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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 MICHAEL AUGUSTUS,

8 Plaintiff,

9 v.

10 CHRISTOPHER RUSTEEN,

11 Defendant.

Case No. [4:17-cv-02705-KAW](#)

**ORDER REASSIGNING CASE TO A
DISTRICT JUDGE; REPORT AND
RECOMMENDATION TO REMAND
TO STATE COURT; ORDER
GRANTING IN FORMA PAUPERIS
APPLICATION**

Re: Dkt. Nos. 1 & 2

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13 On May 10, 2017, Defendant Christopher Rusteen removed this unlawful detainer action
14 from Sonoma County Superior Court, and applied to proceed *in forma pauperis*. (Not. of
15 Removal, Dkt. No. 1; IFP Appl., Dkt. No. 2.)

16 As removal is clearly improper, and the parties have not consented to the undersigned, for
17 the reasons set forth below, the Court reassigns this case to a district judge and recommends that
18 the case be remanded to state court. Additionally, the Court grants Defendant's application to
19 proceed *in forma pauperis*.

20 **I. BACKGROUND**

21 Plaintiff Michael Augustus commenced this unlawful detainer action against Defendant in
22 Sonoma County Superior Court on or around April 14, 2017. (Not. of Removal, Dkt. No. 1 ¶ 2.)
23 The complaint contains a single cause of action for unlawful detainer. *Id.* The case is a "limited
24 civil case," in which Plaintiff seeks immediate possession of a certain property located in Santa
25 Rosa, California, which Defendant occupies.

26 On April 10, 2017, Plaintiff allegedly served a written notice on Defendant to pay rent or
27 quit within three days. (Dkt. No. 1 at 11.) On April 14, 2017, Plaintiff filed the instant unlawful
28 detainer suit in state court. (Compl., Dkt. No. 1 at 7.) On April 25, 2017, Defendant filed an

1 answer. (Dkt. No. 1 at 13.) On May 10, 2017, Defendant removed the action to federal court on
2 the grounds that it presents a federal question. (Not. of Removal at 2.)

3 **II. LEGAL STANDARD**

4 Federal courts exercise limited jurisdiction. A “federal court is presumed to lack
5 jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock W., Inc. v.*
6 *Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citation omitted). A defendant may
7 remove a civil action from state court to federal court if original jurisdiction would have existed at
8 the time the complaint was filed. *See* 28 U.S.C. § 1441(a). “[R]emoval statutes are strictly
9 construed against removal.” *Luther v. Countrywide Homes Loans Servicing, LP*, 533 F.3d 1031,
10 1034 (9th Cir. 2008). “Federal jurisdiction must be rejected if there is any doubt as to the right of
11 removal in the first instance,” such that courts must resolve all doubts as to removability in favor
12 of remand. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The burden of establishing that
13 federal jurisdiction exists is on the party seeking removal. *See id.* at 566-67.

14 Federal district courts have original jurisdiction over actions that present a federal question
15 or those based on diversity jurisdiction. *See Wayne v. DHL Worldwide Express*, 294 F.3d 1179,
16 1183 & n.2 (9th Cir. 2002). Federal district courts have federal question jurisdiction over "all civil
17 actions arising under the Constitution, laws or treaties of the United States." 28 U.S.C. § 1331.
18 Federal question jurisdiction is governed by the well-pleaded complaint rule, which provides that
19 the basis for federal jurisdiction must appear on the face of the properly pleaded complaint, either
20 because the complaint directly raises an issue of federal law or because the plaintiff's "right to
21 relief under state law requires resolution of a substantial question of federal law in dispute
22 between the parties." *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*,
23 463 U.S. 1, 13 (1983). "[A] case may not be removed to federal court on the basis of a federal
24 defense . . . , even if the defense is anticipated in the plaintiff's complaint" *Caterpillar Inc. v.*
25 *Williams*, 482 U.S. 386, 393 (1987) (citation omitted).

26 **III. DISCUSSION**

27 Defendant removed this unlawful detainer action from state court on the grounds that the
28 district court has jurisdiction because the case presents a federal question.

1 **A. Federal Question Jurisdiction**

2 Defendant claims that a federal question exists because Plaintiff allegedly served a
3 defective three day notice to pay rent or quit, which he contends violates the Protecting Tenants at
4 Foreclosure Act. (Not. of Removal ¶ 8.) Defendant’s rights in an unlawful detainer action,
5 however, depend on the interpretation of state law. Further, Defendant has not shown why the
6 resolution of Plaintiff’s unlawful detainer claim will turn on a substantial question of federal law.
7 The complaint, therefore, fails to present a federal question or a substantial question of federal
8 law.

9 Moreover, the well-pleaded complaint rule prevents the Court from considering any
10 additional claims, such that a defendant cannot create federal question jurisdiction by adding
11 claims or defenses to a notice of removal. *See Provincial Gov't of Marinduque v. Placer Dome,*
12 *Inc.*, 582 F.3d 1083, 1086 (9th Cir. 2009); *see also McAtee v. Capital One, F.S.B.*, 479 F.3d 1143,
13 1145 (9th Cir. 2007) (even previously asserted counterclaims raising federal issue will not permit
14 removal). Accordingly, Defendant’s claim that service of the three-day notice was defective does
15 not establish federal question jurisdiction in this matter. Thus, Defendant’s contention that there
16 are federal questions at issue in this litigation is misplaced.

17 Lastly, the limited scope of unlawful detainer proceedings precludes cross-complaints or
18 counterclaims. *See Knowles v. Robinson*, 60 Cal. 2d 620, 626-27 (1963). Thus, to the extent that
19 Defendants’ assertions could be contained in any such filing, they would, nonetheless, fail to
20 introduce a basis for federal question jurisdiction.

21 **B. Diversity Jurisdiction**

22 District courts also have original jurisdiction over all civil actions “where the matter in
23 controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between .
24 . . . citizens of different States.” 28 U.S.C. § 1332(a). When federal subject-matter jurisdiction is
25 predicated on diversity of citizenship, complete diversity must exist between the opposing parties.
26 *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373-74 (1978). Under the forum defendant
27 rule, “a civil action otherwise removable solely on the basis of [diversity jurisdiction] may not be
28 removed if any of the parties in interest properly joined and served as defendants is a citizen of the

1 State in which such action is brought.” 28 U.S.C. § 1441(b). Here, Plaintiff’s citizenship is
2 unknown, and Defendant is a citizen of California. Thus, the forum defendant rule applies, and
3 the action is not removable on the basis of diversity jurisdiction. *See* 28 U.S.C. § 1441(b).

4 **IV. CONCLUSION**

5 For the reasons set forth above, the Court REASSIGNS this action to a district judge with
6 the recommendation that the action be REMANDED to state court for further proceedings. The
7 Court GRANTS Defendant’s request to proceed *in forma pauperis*.

8 Any party may file objections to this report and recommendation with the district judge
9 within 14 days of being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); N.D.
10 Civil L.R. 72-3. The parties are advised that failure to file objections within the specified time
11 may waive the right to appeal the district court’s order. *IBEW Local 595 Trust Funds v. ACS*
12 *Controls Corp.*, No. C-10-5568, 2011 WL 1496056, at *3 (N.D. Cal. Apr. 20, 2011).

13 IT IS SO RECOMMENDED.

14 Dated: June 6, 2017

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17 KANDIS A. WESTMORE
18 United States Magistrate Judge
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