

U.S. BANK, N.A.,)	
)	
Plaintiff,)	8:11CV243
)	
vs.)	ORDER
)	
STACIA M. JARZOSKI,)	
)	
Defendant.)	

This action was initially filed by the plaintiff in the County Court of Douglas County, Nebraska. **See** Filing No. 1 - [Ex. 2](#). According to the allegations in the complaint, the plaintiff extended credit to the defendant who then failed to pay the plaintiff in the amount \$7,349.47. **Id.** The defendant filed an answer and counterclaim alleging violations pursuant to the Fair Debt Collection Practices Act, [15 U.S.C. § 1692](#), *et seq.*, and the Truth in Lending Act, [15 U.S.C. § 1601](#), *et seq.* **Id.** [Ex. 3](#). On July 8, 2011, the plaintiff removed the action to this court stating federal question jurisdiction exists based on the defendant's counterclaims. **See** [Filing No. 1](#) - Notice of Removal.

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removal jurisdiction is made on the basis of the record at the time of removal. [Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach](#), 523 U.S. 26, 43 (1998).

The court finds the notice of removal appears insufficient to grant this court jurisdiction. In this case, the face of the complaint states a specific amount of damages. Such showing may be determinative and indicates no diversity jurisdiction exists. See [St. Paul Mercury Indem. Co. v. Red Cab Co.](#), 303 U.S. 283, 294 (1938). The plaintiff alleges federal question jurisdiction exists. “Federal question jurisdiction, however, is determined solely by the allegations contained in the plaintiff’s complaint. It is well-established that a defendant cannot remove based on a counterclaim.” [Duckson, Carlson, Bassinger, LLC v. Lake Bank, N.A.](#), 139 F. Supp. 2d 1117, 1118 (D. Minn. 2001) (citing [Caterpillar, Inc. v. Williams](#), 482 U.S. 386, 392 (1987)); see [Magee v. Exxon Corp.](#), 135 F.3d 599, 601 (8th Cir. 1998) (noting exception of complete preemption). Similarly, the plaintiff has shown no statutory right exists for **the plaintiff** to remove this matter based on a defense or counterclaim. See [Duckson](#), 139 F. Supp. 2d at 1119 (citing [Shamrock Oil](#), 313 U.S. at 107). The plaintiff does not allege complete preemption. Nevertheless, the plaintiff shall have an opportunity to show cause why this matter should not be summarily remanded.

IT IS ORDERED:

The plaintiff shall have to **on or before November 2, 2011**, to show cause why this matter should not be remanded for lack of subject matter jurisdiction.

DATED this 12th day of October, 2011.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge