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

SOUTHLAND HOME MORTGAGE,  
LLC AND/OR ITS SUCCESSORS  
AND/OR ASSIGNEES IN  
INTEREST,

Plaintiff,

vs.

VIDAL ZAVALA, an individual,  
DOES 1 to 10, inclusive,

Defendant.

CASE NO. 16cv1815-GPC(RBB)

**ORDER *SUA SPONTE*  
REMANDING ACTION TO STATE  
COURT**

On July 14, 2016, Defendant Vidal Zavala filed a notice of removal of this unlawful detainer action from the Superior Court of the State of California for San Diego County. Having reviewed Defendant's notice of removal, the Court finds it does not have subject matter jurisdiction over this action. Accordingly, the Court *sua sponte* REMANDS the action to state court.

**Discussion**

The federal court is one of limited jurisdiction. Lowdermilk v. U.S. Bank Nat'l Ass'n, 479 F.3d 994, 997 (9th Cir. 2007). It possesses only that power authorized by the Constitution or a statute. See Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 541 (1986). It is constitutionally required to raise issues related to federal subject matter jurisdiction, and may do so *sua sponte*. Steel Co. v. Citizens for a Better Env't,

1 523 U.S. 83, 93-94 (1998); see Indus. Tectonics, Inc. v. Aero Alloy, 912 F.2d 1090,  
2 1092 (9th Cir.1990). Removal jurisdiction is governed by 28 U.S.C. § 1441 *et seq.* A  
3 state court action can only be removed if it could have originally been brought in  
4 federal court. Caterpillar, Inc. v. Williams, 482 U.S. 386, 392, 107 (1987); Duncan v.  
5 Stuetzle, 76 F.3d 1480, 1485 (9th Cir.1996). Thus, for an action to be removed on the  
6 basis of federal question jurisdiction, the complaint must establish either that federal  
7 law creates the cause of action or that the plaintiff’s right to relief necessarily depends  
8 on the resolution of substantial questions of federal law. Franchise Tax Board of Cal.  
9 v. Construction Laborers Vacation Trust for Southern Cal., 463 U.S. 1, 10–11 (1983).  
10 Alternatively, a federal court may have diversity jurisdiction over an action involving  
11 citizens of different states where the amount in controversy exceeds \$75,000. 28  
12 U.S.C. § 1332.

13 The presence or absence of federal question jurisdiction “is governed by the  
14 ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only when  
15 a federal question is presented on the face of plaintiff’s properly pleaded complaint.”  
16 Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987). A review of the state court  
17 summons and complaint in this case shows that Plaintiff alleges a unlawful detainer  
18 claim under California state law. (Dkt. No. 1-2.)

19 “The burden of establishing federal jurisdiction is on the party seeking removal,  
20 and the removal statute is strictly construed against removal jurisdiction.” Emrich v.  
21 Touche Ross & Co., 846 F.2d 1190, 1195 (9th Cir. 1988). “Federal jurisdiction must  
22 be rejected if there is any doubt as to the right of removal in the first instance.” Gaus  
23 v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

24 In the notice of removal, Defendant alleges that the Court has jurisdiction  
25 pursuant to a federal question. (Dkt. No. 1 at 2-3.) Defendant contends that there is  
26 a federal question based on a notice which expressly references and incorporates the  
27 “Protecting Tenants at Foreclosure Act of 2009,” 12 U.S.C. § 5201. (Id. at 2-3.) She  
28

1 alleges that this statute will be drawn into the issues in this case because Plaintiff failed  
2 to comply with the alleged 90 day notice period prior to filing any state eviction  
3 proceeding. (Id.)

4 Defendant’s alleged federal “claim” is actually a defense or counterclaim against  
5 Plaintiff. However, defenses and counterclaims are not considered in evaluating  
6 whether a federal question appears on the face of a Plaintiff's complaint. Vaden v.  
7 Discover Bank, 556 U.S. 49, 60 (2009) (federal question jurisdiction cannot “rest upon  
8 an actual or anticipated counterclaim”); Valles v. Ivy Hill Corp., 410 F.3d 1071, 1075  
9 (9th Cir. 2005) (“A federal law defense to a state-law claim does not confer jurisdiction  
10 on a federal court, even if the defense is that of federal preemption and is anticipated  
11 in the plaintiff's complaint.”). As such, Defendant’s allegation does not establish  
12 federal question jurisdiction under 28 U.S.C. § 1331.

13 Defendant has not adequately established a basis for this Court’s subject matter  
14 jurisdiction and the Court must remand the case. See 28 U.S.C. § 1447(c).

15 **Conclusion**

16 Based on the above, the Court *sua sponte* REMANDS the action to the Superior  
17 Court of the State of California for San Diego County.

18 IT IS SO ORDERED.

19  
20 DATED: July 26, 2016

21   
22 HON. GONZALO P. CURIEL  
23 United States District Judge  
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