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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RYAN FAMILY TRUST,

 Plaintiff,

 v.

CARMEN CHAIREZ,

 Defendant.

No. 2:14-cv-958 JAM-KJN PS

ORDER

This is an unlawful detainer action that was removed to this Court on April 18, 2014, by Defendant Carmen Chairez, proceeding without counsel, from the San Joaquin County Superior Court. (ECF No. 1.) Defendant also filed a request to proceed *in forma pauperis*.¹ (ECF No. 2.)

I. OPINION

Defendant’s application in support of her request to proceed *in forma pauperis* makes the showing required by 28 U.S.C. §

¹This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). No hearing was scheduled.

1 1915(a)(1). Accordingly, the Court grants Defendant's request to
2 proceed *in forma pauperis*.

3 The determination that a party may proceed *in forma pauperis*
4 does not complete the required inquiry. A federal court has an
5 independent duty to assess whether federal subject matter
6 jurisdiction exists, whether or not the parties raise the issue.
7 See United Investors Life Ins. Co. v. Waddell & Reed Inc., 360
8 F.3d 960, 967 (9th Cir. 2004) (stating that "the district court
9 had a duty to establish subject matter jurisdiction over the
10 removed action *sua sponte*, whether the parties raised the issue
11 or not"); accord Rains v. Criterion Sys., Inc., 80 F.3d 339, 342
12 (9th Cir. 1996). Because subject matter jurisdiction may not be
13 waived by the parties, a district court must remand a case if it
14 lacks jurisdiction over the matter. Kelton Arms Condominium
15 Owners Ass'n, Inc. v. Homestead Ins. Co., 346 F.3d 1190, 1192
16 (9th Cir. 2003) (citing Sparta Surgical Corp. v. Nat'l Ass'n of
17 Sec. Dealers, Inc., 159 F.3d 1209, 1211 (9th Cir. 1998)); see
18 also 28 U.S.C. § 1447(c) ("If at any time before final judgment
19 it appears that the district court lacks subject matter
20 jurisdiction, the case shall be remanded"). For the reasons
21 outlined below, the Court finds that it lacks subject matter
22 jurisdiction over the action and thus remands the case to state
23 court.

24 In relevant part, the federal removal statute provides:

25 (a) Except as otherwise expressly provided by
26 Act of Congress, any civil action brought in
27 a State court of which the district courts of
28 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

1 embracing the place where such action is
2 pending.

3 28 U.S.C. § 1441(a). "The defendant bears the burden of
4 establishing that removal is proper." Provincial Gov't of
5 Marinduque v. Placer Dome, Inc., 582 F.3d 1083, 1087 (9th Cir.
6 2009). "The removal statute is strictly construed against
7 removal jurisdiction," id., and removal jurisdiction "must be
8 rejected if there is any doubt as to the right of removal in the
9 first instance," Geographic Expeditions, Inc. v. Estate of
10 Lhotka, 599 F.3d 1102, 1107 (9th Cir. 2010) (citation and
11 quotation marks omitted).

12 A federal district court generally has original jurisdiction
13 over a civil action when: (1) a federal question is presented in
14 an action "arising under the Constitution, laws, or treaties of
15 the United States" or (2) there is complete diversity of
16 citizenship and the amount in controversy exceeds \$75,000. See
17 28 U.S.C. §§ 1331, 1332(a).

18 In regard to federal question jurisdiction, federal courts
19 have "jurisdiction to hear, originally or by removal from a state
20 court, only those cases in which a well-pleaded complaint
21 establishes either that federal law creates the cause of action,
22 or that the plaintiff's right to relief necessarily depends on
23 resolution of a substantial question of federal law." Franchise
24 Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 27-28
25 (1983); see also Republican Party of Guam v. Gutierrez, 277 F.3d
26 1086, 1088-89 (9th Cir. 2002). "[T]he presence or absence of
27 federal-question jurisdiction is governed by the 'well-pleaded
28 complaint rule,' which provides that federal jurisdiction exists

1 only when a federal question is presented on the face of the
2 plaintiff's properly pleaded complaint." Placer Dome, Inc., 582
3 F.3d at 1091 (citation and quotation marks omitted). "In
4 determining the existence of removal jurisdiction, based upon a
5 federal question, the court must look to the complaint as of the
6 time the removal petition was filed." Abada v. Charles Schwab &
7 Co., 300 F.3d 1112, 1117 (9th Cir. 2002) (citation and quotation
8 marks omitted). Mere reference to federal law is insufficient to
9 permit removal. See Smith v. Indus. Valley Title Ins. Co., 957
10 F.2d 90, 93 (3d Cir. 1992) ("[T]he mere presence of a federal
11 issue in a state cause of action does not automatically confer
12 federal question jurisdiction"). Also, defenses and
13 counterclaims cannot provide a sufficient basis to remove an
14 action to federal court. See Vaden v. Discover Bank, 556 U.S.
15 49, 60 (2009); Berg v. Leason, 32 F.3d 422, 426 (9th Cir. 1994);
16 Takeda v. Northwestern Nat'l Life Ins. Co., 765 F.2d 815, 821-22
17 (9th Cir. 1985).

18 Here, removal cannot be based on federal question
19 jurisdiction. Although Defendant's notice of removal suggests
20 that Plaintiff brings claims under various federal statutes,
21 including the Fair Debt Collection Practices Act, the Real Estate
22 Settlement Procedures Act, and the Truth in Lending Act, the
23 state court papers accompanying the notice of removal indicate
24 that the state court action is nothing more than a simple
25 unlawful detainer action. (ECF No. 1 at 6-13.) This Court has
26 no jurisdiction over unlawful detainer actions, which are brought
27 pursuant to state law and fall strictly within the province of
28 the state court.

1 Any defenses or counterclaims based on federal law must
2 generally be raised in the state court action and do not provide
3 a basis for removal. "A case may not be removed to federal court
4 on the basis of a federal defense, . . . even if the defense is
5 anticipated in the plaintiff's complaint, and even if both
6 parties admit that the defense is the only question truly at
7 issue in the case." ARCO Env'tl. Remediation, LLC v. Dep't. of
8 Health & Env'tl. Quality of the State of Montana, 213 F.3d 1108,
9 1113 (9th Cir. 2000) (citation and quotation marks omitted); see
10 also Valles v. Ivy Hill Corp., 410 F.3d 1071, 1075 (9th Cir.
11 2005) ("A federal law defense to a state-law claim does not
12 confer jurisdiction on a federal court, even if the defense is
13 that of federal preemption and is anticipated in the plaintiff's
14 complaint.")

15 Furthermore, this action cannot be removed on grounds of
16 diversity jurisdiction. First, the amount in controversy does
17 not exceed \$75,000, because Plaintiff's complaint specifically
18 does not seek more than \$10,000. (ECF No. 1 at 10.) Second,
19 even if the amount in controversy exceeded \$75,000, Defendant is
20 a citizen of California, and therefore cannot remove the action
21 from a California state court on the basis of diversity
22 jurisdiction. See 28 U.S.C. § 1441(b) ("Any civil action of
23 which the district courts have original jurisdiction founded on a
24 claim or right arising under the Constitution, treaties or laws
25 of the United States shall be removable without regard to the
26 citizenship or residence of the parties. *Any other such action*
27 *shall be removable only if none of the parties in interest*
28 *properly joined and served as defendants is a citizen of the*

1 State in which such action is brought") (emphasis added).

2 For the reasons set forth above, the Court finds that it
3 lacks federal subject matter jurisdiction over Plaintiff's
4 unlawful detainer action brought pursuant to California law. As
5 such, the case must be remanded to state court.

6 Finally, the Court notes that this is now the second time
7 that Defendant has improperly removed Plaintiff's unlawful
8 detainer action to federal court. See Ryan Family Trust v.
9 Chairez, 2:14-cv-97-JAM-AC, ECF No. 6 (April 16, 2014 order
10 remanding action to state court based on lack of subject matter
11 jurisdiction). Mere days later, on April 18, 2014, Defendant
12 filed the present notice of removal. Defendant is put on notice
13 that "[a]n order remanding the case may require payment of just
14 costs and any actual expenses, including attorney fees, incurred
15 as a result of the removal." 28 U.S.C. § 1447(c). Although the
16 Court, in light of Defendant's *pro se* status, presently declines
17 to order the payment of costs and expenses, Defendant is
18 cautioned that any future improper removals may result in an
19 award of costs and expenses to Plaintiff, and/or the imposition
20 of any other appropriate sanctions.

21
22 II. ORDER

23 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 24 1. Defendant's request to proceed *in forma pauperis* (ECF
25 No. 2) is GRANTED.
- 26 2. The action is REMANDED to the San Joaquin County
27 Superior Court.

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3. The Clerk of Court shall serve a certified copy of this order on the Clerk of the San Joaquin County Superior Court, and reference the state case number (39-2013-00303361-CL-UD-MAN) in the proof of service.
4. The Clerk of Court shall vacate any dates and close this case.

IT IS SO ORDERED.

Dated: April 22, 2014



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE