

1 (quoting Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)).
2 "If at any time before final judgment it appears that the
3 district court lacks subject matter jurisdiction, the case shall
4 be remanded." 28 U.S.C. § 1447(c). "The court may - indeed must
5 - remand an action *sua sponte* if it determines that it lacks
6 subject matter jurisdiction." GFD, LLC v. Carter, No. CV 12-
7 08985 MMM (FFMx), 2012 WL 5830079, at *2 (C.D. Cal. Nov. 15,
8 2012) (citing Kelton Arms Condo. Owners Ass'n v. Homestead Ins.
9 Co., 346 F.3d 1190, 1192 (9th Cir. 2003)).

10 Defendant asserts in the Notice of Removal that both
11 federal question and diversity removal jurisdiction exist. NOR
12 2:15; 6:10-11. However, Defendant has not shown the existence of
13 federal question jurisdiction. Review of the complaint reveals
14 plaintiffs allege a single claim for unlawful detainer under
15 California law, and "[a]s a general rule, . . . a case will not
16 be removable if the complaint does not affirmatively allege a
17 federal claim." Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 6
18 (2003). Under the "well-pleaded complaint rule[,]. . . 'a case
19 may not be removed to federal court on the basis of a federal
20 defense . . . even if the defense is anticipated in the
21 plaintiff's complaint . . .'" Retail Prop. Trust v. United
22 Bhd. of Carpenters & Joiners of Am., 768 F.3d 938, 947 (9th Cir.
23 2014) (quoting Caterpillar Inc. v. Williams, 482 U.S. 386, 393
24 (1987)). Similarly, "federal [question] jurisdiction [cannot]
25 rest upon an actual or anticipated counterclaim." Vaden v.
26 Discover Bank, 556 U.S. 49, 50 (2009); Bank of New York Mellon v.
27 Flores, 2:12-cv-00435, 2012 WL 1981329, at *4 (E.D. Cal. June 1,
28 2012) ("An anticipated defense or counterclaim cannot establish a

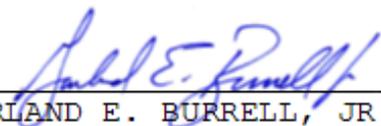
1 federal question because such a defense or counterclaim does not
2 appear on the face of the complaint."). Although Defendant has
3 attempted to create federal question subject matter jurisdiction
4 by adding defenses and claims under RESPA to his petition for
5 removal and characterizing what he added as his complaint for his
6 claims, his obvious counterclaims do not confer the federal court
7 with removal jurisdiction. Cf., Aurora Loan Servs., LLC v.
8 Martinez, 2010 WL 1266887, at *1 (N.D.Cal. Mar.29, 2010) (stating
9 "allegations in [a] removal notice or [an] answer to the
10 complaint cannot provide this court with federal question
11 jurisdiction.").

12 Further, Defendant has not shown satisfaction of the
13 diversity of citizenship requirement for removal jurisdiction to
14 exist 28 U.S.C. § 1332.

15 Therefore, this case is remanded to the Superior Court
16 of California for the County of Sacramento.

17 Dated: November 22, 2017

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GARIAND E. BURRELL, JR.
Senior United States District Judge