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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEFEVER MATTSON, INC.,

Plaintiff,

v.

AMBER THEOUDELE, SABRINA  
MOURA, and DOES 1 through 10  
inclusive,

Defendants.

No. 2:17-cv-0885-KJM-AC

ORDER

On April 26, 2017, defendant Sabrina Moura, proceeding pro se, removed this unlawful detainer action from Sacramento County Superior Court. ECF No. 1.<sup>1</sup> Moura also filed a motion to proceed in forma pauperis. ECF No. 2. As explained below, the court REMANDS the case to the Sacramento County Superior Court and DENIES as moot defendant’s motion to proceed in forma pauperis.

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<sup>1</sup> Defendant’s notice erroneously states she is removing the action from Riverside County. See ECF No. 1 ¶ 8.

1 I. SUBJECT MATTER JURISDICTION

2 A. Legal Standard

3 When a case “of which the district courts of the United States have original  
4 jurisdiction” is initially brought in state court, a defendant may remove it to federal court. 28  
5 U.S.C. § 1441(a). There are two primary bases for federal subject matter jurisdiction: (1) federal  
6 question jurisdiction under 28 U.S.C. § 1331, and (2) diversity jurisdiction under 28 U.S.C.  
7 § 1332.

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

15 Under § 1332, district courts have diversity-of-citizenship jurisdiction where the  
16 amount in controversy exceeds \$75,000 and the parties are in complete diversity. 28 U.S.C.  
17 § 1332. “Where it is not facially evident from the complaint that more than \$75,000 is in  
18 controversy, the removing party must prove, by a preponderance of the evidence, that the amount  
19 in controversy meets the jurisdictional threshold.” *Matheson v. Progressive Specialty Ins. Co.*,  
20 319 F.3d 1089, 1090 (9th Cir. 2003) (per curiam).

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

26 B. Discussion

27 Moura’s Notice of Removal asserts the court has federal question jurisdiction  
28 under § 1331 because “Defendant’s [sic] Answer, a pleading[,] depend [sic] on the determination

1 of Defendant's rights and Plaintiff's duties under federal law." ECF No. 1 at 2. The complaint  
2 plaintiff filed in state court asserts only a claim for unlawful detainer, a matter of state law. See  
3 ECF No. 1 at 5.

4 As explained above, the court cannot base federal question jurisdiction on Moura's  
5 answer or counterclaim. *Vaden*, 556 U.S. at 60. Plaintiff is the master of the complaint and may,  
6 as here, "avoid federal jurisdiction by pleading solely state-law claims." *Valles v. Ivy Hill Corp.*,  
7 410 F.3d 1071, 1075 (9th Cir. 2005). Because plaintiff's complaint is not based upon federal law,  
8 the court does not have federal question jurisdiction over the action.

9 Neither does the court appear to have diversity jurisdiction. Plaintiff's complaint  
10 is labeled as a "limited" civil case, meaning plaintiff predicts the total damages will not exceed  
11 \$10,000. ECF No. 1 at 6. Plaintiff seeks possession of the premises, past due rent of \$986, costs  
12 and reasonable attorney's fees, forfeiture of the agreement, and damages of \$37.03 per day for  
13 each day from April 1, 2017 until the date of judgment. ECF No. 1 at 8. These damages are not  
14 likely to total more than \$75,000, and Moura has provided no other evidence or allegations as to  
15 the amount in controversy. As such, the court cannot exercise diversity jurisdiction over the  
16 action.

17 II. REQUEST TO PROCEED IN FORMA PAUPERIS

18 For the foregoing reasons, the court has determined sua sponte that it does not  
19 have subject matter jurisdiction, and thus remands the case to the Sacramento County Superior  
20 Court. *Cf. Matheson*, 319 F.3d at 1090 ("Where doubt regarding the right to removal exists, a  
21 case should be remanded to state court."). This order moots defendant's motion for in forma  
22 pauperis status.

23 III. CONCLUSION

24 For the foregoing reasons, this action is REMANDED to Sacramento County  
25 Superior Court, and the court DENIES as moot defendant's motion to proceed in forma pauperis.

26 IT IS SO ORDERED.

27 DATED: May 3, 2017.