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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT SUPANICH & SOPHIE  
SUPANICH,

Plaintiffs,

v.

YVONNE NED,

Defendant.

No. 2:15-cv-0202-JAM-KJN PS

ORDER AND  
FINDINGS AND RECOMMENDATIONS

This is an unlawful detainer action that was removed to this court by defendant Yvonne Ned, proceeding without counsel, from the Sacramento County Superior Court on January 26, 2015. (ECF No. 1)<sup>1</sup> Defendant also filed a request to proceed *in forma pauperis*. (ECF No. 2.)

Defendant’s application in support of her request to proceed *in forma pauperis* makes the showing required by 28 U.S.C. § 1915. Accordingly, the court grants defendant’s request to proceed *in forma pauperis*.

The determination that a party may proceed *in forma pauperis* does not complete the required inquiry. A federal court has an independent duty to assess whether federal subject matter jurisdiction exists, whether or not the parties raise the issue. See United Investors Life Ins.

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<sup>1</sup> This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004) (stating that “the district court had  
2 a duty to establish subject matter jurisdiction over the removed action *sua sponte*, whether the  
3 parties raised the issue or not”); accord Rains v. Criterion Sys., Inc., 80 F.3d 339, 342 (9th Cir.  
4 1996). Because subject matter jurisdiction may not be waived by the parties, a district court must  
5 remand a case if it lacks jurisdiction over the matter. Kelton Arms Condominium Owners Ass’n,  
6 Inc. v. Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003) (citing Sparta Surgical Corp. v.  
7 Nat’l Ass’n of Sec. Dealers, Inc., 159 F.3d 1209, 1211 (9th Cir. 1998)); see also 28 U.S.C. §  
8 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter  
9 jurisdiction, the case shall be remanded”). For the reasons outlined below, the court finds that it  
10 lacks federal subject matter jurisdiction over the action and recommends that the action be  
11 remanded to state court.

12 In relevant part, the federal removal statute provides:

13 (a) Except as otherwise expressly provided by Act of Congress, any  
14 civil action brought in a State court of which the district courts of  
15 the United States have original jurisdiction, may be removed by the  
16 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.

17 28 U.S.C. § 1441(a). “The defendant bears the burden of establishing that removal is proper.”  
18 Provincial Gov’t of Marinduque v. Placer Dome, Inc., 582 F.3d 1083, 1087 (9th Cir. 2009). “The  
19 removal statute is strictly construed against removal jurisdiction,” *id.*, and removal jurisdiction  
20 “must be rejected if there is any doubt as to the right of removal in the first instance,” Geographic  
21 Expeditions, Inc. v. Estate of Lhotka, 599 F.3d 1102, 1107 (9th Cir. 2010) (citation and quotation  
22 marks omitted).

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

27 In regards to federal question jurisdiction, federal courts have “jurisdiction to hear,  
28 originally or by removal from a state court, only those cases in which a well-pleaded complaint

1 establishes either that federal law creates the cause of action, or that the plaintiff's right to relief  
2 necessarily depends on resolution of a substantial question of federal law." Franchise Tax Bd. v.  
3 Constr. Laborers Vacation Trust, 463 U.S. 1, 27-28 (1983); see also Republican Party of Guam v.  
4 Gutierrez, 277 F.3d 1086, 1088-89 (9th Cir. 2002). "[T]he presence or absence of federal-  
5 question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that  
6 federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's  
7 properly pleaded complaint." Placer Dome, Inc., 582 F.3d at 1091 (citation and quotation marks  
8 omitted). "In determining the existence of removal jurisdiction, based upon a federal question,  
9 the court must look to the complaint as of the time the removal petition was filed." Abada v.  
10 Charles Schwab & Co., 300 F.3d 1112, 1117 (9th Cir. 2002) (citation and quotation marks  
11 omitted). Mere reference to federal law is insufficient to permit removal. See Smith v. Indus.  
12 Valley Title Ins. Co., 957 F.2d 90, 93 (3d Cir. 1992) ("[T]he mere presence of a federal issue in a  
13 state cause of action does not automatically confer federal question jurisdiction"). Also, defenses  
14 and counterclaims cannot provide a sufficient basis to remove an action to federal court. See  
15 Vaden v. Discover Bank, 556 U.S. 49, 60 (2009); Berg v. Leason, 32 F.3d 422, 426 (9th Cir.  
16 1994); Takeda v. Northwestern Nat'l Life Ins. Co., 765 F.2d 815, 821-22 (9th Cir. 1985).

17 Here, removal cannot be based on federal question jurisdiction. The state court pleadings  
18 and papers accompanying the removal notice establish that the state court action is nothing more  
19 than a simple unlawful detainer action involving real property located in Folsom, California. This  
20 court has no jurisdiction over unlawful detainer actions, which are brought pursuant to state law  
21 and fall strictly within the province of the state court.

22 Defendant contends that federal question jurisdiction exists here, because her answer to  
23 the unlawful detainer complaint purportedly depends on the determination of rights and duties  
24 under federal law. However, any defenses based on federal law must generally be raised in the  
25 state court action and do not provide a basis for removal. "A case may not be removed to federal  
26 court on the basis of a federal defense,...even if the defense is anticipated in the plaintiff's  
27 complaint, and even if both parties admit that the defense is the only question truly at issue in the  
28 case." ARCO Env'tl. Remediation, LLC v. Dep't. of Health & Env'tl. Quality of the State of

1 Montana, 213 F.3d 1108, 1113 (9th Cir. 2000) (citation and quotation marks omitted); see also  
2 Valles v. Ivy Hill Corp., 410 F.3d 1071, 1075 (9th Cir. 2005) (“A federal law defense to a state-  
3 law claim does not confer jurisdiction on a federal court, even if the defense is that of federal  
4 preemption and is anticipated in the plaintiff’s complaint.”)

5 Furthermore, this action cannot be removed on grounds of diversity jurisdiction. First, the  
6 amount in controversy does not exceed \$75,000, because plaintiff’s complaint specifically does  
7 not seek more than \$10,000. (ECF No. 1 at 6.) Second, even if the amount in controversy  
8 exceeded \$75,000, defendant is a citizen of California, and therefore cannot remove the action  
9 from a California state court on the basis of diversity jurisdiction. See 28 U.S.C. § 1441(b) (“Any  
10 civil action of which the district courts have original jurisdiction founded on a claim or right  
11 arising under the Constitution, treaties or laws of the United States shall be removable without  
12 regard to the citizenship or residence of the parties. *Any other such action shall be removable*  
13 *only if none of the parties in interest properly joined and served as defendants is a citizen of the*  
14 *State in which such action is brought*”) (emphasis added).

15 Based on the aforementioned analysis, the court finds that it lacks federal subject matter  
16 jurisdiction over plaintiff’s unlawful detainer action brought pursuant to California law.

## 17 CONCLUSION

18 For the foregoing reasons, IT IS HEREBY ORDERED that defendant’s request to proceed  
19 *in forma pauperis* (ECF No. 2) is GRANTED.

20 IT IS ALSO HEREBY RECOMMENDED that:

21 1. The action be REMANDED to the Sacramento County Superior Court.

22 2. The Clerk of Court be directed to serve a certified copy of the order on the Clerk of the  
23 Sacramento County Superior Court, and reference the state case number (14UD09746) in the  
24 proof of service.

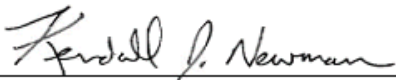
25 3. The Clerk of Court be directed to vacate all dates and close this case.

26 These findings and recommendations are submitted to the United States District Judge  
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
28 days after being served with these findings and recommendations, any party may file written

1 objections with the court and serve a copy on all parties. Such a document should be captioned  
2 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
3 shall be served on all parties and filed with the court within fourteen (14) days after service of the  
4 objections. The parties are advised that failure to file objections within the specified time may  
5 waive the right to appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th  
6 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

7 IT IS SO ORDERED AND RECOMMENDED.

8 Dated: January 27, 2015

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11 KENDALL J. NEWMAN  
12 UNITED STATES MAGISTRATE JUDGE  
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