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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WELLS FARGO BANK, N.A.,

Plaintiff,

No. 2:13-cv-0348 GEB GGH PS

vs.

ALICE KIRKPATRICK, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____/

This action was referred to the undersigned pursuant to E.D. Cal. L.R. 302(c)(21). It was removed from state court on February 21, 2013 by defendants, based on diversity and federal question jurisdiction. Nevertheless, a district court has “a duty to establish subject matter jurisdiction over [a] removed action *sua sponte*, whether the parties raised the issue or not.” United Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 966 (9th Cir. 2004); see also Kelton Arms Condominium Assoc., Inc. v. Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003). Because subject matter jurisdiction may not be waived by the parties, a district court must remand a case if it lacks jurisdiction over the matter. Kelton Arms Condominium Owners Ass’n, Inc., 346 F.3d at 1192 (citing Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc., 159 F.3d 1209, 1211 (9th Cir. 1998)); see also 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded”). Having reviewed the notice of removal, the court finds that the action should be remanded to state court due to lack of subject matter jurisdiction.

1 Removal jurisdiction statutes are strictly construed against removal. See Libhart
2 v. Santa Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir. 1979). “Federal jurisdiction must be
3 rejected if there is any doubt as to the right of removal in the first instance.” Gaus v. Miles, 980
4 F.2d 564, 566 (9th Cir. 1992). “The burden of establishing federal jurisdiction falls on the party
5 invoking removal.” Harris v. Provident Life and Accident Ins. Co., 26 F.3d 930 (9th Cir. 1994),
6 *overruled on other grounds by* Leeson v. Transamerica Disability Income Plan, 671 F.3d 969,
7 979 (9th Cir. 2012).

8 A plaintiff may bring suit in federal court if his claim “arises under” federal law.
9 28 U.S.C. § 1331. In that situation, the court has original jurisdiction. A state court defendant
10 cannot invoke the federal court’s original jurisdiction. But he may in some instances invoke the
11 court’s removal jurisdiction. The requirements to invoke removal jurisdiction are often identical
12 to those for invoking its original jurisdiction. The requirements for both relate to the same end,
13 that is, federal jurisdiction.

14 Removal of a state court action is proper only if it originally could have been filed
15 in federal court. 28 U.S.C. § 1441. “[F]ederal courts have jurisdiction to hear, originally or by
16 removal, only those cases in which a well-pleaded complaint establishes either that federal law
17 creates the cause of action, or that the plaintiff’s right to relief necessarily depends on resolution
18 of a substantial question of federal law.” Franchise Tax Board v. Construction Laborers
19 Vacation Trust, 463 U.S. 1, 27-28, 103 S. Ct. 2841, 2855-56 (1983). Mere reference to federal
20 law is insufficient to permit removal. See Smith v. Industrial Valley Title Ins. Co., 957 F.2d 90,
21 93 (3d Cir. 1992). Also, defenses and counterclaims cannot provide a sufficient basis to remove
22 an action to federal court. See Berg v. Leason, 32 F.3d 422, 426 (9th Cir. 1994); FIA Card Servs.
23 v. McComas, 2010 WL 4974113 (S.D. Cal. Dec. 2, 2010) (remanding action removed by
24 defendant on the basis that defendant’s counterclaim raised a federal question).

25 Here, the exhibits attached to the removal petition establish that the state court
26 action is nothing more than a simple unlawful detainer action, and is titled as such. (See Dkt.

1 No. 1, at pp. 10-11.) This court has no jurisdiction over unlawful detainer actions which are
2 strictly within the province of the state court. Defendants' removal petition asserts federal
3 jurisdiction "resulting from [Defendants'] Discovery Request and Demands for 'THE
4 ORIGINAL BLUE INK PROMISSORY NOTE,' and as to identify the statutory basis for the
5 discovery request/demands and other claims." (Dkt. no. 1 at 1.) Such averments do not
6 establish federal question jurisdiction.

7 The removal petition also asserts complete diversity because defendants reside in
8 California. The citizenship of Wells Fargo Bank, N.A., however, is not addressed in the notice
9 of removal. For diversity jurisdiction pursuant to 28 U.S.C. § 1332, each plaintiff must be
10 diverse from each defendant, and the amount in controversy must exceed \$75,000. Defendants
11 do not assert that the amount in controversy exceeds \$75,000 in this case. Even if they made
12 such a claim, they are informed that the measure of damages is limited to the amount sought in
13 the complaint, not the value of the property. Signet Doman, LLC v. Sam Aintablian, 2012 WL
14 5512388 (C.D. Cal. Nov. 14, 2012). Here, the complaint seeks possession of the subject property
15 as well as restitution in an unnamed amount. (See Dkt. No. 1, at p. 11.) These requested
16 damages do not satisfy the amount in controversy requirement.

17 Defendants have not provided a sufficient basis to remove the action to federal
18 court. Based on the aforementioned analysis, the court finds that remand is appropriate, because
19 there is no subject matter jurisdiction.

20 For the foregoing reasons, IT IS HEREBY RECOMMENDED that:

- 21 1. The action be remanded to San Joaquin County Superior Court, Lodi Branch;
- 22 2. The Clerk be directed to serve a certified copy of this order on the Clerk of the
23 San Joaquin County Superior Court, Lodi Branch, and reference the state case number (39-2012-
24 00289560-CL-UD-LOD) in the proof of service; and
- 25 3. The Clerk be directed to close this case.

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