

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  
EASTERN DISTRICT OF CALIFORNIA

PAUL S. CHAN,  
  
Plaintiff,  
  
v.  
  
LOWELL ALLEN LIGHT, VALLIE  
LIGHT, and DOES 1 TO 10,  
  
Defendants.

No. 2:16-CV-02843-TLN-CKD

**ORDER**

This matter is before the Court pursuant to Defendants Lowell Allen Light and Vallie Light’s (jointly “Defendants”) Notice of Removal. (ECF No. 1.) Defendants filed separate motions to proceed in forma pauperis. (ECF Nos. 2 & 3.) For the reasons set forth below, the Court 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 October 26, 2016, Plaintiff Paul S. Chan (“Plaintiff”) filed an unlawful detainer action in the Sacramento County Superior Court of California. (Not. of Removal, ECF No. 1.) The complaint alleged that on October 17, 2016, Defendants failed to comply with a 3-day notice to pay rent or quit the premises. (ECF No. 1 at 7.) On December 2, 2016, Defendants filed a Notice of Removal in the United States District Court, Eastern District of California. (ECF No. 1.) In

1 their Notice of Removal, Defendants allege the Court has jurisdiction under “28 U.S.C. § 1441 (a)  
2 and/or (b).” (ECF No. 1 at 2.) Defendants mention “[t]he complaint presents federal questions.”  
3 (ECF No. 1 at 2.)

## 4 **II. STANDARD OF LAW**

5 28 U.S.C. § 1441 permits the removal to federal court of any civil action over which “the  
6 district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a). “Removal is  
7 proper only if the court could have exercised jurisdiction over the action had it originally been  
8 filed in federal court.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

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

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

## 22 **III. ANALYSIS**

23 Defendants state in their notice of removal that jurisdiction is proper under 28 U.S.C. §  
24 1441(a) and/or (b). (ECF No. 1 at 2.) Defendant states that “federal question exists because  
25 Defendant’s demurrer, a pleading depend [sic] on the determination of Defendant’s rights and  
26 Plaintiff’s duties under federal law.” (ECF No. 1 at 2.) After reviewing the Notice of Removal,  
27 the Court concludes that Defendants cannot present a viable argument to support federal  
28 jurisdiction on either basis.

1 Subject matter jurisdiction exists where a federal question arises on the face of the  
2 complaint or if there is diversity jurisdiction. Here, there is no federal cause of action that would  
3 supply this court with original jurisdiction. See *Caterpillar*, 482 U.S. at 386 (“federal [question]  
4 jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly  
5 pleaded complaint”). Plaintiff does not bring any claims within the complaint that involve a  
6 federal question. Defendants assert that their demurrer in state court creates federal question  
7 because it depends on a determination of the parties’ rights and duties under federal law.  
8 However, Defendants have not presented adequate facts to demonstrate how federal law arises  
9 out of the demurrer. Even if the Defendants had adequately alleged a federal question from the  
10 demurrer, the federal question would not arise on the face of the complaint. Therefore, Defendant  
11 is not entitled to removal on the grounds of federal question jurisdiction.

12 Furthermore, Defendants cannot satisfy the requirements for diversity jurisdiction under  
13 section 1332. Section 1332 states that “[t]he district courts shall have original jurisdiction of all  
14 civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of  
15 interest and costs, and is between—(1) citizens of different States.” Defendants do not assert that  
16 the parties are citizens of different states.

17 Moreover, the burden of proving the amount in controversy depends on what the plaintiff  
18 has pleaded. *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 998, 1000 (9th Cir. 2007).  
19 When the complaint alleges damages less than the jurisdictional requirement, the party seeking  
20 removal must prove the amount in controversy with legal certainty. *Id.*; *Rynearson v. Motricity,*  
21 *Inc.*, 601 F. Supp. 2d 1238, 1240 (W.D. Wash. 2009). Plaintiff’s complaint alleges damages  
22 calculated at \$46.67 per day. At the time of filing, Plaintiff only requested past due rent in the  
23 amount of \$1400.00, reasonable attorney fees and the fair rental value of \$46.67 dollar per day.  
24 (ECF No. 1 at 8.) The sum would not amount to any value close to \$75,000. Defendants do not  
25 prove with legal certainty that the damages as of removal would exceed \$75,000. Therefore,  
26 Defendants fail to meet the burden of showing that the amount in controversy is met.

27 Defendants have failed to establish their burden of showing that jurisdiction before this  
28 Court is proper based on diversity jurisdiction or federal question jurisdiction. Therefore, it is

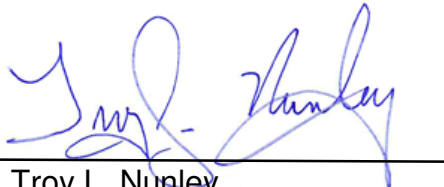
1 appropriate to remand this case, sua sponte, for lack of federal jurisdiction. See United Investors  
2 Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004) (“the district court ha[s] a  
3 duty to establish subject matter jurisdiction over the removed action sua sponte, whether the  
4 parties raised the issue or not.”).

5 **IV. CONCLUSION**

6 For the foregoing reasons, the Court hereby REMANDS this action to the Superior Court  
7 of California, County of Sacramento. Additionally, the Court has reviewed Defendants Lowell  
8 Light’s and Vallie Light’s separate motions for in forma pauperis status (ECF Nos. 2 & 3), and  
9 finds that Defendants meet the requisite standard. As such, Defendants’ motions for in forma  
10 pauperis status are GRANTED.

11 IT IS SO ORDERED.

12  
13 Dated: December 6, 2016



14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  

---

Troy L. Nunley  
United States District Judge