



1 within fourteen days after the motion is served and filed). After considering the case history,  
2 Plaintiff's brief, and law, the court determines that this matter is appropriate for resolution without  
3 oral argument. N.D. Cal. L.R. 7-1(b).

## 4 II. FACTS

5 On or about January 6, 2006, Defendant purchased a residential real property commonly  
6 described as 1375 Monte Maria Avenue, Novato, California (the "subject property"). Defendant  
7 later defaulted on the Deed of Trust secured by the subject property, which ultimately led to a  
8 non-judicial foreclosure sale of the subject property.

9 On February 17, 2011, Plaintiff purchased the subject property at the foreclosure sale, which was  
10 held in accordance with California Civil Code § 2924, *et. seq.* Exh. A, ECF No. 1 at 11-13; ECF  
11 No. 5 at 13-15. The transfer of title to the subject property was duly perfected in Plaintiff by the  
12 recording on March 1, 2011, of a Trustee's Deed Upon Sale, in the official records of the Marin  
13 County Recorder's office, as Inst. No. 2011-00 12447. *Id.*

14 On March 15, 2011, a California licensed process server served a Notice to Quit on Defendant,  
15 in compliance with California Code of Civil Procedure § 1161(a) and 1161(b). Exh. A, ECF No. 1  
16 at 14-16; Crosby Decl., ECF No. 4-2 at 7.

17 The notice to quit expired. However, Defendant continues to remain in possession of the subject  
18 property despite not having held title to the subject property since March 1, 2011. ECF No. 5 at 20.

19 Plaintiff filed a complaint in state court against Defendant, alleging only a single state law cause  
20 of action for unlawful detainer and specifically stating that the amount of damages sought does not  
21 exceed \$10,00.00. ECF No. 5 at 8. On April 3, 2011, Defendant and other occupants were served  
22 via substituted service as well as by mail and posting at the subject residence. Crosby Decl., ECF  
23 No. 4-2 at 9-15. Defendant filed a demurrer in state court. ECF No. 1 at 17-22. And, on September  
24 2, 2011, Defendant filed a notice of removal. ECF No. 1 at 1.

## 25 III. LEGAL STANDARDS

26 A defendant in a state court may remove an action to federal court so long as the action could  
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1 have originally asserted federal-question jurisdiction.<sup>2</sup> 28 U.S.C. 1441(b). The action must be  
2 removed within 30 days of service of the initial pleading. 28 U.S.C. 1446(b). The defendant has the  
3 burden of proving the basis for the federal court’s jurisdiction. *Shizuko Nishimoto v. Federman-*  
4 *Bachrach & Assocs.*, 903 F.2d 709, 712 (9th Cir. 1990). Removal jurisdiction statutes are strictly  
5 construed against removal. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108 (1941); *Takeda*  
6 *v. Northwestern Nat’l. Life Ins. Co.*, 765 F.2d 815, 818 (9th Cir.1985).

7 The “well-pleaded complaint” rule requires a federal question to be presented on the face of the  
8 plaintiff’s complaint at the time of removal for federal-question jurisdiction to exist. *Duncan v.*  
9 *Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996). A plaintiff may “by eschewing claims based on federal  
10 law, choose to have the cause be heard in state court.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386,  
11 399 (1987). And an anticipated federal defense is not sufficient to confer jurisdiction. *Franchise*  
12 *Tax Bd. of California v. Construction Laborers Vacation Trust*, 463 U.S. 1, 10 (1983). But a  
13 plaintiff may not defeat removal by omitting necessary federal questions from his or her complaint.  
14 *Id.* at 22.

15 A federal court may exercise removal under the “artful pleading” doctrine even if a federal  
16 question does not appear on the face of the complaint. *ARCO Environmental Remediation, L.L.C. v.*  
17 *Dep’t of Health and Environmental Quality of the State of Montana*, 213 F.3d 1108, 1114 (9th Cir.  
18 2000). The artful pleading doctrine applies when: (1) federal law completely preempts state law; (2)  
19 the claim is necessarily federal in character; or (3) the right to relief depends on the resolution of a  
20 substantial, disputed federal question. *Id.* However, courts should “invoke the [artful pleading]  
21 doctrine only in limited circumstances as it raises difficult issues of state and federal relationships  
22 and often yields unsatisfactory results.” *Lippitt v. Raymond James Financial Services*, 340 F.3d  
23 1033, 1041 (9th Cir. 2003). Additionally, the “mere presence of a federal issue in a state cause of  
24 action does not automatically confer federal-question jurisdiction.” *Merrell Dow Pharmaceuticals*  
25 *Inc. v. Thompson*, 478 U.S. 804, 813 (1986).

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28 <sup>2</sup> District courts have original jurisdiction over cases that arise under the law of the United States. U.S. Const. art. III, § 2, cl.1.

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**IV. DISCUSSION**

**A. Whether the Complaint Was Timely Removed**

Plaintiff argues that Defendant did not timely remove the complaint. Motion to Remand, ECF No. 4 at 7. Defendant did not file the notice of removal until September 2, 2011. Notice of Removal, ECF No. 1 at 1. Even if the court accepted the representation made in Defendant’s demurrer that he was not served until April 6, 2011, *see* ECF No. 1 at 20, his time to remove the action would have expired on May 6, 2011. 28 U.S.C. 1446(b). Accordingly, the court finds that Defendant’s removal was untimely.

**B. Whether the PTFA Provides a Basis for Federal-Question Jurisdiction**

Plaintiff states that its complaint asserts only a cause of action for unlawful detainer pursuant to section 1161(a)(b)(3) of the California Code of Civil Procedure. Motion, ECF No 4 at 9. Defendant asserted only federal-question jurisdiction as a basis for removal. Complaint, ECF No. 1 at 2, ¶ 6. As the court discussed in *Wells Fargo Bank v. Lapeen*, NO. C 11-01932 LB, 2011 WL 2194117 (N.D. Cal. June 6, 2011), in these circumstances, the PTFA does not create federal-question jurisdiction.


**V. CONCLUSION**

For the foregoing reasons, the court **GRANTS** Plaintiff’s motion to remand.

This disposes of ECF No. 4.

**IT IS SO ORDERED.**

Dated: November 4, 2011

  
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LAUREL BEELER  
United States Magistrate Judge