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E-Filed: August 29, 2014

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

United States District Court
Northern District of California

MONTEREY BAY MILITARY HOUSING,
LLC,

Plaintiff,

v.

TYRRELL A. MORRIS; et al.,

Defendants.

Case No. C14-03807 HRL

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

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

**REPORT AND RECOMMENDATION
RE REMAND TO STATE COURT**

[Re: Docket No. 3]

Defendants Tyrrell A. Morris and Katrina M. Kellerman removed this unlawful detainer action from the Monterey County Superior Court. They also seek leave to proceed in forma pauperis (IFP). For the reasons stated below, the undersigned grants the IFP application and recommends that this matter be remanded to state court.

A court may authorize the commencement of a civil action in forma pauperis (“IFP”) if the court is satisfied that the applicant cannot pay the requisite filing fees. 28 U.S.C § 1915(a)(1). In evaluating such an application, the court should “gran[t] or den[y] IFP status based on the applicant’s financial resources alone and then independently determin[e] whether to dismiss the complaint on the grounds that it is frivolous.” Franklin v. Murphy, 745 F.2d 1221, 1226-27 n.5

1 (9th Cir. 1984). A court may dismiss a case filed without the payment of the filing fee whenever it
2 determines that the action “(i) is frivolous or malicious; (ii) fails to state a claim on which relief
3 may be granted; or (iii) seeks monetary relief against a defendant who is immune from such
4 relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). Having reviewed Defendants’ financial affidavit, the
5 court will grant the application. Nevertheless, this court finds that subject matter jurisdiction is
6 lacking and that this action should be remanded to state court.

7 Removal to federal court is proper where the federal court would have original subject
8 matter jurisdiction over the complaint. 28 U.S.C. § 1441. The removal statutes are strictly
9 construed against removal and place the burden on the defendant to demonstrate that removal was
10 proper. Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1244 (9th Cir. 2009) (citing Gaus
11 v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)). Additionally, the court has a continuing duty to
12 determine whether it has subject matter jurisdiction. Fed. R. Civ. P. 12(h). A case must be
13 remanded to the state court if it appears at any time before final judgment that the court lacks
14 subject matter jurisdiction. 28 U.S.C. § 1447(c).

15 Defendants fail to show that removal is proper based on any federal law. Federal courts
16 have original jurisdiction over civil actions “arising under the Constitution, laws, or treaties of the
17 United States.” 28 U.S.C. § 1331. A claim “arises under” federal law if, based on the “well-
18 pleaded complaint rule,” the plaintiff alleges a federal claim for relief. Vaden v. Discovery Bank,
19 129 S. Ct. 1262, 1272 (2009). Defenses and counterclaims asserting a federal question do not
20 satisfy this requirement. Id. Here, plaintiff’s complaint presents a claim arising only under state
21 law. It does not allege any federal claims whatsoever. Allegations in a removal notice or in a
22 response to the complaint cannot provide this court with federal question jurisdiction.


23 Nor does this court find any basis for diversity jurisdiction. Federal district courts have
24 jurisdiction over civil actions in which the matter in controversy exceeds the sum or value of
25 \$75,000 (exclusive of interest and costs) and is between citizens of different states. 28 U.S.C.
26 §1332. The complaint indicates that the amount demanded does not exceed \$10,000. Moreover,
27 unlawful detainer actions involve the right to possession alone, not title to the property. So, the
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1 fact that the subject property may be worth more than \$75,000 is irrelevant. MOAB Investment
2 Group, LLC v. Moreno, No. C14-0092EMC, 2014 WL 523092 at *1 (N.D. Cal., Feb. 6, 2014);
3 Maxwell Real Estate Investment LLC v. Bracho, No. C12-02774RMW, 2012 WL 2906762 at *1
4 (N.D. Cal., July 13, 2012).

5 There being no basis for federal jurisdiction over plaintiff's unlawful detainer action, the
6 removal of this case was improper. Defendants are advised that future attempts to remove this
7 matter may result in sanctions.

8 Because the parties have yet to consent to the undersigned's jurisdiction, this court
9 ORDERS the Clerk of the Court to reassign this case to a District Judge. The undersigned further
10 RECOMMENDS that the newly assigned judge remand the case to the Monterey County Superior
11 Court. Any party may serve and file objections to this Report and Recommendation within
12 fourteen days after being served. Fed. R. Civ. P. 72.

13 Dated: August 29, 2014

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16 HOWARD R. LLOYD
17 UNITED STATES MAGISTRATE JUDGE
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Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court’s CM/ECF program.