

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  
FOR THE EASTERN DISTRICT OF CALIFORNIA

E&S RING MANAGEMENT CORPORATION,  
  
Plaintiff,  
  
v.  
  
DARNELL LAMONT CARD; and DOES 1 through 10 inclusive,  
  
Defendants.

No. 2:16-cv-03043-KJM-CKD PS

ORDER

On December 29, 2016, defendant Darnell L. Card, proceeding pro se, removed this unlawful detainer action from Sacramento County Superior Court. ECF No. 1. Card also filed a motion to proceed in forma pauperis. ECF No. 2. As explained below, the court REMANDS the case to Sacramento County Superior Court and DENIES as moot Card’s motion to proceed in forma pauperis.

I. SUBJECT MATTER JURISDICTION

A. Legal Standard

When a case “of which the district courts of the United States have original jurisdiction” is initially brought in state court, a defendant may remove it to federal court. 28 U.S.C. § 1441(a). There are two primary bases for federal subject matter jurisdiction: (1) federal

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 Card’s Notice of Removal asserts the court has federal question jurisdiction under  
23 § 1331 because “Defendant’s answer, a pleading depend [sic] on the determination of  
24 Defendant’s rights and Plaintiff’s duties under federal law.” ECF No. 1 at 2. The complaint  
25 plaintiff filed in state court asserts only a claim for unlawful detainer, which is a matter of state  
26 law. *Id.* at 8.

27 As explained above, Card’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 this “action is a limited civil case” where the “amount demanded does not  
6 exceed \$10,000.” ECF No. 1 at 6. The complaint seeks possession of the premises, reasonable  
7 attorney fees, and damages in the amount of \$1,526.04 for past due rent and \$52.43 per day for  
8 each day from December 1, 2016 until the date of judgment. *Id.* at 8. These damages, taken  
9 together, are not likely to total more than \$75,000, and Card has provided no other evidence or  
10 allegations as to the amount in controversy. Accordingly, the court cannot exercise diversity  
11 jurisdiction over the action.

12 II. REQUEST TO PROCEED IN FORMA PAUPERIS

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

17 III. CONCLUSION

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

20 IT IS SO ORDERED.

21 This order resolves ECF Nos. 1 and 2.

22 DATED: January 11, 2017.

23  
24   
25  
26  
27  
28  
UNITED STATES DISTRICT JUDGE