

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 28 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ESA MANAGEMENT LLC,

No. 23-55694

Plaintiff-Appellee,

D.C. No.

v.

3:23-cv-01324-RBM-MMP
Southern District of California,
San Diego

TIMOTHY KALER,

ORDER

Defendant-Appellant.

Before: BADE, LEE, and VANDYKE, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal of the district court's August 2, 2023 order remanding the action to state court for lack of subject matter jurisdiction. *See* 28 U.S.C. § 1447(d) (order remanding a removed action to state court for lack of subject matter jurisdiction pursuant to § 1447(c) "is not reviewable on appeal or otherwise"); *Acad. of Country Music v. Cont'l Cas. Co.*, 991 F.3d 1059, 1066 (9th Cir. 2021) (review of district court's characterization of remand for lack of subject-matter jurisdiction under § 1447(c) limited to confirming that that characterization was colorable); *Kunzi v. Pan Am. World Airways, Inc.*, 833 F.2d 1291, 1293 (9th Cir. 1987).

Consequently, this appeal is dismissed for lack of jurisdiction.

DISMISSED.

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

11 ESA MANAGEMENT, LLC,
12
13 v.
14 TIMOTHY KALER,

Plaintiff,
Defendant.

Case No.: 3:23-cv-01324-RBM-MMP

ORDER:

(1) REMANDING CASE TO STATE COURT FOR LACK OF SUBJECT MATTER JURISDICTION; AND

(2) DENYING DEFENDANT'S MOTION TO PROCEED IN FORMA PAUPERIS AS MOOT

[Doc. 2]

21 On July 19, 2023, Defendant Timothy Kaler (“Defendant”) filed a Notice of
22 Removal of Case No. 37-2023-00010833-CL-UD-CTL (“Notice of Removal”), which was
23 initiated in the Superior Court of California, County of San Diego (“San Diego Superior
24 Court”). (Doc. 1.) Also on July 19, 2023, Defendant filed a Motion for Leave to Proceed
25 In Forma Pauperis (“IFP Motion”). (Doc. 2.) For the reasons discussed below, the Court
26 **REMANDS** this action to San Diego Superior Court and **DENIES** Defendant’s IFP
27 Motion as moot.

28 | //

I. BACKGROUND

2 Plaintiff ESA Management, LLC (“Plaintiff”) initiated this action by filing an
3 unlawful detainer action for residential real property against Defendant in San Diego
4 Superior Court (“Underlying Action”) on March 15, 2023. (See Doc. 1-2.) In the
5 Underlying Action, Plaintiff seeks unpaid rent from Defendant in the amount of \$19,975.20
6 and possession of property located at 1050 Grand Avenue, Room 104 in Carlsbad,
7 California (the “Property”). (See *id.*) Plaintiff alleges that it served Defendant with a
8 written notice requiring Defendant to pay rent or vacate the Property, and Defendant failed
9 to do either. (*Id.* at 2-3.) Plaintiff alleges a single claim for unlawful detainer under
10 California law. (*Id.* at 14.)

11 On July 19, 2023, Defendant a Notice of Removal. (Doc. 1.) In the Notice of
12 Removal, Defendant explains that the Court has jurisdiction over this matter pursuant to
13 federal question jurisdiction and diversity jurisdiction. (*Id.* at 6–12.)

II. LEGAL STANDARD

15 Congress has authorized a defendant to remove a civil action from state court to
16 federal court. 28 U.S.C. § 1441. However, the removing party “always has the burden of
17 establishing that removal was proper.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.
18 1992). The district court must remand any case previously removed from a state court “if
19 at any time before final judgment it appears that the district court lacks subject
20 matter jurisdiction.” 28 U.S.C. § 1447(c); *see Allen v. Santa Clara Cnty. Corr. Peace*
21 *Officers Ass'n*, 400 F. Supp. 3d 998, 1001 (E.D. Cal. 2019), *aff'd*, 38 F.4th 68 (9th Cir.
22 2022) (“Lack of subject matter jurisdiction may [] be raised by the district court *sua*
23 *sponte*.”); *Fort Bend Cnty., Texas v. Davis*, 139 S. Ct. 1843, 1849 (2019) (“[C]hallenges to
24 subject-matter jurisdiction may be . . . ‘at any point in the litigation,’ and courts must
25 consider them *sua sponte*.”) (quoting *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012)).
26 Moreover, there is a strong presumption against removal jurisdiction. *Gaus*, 980 F.2d at
27 566 (“The ‘strong presumption’ against removal jurisdiction means that the defendant
28 always has the burden of establishing that removal is proper.”) (quoting *Nishimoto v.*

1 *Federman-Bachrach & Assocs.*, 903 F.2d 709, 712 n. 3 (9th Cir.1990)). Thus, doubts as
2 to whether the federal court has subject matter jurisdiction must be resolved in favor of
3 remand. *See Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996); *see also Gaus*, 980
4 F.2d at 566 (“Federal jurisdiction must be rejected if there is any doubt as to the right
5 of removal in the first instance.”)

6 **III. DISCUSSION**

7 **A. Federal Question Jurisdiction**

8 District courts have original jurisdiction over “all civil actions that arise under the
9 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. “A case ‘arises
10 under’ federal law either where federal law creates the cause of action or ‘where the
11 vindication of a right under state law necessarily turn[s] on some construction of federal
12 law.’” *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088–89 (9th Cir. 2002)
13 (modification in original) (citing *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*,
14 463 U.S. 1, 8–9 (1983)).

15 Defendant argues that:

16 [t]his Court possesses federal question jurisdiction over this action pursuant
17 to 28 U.S.C. § 1331 because . . . Defendant alleges a cognizable claim arising
18 under, (1) Violations of the Federal CARES Act; and (2) Breach of Fiduciary
19 Duty indicating potential fraud against the United States of America; and (3)
20 Violation of the 6th amendment under the US Constitution; and (4) Violation
of Defendant’s right for due process under the 14th amendment of the US
Constitution.

21
22 (*Id.* at 6.)

23 The Court notes “[f]ederal jurisdiction cannot be predicated on an actual or
24 anticipated defense . . . or rest upon an actual or anticipated counterclaim.” *Vaden v.*
25 *Discover Bank*, 556 U.S. 49, 49 (2009). Rather, “the federal question must ‘be disclosed
26 upon the face of the complaint, unaided by the answer.’” *Provincial Gov’t of Marinduque*
27 *v. Placer Dome, Inc.*, 582 F.3d 1083, 1086 (9th Cir. 2009) (quoting *Phillips Petroleum Co.*
28 *v. Texaco, Inc.*, 415 U.S. 125, 127–28 (1974)).

1 Here, Court finds there is no federal question jurisdiction because the Underlying
2 Action invokes an unlawful detainer proceeding pursuant to California law. (See Doc. 1–
3 2); *see also Aurora Loan Servs., LLC v. Montoya*, No. 2:11-cv-2485-MCE-KJN-PS, 2011
4 WL 5508926, at *3 (E.D. Cal. Nov. 9, 2011) (“[P]laintiff filed its Complaint in Superior
5 Court asserting a single claim for unlawful detainer premised solely on California law.
6 Because a claim for unlawful detainer does not by itself present a federal question or
7 necessarily turn on the construction of federal law, no basis for federal question jurisdiction
8 appears on the face of the Complaint.”); *see also U.S. Bank Nat'l Ass'n v. Bilbaeno*, No.
9 C-12-01707, 2012 WL 3987317, at * 1 (N.D. Cal. Sept. 7, 2012) (finding that an unlawful-
10 detainer claim *not* based upon any federal statute cannot establish federal-question
11 jurisdiction). While Defendant’s Notice of Removal asserts various federal causes of
12 action, they have not been formally raised and, in any event, are not asserted in Plaintiff’s
13 complaint. *See Am. Vantage Companies v. Table Mountain Rancheria*, 103 Cal. App. 4th
14 590, 595 (2002) (“[F]ederal jurisdiction exists only when a federal question is presented
15 on the face of the plaintiff’s properly pleaded complaint.”) Therefore, the Court finds no
16 federal question jurisdiction.

17 B. Diversity Jurisdiction

18 Diversity jurisdiction under title 28 of the United States Code, section 1332, gives
19 district courts original jurisdiction of civil actions that are between citizens of different
20 states where the amount in controversy exceeds \$75,000. *Louie v. BFS Retail & Com.*
21 *Operations, LLC*, 178 Cal. App. 4th 1544, 1554 (2009). For purposes of citizenship, a
22 limited liability company is a citizen of every state in which its owners are citizens.
23 *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006).

24 Defendant argues diversity jurisdiction exists because Defendant is a resident of
25 California, and Plaintiff “is not a citizen of the State of California.” (Doc. 1 at 8.)
26 Additionally, Defendant explains that “[i]n this case the record contains offers which
27 [Plaintiff’s] counsel and representatives sent to [Defendant] which will, when combined
28 with requests at trial, will exceed \$80,000” (*Id.* at 12.)

1 The Court finds Defendant has failed to overcome the “strong presumption” against
2 removal jurisdiction. *See Gaus*, 980 F.2d at 566. As previously noted, “the defendant
3 always has the burden of establishing that removal is proper.” *Id.* Here, Defendant does
4 not show there is complete diversity among the parties and simply states Plaintiff “is not a
5 citizen of the State of California.” (See Doc. 1 at 8.) Since Plaintiff is an LLC, Plaintiff’s
6 citizenship is determined by the citizenship of its owners. *See Johnson*, 437 F.3d at 899.
7 However, Defendant fails to identify the specific citizenship of the owners.

8 Even assuming there was complete diversity, Defendant fails to show the amount in
9 controversy exceeds \$75,000. It is well established that “[w]here it is not facially evident
10 from the complaint that more than \$75,000 is in controversy, the removing party must
11 prove, by a preponderance of the evidence, that the amount in controversy meets the
12 jurisdictional threshold.” *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090
13 (9th Cir. 2003). Conclusory allegation as to the amount in controversy are insufficient. *Id.*
14 at 1090–91; *see Gaus*, 980 F.2d at 567. Here, Defendant argues “[t]he amount in
15 controversy requirement of the diversity statute is easily met in this case” and explains
16 there are “settlement demand letters and other relevant evidence of the amount in
17 controversy that appears to reflect a reasonable estimate of [Plaintiff’s] claim in excess of
18 \$80,000.[] This will be further explored at trial with witnesses.” (Doc. 1 at 11–12.) The
19 Court notes Plaintiff’s initial March 15, 2023 filing in San Diego Superior Court identifies
20 this action as a “limited civil case” which “exceeds \$10,000 but does not exceed \$25,000.”
21 (Doc. 1–2 at 1.) Additionally, Plaintiff seeks “possession of the premises” and costs
22 incurred in the proceeding including “past-due rent of \$19,975.20” and “reasonable
23 attorney fees.” (*Id.* at 4.) It appears Plaintiff’s request is limited and, based on the
24 foregoing, unlikely to exceed \$75,000. While Defendant mentions an \$80,000 estimate,
25 the origins of that estimate are unclear. *See Garza v. Bettcher Indus., Inc.*, 752 F. Supp.
26 753, 763 (E.D. Mich. 1990) (holding that defendant’s assertion that “the amount in
27 controversy exceeds \$50,000,” without identifying any specific factual allegations or
28 provisions in the complaint which might support that proposition, should provoke *sua*

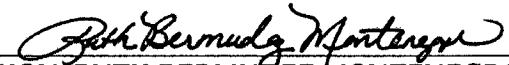
1 *sponte* remand). Therefore, the Court concludes Defendant has failed to prove by a
2 preponderance of the evidence that the amount in controversy exceeds \$75,000.

3 **IV. CONCLUSION**

4 In conclusion, it appears the Court lacks subject matter jurisdiction over this action
5 and, because Defendant cannot establish this Court has jurisdiction, removal was improper.
6 Therefore, the Court **REMANDS** this action to San Diego Superior Court and **DENIES**
7 Defendant's IFP Motion as moot.

8 **IT IS SO ORDERED.**

9 DATE: August 2, 2023

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11 
12 HON. RUTH BERMUDEZ MONTENEGRO
13 UNITED STATES DISTRICT JUDGE
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