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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE BELTRAN,

Plaintiff,

v.

KRYSTAL ALTAMIRANO, JONATHAN
ALTAMIRANO, MARIA
ALTAMIRANO, ARELENE CISNEROS,
CHRISTOPHER RODRIGUEZ, ANDREA
RODRIGUEZ, RUBEN RODRIGUEZ,
JOHN RODRIGUEZ, ALEX MEDOZA,
IRENE MENDOZA, DESTINY
MENDOZA, and DOES 1 through 10,
inclusive,

Defendants.

No. 2:18-cv-1756-KJM-AC PS

ORDER

On June 19, 2018, defendants, proceeding pro se, jointly removed this unlawful detainer action from Sacramento County Superior Court. Notice of Removal, ECF No. 1. Three defendants, Jonathan Altamirano, Maria Altamirano and Irene Mendoza, also filed motions to proceed in forma pauperis. ECF Nos. 2-4. As explained below, the court REMANDS the case to the Sacramento County Superior Court and DENIES as moot defendants’ motions to proceed in forma pauperis.

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.
5 28 U.S.C. § 1441(a). There are two primary bases for federal subject matter jurisdiction:
6 (1) federal question jurisdiction under 28 U.S.C. § 1331, and (2) diversity jurisdiction under 28
7 U.S.C. § 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.” *Id.* § 1331. Under
10 the longstanding well-pleaded complaint rule, a suit “arises under” federal law “only when the
11 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 Defendants’ Notice of Removal asserts the court has federal question jurisdiction
28 under § 1331 because “Defendant’s Demurrer, a pleading depend [sic] on the determination of

1 Defendant's rights and Plaintiff's duties under federal law." ECF No. 1 at 3. The complaint
2 plaintiff filed in state court, however, asserts only a claim for unlawful detainer, which is strictly a
3 matter of state law. *See id.* at 6-9.

4 Defendants' answer, counterclaim or demurrer cannot serve as the basis for federal
5 question jurisdiction. *See Vaden*, 556 U.S. at 60. Plaintiff is the master of the complaint and
6 may, as here, "avoid federal jurisdiction by pleading solely state-law claims." *Valles v. Ivy Hill*
7 *Corp.*, 410 F.3d 1071, 1075 (9th Cir. 2005). Because plaintiff's complaint does not show that it
8 is based upon federal law, 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 seeks repossession of the premises, costs and reasonable attorney's fees, past-due rent of
11 \$9,572.56, forfeiture of the rental agreement, and damages of \$27.66 per day for each day from
12 April 17, 2018, until the date of judgment. ECF No. 1 at 9. Because these damages are unlikely
13 to exceed \$75,000, and defendants provide no other evidence or allegations as to the amount in
14 controversy, the court cannot exercise diversity jurisdiction over the action.

15 II. REQUEST TO PROCEED IN FORMA PAUPERIS

16 For these reasons, the court has determined sua sponte that it appears to lack
17 subject matter jurisdiction, and thus remands the case to the Sacramento County Superior Court.
18 *Cf. Matheson*, 319 F.3d at 1090 ("Where doubt regarding the right to removal exists, a case
19 should be remanded to state court."). As a result, defendants' motions for in forma pauperis
20 status are moot.

21 III. CONCLUSION

22 This action is REMANDED to Sacramento County Superior Court and
23 defendants' motions to proceed in forma pauperis status are DENIED as MOOT. Plaintiff's
24 pending motion to remand, ECF No. 6, which is improperly noticed for hearing before Magistrate
25 Judge Claire on August 29, 2018, is therefore DENIED as MOOT.

26 IT IS SO ORDERED.

27 This resolves ECF Nos. 2, 3, 4 and 6.

28 DATED: August 9, 2018.