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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

HARMIN ASSOCIATES, LLC,

CASE NO. 5:12-cv-03529 EJD

Plaintiff(s),

**ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND**

v.

TROY M. GAVINA,

[Docket Item No(s). 10]

Defendant(s).

Defendant Troy M. Gavina ("Defendant") removed to this court the instant unlawful detainer action filed by Plaintiff Harmin Associates, LLC ("Plaintiff") in Santa Clara County Superior Court. See Not. of Removal, Docket Item No. 1. Plaintiff purchased the property at a trustee's sale in May, 2012, after Defendant defaulted on a Deed of Trust secured by the property. See Decl. of Kirkman J. Hoffman, Docket Item No. 12, at Ex. 1.

Plaintiff now seeks an order remanding the case to the state court from which it originated pursuant to 28 U.S.C. § 1447(c). Defendant did not file written opposition to this motion, and the time for filing such opposition has expired.<sup>1</sup> See Docket Item No. 19. The court finds this matter appropriate for decision without oral argument pursuant to Civil Local Rule 7-1(b).

For the reasons stated below, the hearing scheduled for August 3, 2012, will be vacated and

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<sup>1</sup> The court previously granted Plaintiff's request to shorten time for a hearing on the motion to remand. See Docket Item No. 19. Pursuant to the order served on Defendant by overnight mail on July 24, 2012, Defendants were to file their brief in opposition no later than July 30, 2012.

1 Plaintiff's motion to remand will be granted.

2 **I. DISCUSSION**

3 **A. Legal Standard**

4 Removal jurisdiction is a creation of statute. See Libhart v. Santa Monica Dairy Co., 592  
5 F.2d 1062, 1064 (9th Cir. 1979) (“The removal jurisdiction of the federal courts is derived entirely  
6 from the statutory authorization of Congress.”). Only those state court actions that could have been  
7 originally filed in federal court may be removed. 28 U.S.C. § 1441(a) (“Except as otherwise  
8 expressly provided by Act of Congress, any civil action brought in a State court of which the district  
9 courts of the United States have original jurisdiction, may be removed by the defendant.”); see also  
10 Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987) (“Only state-court actions that originally  
11 could have been filed in federal court may be removed to federal court by defendant.”).  
12 Accordingly, the removal statute provides two basic ways in which a state court action may be  
13 removed to federal court: (1) the case presents a federal question, or (2) the case is between citizens  
14 of different states. 28 U.S.C. §§ 1441(a), (b).

15 When removal is based on the presence of a federal question, the court looks to the face of a  
16 well-pleaded complaint to determine whether a cause of action is created by federal law or whether  
17 the plaintiff's right to relief necessarily depends on the resolution of a substantial question of federal  
18 law. Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 808 (1988) (citing Franchise Tax  
19 Bd. of California v. Constr. Laborers Vacation Trust, 463 U.S. 1, 27-28, (1983)). “[I]t must be clear  
20 from the face of the plaintiff's well-pleaded complaint that there is a federal question.” Duncan v.  
21 Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996). The complaint as it existed at time of removal dictates  
22 whether removal jurisdiction is proper. Libhart, 592 F.2d at 1065.

23 An anticipated or even actual federal defense or counterclaim is not sufficient to confer  
24 jurisdiction. Constr. Laborers Vacation Trust, 463 U.S. at 10.

25 **B. Federal Jurisdiction**

26 Plaintiff argues that federal jurisdiction is lacking in any form. The court agrees.

27 In the underlying Complaint, Plaintiff alleges a single claim for unlawful detainer against  
28 Defendant. See Compl., Docket Item No. 1. It is well established that unlawful detainer claims

