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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 ADAM WEILER,

12 Plaintiff,

13 v.

14 LAURA NUNO TORRES; ANTONIA
15 TORRES OCHOA; ANGEL NUNO
16 TORRES; JESUS HERNANDEZ
17 TORRES; DOES 1 through 10,

18 Defendants.
19

Case No.: 17-CV-1044-AJB-WVG

ORDER:

**(1) SUA SPONTE REMANDING FOR
LACK OF SUBJECT MATTER
JURISDICTION; AND**

**(2) DENYING AS MOOT MOTION
TO PROCEED IN FORMA
PAUPERIS, (Doc. No. 3)**

20 On May 22, 2017, Defendant Angel Nuno Torres (“Defendant”), acting *pro se*, filed
21 a notice of removal, (Doc. No. 1), and application to proceed *in forma pauperis*, (Doc. No.
22 3). The notice of removal seeks to remove an unlawful detainer proceeding initiated in San
23 Diego Superior Court by Plaintiff Adam Weiler (“Plaintiff”) in this action. (Doc. No. 1 at
24 2.) For the reasons set forth below, the Court *sua sponte* **REMANDS** the action to San
25 Diego Superior Court for lack of subject matter jurisdiction and **DENIES AS MOOT**
26 Defendant’s application to proceed *in forma pauperis*. (Doc. No. 3.)

27 **LEGAL STANDARD**

28 Federal courts are courts of limited jurisdiction, having subject matter jurisdiction

1 only over matters authorized by the Constitution and Congress. *See Kokkonen v. Guardian*
2 *Life Ins. Co.*, 511 U.S. 375, 377 (1994). A defendant may remove a civil action to federal
3 court only if the district court would have original jurisdiction over the matter. 28 U.S.C.
4 § 1441(a). “[R]emoval statutes are strictly construed against removal.” *Luther v.*
5 *Countywide Home Loans Servicing LP*, 533 F.3d 1031, 1034 (9th Cir. 2008). There is a
6 “strong presumption” against removal jurisdiction, and the party seeking removal always
7 bears the burden of establishing that removal is proper. *Gaus v. Miles, Inc.*, 980 F.2d 564,
8 566 (9th Cir. 1992). If there is any doubt as to the propriety of removal, federal jurisdiction
9 must be rejected. *Id.*

10 “[F]ederal courts are under an independent obligation to examine their own
11 jurisdiction[.]” *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990). Accordingly,
12 “[i]f at any time before final judgment it appears that the district court lacks subject matter
13 jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

14 DISCUSSION

15 As set forth in the notice of removal, Defendant alleges the Court has both diversity
16 and federal question jurisdiction over the present action. (Doc. No. 1 ¶¶ 5, 9.) Diversity
17 jurisdiction exists where there is complete diversity among opposing parties and the
18 amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). Federal question jurisdiction
19 exists over “all civil actions arising under the Constitution, laws, or treaties of the United
20 States.” 28 U.S.C. § 1331; *see also* U.S. Const. art. III, § 2, cl. 1. Jurisdiction in a federal
21 question case is “governed by the ‘well-pleaded complaint rule,’ which provides that
22 federal [question] jurisdiction exists only when a federal question is presented on the face
23 of the plaintiff’s properly pleaded complaint.” *California ex rel. Sacramento Metro. Air*
24 *Quality Mgmt. Dist. v. United States*, 215 F.3d 1005, 1014 (9th Cir. 2000) (quoting *Audette*
25 *v. Int’l Longshoremen’s & Warehousemen’s Union*, 195 F.3d 1107, 1111 (9th Cir. 1999));
26 *see Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 199 (1921). Accordingly, the
27 federal question may not be aided by the notice of removal, *Gully v. First Nat’l Bank*, 299
28 U.S. 109, 113 (1936), nor may a case be removed on the basis of a federal defense,

1 *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392–93 (1987), or counterclaim, *Holmes Grp.,*
2 *Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 832 (2002).

3 Defendant first claims that diversity jurisdiction exists. (Doc. No. 1 ¶ 5.) The
4 complaint attached as Exhibit A to the notice of removal, however, affirmatively shows
5 that the amount in controversy does not meet the jurisdictional minimum. The complaint
6 is an unlawful detainer action in which Plaintiff requests \$3100.00 in past due rent, as well
7 as reasonable attorney fees and forfeiture of the rental agreement. (Doc. No. 1 at 9.)
8 Plaintiff also seeks damages at the rate of \$51.66 per day for each day from April 1, 2017,
9 through entry of judgment. (*Id.*) At this juncture, the request for damages amounts to
10 approximately \$2737.98. It is therefore not more likely than not that the amount in
11 controversy exceeds \$75,000.

12 Defendant’s contention that federal question jurisdiction exists based on his answer
13 also fails. (Doc. No. 1 ¶¶ 7, 9.) The face of Plaintiff’s complaint alleges only a single claim
14 for unlawful detainer, which is a California state law cause of action. (Doc. No. 1 at 7–9.)
15 *Wells Fargo Bank v. Lapeen*, No. C 11-01932 LB, 2011 WL 2194117, at *3 (N.D. Cal.
16 June 6, 2011) (“An unlawful detainer action, on its face, does not arise under federal law
17 but is purely a creature of California law.” (citing *Wescom Credit Union v. Dudley*, No.
18 CV 10-8203 GAF (SSx), 2010 WL 4916578, at *2 (C.D. Cal. Nov. 22, 2010))).

19 Defendant nonetheless argues that federal question jurisdiction exists based upon his
20 demurrer and answer to the state court complaint, asserting the notice was defective for
21 failing to comply with the Protecting Tenants at Foreclosure Act, a federal statute. (Doc.
22 No. 1 ¶ 7.) Defendant’s position carries no clout. Federal question jurisdiction cannot be
23 predicated upon a defendant’s response to the complaint; rather, the complaint itself must
24 raise the federal question. *Gully*, 299 U.S. at 113 (“the controversy must be disclosed upon
25 the face of the complaint, unaided by the answer or by the petition for removal”);
26 *Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1086 (9th Cir. 2009)
27 (“the federal question on which jurisdiction is premised cannot be supplied via a defense”);
28 *Franks v. Franks*, No. 3:17-CV-893-CAB-AGS, 2017 WL 1735169, at *2 (S.D. Cal. May

1 4, 2017) (remanding unlawful detainer action for lack of subject matter jurisdiction where
2 defendant asserted that plaintiff “allegedly violated the notice provisions of the [PTFA],
3 and that the PTFA preempts Plaintiff’s unlawful detainer action”).¹

4 As such, the Court finds that Plaintiff’s complaint does not “necessarily raise a stated
5 federal issue, actually disputed and substantial,” which this Court “may entertain without
6 disturbing any congressionally approved balance of federal and state judicial
7 responsibilities.” *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308,
8 314 (2005); *see also Aurora Loan Servs., LLC v. Montoya*, No. 2:11-cv-2485-MCE-KJN-
9 PS, 2011 WL 5508926, at *3 (E.D. Cal. Nov. 9, 2011) (“[P]laintiff filed its Complaint in
10 Superior Court asserting a single claim for unlawful detainer premised solely on California
11 law. Because a claim for unlawful detainer does not by itself present a federal question or
12 necessarily turn on the construction of federal law, no basis for federal question jurisdiction
13 appears on the face of the Complaint.”).

14 **CONCLUSION**

15 Based on the foregoing, the Court *sua sponte* **REMANDS** this action in its entirety
16 to San Diego Superior Court. Because the Court remands this action pursuant to its
17 “independent obligation to examine [its] own jurisdiction,” *FW/PBS, Inc.*, 493 U.S. at 231,
18 the Court **DENIES AS MOOT** Defendant’s application to proceed *in forma pauperis*.
19 (Doc. No. 3.)

20 **IT IS SO ORDERED.**

21 Dated: May 23, 2017

22 
23 Hon. Anthony J. Battaglia
24 United States District Judge

25 _____
26 ¹ Furthermore, Defendant’s contention that the demurrer and answer invoked the PTFA is
27 factually false. Defendant demurred on the grounds that the notice was defective for failing
28 to comply with California state law, not the PTFA. (Doc. No. 1 at 17–18.) The answer
similarly makes no mention of the PTFA. (*Id.* at 19–22.)