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2
3 UNITED STATES DISTRICT COURT
4 Northern District of California
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6 ING BANK, FSB,

No. C 12-02418 MEJ

7 Plaintiff(s),

ORDER TO SHOW CAUSE

8 v.

9 RAUL R. PINEDA,

10 Defendant(s).
_____ /

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12 On May 14, 2012, the Defendant(s) removed this unlawful detainer action from Alameda
13 County Superior Court. However, an unlawful detainer action does not arise under federal law but is
14 purely a creature of California law. *Wells Fargo Bank v. Lapeen*, 2011 WL 2194117, at *3 (N.D.
15 Cal. June 6, 2011); *Wescom Credit Union v. Dudley*, 2010 WL 4916578, at *2 (C.D. Cal. Nov. 22,
16 2010). Thus, it appears that jurisdiction is lacking and the case should be remanded to state court.
17 Accordingly, the Court ORDERS Defendant(s) to show cause why this case should not be remanded
18 to the Alameda County Superior Court. Defendant(s) shall file a declaration by May 30, 2012, and
19 the Court shall conduct a hearing on June 14, 2012 at 10:00 a.m. in Courtroom B, 15th Floor, 450
20 Golden Gate Avenue, San Francisco, California. In the declaration, Defendant(s) must address how
21 this Court has jurisdiction over Plaintiff's unlawful detainer claim.

22 Defendant(s) should be mindful that an anticipated federal defense or counterclaim is not
23 sufficient to confer jurisdiction. *Franchise Tax Bd. of California v. Construction Laborers Vacation*
24 *Trust*, 463 U.S. 1, 10 (1983); *Berg v. Leason*, 32 F.3d 422, 426 (9th Cir.1994). "A case may not be
25 removed to federal court on the basis of a federal defense, . . . even if the defense is anticipated in the
26 plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue
27 in the case." *ARCO Environmental Remediation, LLC v. Dept. of Health and Environmental Quality*
28 *of the State of Montana*, 213 F.3d 1108, 1113 (9th Cir. 2000); *see also Valles v. Ivy Hill Corp.*, 410

1 F.3d 1071, 1075 (9th Cir. 2005) (“A federal law defense to a state-law claim does not confer
2 jurisdiction on a federal court, even if the defense is that of federal preemption and is anticipated in
3 the plaintiff’s complaint.”). Thus, any anticipated defense, such as a claim under the Protecting
4 Tenants at Foreclosure Act (“PTFA”), Pub.L. No. 111–22, § 702, 123 Stat. 1632 (2009), is not a valid
5 ground for removal. *See e.g. Aurora Loan Services, LLC v. Montoya*, 2011 WL 5508926, at *4
6 (E.D.Cal. Nov. 9, 2011); *SD Coastline LP v. Buck*, 2010 WL 4809661, at *2–3 (S.D.Cal. Nov.19,
7 2010); *Wescom Credit Union v. Dudley*, 2010 WL 4916578, at 2–3 (C.D.Cal. Nov. 22, 2010); *Aurora*
8 *Loan Services, LLC v. Martinez*, 2010 WL 1266887, at * 1 (N.D.Cal. March 29, 2010).

9 **IT IS SO ORDERED.**

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11 Dated: May 15, 2012

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14 Maria-Elena James
15 Chief United States Magistrate Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ING BANK, FSB,

No. C 12-02418 MEJ

Plaintiff(s),

CERTIFICATE OF SERVICE

v.

RAUL R. PINEDA,

Defendant(s).

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 15, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Raul Pineda
Graciela Pineda
27840 La Porte Avenue
Hayward, CA 94545

Dated: May 15, 2012

Richard W. Wieking, Clerk
By: Rose Maher, Deputy Clerk