

1 California. (ECF No. 1.) Defendant asserts that removal is proper because (i) “[t]he complaint
2 presents federal questions” and (ii) “[f]ederal question exists because Defendant’s Answer, a
3 pleading that depends on the determination of Defendant’s rights and Plaintiff’s [sic] duties under
4 federal law.” (ECF No. 1 at 2–3, ¶¶ 5, 8.) For the reasons stated below, this Court finds that
5 subject matter jurisdiction does not exist and thus this case must be remanded.

6 II. STANDARD OF LAW

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

11 Courts “strictly construe the removal statute against removal jurisdiction,” and “the
12 defendant always has the burden of establishing that removal is proper.” *Gaus v. Miles, Inc.*, 980
13 F.2d 564, 566 (9th Cir. 1992) (per curiam). Furthermore, “[i]f the district court at any time
14 determines that it lacks jurisdiction over the removed action, it must remedy the improvident
15 grant of removal by remanding the action to state court.” *California ex rel. Lockyer v. Dynegy,*
16 *Inc.*, 375 F.3d 831, 838, *as amended*, 387 F.3d 966 (9th Cir. 2004), *cert. denied* 544 U.S. 974
17 (2005).

18 The “presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded
19 complaint rule,’ which provides that federal jurisdiction exists only when a federal question is
20 presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar*, 482 U.S. at 392.
21 Removal cannot be based on a defense, counterclaim, cross-claim, or third party claim raising a
22 federal question, whether filed in state court or federal court. *See Vaden v. Discover Bank*, 556
23 U.S. 49, 60–61 (2009); *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042–43 (9th Cir. 2009).

24 III. ANALYSIS

25 Defendant removed the instant action to this Court on the basis of federal question
26 jurisdiction. (ECF No. 1 at 2–3.) Defendant argues that jurisdiction is proper under 28 U.S.C. §

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1 1441(a) or (b).¹ (ECF No. 1 at 2.) For jurisdiction to exist under § 1441(a), a federal question
2 must be presented on the face of the plaintiff’s properly pleaded complaint. *Caterpillar*, 482 U.S.
3 at 392. Here, Defendant states without explanation that the “complaint presents federal
4 questions.” (ECF No. 1 at 2, ¶ 5.) However, Plaintiffs’ complaint for unlawful detainer does not
5 present a federal question on its face. *See, e.g., DVP, LP v. Champ*, No. 1:15-cv-00074-LJO-
6 SKO, 2015 WL 12681672, at *2 (E.D. Cal. Jan. 29, 2015) (“[A]n unlawful detainer action, on its
7 face, fails to raise a federal question.”). Defendant further claims that her Answer implicates
8 federal questions because it requires a “determination of Defendant’s rights and Plaintiff’s [sic]
9 duties under federal law.” (ECF No. 1 at 2, ¶ 8.) An answer cannot confer federal question
10 jurisdiction on this Court. *See Vaden*, 556 U.S. at 60 (explaining federal jurisdiction can neither
11 be “predicated on an actual or anticipated defense” nor “rest upon an actual or anticipated
12 counterclaim”).

13 To the extent Defendant’s notice of removal seeks removal on the basis of Section
14 1441(b), this too fails. Section 1441(b) allows for a case to be removed to federal court on the
15 basis of diversity jurisdiction if the requirements of 28 U.S.C. § 1332(a) are met. Section 1332(a)
16 confers diversity jurisdiction “where the matter in controversy exceeds the sum or value of
17 \$75,000, exclusive of interest and costs, and is between — (1) citizens of different States.” In an
18 unlawful detainer action, only the right to possession of the property is at issue, not the title. *See*
19 *Deutsche Bank Nat’l Trust Co. v. Yanez*, ED-15-CV-02462-VAP-DTBx, 2016 WL 591752, at *2
20 (C.D. Cal. February 11, 2016) (citing *Evans v. Superior Court*, 67 Cal. App. 3d 162, 170 (1977)).
21 Consequently, the amount in controversy is determined by the amount sought in the complaint.
22 *See id.* Here, Defendant fails to meet the \$75,000 threshold as Plaintiffs seek less than \$10,000 in
23 their complaint. (*See* ECF No. 1-1 at 3.)

24 Thus, Defendant has failed to establish the burden of showing that jurisdiction before this
25 Court is proper, and it is appropriate to remand this case, *sua sponte*, for lack of federal
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27 ¹ Defendant fails to explain how or why subject matter jurisdiction exists under 28 U.S.C. § 1441(b). In fact,
28 other than Defendant’s passing mention of §1441(b), Defendant fails to discuss diversity jurisdiction. Nonetheless,
this Court discusses below why removal is improper under §1441(b).

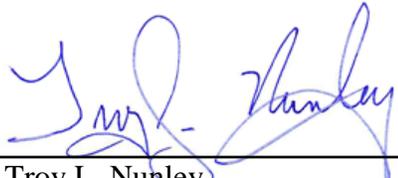
1 jurisdiction. *See United Investors Life Ins. Co. v. Waddell & Reed Inc.*, 360 F.3d 960, 967 (9th
2 Cir. 2004) (“[T]he district court ha[s] a duty to establish subject matter jurisdiction over the
3 removed action *sua sponte*, whether the parties raised the issue or not.”).

4 **IV. CONCLUSION**

5 For the foregoing reasons, the Court hereby REMANDS this action to the Superior Court
6 of California, County of Sacramento. In removing this case, Defendant filed a motion to proceed
7 in forma pauperis. (*See* ECF No. 2.) The Court has reviewed this motion and finds that
8 Defendant meets the requirements of in forma pauperis status and thus GRANTS Defendant’s
9 request.

10 IT IS SO ORDERED.

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12 Dated: May 26, 2017

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16 Troy L. Nunley
17 United States District Judge
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