1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 ROBERT LESNETT, No. 2:16-cv-1970-KJM-KJN 12 Plaintiff. 13 **ORDER** v. 14 VERONICA SAN JOSE, 15 Defendant. 16 17 On August 19, 2016, pro se defendant Veronica San Jose removed this unlawful 18 detainer action from Solano County Superior Court, and moved to proceed in forma pauperis. 19 ECF Nos. 1, 2. As explained below, the court REMANDS the case to the Solano County 20 Superior Court and DENIES the motion to proceed in forma pauperis. 21 When a case "of which the district courts of the United States have original 22 jurisdiction" is initially brought in state court, a defendant may remove it to federal court. 28 23 U.S.C. § 1441(a). There are two bases for federal subject matter jurisdiction: (1) federal question 24 jurisdiction under 28 U.S.C. § 1331, and (2) diversity jurisdiction under 28 U.S.C. § 1332. A 25 federal district court may remand a case sua sponte where a defendant has not 26 established federal jurisdiction. See Enrich v. Touche Ross & Co., 846 F.2d 1190, 1195 (9th Cir. 27 1988) (citing Wilson v. Republic Iron & Steel Co., 257 U.S. 92, 97 (1921)). "If at any time 28 1

before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). Here, the court finds the case should be remanded to the Solano County Superior Court. The form complaint filed in the state court is for unlawful detainer only. ECF No. 1. Defendant grounds the removal on the court's federal question jurisdiction, arguing that "[f]ederal question exists because [d]efendant's [d]emurrer, a pleading[,] depend [sic] on the determination of [d]efendant's rights and [p]laintiff's duties under federal law." *Id.* at 2. However, plaintiff is the master of the complaint and may "avoid federal jurisdiction by pleading solely state-law claims." Valles v. Ivy Hill Corp., 410 F.3d 1071, 1075 (9th Cir. 2005). A defendant cannot rely on his answer or demurrer to provide the basis for determining federal question jurisdiction. See Farmco Stores, Inc. v. Newmark, 315 F. Supp. 396, 397 (E.D. Cal. 1970) (citing Gully v. F. Nat'l Bank, 299 U.S. 109, 113 (1936)). Accordingly, because plaintiff's unlawful detainer complaint does not provide a basis for federal question jurisdiction, and defendant's demurrer cannot provide the basis for removal jurisdiction here, this court cannot exercise subject matter jurisdiction over plaintiff's single state-law claim for unlawful detainer. This case is REMANDED to Solano County Superior Court. IT IS SO ORDERED. DATED: August 22, 2016