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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARITAS ACQUISITIONS I, LLC dba
CASA GRANDED MOBILE HOME
PARK,

Plaintiff,

v.

CLIFFORD COX aka WESLEY C. COX

Defendant.

No. 2:15-cv-2668 TLN KJN PS

ORDER REMANDING CASE

This matter is before the Court pursuant to Defendant Clifford Cox’s (“Cox”) Notice of Removal. (ECF No. 1.) Cox is a defendant in a state court matter and erroneously identifies himself as the plaintiff for purposes of his removal. For the reasons set forth below, the Court hereby remands the action to the Superior Court of California, County of Solano, due to lack of subject-matter jurisdiction.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On or about March 1, 2004, Cox and Plaintiff Casa Grande Mobile Home Park (“Park”) entered into a yearly lease agreement for the homesite known as space 74 Del Luz Court. (Compl., Ex. 1, ECF No. 1.) On August 12, 2015, Park filed a complaint in state court alleging unlawful detainer and past rents in an amount of \$2765.20 and asserting a claim for attorney’s fees as well as utility fees totaling \$1337.99. (ECF No. 1.) Park served Cox a three-day written

1 notice to vacate the Property and deliver up possession of the Property, in accordance with Cal.
2 Civ. Pro. Code § 1162. (ECF No. 1.) In response, Cox removed this matter to federal court on
3 December 24, 2015. (ECF No. 1.) In addition, Cox moves for in forma pauperis status because
4 he asserts that he is unable to pay the filing fees. (ECF No. 2.)

5 **II. STANDARD OF LAW**

6 28 U.S.C. § 1441 permits the removal to federal court of any civil action over which “the
7 district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a). “Removal is
8 proper only if the court could have exercised jurisdiction over the action had it originally been
9 filed in federal court.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

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

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

23 **III. ANALYSIS**

24 Cox states in his removal that jurisdiction is proper under: 28 U.S.C. § 1441 (a) or (b); 28
25 U.S.C. § 1367; and California Civil Code § 1954.31. Cox does not give any reasons as to why
26 jurisdiction is proper under these statutes. After reviewing the briefing, the Court concludes that
27 Cox cannot present a viable argument to support federal jurisdiction.

28 Section 1441(a) allows for removal where a complaint presents a federal question, while

1 section 1441(b) allows for removal where diversity jurisdiction is met under section 1332. Here,
2 there is not a federal cause of action that would supply this court with original jurisdiction. *See*
3 *Caterpillar*, 482 U.S. at 386 (“federal [question] jurisdiction exists only when a federal question
4 is presented on the face of the plaintiff’s properly pleaded complaint”). Park does not bring any
5 claims within its complaint that involve a federal question. In fact, all of Park’s claims are based
6 on California state contract law. Furthermore, Cox cannot satisfy the requirements for diversity
7 jurisdiction under section 1332.

8 Section 1332 states that “[t]he district courts shall have original jurisdiction of all civil
9 actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest
10 and costs, and is between—(1) citizens of different States.” Cox does not assert that the parties
11 are citizens of different states or that the amount in controversy exceeds \$75,000.

12 The burden of proving the amount in controversy depends on what the plaintiff has
13 pleaded. *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 998, 1000 (9th Cir. 2007). When
14 the complaint alleges damages less than the jurisdictional requirement, the party seeking removal
15 must prove the amount in controversy with legal certainty. *Id.*; *Rynearson v. Motricity, Inc.*, 601
16 F. Supp. 2d 1238, 1240 (W.D. Wash. 2009). Cox fails to allege a reason to support the propriety
17 of removal on this basis. The complaint alleges damages calculated at \$18.18 per day for the time
18 period that Defendants fail to vacate the premises, and asserts that the damages at this time are
19 somewhere in the neighborhood of \$4,103.19 plus attorney’s fees. Thus, Cox has failed to
20 establish his burden of showing that jurisdiction before this Court is proper. Therefore, it is
21 appropriate to remand this case, *sua sponte*, for lack of federal jurisdiction. *See United Investors*
22 *Life Ins. Co. v. Waddell & Reed Inc.*, 360 F.3d 960, 967 (9th Cir. 2004) (“the district court ha[s] a
23 duty to establish subject matter jurisdiction over the removed action *sua sponte*, whether the
24 parties raised the issue or not.”).

25 IV. CONCLUSION

26 For the foregoing reasons, the Court hereby remands the action to the Superior Court of
27 California, County of Solano. Additionally, the Court has reviewed Cox’s motion for in forma

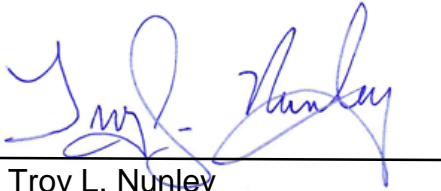
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pauperis status (ECF No. 2) and finds that Cox meets the requisite standard. As such, Cox's motion for in forma pauperis status is granted.

IT IS SO ORDERED.

Dated: January 6, 2016



Troy L. Nunley
United States District Judge