

1 UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF CALIFORNIA  
3

4 FRESNO COMMUNITY HOSPITAL AND  
5 MEDICAL CENTER,

6 Plaintiff,

7 v.

8 MICHAEL TATER-ALEXANDER,

9 Defendant.

1:11-cv-00487 OWW SMS

MEMORANDUM DECISION AND ORDER  
RE PLAINTIFF'S MOTION TO  
REMAND.

10  
11 I. INTRODUCTION

12 Before the court is Plaintiff's motion to remand the case to  
13 Fresno County Superior Court. Doc. 6. Defendant opposes the  
14 motion. Doc. 14.

15 II. BACKGROUND

16 On March 18, 2011, Plaintiff filed a Complaint against  
17 Defendant in the Superior Court of California, County of Fresno.  
18 Doc. 1, Ex. A. The Complaint seeks a temporary restraining order  
19 and preliminary and permanent injunctions: (1) enjoining  
20 Defendant from engaging in certain conduct; and (2) preventing  
21 Defendant from remaining on Plaintiff's premises once Defendant  
22 has been discharged or has refused the care that can be provided  
23 to him, or if Defendant engages in prohibited conduct.  
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25 Defendant removed the case to federal court on March 22,  
26 2011. Doc. 1. On March 28, 2011, Plaintiff filed a motion to  
27 remand (Doc. 6), which Defendant opposed (Doc. 14). Plaintiff  
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1 contends that remand is proper because the court does not have  
2 jurisdiction. Plaintiff applied for an order shortening the time  
3 for hearing of the motion (Doc. 8), which was granted in court on  
4 March 31, 2011 (Minute Order 12). The motion was heard on April  
5 7, 2011.  
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7 III. LEGAL STANDARD

8 28 U.S.C. § 1441(a) provides in pertinent part:

9 [A]ny civil action brought in a State court of which the  
10 district courts of the United States have original  
11 jurisdiction, may be removed by the defendant or the  
12 defendants, to the district court of the United States for  
the district and division embracing the place where such  
action is pending.

13 "The threshold requirement for removal under 28 U.S.C. § 1441 is  
14 a finding that the complaint contains a cause of action that is  
15 within the original jurisdiction of the district court." *Hunter*  
16 *v. Philip Morris USA*, 582 F.3d 1039, 1042 (9<sup>th</sup> Cir. 2009) (quoting  
17 *Ansley v. Ameriquest Mortg. Co.*, 340 F.3d 858, 861 (9<sup>th</sup> Cir.  
18 2003). "A defendant may remove an action to federal court based  
19 on federal question jurisdiction or diversity jurisdiction."  
20 *Hunter v. Philip Morris USA*, 582 F.3d at 1042.  
21

22 To determine whether removal is proper based on "federal  
23 question jurisdiction, the well-pleaded complaint rule 'provides  
24 that federal jurisdiction exists only when a federal question is  
25 presented on the face of the plaintiff's properly pleaded  
26 complaint.'" *Hunter v. Philip Morris USA*, 582 F.3d at 1042  
27 (quoting *Fisher v. NOS Commc'ns (In re NOS Commc'ns)*, 495 F.3d  
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1 1052, 1057 (9th Cir. 2007)). More specifically, federal question  
2 jurisdiction exists "if a well-pleaded complaint establishes  
3 either that [1] federal law creates the cause of action or that  
4 [2] the plaintiff's right to relief necessarily depends on  
5 resolution of a substantial question of federal law." *Armstrong*  
6 *v. N. Mariana Islands*, 576 F.3d 950, 955-956 (9th Cir. 2009)  
7 (quoting *Williston Basin Interstate Pipeline Co. v. An Exclusive*  
8 *Gas Storage Leasehold & Easement in the Cloverly Subterranean*  
9 *Geological Formation*, 524 F.3d 1090, 1100 (9<sup>th</sup> Cir. 2008)  
10 (internal quotation marks omitted).  
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12 "Whether the complaint states a claim arising under federal  
13 law must be ascertained by the legal construction of [the  
14 plaintiff's] allegations, and not by the effect attributed to  
15 those allegations by the adverse party." *Ultramar Amer. Ltd. v.*  
16 *Dwelle*, 900 F.2d 1412, 1414 (9th Cir. 1990). "The mere existence  
17 of a federal defense to a state law claim is insufficient to  
18 create federal jurisdiction over a case." *U.S. v. Arcata*, 629  
19 F.3d 986, 990 (9<sup>th</sup> Cir. 2010). Similarly, a counterclaim involving  
20 federal law does not provide a basis for federal question  
21 jurisdiction. *Holmes Group, Inc. v. Vornado Air Circulation Sys.,*  
22 *Inc.*, 535 U.S. 826, 830, 122 S.Ct. 1889 (2002). There is an  
23 exception where plaintiff's federal claim has been disguised by  
24 "artful pleading," such as where the claim is exclusively  
25 governed by federal law or is a state claim preempted by federal  
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1 law. *Sullivan v. First Affiliated Sec., Inc.*, 813 F.2d 1368, 1372  
2 (9th Cir.1987). However, the artful pleading exception is invoked  
3 "only in exceptional circumstances as it raises difficult issues  
4 of state and federal relationships and often yields  
5 unsatisfactory results." *Id.* (quoting *Salveson v. W. States*  
6 *Bankcard Ass'n*, 731 F.2d 1423, 1427 (9<sup>th</sup> Cir. 1984)).

8 To protect the jurisdiction of state courts, removal  
9 jurisdiction is strictly construed in favor of remand. *Harris v.*  
10 *Bankers Life & Cas. Co.*, 425 F.3d 689, 698 (9th Cir. 2005)  
11 (citing *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09,  
12 61 S.Ct. 868, 85 L.Ed. 1214 (1941)). Any doubt as to the right of  
13 removal must be resolved in favor of remand. *Gaus v. Miles*, 980  
14 F.2d 564, 566 (9th Cir. 1992). It is presumed "that a cause lies  
15 outside [the] limited jurisdiction [of the federal courts] and  
16 the burden of establishing the contrary rests upon the party  
17 asserting jurisdiction." *Hunter v. Philip Morris USA*, 582 F.3d at  
18 1042 (quoting *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 684  
19 (9<sup>th</sup> Cir. 2006) (alterations in original)).

#### 21 IV. ANALYSIS

##### 22 A. Jurisdiction

23 Plaintiff argues that the case should be remanded because  
24 the court does not have jurisdiction. Because Plaintiff is a  
25 California corporation with its principal office in Fresno and  
26 Defendant is a resident of Fresno, Plaintiff correctly asserts  
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1 that the court does not have diversity jurisdiction under 28  
2 U.S.C. § 1332. At issue is whether the court has federal question  
3 jurisdiction under 28 U.S.C. § 1331.

4 Here, the Complaint seeks a temporary restraining order and  
5 preliminary and permanent injunctions: (1) enjoining Defendant  
6 from engaging in certain conduct, including: (i) using profanity  
7 against medical personnel; (ii) refusing to be examined; (iii)  
8 refusing to have his vital signs taken; (iv) interrupting medical  
9 personnel when they are trying to speak with him; (v) threatening  
10 to sue medical personnel; (vi) ordering his doctor and nurse out  
11 of the room; (vii) refusing to remain on the floor when connected  
12 to an IV pump and going outside to smoke; (viii) attempting to  
13 get food from the cafeteria after being ordered to not eat by  
14 mouth; (ix) loudly criticizing medical staff; (x) refusing to  
15 permit his nurse to discontinue his IV pump; (xi) yelling at  
16 medical personnel; and (xii) closing the door to his room and  
17 refusing to allow medical personnel in; and (2) preventing  
18 Defendant from remaining on Plaintiff's premises if Defendant:  
19 (i) has been discharged; (ii) has refused the care that can be  
20 provided to him; or (iii) engages in prohibited conduct.

21 Plaintiffs' request for injunctive relief is brought under state  
22 law, pertaining to the operation, security, and orderly  
23 procedures of the hospital. On its face, the Complaint does not  
24 invoke a federal question. *See Hunter v. Philip Morris USA*, 582  
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1 F.3d at 1042.

2 Defendant asserts that there is federal question  
3 jurisdiction because this action arises under the Americans with  
4 Disabilities Act, 42 U.S.C. § 12101, et seq. ("ADA"). Defendant  
5 argues that whether Defendant has a psychological disability  
6 within the meaning of the ADA is central to this case, and that  
7 Plaintiff's desired injunctive relief violates the ADA.  
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9 Here, the ADA does not create the cause of action. Rather,  
10 the ADA is a potential defense and/or counterclaim Defendant  
11 asserts in opposition to Plaintiff's claim. "The mere existence  
12 of a federal defense to a state law claim is insufficient to  
13 create federal jurisdiction over a case." *U.S. v. Arcata*, 629  
14 F.3d 986, 990 (9<sup>th</sup> Cir. 2010). In addition, a counterclaim  
15 involving federal law does not provide a basis for federal  
16 question jurisdiction. *Holmes Group, Inc. v. Vornado Air*  
17 *Circulation Sys., Inc.*, 535 U.S. 826, 830, 122 S.Ct. 1889, 1894  
18 (2002). This is not a case where the Plaintiff has omitted  
19 necessary federal questions essential to his or her claim,  
20 necessitating the invocation of the artful pleading doctrine.  
21 Federal question jurisdiction over this case is lacking.  
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24 **B. Related Case**

25 Defendant concedes that under normal circumstances,  
26 Plaintiff's claim for injunctive relief against Defendant would  
27 "likely be reasonable and properly heard before the Fresno  
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1 Superior Court." Doc. 14, 2. However, Defendant argues that the  
2 case should not be remanded to state court because Plaintiff and  
3 Defendant have been in litigation for over three years in a  
4 related federal district court case, *Tater-Alexander v. Community*  
5 *Regional Medical Center*, Case No. 1:08-cv-372-OWW-SKO ("Tater-  
6 Alexander Case"). Defendant asserts that this case should be  
7 joined under Federal Rule of Civil Procedure 18.  
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9 A federal district court "shall have supplemental  
10 jurisdiction over all other claims that are so related to claims  
11 in the action within such original jurisdiction that they form  
12 part of the same case or controversy under Article III of the  
13 United States Constitution." 28 U.S.C. § 1367(a). Supplemental  
14 jurisdiction is constitutional only if the federal and state  
15 claims (1) form one constitutional "case" and (2) "derive from a  
16 common nucleus of operative facts." *Mendoza v. Zirkle Fruit Co.*,  
17 301 F.3d 1163, 1173 (9<sup>th</sup> Cir. 2002) (quoting *United Mine Workers*  
18 *of Am. v. Gibbs*, 383 U.S. 715, 725, 86 S.Ct. 1130 (1966)).  
19 Supplemental jurisdiction, however, does not provide a basis for  
20 removal to federal court. *Syngenta Crop Prot., Inc. v. Henson*,  
21 537 U.S. 28, 34, 123 S.Ct. 366 (2002) ("Ancillary jurisdiction  
22 ... cannot provide the original jurisdiction that petitioners  
23 must show in order to qualify for removal under § 1441").  
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25 Here, the federal Tater-Alexander Case and this case share  
26 some common facts. The Plaintiff's Request for Judicial Notice of  
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1 Pleadings includes pleadings filed in the Tater-Alexander Case:  
2 The Declaration of Thomas Mansfield, M.D., in support of his  
3 motion for summary judgment (Doc. 1-3, 15-41); The Declaration of  
4 Corporal Lonnie Amerjan, in support of his motion for summary  
5 judgment (*Id.* at 42-46); and Response of Defendants Fresno  
6 Community Hospital and Medical Center and Marilyn Jo Greene, R.N.  
7 to Plaintiff's MIL No. 3 to Preclude Evidence of Settlement  
8 Discussions (*Id.* at 47-55). However, supplemental jurisdiction  
9 does not provide a basis for removal under 28 U.S.C. § 1441.  
10 *Syngenta*, 537 U.S. at 34. Although this case is partially related  
11 to the Tater-Alexander Case by reason of the underlying issues  
12 raised about Defendant's interaction with the hospital and its  
13 staff, supplemental jurisdiction cannot be exercised under 28  
14 U.S.C. § 1441.  
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17 V. CONCLUSION

18 For the reasons stated above:

- 19 1. Plaintiff's motion to remand is GRANTED.
- 20 2. Pursuant to both parties' stipulations during the April 7,  
21 2011 hearing, neither party shall introduce any evidence,  
22 finding, or decision from this remanded state court case  
23 into the federal Tater-Alexander Case.
- 24 3. Plaintiff shall submit a proposed form of order consistent  
25 with this memorandum decision within five (5) days of  
26 electronic service of this memorandum decision.  
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SO ORDERED.

DATED: April 11, 2011

/s/ Oliver W. Wanger  
Oliver W. Wanger  
United States District Judge