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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANIEL YELEN,

No. C 08-02699 CRB

Plaintiff,

**ORDER OF REMAND**

v.

TROPHY PROPERTIES B10 DE, LLC et  
al.,

Defendants.

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Plaintiff Daniel Yelen (“Plaintiff”) originally filed this action against Trophy Properties B10 DE, LLC (“Trophy”), CitiApartments, Inc., and CitiFunding Group, Inc. (collectively “Defendants”) in San Francisco County Superior Court. Defendants removed the case to federal court on the basis of federal question jurisdiction. Now pending before the Court is Plaintiff’s motion to remand. After carefully considering the papers filed by the parties, the Court concludes that oral argument is unnecessary and GRANTS the motion to remand.

**ALLEGATIONS OF THE COMPLAINT**

On September 1, 1992, Plaintiff commenced a one-year lease with a predecessor of interest of Trophy to lease an apartment at 355 Fulton Street, San Francisco. Complaint ¶¶ 1, 2. Plaintiff has been a tenant of 355 Fulton Street ever since. Complaint ¶ 2. On

1 December 20, 2007, Plaintiff was awarded a Section 8 Housing Choice voucher under 42  
2 U.S.C. §1437f. Complaint ¶ 11. On December 24, 2007, Plaintiff requested that Defendants  
3 accept his voucher, and “noted in his request that he was disabled and requested that  
4 defendants reasonably accommodate his disability. . . .” Complaint ¶ 12. Plaintiff is disabled  
5 as defined under California Government Code §§12955.3, 12926(i) & (k). Complaint ¶ 10.  
6 Defendants refused his request. Complaint ¶ 14.

7 This lawsuit followed. Plaintiff’s complaint contains ten causes of action, all state  
8 claims: (1) violation of California Government Code § 12900, et seq. (intentional  
9 discrimination on the basis of disability), (2) violation of California Government Code §  
10 12900, et seq. (discriminatory effect against the disabled), (3) violation of California Civil  
11 Code § 51, (4) violation of California Civil Code § 54.1(b), (5) violation of San Francisco  
12 Administration Code §37.9, (6) violation of California Business & Professions Code sections  
13 17200 et seq., (7) intentional infliction of emotional distress, (8) breach of covenant of good  
14 faith and fair dealing, (9) breach of covenant of quiet enjoyment, and (10) negligence.  
15 Complaint ¶¶ 21-61. In addition to damages, Plaintiff seeks an injunction requiring  
16 Defendants to accept his Section 8 voucher.

17 Defendants removed the complaint to this Court on the basis of federal question  
18 jurisdiction and Plaintiff moved to remand.

### 19 DISCUSSION

20 Courts in the Ninth Circuit “strictly construe the removal statute against removal  
21 jurisdiction.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). “Federal jurisdiction  
22 must be rejected if there is any doubt as to the right of removal in the first instance.” Id.  
23 Defendants, as the removing parties, bear the burden of establishing that removal was proper.  
24 See id.

25 Since there is no diversity of citizenship in this case, the “the propriety of removal  
26 turns on whether the case falls within the original ‘federal question’ jurisdiction of the United  
27 States district courts” under 28 U.S.C. § 1331. Franchise Tax Board v. Construction Laborers  
28 Vacation Trust, 463 U.S. 1, 8 (1983). A district court has federal question jurisdiction under

1 28 U.S.C. § 1331 only if the complaint “establishes either that federal law creates the cause of  
2 action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial  
3 question of federal law.” Franchise Tax Board, 463 U.S. at 27-28.

4 In determining whether the claim involves a federal question for subject matter  
5 purposes, the federal question must appear in the “well-pleaded complaint.” Merrell Dow  
6 Pharmaceuticals Inc. v. Thompson, 478 U.S. 804, 808 (1986). This means that “[a] defense  
7 that raises a federal question is inadequate to confer federal jurisdiction.” Id. The question of  
8 removal jurisdiction is determined by reference to the “well-pleaded complaint,” because “a  
9 defendant may remove a case only if the claim could have been brought in federal court.” Id.

10 Defendant’s Notice of Removal does not establish federal question jurisdiction. First,  
11 the complaint, on its face, makes only state law claims; Plaintiff is not making his claims  
12 under 42 U.S.C. §1437f.

13 Second, Plaintiff’s right to relief does not necessarily depend on the resolution of a  
14 substantial question of federal law. Plaintiff’s complaint does not allege that Defendants  
15 violated 42 U.S.C. §1437f by not accepting his voucher. His complaint alleges that  
16 Defendants violated California’s Fair Employment and Housing Act (“FEHA”) by not  
17 reasonably accommodating his voucher request. What constitutes a reasonable  
18 accommodation under the FEHA does not involve a substantial federal issue.

19 Defendants argue that whether Defendants must accept Plaintiff’s Section 8 voucher  
20 pursuant to FEHA rests largely on rights conferred under 42 U.S.C. §1437f. They also argue  
21 that because Plaintiff seeks an injunction requiring Defendants to participate in the Section 8  
22 voucher program, which Congress intended to be voluntary, the complaint raises a substantial  
23 federal issue. The Defendants, however, do not cite any caselaw to support their argument.  
24 This omission is unsurprising given that because state law claims depend in some way on  
25 federal law does not mean that such claims “arise under” federal law. Hunter v. United Van  
26 Lines, 746 F.2d 635, 645 (9th Cir. 1984). “[T]he resolution of the federal question must play  
27 a significant role in the proceedings.” Id. at 646. Here, Defendants have not come close to  
28 establishing that the role played by federal law in Plaintiff’s claim is sufficient to give rise to

1 federal question jurisdiction. Moreover, Defendants' argument that an injunction is  
2 inappropriate because Congress intended the voucher program to be voluntary is a defense.  
3 "[A] case may *not* be removed to federal court on the basis of a federal defense." Caterpillar  
4 Inc. v. Williams, 482 U.S. 386, 393 (1987). Plaintiff's motion to remand is GRANTED.

5 Plaintiff also seeks an award of attorney fees pursuant to 28 U.S.C. § 1447(c) which  
6 provides that, "[a]n order remanding the case may require payment of just costs and any actual  
7 expenses, including attorney fees, incurred as a result of the removal." The Court finds that  
8 an award of expenses is appropriate. Accordingly, the parties are directed to meet and confer  
9 in an attempt to agree on the amount of expenses to be paid by Defendants. If the parties  
10 cannot agree, Plaintiff shall submit a declaration that details the expenses he seeks to recover,  
11 including any expenses incurred as a result of his fee submission. Such declaration shall be  
12 filed on or before September 19, 2008.

13 **CONCLUSION**

14 As defendants' Notice of Removal does not establish this Court's jurisdiction of the  
15 removed action, this action is hereby REMANDED to the San Francisco Superior Court and  
16 Plaintiff is awarded his reasonable expenses incurred in obtaining remand.

17 **IT IS SO ORDERED.**

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CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE

21 Dated: September 9, 2008

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