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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Moofly Productions, LLC,)	CV 13-5866 RSWL (PjWx)
)	
Plaintiff,)	
v.)	ORDER TO SHOW CAUSE RE:
)	SUBJECT MATTER
Sandra Favila, an)	JURISDICTION
individual; Estate of)	
Richard C. Corrales; and)	
Does 1 through 10,)	
inclusive,)	
)	
)	
Defendants.)	
)	
)	

The Court is in receipt of Defendants and Counter-Claimants Estate of Richard C. Corrales, Sandra Corrales Favila, and Motion Graphix, Inc.'s (collectively "Counter-Claimants") Notice of Removal, which alleges federal question jurisdiction as the ground for removing this Action to federal court [1].

The removal statute, 28 U.S.C. § 1441, allows a defendant to remove a case originally filed in state court when the case presents a federal question or is

1 an action between citizens of different states and
2 involves an amount in controversy that exceeds \$75,000.
3 See 28 U.S.C. §§ 1441(a), (b). See also 28 U.S.C. §§
4 1331, 1332(a).

5 The Ninth Circuit "strictly construe[s] the removal
6 statute against removal jurisdiction," and "[f]ederal
7 jurisdiction must be rejected if there is any doubt as
8 to the right of removal in the first instance." Gaus
9 v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)
10 (citing Boggs v. Lewis, 863 F.2d 662, 663 (9th Cir.
11 1988), Takeda v. Northwestern Nat'l Life Ins. Co., 765
12 F.2d 815, 818 (9th Cir. 1985), and Libhart v. Santa
13 Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir. 1979)).
14 "The 'strong presumption' against removal jurisdiction
15 means that the defendant always has the burden of
16 establishing that removal is proper." Id. (citing
17 Nishimoto v. Federman-Bachrach & Assocs., 903 F.2d 709,
18 712 n. 3 (9th Cir. 1990), and Emich v. Touche Ross &
19 Co., 846 F.2d 1190, 1195 (9th Cir. 1988)).

20 As the party invoking federal jurisdiction in this
21 case, Counter-Claimants have the burden of establishing
22 the existence of subject matter jurisdiction. See
23 Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377
24 (1994); In re Ford Motor Co., 264 F.3d 952, 957 (9th
25 Cir. 2001); Thompson v. McCombe, 99 F.3d 352, 353 (9th
26 Cir. 1996).

27 The Notice of Removal alleges that removal is
28 proper based on federal question jurisdiction. Notice

1 of Removal ¶ 16. In particular, the Notice of Removal
2 alleges that Counter-Claimants' first amended cross-
3 complaint alleges causes of action arising under
4 federal law. Id. ¶ 7.

5 It is well established that "a case may *not* be
6 removed to federal court on the basis of a federal
7 defense, . . . even if the defense is anticipated in
8 the plaintiff's complaint." Caterpillar, Inc. v.
9 Williams, 482 U.S. 386, 393 (1987). Similarly, "a
10 counterclaim -- which appears as part of the
11 defendant's answer, not as part of the plaintiff's
12 complaint -- cannot serve as the basis for 'arising
13 under' jurisdiction." Holmes Grou, Inc. v. Vornado Air
14 Circulation Sys., 535 U.S. 826, 831 (2002). "Under the
15 longstanding well-pleaded complaint rule, . . . a suit
16 'arises under' federal law 'only when the plaintiff's
17 statement of his own cause of action shows that it is
18 based upon federal law.'" Vaden v. Discover Bank, 556
19 U.S. 49, 60 (2009) (quoting Louisville & N.R. Co. v.
20 Mottley, 211 U.S. 149, 152 (1908)). Because "plaintiff
21 is 'the master of the complaint,' the
22 well-pleaded-complaint rule enables him, 'by eschewing
23 claims based on federal law, . . . to have the cause
24 heard in state court.'" Id. (quoting Caterpillar, 482
25 U.S. at 398-99).

26 Plaintiff Moofly Productions, LLC's ("Plaintiff")
27 First Amended Complaint ("FAC") alleges four state law
28 causes of action: (1) Intentional Interference with

1 Prospective Economic Advantage; (2) Intentional
2 Interference with Present Contractual Relations; (3)
3 Unfair Competition under California Business &
4 Professions Code section 17200 et seq.; and (4) Unfair
5 Competition under California Business & Professions
6 Code section 17000 et seq. FAC ¶¶ 17-55. In other
7 words, Plaintiff's FAC pleads only state-law tort
8 claims and state law claims arising under California
9 statute, not federal claims.

10 Therefore, it is **ORDERED** that Counter-Claimants
11 show cause why this case is removable to federal
12 district court. Counter-Claimants have no later than
13 **October 7, 2013**, to respond, demonstrating why this
14 case should not be remanded for lack of subject matter
15 jurisdiction. If Plaintiff and Cross-Defendants deem
16 it necessary to respond to Defendants' response, they
17 have no later than **October 21, 2013** to submit a
18 response to this Court. If the Court is not in receipt
19 of the Plaintiff and Cross Defendants' response by that
20 date, the Court will deem the matter submitted and rule
21 on the papers presented before it.

22
23 **IT IS SO ORDERED.**

24 DATED: September 23, 2013

25
26 RONALD S.W. LEW

27 **HONORABLE RONALD S.W. LEW**
28 Senior, U.S. District Court Judge