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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GINA ROBINSON,  
Plaintiff,  
v.  
PETER WALL, *et al.*,  
Defendants.

Case No. 2:18-cv-00885-TLN-CKD

**SUA SPONTE REMAND ORDER**

This matter is before the Court pursuant to Defendants Peter Wall and Dean Eads’s (“Defendants”) Notice of Removal. (ECF No. 1.) For the reasons discussed below, the Court remands the action to the Placer County Superior Court, due to lack of subject-matter jurisdiction.

**I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

On March 2, 2018, Plaintiff Gina Robinson (“Plaintiff”) brought an action against Defendants for possession of the real property known as 6990 Auburn Folsom Road, Granite Bay, California (“the Property”). (ECF No. 1 at 11.) In her complaint, Plaintiff alleges Defendants were month-to-month tenants who did not pay the monthly rent due for February 2018 by the late deadline of February 5, 2018. (ECF No. 1 at 11.) Plaintiff alleges she served Defendants with a 3-day notice to pay rent or quit, but Defendants did not pay and continued to occupy the Property. (ECF No. 1 at 11–13.) On April 11, 2018, Defendants filed a Notice of Removal removing this unlawful detainer action from the Placer County Superior Court. (ECF No. 1.)

1           **II.     STANDARD OF LAW**

2           28 U.S.C. § 1441 permits the removal to federal court of any civil action over which “the  
3 district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a). “Removal is  
4 proper only if the court could have exercised jurisdiction over the action had it originally been  
5 filed in federal court.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

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

13           The “presence or absence of federal question jurisdiction is governed by the ‘well-pleaded  
14 complaint rule,’ which provides that federal jurisdiction exists only when a federal question is  
15 presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar*, 482 U.S. at 386.  
16 Removal cannot be based on a defense, counterclaim, cross-claim, or third party claim raising a  
17 federal question, whether filed in state court or federal court. *See Vaden v. Discover Bank*, 556  
18 U.S. 49 (2009); *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042–43 (9th Cir. 2009).

19           **III.     ANALYSIS**

20           Defendants argue that the Fair Housing Act 42 U.S.C. § 3601 (“FHA”) gives rise to a  
21 federal question in this matter because FHA protects persons with disabilities from discrimination  
22 by housing providers, such as landlords, and both Defendants are disabled. (ECF No. 1 at 2 ¶¶ 7–  
23 8.) Defendants also argue civil rights violations by Plaintiff “and her agents” give rise to a  
24 federal question in this matter, including making threats, using derogatory terms, cutting off the  
25 water, taking Defendants’ property such as a passport, clothing, and animals, filing false criminal  
26 charges against Defendants, human trafficking by forcing Defendants to work on the Property  
27 without pay and to also pay rent, threatening deportation, and beatings to force Defendants’  
28 continued work without pay. (ECF No 1 at 2 ¶ 9.)

1 In her complaint, Plaintiff asserts only an unlawful detainer claim and no claims under any  
2 federal laws. (ECF No. 1 at 11–13.) Under the well-pleaded complaint rule, “federal [question]  
3 jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly  
4 pleaded complaint.” *Caterpillar*, 482 U.S. at 386. Plaintiff relies on state law and does not  
5 mention expressly or impliedly any federal law. The well-pleaded complaint rule makes the  
6 plaintiff the master of her claim, so she may avoid federal jurisdiction by basing her claim  
7 exclusively on state law, as is the case here. *Caterpillar*, 482 U.S. at 392.

8 Defendants assert subject matter jurisdiction by alleging violations of the FHA and federal  
9 civil rights law. However, removal cannot be based on a defense, counterclaim, cross-claim, or  
10 third party claim raising a federal question, whether filed in state court or federal court. *See*  
11 *Vaden*, 556 U.S. at 49; *Hunter v. Philip Morris USA*, 582 F.3d at 1042–43. While Defendants  
12 contend that Plaintiff has violated federal law, this assertion relates only to an affirmative defense  
13 or potential counterclaim, which is not considered in evaluating whether a federal question  
14 appears on the face of a plaintiff’s complaint. *See Vaden*, 556 U.S. at 60-62. “[A] counterclaim  
15 — which appears as part of the defendant’s answer, not as part of the plaintiff’s complaint —  
16 cannot serve as the basis for ‘arising under’ jurisdiction.” *Holmes Group, Inc. v. Vornado Air*  
17 *Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002).

18 The only cause of action Plaintiff asserts is unlawful detainer, which arises under state law  
19 and not under federal law. Thus, this action does not arise under federal law and no other  
20 grounds for federal jurisdiction are apparent. Therefore, it is appropriate to remand this case, *sua*  
21 *sponte*, for lack of federal jurisdiction. *See United Investors Life Ins. Co. v. Waddell & Reed Inc.*,  
22 360 F.3d 960, 967 (9th Cir. 2004) (“the district court ha[s] a duty to establish subject matter  
23 jurisdiction over the removed action *sua sponte*, whether the parties raised the issue or not.”).

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**IV. CONCLUSION**

Thus for the reasons stated above, the Court hereby REMANDS this action to the Superior Court of California, County of Placer.

IT IS SO ORDERED.

Dated: April 12, 2018



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Troy L. Nunley  
United States District Judge