

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PLEASANTON MANOR, LLC,

Plaintiff,

v.

DRAWING BOARD VENTURES, INC.,

Defendant.

No. 2:15-cv-0233 KJM GGH PS

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 January 28, 2015 by defendant, based on 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 v. Santa
2 Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir. 1979). “Federal jurisdiction must be rejected if
3 there is any doubt as to the right of removal in the first instance.” Gaus v. Miles, 980 F.2d 564,
4 566 (9th Cir. 1992). “The burden of establishing federal jurisdiction falls on the party invoking
5 removal.” Harris v. Provident Life and Accident Ins. Co., 26 F.3d 930 (9th Cir. 1994), *overruled*
6 *on other grounds by* Leeson v. Transamerica Disability Income Plan, 671 F.3d 969, 979 (9th Cir.
7 2012).

8 A plaintiff may bring suit in federal court if his claim “arises under” federal law. 28
9 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 in
15 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 Vacation
19 Trust, 463 U.S. 1, 27-28, 103 S. Ct. 2841, 2855-56 (1983). Mere reference to federal law is
20 insufficient to permit removal. See Smith v. Industrial Valley Title Ins. Co., 957 F.2d 90, 93 (3d
21 Cir. 1992) (“[T]he mere presence of a federal issue in a state cause of action does not
22 automatically confer federal question jurisdiction”). Also, defenses and counterclaims cannot
23 provide a sufficient basis to remove an action to federal court. See Vaden v. Discover Bank, 556
24 U.S. 49, 60, 129 S.Ct. 1262, 173 L.Ed.2d 206 (2009); Berg v. Leason, 32 F.3d 422, 426 (9th
25 Cir.1994); Takeda v. Northwestern Nat’l Life Ins. Co., 765 F.2d 815, 821–22 (9th Cir.1985); FIA
26 Card Servs. v. McComas, 2010 WL 4974113 (S.D. Cal. Dec. 2, 2010) (remanding action
27 removed by defendant on the basis that defendant’s counterclaim raised a federal question).

28 Here, the exhibits attached to the removal petition establish that the state court action is

1 nothing more than a simple unlawful detainer action, and is titled as such. (See ECF No. 1, at pp.
2 10-13.) This court has no jurisdiction over unlawful detainer actions which are strictly within the
3 province of the state court. Defendant’s removal petition incorrectly asserts that the state court
4 action is a federal question action. (Id. at 2.) Defendant also asserts federal jurisdiction based on
5 the “‘Protecting Tenants at Foreclosure Act of 2009,’ 12 U.S.C. § 5220.” (Id.) Such averments
6 do not establish federal question jurisdiction, especially since the complaint contains no mention
7 of this act. Plaintiff, the apparent owner of the subject real property in Placer County, California,
8 filed suit in the Placer County Superior Court on November 6, 2014, seeking to evict defendant
9 from the property. (Id. at 10-11.) This court has no jurisdiction over unlawful detainer actions,
10 which are brought pursuant to state law and fall strictly within the province of the state court.

11 Furthermore, while defendant may seek to raise counterclaims based on federal law in
12 response to plaintiff’s unlawful detainer claim, any counterclaim based on federal law must
13 generally be raised in the state court action and does not provide a basis for removal. “[A] federal
14 counterclaim, even when compulsory, does not establish ‘arising under’ jurisdiction.” Id. In
15 other words, federal question jurisdiction under 28 U.S.C. § 1331 cannot “rest upon an actual or
16 anticipated counterclaim.” Id.; see also Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.,
17 535 U.S. 826, 830, 122 S.Ct. 1889, 153 L.Ed.2d 13 (2002) (“[T]he well-pleaded complaint rule,
18 properly understood, [does not] allo[w] a counterclaim to serve as the basis for a district court’s
19 ‘arising under’ jurisdiction.”); Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust
20 for Southern Cal., 463 U.S. 1, 10–11, n. 9, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983) (“The well-
21 pleaded complaint rule applies to the original jurisdiction of the district courts as well as to their
22 removal jurisdiction.”). Accordingly, based on defendant’s removal filing, federal question
23 jurisdiction is not present in this case.

24 Defendant has not provided a sufficient basis to remove the action to federal court. Based
25 on the aforementioned analysis, the court finds that remand is appropriate, because there is no
26 subject matter jurisdiction.

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

- 28 1. The action be remanded to Placer County Superior Court;

