 1380. “Federal jurisdiction must be rejected if there
17 is any 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 Inv’rs 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 Glob. 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)).

26 Here, Defendants seek to remove this action from state court based upon
27 federal question jurisdiction under 28 U.S.C. § 1331. Section 1331 provides that
28 “district courts shall have original jurisdiction of all civil actions arising under the

1 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. “[T]he
2 presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded
3 complaint rule,’ which provides that federal jurisdiction exists only when a federal
4 question is presented on the face of the plaintiff’s properly pleaded complaint.” *Rivet*
5 *v. Regions Bank of La.*, 522 U.S. 470, 475 (1998) (quoting *Caterpillar Inc. v.*
6 *Williams*, 482 U.S. 386, 392 (1987)). A federal “defense is not part of a plaintiff’s
7 properly pleaded statement of his or her claim.” *Id.* (citing *Metro. Life Ins. Co. v.*
8 *Taylor*, 481 U.S. 58, (1987)). A case, therefore, may not be removed to federal court
9 based on a federal defense “even if the defense is anticipated in the plaintiff’s
10 complaint, and even if both parties admit that the defense is the only question truly
11 at issue in the case.” *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Tr. for*
12 *S. Cal.*, 463 U.S. 1, 14 (1983); *see also Rivet*, 522 U.S. at 475.

13 The case removed here is a residential unlawful detainer action. (Compl. –
14 Unlawful Detainer, Notice of Removal Ex. A, ECF No. 1.) It contains one cause of
15 action for unlawful detainer brought pursuant to California Code of Civil Procedure
16 section 1161(2). (*Id.*) Therefore, the action arises exclusively under California state
17 law. Defendants argue in their Notice of Removal that a federal question exists
18 because they filed a responsive pleading in state court that required a determination
19 of the parties’ “duties under federal law.” (*Id.*) The Court is unconvinced. Plaintiff’s
20 Complaint does not raise a federal issue. Consequently, even if Defendants have
21 implicated the parties’ “duties under federal law” by raising federal defenses in their
22 responsive pleading, this Court lacks federal question jurisdiction under the well-
23 pleaded complaint rule. *See Rivet*, 522 U.S. at 475; *see also, e.g., Wells Fargo Bank*
24 *NA v. Zimmerman*, No. 2:15-cv-08268-CAS-MRWx, 2015 WL 6948576, at *4 (C.D.
25 Cal. Nov. 10, 2015) (remanding unlawful detainer action to state court); *McGee v.*
26 *Seagraves*, No. 06-CV-0495-MCE-GGH-PS, 2006 WL 2014142, at *3 (E.D. Cal.
27 July 17, 2006) (same).

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1 Accordingly, Defendants have failed to meet their burden of establishing this
2 Court's jurisdiction under 28 U.S.C. § 1331. Thus, the Court **REMANDS** this action
3 to the San Diego Superior Court for lack of subject matter jurisdiction. *See* 28 U.S.C.
4 § 1447(c) ("If at any time before final judgment it appears that the district court lacks
5 subject matter jurisdiction, the case shall be remanded."). Further, because the Court
6 lacks jurisdiction over this case, the Court **TERMINATES** Defendants' motions to
7 proceed *in forma pauperis* (ECF Nos. 2, 4, 5).

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

16 **IT IS SO ORDERED.**

17
18 **DATED: June 22, 2017**


Hon. Cynthia Bashant
United States District Judge