



Paul Herold v. Coreen McKendry

2013 | Cited 0 times | C.D. California | May 16, 2013

JS-6 UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL Case No. CV 13-00340-RGK (OPx) Date May 16, 2013 Title PAUL HEROLD v. COREEN MCKENDRY

Present: The Honorable

R. GARY KLAUSNER, U.S. DISTRICT JUDGE

Sharon L. Williams (Not Present) Not Reported N/A

Deputy Clerk Court Reporter / Recorder Tape No. Attorneys Present for Plaintiffs: Attorneys Present for Defendants:

Not Present Not Present Proceedings: (IN CHAMBERS) ORDER REMANDING CIVIL ACTION TO SUPERIOR COURT

On February 22, 2013, Defendant Coreen McKendry (“Defendant”), in pro se, removed this action from the Riverside County Superior Court of California to the United States District Court, Central District of California on the basis of federal question jurisdiction, pursuant to 28 U.S.C. § 1331.

Removal jurisdiction is governed by statute. See 28 U.S.C. §§ 1441, et seq. The Ninth Circuit has held unequivocally that the removal statute is construed strictly against removal. *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1393 (9th Cir. 1988). The strong presumption against removal jurisdiction means that “the defendant always has the burden of establishing that removal is proper.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citing *Nishimoto v. Federman-Bachrach & Assocs.*, 903 F.2d 709, 712 n.3 (9th Cir. 1990)); see also *In re Ford Motor Co./Citibank (South Dakota), N.A.*, 264 F.3d 952, 957 (9th Cir. 2001) (“The party asserting federal jurisdiction bears the burden of proving the case is properly in federal court.”).

Defendant states that the basis for removal is that the claims arise under federal law. However, according to Defendant’s Notice of Removal, the removed Complaint states one claim for Unlawful Detainer, an action that exclusively invokes authority pursuant to California statute. There is no indication that the Complaint sets forth any claims arising under the U.S. Constitution, treaties, or



Paul Herold v. Coreen McKendry

2013 | Cited 0 times | C.D. California | May 16, 2013

laws of the United States for which the Court would have “original jurisdiction.” 28 U.S.C. § 1441(b). Defendant cannot confer jurisdiction upon the Court by attempting to attach a federal question to her Notice of Removal. Accordingly, Defendant’s removal is improper for lack of federal question jurisdiction.

CV-90 (06/04) CIVIL MINUTES - GENERAL

Page 1 of 2 For the foregoing reasons, the above-entitled case is ordered REMANDED to the Superior Court for all further proceedings for lack of subject matter jurisdiction.

IT IS SO ORDERED.

: Initials of Preparer

CV-90 (06/04) CIVIL MINUTES - GENERAL

Page 2 of 2

