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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 SARAH RUBIN,
8 Plaintiff,
9 v.
10 LADY BENJAMIN CANNON,
11 Defendants.

Case No. 22-cv-02474-JCS

**ORDER GRANTING APPLICATION
TO PROCEED IN FORMA PAUPERIS**

**ORDER TO SHOW CAUSE WHY
CASE SHOULD NOT BE REMANDED**

Re: Dkt. No. 2

12
13 Defendant Lady Benjamin Cannon, pro se, removed this case from state court and moves
14 to proceed in forma pauperis. Sufficient cause having been shown, Cannon's application to
15 proceed in forma pauperis (dkt. 2) is GRANTED.

16 Federal courts have limited subject matter jurisdiction and may only hear cases falling
17 within their jurisdiction. Generally, a defendant may remove a civil action filed in state court if
18 the action could have been filed originally in federal court. 28 U.S.C. § 1441. The removal
19 statutes are construed restrictively so as to limit removal jurisdiction. *Shamrock Oil & Gas Corp.*
20 *v. Sheets*, 313 U.S. 100, 108–09 (1941). The Ninth Circuit recognizes a “strong presumption
21 against removal.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (internal quotation marks
22 omitted). Any doubts as to removability should be resolved in favor of remand. *Matheson v.*
23 *Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). The defendant bears the
24 burden of showing that removal is proper. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th
25 Cir. 2004). A district court may remand a case to state court sua sponte if it determines that
26 jurisdiction is lacking. 28 U.S.C. §1447(c); see *Smith v. Mylan, Inc.*, 761 F.3d 1042, 1043 (9th
27 Cir. 2014).

28 To establish diversity jurisdiction under 28 U.S.C. § 1332(a), as Cannon asserts here, a

1 removing defendant must show that there is complete diversity of the parties—i.e., no defendant is
 2 a citizen of the same state as any plaintiff—and that the amount in controversy exceeds \$75,000.
 3 *See Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).¹ “[A] defendant’s notice of removal need
 4 include only a plausible allegation that the amount in controversy exceeds the jurisdictional
 5 threshold. Evidence establishing the amount is required by [28 U.S.C.] § 1446(c)(2)(B) only when
 6 the plaintiff contests, or the court questions, the defendant’s allegation.” *Dart Cherokee Basin*
 7 *Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014). “Conclusory allegations as to the amount
 8 in controversy are insufficient.” *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089,
 9 1090–91 (9th Cir. 2003).

10 Here, Cannon asserts that she and Plaintiff Sarah Rubin are citizens of different states—
 11 California for Cannon, and New York for Rubin—and that the amount in controversy exceeds
 12 \$75,000. But her assertion regarding the amount in controversy does not rise to the level of
 13 plausibility. Her discussion of the issue reads as follows:

14 Here, the Complaint states that the unit that was offered for occupancy
 15 by Lady Benjamin to Plaintiff Rubin—is at issue. Exhibit 1,
 16 Complaint _____. Plaintiff is seeking to invalidate the Settlement
 17 Agreement by way of this lawsuit, but has not made any payment to
 18 Lady Benjamin for the space. Thus, if Plaintiff prevails in her action
 for demanding to be paid, the pecuniary result the judgment would
 directly produce is the payment of space rent by Rubin for the period
 of time she occupied the mentioned space.

19 [page break²]

20 the litigation at _____. *See e.g. Cohn v. Petsmart Inc.*, *supra* 281 F.3d at
 21 840 (“A settlement letter is relevant evidence of the amount in
 controversy if it appears to reflect a reasonable estimate of the
 plaintiff’s claim.”)

22 _____
 23
 24 ¹ Removal is generally not available based on diversity jurisdiction where, as here, at least one
 25 defendant is a citizen of the forum state, *see* 28 U.S.C. § 1441(b)(2), but that “forum defendant
 26 rule is procedural [rather than jurisdictional], and therefore a violation of this rule is a waivable
 27 defect in the removal process that cannot form the basis for a district court’s sua sponte remand
 order.” *Lively v. Wild Oats Mkts., Inc.*, 456 F.3d 933, 936 (9th Cir. 2006). Accordingly, while the
 case would be subject to remand on that basis if Rubin were to assert it, it is incumbent on her to
 do so if she objects to proceeding in this Court.

28 ² It appears that a page might be missing from Cannon’s notice of removal, but it is not clear
 because she has not included page numbers. This order cites the notice of removal using the page
 numbers assigned by the Court’s ECF filing system.

1 Accordingly, the amount in controversy in this action well exceeds
2 \$75,000, exclusive of interest and costs.

3 Notice of Removal (dkt. 1) at 4–5.

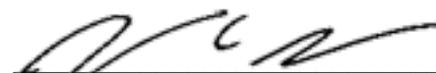
4 Cannon has not attached Rubin’s complaint to the notice of removal as required by 28
5 U.S.C. § 1446(a). Nor has she included any allegations in her notice of removal from which the
6 Court can discern the precise nature of Rubin’s claim, the value of the rental unit apparently at
7 issue, or the terms of the settlement agreement that Rubin purportedly seeks to invalidate. The
8 Court therefore has no way to determine whether the amount in controversy meets the threshold
9 required by § 1332(a), and thus whether jurisdiction is proper.

10 Cannon is therefore ORDERED TO SHOW CAUSE why this case should not be
11 remanded sua sponte for lack of subject matter jurisdiction. Cannon must file a response to this
12 order no later than May 31, 2022 explaining why the amount in controversy exceeds \$75,000, and
13 attaching a copy of Rubin’s complaint and all other “process, pleadings, and orders served upon”
14 Cannon in the state court action as required by § 1446(a). If she does not file a response by that
15 date, or fails to provide sufficient justification of the amount in controversy, the case will be
16 reassigned to a district judge with a recommendation for sua sponte remand to state court.

17 Cannon is encouraged to contact the Federal Pro Bono Project’s Pro Se Help Desk for
18 assistance as she continues to pursue this case. Lawyers at the Help Desk can provide basic
19 assistance to parties representing themselves but cannot provide legal representation. Cannon may
20 contact the Help Desk at (415) 782-8982 or FedPro@sfbar.org to schedule a telephonic
21 appointment

22 **IT IS SO ORDERED.**

23 Dated: May 9, 2022

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25 _____
26 JOSEPH C. SPERO
27 Chief Magistrate Judge
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