
THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

TYLER OLSEN, and BRONCS & DONKS,
Plaintiffs,

vs.

SETH LARSEN and CANVAS CUTTER,
LLC,

Defendants.

**ORDER TO SHOW CAUSE WHY THIS
CASE SHOULD NOT BE DISMISSED
AND REMANDED TO STATE COURT
FOR LACK OF SUBJECT MATTER
JURISDICTION**

Case No: 4:23-cv-00110-DN

Judge David Nuffer

A federal court has a duty to consider *sua sponte* whether it has subject-matter jurisdiction whenever a doubt arises as to the existence of federal jurisdiction.¹ If a court concludes that it lacks subject-matter jurisdiction in a case removed from state court, it must remand the case to state court.²

Defendants removed this case under 28 U.S.C. §§ 1331 and 1338 alleging federal question subject matter jurisdiction.³ Plaintiff's Complaint contains five state law claims.⁴ However, Defendants argue federal question jurisdiction under 28 U.S.C. § 1331 is satisfied because they filed "compulsory counterclaims of Copyright Infringement claims pursuant to 17 U.S.C. § 501 et seq over which federal district courts hold exclusive jurisdiction."⁵

¹ *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 278 (1977).

² 28 U.S.C. § 1447(c).

³ Notice of Removal at 2, docket no. 1, filed November 24, 2023.

⁴ Complaint, [docket no.1-1](#), filed November 24, 2023.

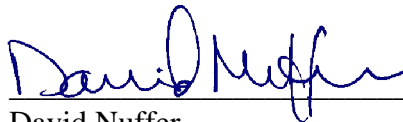
⁵ Notice of Removal at 2. *See also* Answer and Counterclaim, [docket no. 4](#), filed November 24, 2023.

With regard to federal question jurisdiction of a case with a patent-law counterclaim, the United States Supreme Court held: “federal jurisdiction generally exists only when a federal question is presented on the face of the *plaintiff’s* properly pleaded complaint.”⁶ Additionally, the Supreme Court also stated that a counterclaim “which appears as part of the defendant's answer, not as part of the plaintiff's complaint—cannot serve as the basis for [federal question] jurisdiction.”⁷ More recently, the United States Court of Appeals for the Tenth Circuit agreed: “In general, original jurisdiction is lacking unless there is diversity of citizenship or ‘a federal question is presented on the face of the plaintiff's properly pleaded complaint.’ [A] case may not be removed to federal court solely because of a defense or counterclaim arising under federal law.”⁸

THEREFORE, IT IS HEREBY ORDERED that by no later than Friday February 2, 2024, Defendants shall file a response that explains why this case should not be remanded for lack of subject-matter jurisdiction. If Defendants fail to respond, this action will be remanded to state court.

Signed January 24, 2024.

BY THE COURT



David Nuffer
United States District Judge

⁶ *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831, (2002).

⁷ *Id.*

⁸ *Topeka Hous. Auth. v. Johnson*, 404 F.3d 1245, 1247 (10th Cir.2005).