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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6
7 WAYPOINT HOMES, INC.,

8 Plaintiff,

9 vs.

10 ADE FAGORALA,

11 Defendant.

Case No.: 12-CV-05282-YGR

**ORDER GRANTING PLAINTIFF'S MOTION TO
REMAND CASE AND DENYING APPLICATION
TO PROCEED *IN FORMA PAUPERIS***

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13 Defendant Ade Fagorala removed this unlawful detainer case from the Superior Court of the
14 State of California, County of Contra Costa, on October 12, 2012. (Dkt. No. 1 (Notice of
15 Removal).) Defendant removed this action pursuant to 28 U.S.C. sections 1441 and 1446, invoking
16 this Court's federal question jurisdiction based on the "Federal Fair Debt Collection Practices Act"
17 ("FDCPA") and the Fourth Amendment's "Federal Search and Seizure Rules." (Notice of
18 Removal at 2.) Defendant also asserted that diversity jurisdiction exists. (*Id.* at 4.)

19 Plaintiff filed the instant Motion to Remand Case on October 25, 2012. (Dkt. No. 5
20 ("Motion").) Defendant did not file a response to the Motion. The Court hereby **GRANTS** the
21 pending Motion because no federal question is presented in this action, and no diversity jurisdiction
22 exists.¹

23 Pursuant to 28 U.S.C. section 1441(a), "any civil action brought in a State court of which
24 the district courts of the United States have original jurisdiction, may be removed by the defendant
25 or the defendants, to the district court of the United States for the district and division embracing
26 the place where such action is pending." 28 U.S.C. § 1441(a). Under 28 U.S.C. section 1331, a

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28 ¹ Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds that this
motion is appropriate for decision without oral argument. Accordingly, the Court **VACATES** the hearing set
for December 4, 2012.

1 district court has original jurisdiction over “all civil actions arising under the Constitution, laws, or
2 treaties of the United States.” 28 U.S.C. § 1331. The burden of establishing federal jurisdiction is
3 on the party seeking removal, and courts strictly construe the removal statute against removal
4 jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566–67 (9th Cir. 1992) (internal citations omitted).
5 Accordingly, “federal jurisdiction must be rejected if there is any doubt as to the right of removal in
6 the first instance.” *Id.* at 566. A district court *must* remand the case to state court if it appears at
7 any time before final judgment that the district court lacks subject matter jurisdiction. 28 U.S.C. §
8 1447(c).

9 Defendant characterizes this action as one for unlawful debt collection under the FDCPA
10 and also seeks to cross-complain based on the same. However, Defendant’s claim under the
11 FDCPA (nor the Fourth Amendment) does not create a federal question. A claim “arises under”
12 federal law if, based on the “well-pleaded complaint rule,” the plaintiff alleges a federal claim for
13 relief. *Vaden v. Discovery Bank*, 556 U.S. 49, 60 (2009). Defenses and counterclaims asserting a
14 federal question do not satisfy this requirement. *Id.*; *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393
15 (1987) (“[I]t is now settled law that a case may *not* be removed to federal court on the basis of a
16 federal defense.”). The federal question must be presented by the plaintiff’s complaint as it stands
17 at the time of removal. The record indicates that Plaintiff’s state court complaint presents one state
18 law claim for unlawful detainer under California Code of Civil Procedure section 1161. The
19 complaint is clearly captioned as a “Complaint for Unlawful Detainer – Real Property” and does
20 not allege any federal claims whatsoever. Defendant’s allegations in the Notice of Removal cannot
21 provide this Court with federal question jurisdiction.

22 Moreover, there is no diversity jurisdiction in this matter. The complaint indicates that the
23 amount demanded does not exceed \$10,000. As such, removal to federal court cannot be based on
24 diversity jurisdiction. 28 U.S.C §§ 1441(b) & 1332(a).

25 For the foregoing reasons, this action is hereby **REMANDED** to the Contra Costa County
26 Superior Court. The pending Application to Proceed *in Forma Pauperis* by Defendant (Dkt. No. 3)
27 is **DENIED AS MOOT** based on this Order. This Order terminates Dkt. Nos. 3 & 5.

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The Clerk of this Court is further ordered to forward certified copies of this Order and all docket entries to the Clerk of the Contra Costa County Superior Court.

IT IS SO ORDERED.

Dated: November 14, 2012



YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE