

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Real Estate Global Investment Service LLC, a
Nevada Limited Liability Company,

Plaintiff,

vs.

Karin Ann Lawson,

Defendant.

Case No. 2:17-cv-02098-JCM-VCF

REPORT & RECOMMENDATION

Defendant Karin Ann Lawson in a pro se capacity removed this case from Nevada state court (case no. A-17-757280-C) where it was pending as an unlawful detainer action against Lawson. Lawson filed a notice of removal on August 2, 2017 (ECF No. 1-1) claiming to invoke this Court’s subject matter jurisdiction under 28 U.S.C. § 1443(1). Lawson concurrently moves to proceed in forma pauperis. (ECF No. 1). Both Lawson’s motion to proceed in forma pauperis (ECF No. 1) and Notice of Removal (ECF No. 1-1) are presently before the Court. The Court having reviewed the papers, and for the reasons set forth below, RECOMMENDS that this case be REMANDED to Nevada District Court, County of Clark, for lack of subject matter jurisdiction and Lawson’s IFP application be DISMISSED as MOOT.

I. DISCUSSION

A defendant in state court may remove an action to federal court so long as the action could have originally asserted subject matter jurisdiction. See 28 U.S.C. § 1441(a).¹ The basic rule is that this Court

¹ 28 U.S.C. § 1441(a) states in its entirety as follows: Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending

1 is a Court of limited jurisdiction, and has no authority beyond that specifically granted it by law. The
2 jurisdiction of this Court is never presumed. In fact, the presumption is to the contrary. See *Lehigh Mining*
3 & Mfg. Co. v. Kelly, 160 U.S. 327, 327 (1895); see also *United States v. Green*, 107 F.2d 19, 21 (9th Cir.
4 1939). The removing defendant has the burden of proving the basis for the federal court’s jurisdiction.
5 See *Nishimoto v. Federaman-Bachrach & Assocs.*, 903 F.2d 709, 712 (9th Cir. 1990); see also *Abrego*
6 *Abrego v. Dow Chemical Co.*, 443 F.3d 676, 682 (9th Cir. 2006). It is also the duty of the Court to make
7 sure that jurisdiction exists. Removal statutes are strictly construed against removal. See *Shamrock Oil*
8 & Gas Corp. v. Sheets, 313 U.S. 100, 108 (1941); see also *Takeda v. Northwestern Nat’l. Life Ins. Co.*,
9 765 F.2d 815, 818 (9th Cir. 1985).

10 The removing defendant must establish either that (1) the action arises under federal law or that
11 (2) all plaintiffs are diverse in citizenship from all defendants and the amount in controversy exceeds
12 \$75,000. See 28 U.S.C. §§ 1331, 1332. A defendant may also remove “certain” civil rights actions
13 pursuant to 28 U.S.C. § 1443. To remove an action pursuant to this statute, the removing defendant must
14 (1) “assert as a defense to the [action], rights that are given to [him] by explicit statutory enactment
15 protecting equal racial civil rights” and (2) “assert that the state courts will not enforce that right.” See
16 *Patel v. Del Taco, Inc.*, 446 F.3d 996, 998-99 (9th Cir. 2006).

18 Lack of subject matter jurisdiction may be challenged by either party or raised sua sponte by the
19 Court. See Fed. R. Civ. P. 12(b)(1); see also Fed. R. Civ. P. 12(h)(3); *Ruhrgas AG v. Marathon Oil Co.*,
20 526 U.S. 574, 583-84 (1999); *Geminiano-Martinez v. Beers*, No. 2:13-cv-01702-MMD, 2013 WL
21 6844717, at *2 (D. Nev. Dec. 13, 2013) (“The court may sua sponte raise the issue of lack of subject
22 matter jurisdiction and must dismiss a case if no subject matter jurisdiction exists ... Even where neither
23 party contests subject matter jurisdiction, courts are ‘bound to address it sua sponte if it is questionable.’
24 ” (quoting *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 421 (9th Cir. 1991)); 5C Charles Alan Wright, Arthur
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1 R. Miller & Richard L. Marcus, *Federal Practice and Procedure*, § 1393 (3d ed. 2017) (“it is now well-
2 settled that a lack of subject matter jurisdiction may be asserted by the federal court itself ...”).

3 In particular, Fed. R. Civ. P. 12(h)(3) provides that “[i]f the court determines at any time that it
4 lacks subject-matter jurisdiction, the court must dismiss the action.” See Fed. R. Civ. P. 12(h)(3); see also
5 *Cat Diversified Promotions, Inc. v. Musick*, 505 F.2d 278, 280 (9th Cir. 1974) (“It has long been held that
6 a judge can dismiss sua sponte for lack of jurisdiction”). What is more, in connection with in forma
7 pauperis actions such as this, the district courts are obliged to dismiss sua sponte actions failing to state a
8 claim upon which relief can be granted:

9 Notwithstanding any filing fee, or any portion thereof, that may have been
10 paid, the court shall dismiss the case at any time if the court determines
11 that—

11 ...

12 (B) the action ...

13 (ii) fails to state a claim on which relief may be granted

14 See 28 U.S.C. § 1915(e)(2). Accordingly, if at any time a district court determines that it lacks subject
15 matter jurisdiction, it must remand the case to state court. See *Emrich v. Touche Ross & Co.*, 846 F.2d
16 1190, 1194 n.2 (9th Cir. 1988) (a district court may sua sponte remand); *Kelton Arms Condo. Owners*
17 *Ass’n v. Homestead Ins. Co.*, 346 F.3d 1190, 1192 (9th Cir. 2003) (a district court “must” remand when it
18 lacks subject matter jurisdiction); 5C *Wright et al.*, *supra*, § 1393 (“If Federal jurisdiction is not apparent,
19 the Court not only will, but must, refuse to proceed with the determination of the merits of the controversy,
20 unless this failure can be cured. This is true regardless of what stage the case may be in, and whether the
21 defect is called to the Court’s attention by suggestion of the parties, or otherwise ...”).

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23 In this case, Lawson argues that the Court has subject matter jurisdiction based on a federal
24 question. The “well-pleaded complaint” rule requires a federal question to be presented on the face of a
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1 complaint at the time of removal for federal question jurisdiction to exist. See *Duncan v. Stuetzel*, 76 F.3d
2 1480, 1485 (9th Cir. 1996). The removal statute states that “any civil action brought in a State court of
3 which the district courts of the United States have original jurisdiction, may be removed by the defendant
4 or the defendants, to the district court of the United States for the district and division embracing the place
5 where such action is pending.” See 28 U.S.C. § 1441(a). The complaint asserts only state law claims for
6 unlawful detainer and for declaratory relief. The question then, is whether this Court has original
7 jurisdiction over this state unlawful detainer action. It does not. “Unlawful detainer claims do not arise
8 under federal law and, without more, the court lacks federal question jurisdiction.” See *Wells Fargo Bank*
9 *N.A. v. Robinson*, No. C 14-03663 LB, 2014 WL 4748471, at *3 (N.D. Cal. Sept. 23, 2014) (citing *Fed.*
10 *Nat’l Mortg. Assoc. v. Lopez*, No. C 11-00451 WHA, 2011 WL 1465678, at *1 (N.D. Cal. Apr. 15, 2011));
11 see also *GMAC Mortg. LLC v. Rosario*, No. C 11-1894 PJH, 2011 WL 1754053, at *2 (N.D. Cal. May 9,
12 2011); *Wescom Credit Union v. Dudley*, 2010 WL 4916578, at *2 (C.D. Cal. Nov. 22, 2010).

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14 And “[i]t is ‘settled law that a case may not be removed to federal court on the basis of a federal
15 defense.’ ” See *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009) (quoting *Franchise*
16 *Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 14 (1983)); see also *Caterpillar Inc. v. Williams*,
17 482 U.S. 386 (1987) (under the “well-pleaded complaint” rule, a case may not be removed on the basis of
18 a federal defense); *Wayne v. DHL Worldwide Express*, 294 F.3d. 1179, 1183 (9th Cir. 2002) (existence of
19 a defense based on federal law is insufficient to support jurisdiction). Here, the complaint asserts only
20 state law claims for unlawful detainer and for declaratory relief, and does not present any federal question.
21 Lawson also does not appear to raise a federal defense,² and she therefore cites 28 U.S.C. § 1443(1) as a
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² See ECF No. 1-2, Ex. B.

1 basis for removal. See, e.g., ECF No. 1-1 at 7 (“Defendant is entitled to remove the above-entitled and
2 numbered cause to the United States District Court, under 28 U.S.C. §1443(1) ...”).

3 28 U.S.C. § 1443(1) permits the removal of certain “civil rights cases.” As noted above, a petition
4 for removal under § 1443(1) must satisfy a two-part test: (1) “the petitioner must assert, as a defense to
5 the [action], rights that are given to them by explicit statutory enactment protecting equal racial civil
6 rights;” and (2) the “petitioners must assert that the state courts will not enforce that right,” with “reference
7 to a state statute or constitutional provision that purports to command the state courts to ignore the federal
8 rights.” See Patel, 446 F.3d at 998-99.

9 Lawson in essence argues that she will raise a defense to the unlawful detainer action pursuant to
10 her equal rights based not on race but on other constitutionally guaranteed rights she claims are protected.
11 See ECF No. 1-1 at 2 (“Plaintiff ... caused Defendant harm and under title 42 USC 1983 and 1985”), 7,
12 (“plaintiffs discriminatory and retaliatory acts in violation of fair housing and that specifically violate the
13 equal protection of the laws and equal access to the courts and to due process of law granted and secured
14 by 42 U.S.C. §§1981 & 1982.”), 9 (“The federal question law is the Federal protection of homeowner
15 discrimination against the poor and in favor of the rich), 13 (“The Nevada Justice Courts of Limited
16 Jurisdiction ... operate based on an institutionalized predetermination of the outcome reflect a pervasive
17 state statutory program expressly designed to deny Defendants their equal constitutional rights to equal
18 access to the Courts and to make and enforce contracts [for the] maintenance of interest in property, which
19 rights are guaranteed by the First, Fifth[,] Ninth, and Fourteenth Amendments to the Constitution, as well
20 as by the Article I guarantee against state ‘impairment of the obligations of contract.’ ”), 15 (“The federal
21 question law is the violation of civil rights that has associated Federal Claims of the SEC, securities
22 issues[,] and violations of federal banking laws in alleged property transfers.”); but see ECF No. 1-1 at 7
23 (“Defendant has a right to remove on the basis that there is a pervasive state statutory program which both
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1 on its face and as applied discriminates unfairly against Ethnic-Surname Americans (all of whom are
2 presumed to be unfamiliar with legal proceedings and/or illiterate in the English language and therefore
3 ignorant of their rights”).

4 U.S. Supreme Court and Ninth Circuit precedent limit removal under § 1443(1) to cases where it
5 is predicated upon racial discrimination. See *Georgia v. Rachel*, 384 U.S. 780, 788-92 (1966) (“we
6 conclude that the phrase ‘any law providing for equal civil rights’ must be construed to mean any law
7 providing for specific civil rights stated in terms of racial equality.”); see also *Patel*, 446 F.3d at 998-99.
8 Because Lawson’s brief is not predicated upon racial discrimination, Lawson’s attempt to remove this
9 matter on the basis of 28 U.S.C. § 1443 necessarily fails. See *Working Dirt LLC v. Raynor*, No. 16-cv-
10 5444 YGR, 2016 WL 6124707, at *2 (N.D. Cal. Oct. 20, 2016) (denying 28 U.S.C. § 1443 removal where
11 the case lacked any racial equity component); see also *Duke Partners II, LLC v. Vonquerner*, No. 5:16-
12 cv-05542-HRL, 2016 WL 6273928, at *2 (N.D. Cal. Oct. 27, 2016) (same); *Baldini Real Estate, Inc. v.*
13 *Cruz*, No. 15-cv-2932 YGR, 2015 WL 4760510, at *2 (N.D. Cal. Aug. 12, 2015) (same); *CIC v. Villa*,
14 No. 2:16-cv-08243-OD-WAS, 2016 WL 6808119, at *3 (C.D. Cal. Nov. 17 2016). Lawson has therefore
15 failed to establish that this Court has subject matter jurisdiction on the basis of a federal question, 28
16 U.S.C. section 1443(1) or otherwise.

17
18 ACCORDINGLY,

19 IT IS RECOMMENDED that this case be REMANDED to the Eighth Judicial District Court for
20 the District of Nevada, County of Clark, for further proceedings.³

21 IT IS ORDERED that Defendant Karin Ann Lawson’s Application to Proceed In Forma Pauperis
22 (ECF No. 1) is DENIED as MOOT.

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25 ³ See *Emrich*, 846 F.2d at 1194 n.2; see also *Kelton Arms Condo. Owners Ass’n*, 346 F.3d at 1192.

NOTICE

Pursuant to Local Rules IB 3-1 and 3-2, any objection to this Order and Finding and Recommendation must be in writing and filed with the Clerk of the Court within 14 days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. See *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court’s order and/or appeal factual issues from the order of the District Court. See *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); see also *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

DATED this 16th day of August, 2017.



CAM FERENBACH
UNITED STATES MAGISTRATE JUDGE