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

ABITSCH & ABITSCH, LLC,  
Plaintiff,

No. C 12-3684 WHA

v.

**ORDER REGARDING APPLICATION  
FOR TRO AND REMANDING ACTION  
TO STATE COURT**

DARUKA WANIGATUNGA, *et al.*,  
Defendants.

Defendant Daruka Wanigatunga seeks a stay and temporary restraining order enjoining a writ of execution issued by San Francisco Superior Court. Because this Court does not have subject-matter jurisdiction it lacks the power to grant such relief.

The underlying action is an unlawful detainer action brought by plaintiff Abitsch & Abitsch LLC, in the Superior Court of California, County of San Francisco. The burden of establishing federal jurisdiction is on the party seeking removal. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566–67 (1992). Defendant removed this action on July 13, 2012, based on federal-question jurisdiction. An unlawful detainer action does not present a federal question. Along with the notice of removal, defendant pled a counterclaim alleging that plaintiff violated the Racketeer Influenced and Corrupt Organizations Act and the Federal Debt Collection Practices Act. A counterclaim that presents a federal question does not create a basis for removal. *See Takeda v. Nw. Nat. Life Ins. Co.*, 765 F.2d 815, 821–22 (9th Cir. 1985) (removal is only proper “if the federal question appears on the face of the plaintiff’s well-pleaded complaint”). Defendant does not assert diversity jurisdiction. To sum up, defendant has not met his burden of establishing subject-matter jurisdiction, and this order finds no basis for subject-matter jurisdiction.

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Accordingly, this Court is without power to adjudicate defendant's application for a temporary restraining order. For the foregoing reasons, this action is **REMANDED** to the Superior Court of San Francisco County.

**IT IS SO ORDERED.**

Dated: July 31, 2012

  
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EDWARD M. CHEN  
UNITED STATES DISTRICT JUDGE