

1 **** E-filed January 4, 2010 ****

2
3
4
5
6
7 NOT FOR CITATION
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 WACHOVIA MORTGAGE FSB,

No. C09-06029 HRL

12 Plaintiff,

**ORDER THAT CASE BE
REASSIGNED TO A DISTRICT
COURT JUDGE**

13 v.

14 ANTHONY V. GUANCIONE III, R.
AUBREÉ GUANCIONE, and WILLIAM
BULLOCK STEWART III,

REPORT AND RECOMMENDATION

15 Defendants.

[Re: Docket Nos. 5–7]

16
17 _____
18 Pro se defendants Anthony Guancione III, R. Aubréé Guancione, and William Stewart III
19 removed this case from Santa Clara County Superior Court and also filed new counterclaims and
20 individual requests to proceed in forma pauperis. For the reasons stated below, the undersigned
21 recommends that this action be summarily remanded to state court.

22 Plaintiff Wachovia Mortgage FSB filed this unlawful detainer action on November 12, 2009
23 in Santa Clara County Superior Court. According to the complaint, in September 2009, Stewart
24 signed a six-month lease agreement to rent the subject property from the Guanciones for \$1471 per
25 month. It appears that shortly thereafter, plaintiff acquired the property, but no rent was paid to it as
26 the successor in interest to the rental agreement. Plaintiff served defendants with a three-day notice
27 to pay rent or quit and then filed this unlawful detainer action when defendants failed to do so.
28 (Docket No. 4, at 11–15.)

1 Removal to federal court is proper where the federal court would have original subject-
2 matter jurisdiction over the complaint. 28 U.S.C. § 1441. If after a court’s prompt review of a
3 notice of removal “it clearly appears on the face of the notice and any exhibits annexed thereto that
4 removal should not be permitted, the court *shall* make an order for summary remand.” 28 U.S.C.
5 § 1446(c)(4) (emphasis added). These removal statutes are strictly construed against removal and
6 place the burden on the petitioner to demonstrate that removal was proper. *Moore-Thomas v.*
7 *Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (citing *Gaus v. Miles, Inc.*, 980 F.2d 564,
8 566 (9th Cir. 1992)).

9 In this case, defendants primarily assert that removal is proper under federal question
10 jurisdiction. Federal courts have original jurisdiction over civil actions “rising under the
11 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. A claim “arises under”
12 federal law if, based on the “well-pleaded complaint rule,” the plaintiff alleges a federal cause of
13 action. *Vaden v. Discovery Bank*, --- U.S. ----, 129 S. Ct. 1262, 1272 (2009). Defenses and
14 counterclaims asserting a federal question do not satisfy this requirement. *Id.* at 1273 (holding that
15 “counterclaims, even if they rely exclusively on federal substantive law, do not qualify a case for
16 federal-court cognizance”).

17 In this case, defendants raise numerous reasons why they satisfy federal question
18 jurisdiction, including that plaintiff has violated their due process and civil rights and that plaintiff
19 has no right to the subject property because defendants have a “land patent” for it under the Treaty
20 of Guadalupe Hidalgo, which ended the Mexican-American War. They also make the conclusory
21 assertion that their counterclaims, seeking a multi-million dollar payment, are based in admiralty
22 law. Despite the dubious nature of defendants’ assertions,¹ none of them can provide this court with
23 federal question jurisdiction. The plaintiff’s complaint clearly states only a cause of action for
24 unlawful detainer; it does not make any federal claims whatsoever. Accordingly, defendants have
25 failed to show that removal is proper on account of any federal substantive law.


26

27 ¹ Defendant R. Aubréé Guancione raised similar assertions in a complaint she filed in October 2009
28 against plaintiff’s Chief Executive Officer, amongst others. Her complaint was dismissed for failure
to “set forth any facts that would support a cognizable federal claim or any likelihood of success on
the merits.” *Guancione v. Stumpf*, No. 09-04684 JF (N.D. Cal. Oct. 2, 2009).

1 Yet defendants also assert that removal is proper based on diversity of citizenship. Federal
2 jurisdiction based on diversity requires not only citizens of different states, but also that the amount
3 in controversy exceed \$75,000. 28 U.S.C. § 1332(a). Defendants do not indicate plaintiff's
4 citizenship, but do note that they are citizens of California.² Furthermore, a review of the complaint
5 shows that it specifies that the "amount demanded does not exceed \$10,000.00." (Docket No. 4, at
6 12.) Plaintiff only seeks forfeiture of the rental agreement, past-due rent of \$1471.00, and damages
7 of \$49.03 per day from December 1, 2009 to the date of entry of judgment. (*Id.* at 13.)
8 Consequently, it is apparent from the face of the complaint that it also fails to meet this court's
9 jurisdictional requirement under § 1332(a), and this court lacks subject-matter jurisdiction.

10 Because defendants have yet to consent to the undersigned's jurisdiction, this court
11 ORDERS the Clerk of the Court to reassign this case to a district court judge. The undersigned
12 further RECOMMENDS that the newly assigned judge (1) summarily remand the case to Santa
13 Clara County Superior Court; and (2) deny as moot, without prejudice, defendants' applications to
14 proceed in forma pauperis. Pursuant to Federal Rule of Civil Procedure 72(b), any party may serve
15 and file objections to this Report and Recommendation within fourteen days after being served.

16
17 Dated: January 4, 2010



HOWARD R. LOYD
UNITED STATES MAGISTRATE JUDGE

18
19
20
21
22
23
24
25
26
27 _____
28 ² As local defendants, it would appear that the defendants do not have the right to remove this action to federal court. 28 U.S.C. § 1441(b) (stating that an action is removable "only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought"). However, as a procedural requirement, a federal court cannot remand sua sponte on this basis. *Lively v. Wild Oats Markets, Inc.*, 456 F.3d 933, 942 (9th Cir. 2006).

1 **C 09-06029 Notice will be sent by alternative means to:**

2 Scott Michael Harris
3 Harris, Rosales & Harris
4 351 St. Mary Street
5 Pleasanton, CA 94566-6648

6 Anthony Guancione III
7 POB 641641
8 San Jose, CA 95164

9 R. Aubréé Guancione
10 POB 641641
11 San Jose, CA 95164

12 William Bullock Stewart III
13 POB 694
14 San Jose, CA 95106

15 **Counsel are responsible for distributing copies of this document to co-counsel who have not**
16 **registered for e-filing under the court's CM/ECF program.**

17
18
19
20
21
22
23
24
25
26
27
28