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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HUAQIANG WEI,
Plaintiff,
v.
BARRY VON KETTEL,
Defendant.

No. 2:17-cv-01971-KJM-EFB

ORDER

On September 22, 2017, defendant Barry Von Kettel, proceeding pro se, removed this unlawful detainer action from Sacramento County Superior Court. ECF No. 1. Von Kettel 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.

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 Von Kettel’s Notice of Removal asserts the court has federal question jurisdiction
23 under § 1331 because Von Kettel “seeks a safe harbor of his constitutional rights for a home in
24 the face of housing discrimination from Plaintiff and retaliatory eviction in violation of federal
25 housing laws.” ECF No. 1 at 2. Von Kettel asserts, “Defendant is one class protected by Obama
26 Homeowner Protection laws, California Homeowners/Tenant Bill of Rights, Department of Fair
27 Housing and Urban Development and consumer protections.” *Id.* at 2; *see id.* at 5. But the
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1 complaint plaintiff filed in state court asserts only a claim for unlawful detainer, which is a matter
2 of state law. *See* ECF No. 1 at 19.

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

8 Neither does the court appear to have diversity jurisdiction. Von Kettel explicitly
9 states in the Notice of Removal, “THIS IS NOT BASED on grounds of diversity of citizenship.”
10 ECF No. 1 at 8; *see id.* at 13 (“THIS REMOVAL IS NOT BASED on grounds of diversity
11 citizenship, amount in controversy in excess of \$75,000 does not apply.”). Plaintiff’s complaint
12 seeks possession of the premises, costs incurred in the proceeding, forfeiture of the agreement,
13 and damages of \$11.66 per day from July 31, 2017, for each day that defendants remain in
14 possession through entry of judgment. ECF No. 1 at 21. Plaintiff has pleaded that the amount
15 demanded “does not exceed \$10,000.” ECF No. 1 at 19. Because these damages are not likely to
16 total more than \$75,000, and Von Kettel has provided no other evidence or allegations as to the
17 amount in controversy, the court cannot exercise diversity jurisdiction over the action.

18 **II. REQUEST TO PROCEED IN FORMA PAUPERIS**

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

24 **III. CONCLUSION**

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

27 IT IS SO ORDERED.

28 DATED: September 26, 2017