

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

BANK OF AMERICA, N.A.,  
SUCCESSOR BY MERGER TO BAC  
HOME LOANS SERVICING, LP FKA  
COUNTRYWIDE HOME LOANS  
SERVICING, LP FOR THE BENEFIT OF  
HARBORVIEW 2005-7 TRUST FUND,

Plaintiff,

v.

GREGG MCCALLUM; JOHN  
MCCALLUM and DOES 1 through X,  
inclusive,

Defendants.

Case No. 11cv02740 BTM (BGS)

**ORDER**

On September 14, 2011, the Plaintiff in the above-captioned matter filed an unlawful  
detainer action against the Defendants in the Superior Court of California, County of San  
Diego (Case No. 37-2011-00046865-CL-UD-CTL). On November 22, 2011, Defendant  
Gregg McCallum filed in this Court a "Notice of Removal from San Diego Superior Court"  
(Dkt. No. 1) and a "Motion for Leave to Proceed In Forma Pauperis" (Dkt. No. 2). On  
December 13, 2011, Plaintiff filed a "Motion to Remand to State Court" (Dkt. No. 3). For the  
reasons set forth below, the Court hereby GRANTS Defendant Gregg McCallum's Motion  
for Leave to Proceed In Forma Pauperis and REMANDS this case to San Diego Superior  
Court.

//

1 **I. Motion for Leave to Proceed In Forma Pauperis**

2 Defendant Gregg McCallum, a nonprisoner proceeding pro se, has not paid the \$350  
3 civil filing fee required to remove this action, and instead seeks leave to proceed in forma  
4 pauperis pursuant to 28 U.S.C. § 1915(a). 28 U.S.C. § 1915(a) allows the Court to authorize  
5 a party to proceed in a federal case without prepayment of fees if that party submits an  
6 affidavit, including a statement of all his assets, showing that he is unable to pay filing fees.  
7 See 28 U.S.C. § 1915(a). Defendant Gregg McCallum has submitted an affidavit  
8 establishing that he lacks the financial resources to pay filing fees. The Court therefore  
9 GRANTS Defendant Gregg McCallum's Motion for Leave to Proceed In Forma Pauperis.

10  
11 **II. Subject-matter Jurisdiction**

12 Plaintiff's motion to remand correctly argues that the Court lacks subject-matter  
13 jurisdiction over Plaintiff's state court complaint. Plaintiff's complaint (attached as an exhibit  
14 to Plaintiff's Request for Judicial Notice, Dkt. No. 3-3) brings no claim other than unlawful  
15 detainer pursuant to California Code of Civil Procedure § 1161a. Unlawful detainer actions  
16 arise under state law and do not require resolution of a substantial question of federal law.  
17 See U.S. Bank Nat'l Ass'n v. Lasoff, 2010 WL 669239 (C.D. Cal. Feb. 23, 2010) (holding that  
18 unlawful detainer action did not raise a federal question); HSBC Bank USA, NA v. Valencia,  
19 2010 WL 546721 (E.D. Cal. Feb. 10, 2010) (remanding unlawful detainer action); Wells  
20 Fargo Bank, Nat'l Ass'n v. Cencil, 2010 WL 2179778 (N.D. Cal. May 27, 2010) (granting  
21 motion to remand unlawful detainer action). Any federal defenses or counterclaims  
22 Defendant may wish to bring do not give rise to federal question jurisdiction. Franchise Tax  
23 Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 14 (1983) (explaining that a case may  
24 not be removed to federal court on the basis of a federal defense). Because this action  
25 arises under state law and does not require resolution of a substantial question of federal  
26 law, the Court REMANDS this action. See 28 U.S.C. § 1447(c) ("If at any time before final  
27 judgment it appears that the district court lacks subject matter jurisdiction, the case shall be  
28 remanded.")

1 **III. Conclusion**

2 For the reasons set forth above, the Court **GRANTS** Defendant Gregg McCallum's  
3 Motion for Leave to Proceed In Forma Pauperis and **REMANDS** this action to the Superior  
4 Court of California, County of San Diego.

5

6 **IT IS SO ORDERED.**

7 Dated: December 15, 2011

  
**HONORABLE BARRY TED MOSKOWITZ**  
United States District Judge

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28