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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CAROLYN BRADLEY, ATTORNEY IN
FACT FOR NORMA G. BRADLEY,

Plaintiff,

v.

WILLIAM G. TAFF AND KAREN D.
TAFF, AND DOES 1-10, INCLUSIVE,

Defendants.

No. 2:15-CV-1578 TLN CKD PS

ORDER

This matter is before the Court pursuant to Defendants’ Notice of Removal and Motion to Proceed in Forma Pauperis. (Compl., ECF No. 1, 2.) For the reasons set forth below, Defendants’ Motion to Proceed in Forma Pauperis is GRANTED. The Court hereby REMANDS the action to the Superior Court of California, County of Sacramento, due to lack of subject-matter jurisdiction.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On or about May 18, 2015, the Plaintiff Carolyn Bradley (“Plaintiff”) bought the property at 3152 Miramonte Drive, Sacramento, CA 95833 (“the Property”) at a trustee’s sale following foreclosure proceedings. (ECF No. 1 at 10.) The Complaint alleges that on June 9, 2015, the Defendants William G. Taff and Karen D. Taff (“Defendants”) were served a three-day written notice to vacate the Property and deliver up possession of the Property, in accordance with Cal.

1 Civ. Pro. Code § 1161a(b)(3). (ECF No. 1 at 10.) Plaintiff claims that three days passed without
2 Defendants’ compliance, and that Defendants continue to possess the Property without Plaintiff’s
3 consent. (ECF No. 1 at 10.)

4 Plaintiff commenced an action for unlawful detainer in the Superior Court of California,
5 County of Sacramento, on June 15, 2015. On July 23, 2015, Defendants filed a Motion to
6 Proceed in Forma Pauperis and a Notice of Removal in United States District Court, Eastern
7 District of California. (ECF No. 1, 2.)

8 **II. STANDARD OF LAW**

9 28 U.S.C. § 1441 permits the removal to federal court of any civil action over which “the
10 district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a). “Removal is
11 proper only if the court could have exercised jurisdiction over the action had it originally been
12 filed in federal court.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

13 Courts “strictly construe the removal statute against removal jurisdiction,” and “the
14 Defendants always have the burden of establishing that removal is proper.” *Gaus v. Miles, Inc.*,
15 980 F.2d 564, 566 (9th Cir. 1992) (per curiam). Furthermore, “[i]f the district court at any time
16 determines that it lacks subject matter jurisdiction over the removed action, it must remedy the
17 improvident grant of removal by remanding the action to state court.” *California ex rel. Lockyer*
18 *v. Dynegy, Inc.*, 375 F.3d 831, 838, *as amended*, 387 F.3d 966 (9th Cir. 2004), *cert. denied* 544
19 U.S. 974 (2005).

20 The “presence or absence of federal question jurisdiction is governed by the ‘well-pleaded
21 complaint rule,’ which provides that federal jurisdiction exists only when a federal question is
22 presented on the face of the Plaintiff’s properly pleaded complaint.” *Caterpillar*, 482 U.S. at 386.
23 Removal cannot be based on a defense, counterclaim, cross-claim, or third party claim raising a
24 federal question, whether filed in state court or federal court. *See Vaden v. Discover Bank*, 556
25 U.S. 49, 61–62 (2009); *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042–43 (9th Cir. 2009).

26 **III. ANALYSIS**

27 Defendants removed this case to this Court on the basis of federal question jurisdiction.
28 Defendants argue that this case is a federal question under the Protecting Tenants at Foreclosure

1 Act of 2009 (“PTFA”).¹ (ECF No. 1 at 2.)

2 Defendants state that the Plaintiff’s “Notice to Occupants to Vacate Premises failed to
3 comply with the Tenants at Foreclosure Act [12 U.S.C. § 5220].” (ECF No. 1 at 2.) Plaintiff’s
4 Complaint did not reference to the PTFA. The Complaint itself contains only a single claim for
5 unlawful detainer. (ECF No. 1 at 9–10). Under the well-pleaded complaint rule, “federal
6 [question] jurisdiction exists only when a federal question is presented on the face of the
7 Plaintiff’s properly pleaded complaint.” *Caterpillar*, 482 U.S. at 386. The instant Complaint
8 relies solely on California state law and does not mention expressly or impliedly 12 U.S.C. §
9 5220. The Complaint does not state claims under the PTFA or any other federal law. The well-
10 pleaded complaint rule makes the Plaintiff the master of his claim, so he may avoid federal
11 jurisdiction by basing his claim exclusively on state law, as is the case here. *Caterpillar*, 482
12 U.S. at 392.

13 Defendants allege the statute is at issue because the Plaintiff’s “Notice to Occupants to
14 Vacate Premises” was defective and failed to comply with the PTCA. (ECF No. 1 at ¶ 8.) It
15 seems Defendants mean to assert subject matter jurisdiction by alleging Plaintiff violated the
16 PTFA.² However, Defendants’ assertions are unavailing because removal cannot be based on a
17 defense, counterclaim, cross-claim, or third party claim raising a federal question, whether filed in
18 state court or federal court. *See Vaden*, 556 U.S. at 49; *Hunter v. Philip Morris USA*, 582 F.3d at
19 1042–43. While Defendants contend in the notice of removal that Plaintiff has violated a federal
20 law, this assertion relates only to an affirmative defense or potential counterclaim, which is not
21 considered in evaluating whether a federal question appears on the face of a Plaintiff’s complaint.
22 *See Vaden*, 556 U.S. at 60–62. “[A] counterclaim – which appears as part of the defendants’
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24 ¹ The court notes that the Plaintiff also moved to remand on the grounds that Defendants’
25 removal procedure was defective. However, the court declines to address Defendant’s removal
26 procedure because the suit should be remanded due to lack of subject-matter jurisdiction.

27 ² In any event, the Ninth Circuit has held that no private right of action exists under the
28 PTFA. *Logan v. U.S. Nat. Assoc.*, 722 F.3d 1163, 1173 (9th Cir. 2013). Further, “the PTFA is
framed in terms of ‘protections’ for tenants, suggesting that it was intended to provide a defense
in state eviction proceedings rather than a basis for offensive suits in federal courts.” *Id.* at 1173
(emphasis added).

1 answer, not as part of the plaintiff's complaint – cannot serve as the basis for 'arising under'
2 jurisdiction." *Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831
3 (2002).

4 In summary, the state court Complaint indicates that the only cause of action is one for
5 unlawful detainer, which arises solely under state law and not under federal law. Thus, this action
6 does not arise under federal law and no other grounds for federal jurisdiction are apparent.
7 Therefore, it is appropriate to remand this case, *sua sponte*, for lack of federal jurisdiction. *See*
8 *United Investors Life Ins. Co. v. Waddell & Reed Inc.*, 360 F.3d 960, 967 (9th Cir. 2004) ("the
9 district court ha[s] a duty to establish subject matter jurisdiction over the removed action *sua*
10 *sponte*, whether the parties raised the issue or not.").

11 IV. CONCLUSION

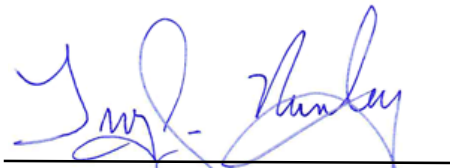
12 Defendants have submitted the affidavit required by 28 U.S.C. § 1915(a) showing that he
13 is unable to prepay fees and costs or give security for them. Accordingly, the Court hereby
14 GRANTS Defendants' Motion to Proceed in Forma Pauperis. (ECF No. 2.)

15 For the foregoing reasons, the Court hereby REMANDS the action to the Superior Court
16 of California, County of Sacramento

17 IT IS SO ORDERED.

18 Dated: September 1, 2015

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Troy L. Nunley
United States District Judge