

1 question jurisdiction under 28 U.S.C. § 1331, and (2) diversity jurisdiction under 28 U.S.C.
2 § 1332.

3 Under § 1331, district courts have federal question jurisdiction over “all civil
4 actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.
5 Under the longstanding well-pleaded complaint rule, a suit “arises under” federal law “only when
6 the plaintiff’s statement of his own cause of action shows that it is based upon [federal law].”
7 *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152 (1908). Federal question jurisdiction
8 cannot rest upon an actual or anticipated defense or counterclaim. *Vaden v. Discover Bank*, 556
9 U.S. 49, 60 (2009).

10 Under § 1332, district courts have diversity-of-citizenship jurisdiction where the
11 amount in controversy exceeds \$75,000 and the parties are in complete diversity. 28 U.S.C.
12 § 1332. “Where it is not facially evident from the complaint that more than \$75,000 is in
13 controversy, the removing party must prove, by a preponderance of the evidence, that the amount
14 in controversy meets the jurisdictional threshold.” *Matheson v. Progressive Specialty Ins. Co.*,
15 319 F.3d 1089, 1090 (9th Cir. 2003) (per curiam).

16 A federal district court may remand a case sua sponte where a defendant has not
17 established federal jurisdiction. *See* 28 U.S.C. § 1447(c) (“If at any time before final judgment it
18 appears that the district court lacks subject matter jurisdiction, the case shall be remanded”);
19 *Enrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988) (citing *Wilson v. Republic*
20 *Iron & Steel Co.*, 257 U.S. 92, 97 (1921)).

21 B. Discussion

22 Bertsch’s Notice of Removal asserts the court has federal question jurisdiction
23 under § 1331 because “Defendant alleges that the plaintiffs intentionally violated the federal
24 statute, [Real Estate Settlement Procedures Act].” ECF No. 1 at 2. The complaint plaintiff filed
25 in state court asserts only a claim for unlawful detainer, which is a matter of state law. ECF No. 1
26 at 8.

27 As explained above, Bertsch’s answer or counterclaim cannot serve as the basis for
28 federal question jurisdiction. *Vaden*, 556 U.S. at 60. Plaintiff is the master of the complaint and

1 may, as here, “avoid federal jurisdiction by pleading solely state-law claims.” *Valles v. Ivy Hill*
2 *Corp.*, 410 F.3d 1071, 1075 (9th Cir. 2005). Because plaintiff’s complaint does not show that it
3 is based upon federal law, the court does not have federal question jurisdiction over the action.

4 Neither does the court appear to have diversity jurisdiction. Plaintiff’s complaint
5 expressly states that “demand does not exceed \$10,000.” ECF No. 1 at 8. Additionally, the
6 complaint seeks possession of the premises, costs and reasonable attorney’s fees, and damages of
7 \$91.67 per day for each day from October 5, 2016, until the date of judgment. ECF No. 1 at 10.
8 These damages are not likely to total more than \$75,000, and Bertsch has provided no other
9 evidence or allegations as to the amount in controversy. Accordingly, the court cannot exercise
10 diversity jurisdiction over the action.

11 II. REQUEST TO PROCEED IN FORMA PAUPERIS

12 For the foregoing reasons, the court has determined sua sponte that it lacks subject
13 matter jurisdiction, and thus remands the case to the El Dorado County Superior Court. *Cf.*
14 *Matheson*, 319 F.3d at 1090 (“Where doubt regarding the right to removal exists, a case should be
15 remanded to state court.”). As a result, defendant’s motion for in forma pauperis status is moot.

16 III. CONCLUSION

17 For the foregoing reasons, this action is REMANDED to El Dorado County
18 Superior Court, and defendant’s motion to proceed in forma pauperis is DENIED as moot.

19 IT IS SO ORDERED.

20 This order resolves ECF Nos. 1 and 2.

21 DATED: January 5, 2017.

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25 UNITED STATES DISTRICT JUDGE
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