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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WELLS FARGO BANK, N.A., et al.,
Plaintiffs,
v.
ROSE M. LAW,
Defendant.

No. 2:17-cv-01835-KJM-CKD

ORDER

On September 5, 2017, defendant Rose M. Law, proceeding pro se, removed this unlawful detainer action from San Joaquin County Superior Court. ECF No. 1. Law also filed a motion to proceed in forma pauperis. ECF No. 2. As explained below, the court REMANDS the case to the San Joaquin County Superior Court and DENIES as moot defendant’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. 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 Law’s Notice of Removal asserts the court has federal question jurisdiction under
23 § 1331 because questions in this case turn on “[p]laintiffs’ duty and condition to comply with
24 [the] Federally Mandated Making Home Affordable Act pursuant to 12 U.S.C. § 5219.” ECF No.
25 1 at 3. But the complaint plaintiff filed in state court asserts only a claim for unlawful detainer, a
26 matter of state law. See ECF No. 1 at 11.

27 As explained above, the court cannot base federal question jurisdiction on Law’s
28 answer or counterclaim. *Vaden*, 556 U.S. at 60. Plaintiff is the master of the complaint and may,

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

4 Neither does the court appear to have diversity jurisdiction. Defendant’s notice of
5 removal states “diversity in citizenship exists” but defendant does not explain how the complaint
6 meets the amount-in-controversy requirement. ECF No. 1 at 2. Plaintiff’s complaint is labeled as
7 a “limited” civil case, meaning plaintiff predicts the total damages will not exceed \$10,000. ECF
8 No. 1 at 11. Plaintiff seeks possession of the premises, costs and reasonable attorney’s fees, and
9 damages of \$44 per day for each day from July 13, 2017 until the date of judgment. ECF No. 1 at
10 15. These damages are not likely to total more than \$75,000, and Law has provided no other
11 evidence or allegations as to the amount in controversy. As such, the court cannot exercise
12 diversity jurisdiction over the action.

13 II. REQUEST TO PROCEED IN FORMA PAUPERIS

14 For the foregoing reasons, the court has determined sua sponte that it does not
15 have subject matter jurisdiction, and thus remands the case to the San Joaquin County Superior
16 Court. *Cf. Matheson*, 319 F.3d at 1090 (“Where doubt regarding the right to removal exists, a
17 case should be remanded to state court.”). This order moots defendant’s motion for in forma
18 pauperis status.

19 III. CONCLUSION

20 This action is REMANDED to San Joaquin County Superior Court, and the court
21 DENIES as moot defendant’s motion to proceed in forma pauperis.

22 IT IS SO ORDERED.

23 DATED: September 11, 2017.

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26 UNITED STATES DISTRICT JUDGE
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