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

JI SUN KIM,

Plaintiff,

v.

JORGE CAMACHO; ANNA M.
CAMACHO-TIZNADO,

Defendants.

Case No. 17-cv-00566-BAS-WVG
**ORDER REMANDING CASE TO
STATE COURT**

On March 22, 2017, Defendant Jorge Camacho, proceeding pro se, removed this unlawful detainer action from San Diego County Superior Court. (ECF No. 1.) Camacho argues that removal is proper based on federal question jurisdiction, presumably because he intends to assert a counterclaim under the Protecting Tenants at Foreclosure Act, 12 U.S.C. § 5220. (*Id.*) Concurrent with his notice of removal, Camacho filed a motion for leave to proceed *in forma pauperis* (“IFP”). (ECF No. 3.)

The Court finds that this case was improperly removed. Although a defendant may remove a civil action by filing a notice of removal with the relevant federal district court within 30 days after receiving the complaint, *see* 28 U.S.C. § 1441,

1 removal does not by its own force confer federal jurisdiction. Rather, with exceptions
2 not applicable here, only cases that could originally have been filed in federal court
3 may be properly removed. *See Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804,
4 808 (1986).

5 The question whether a case could originally have been filed in federal court
6 is determined by the well-pleaded complaint rule. The well-pleaded complaint rule
7 holds that the basis for federal jurisdiction must be found in plaintiff’s statement of
8 his or her own cause of action, rather than in defendant’s anticipated defenses or
9 counterclaims. *See Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation*
10 *Trust for S. Cal.*, 463 U.S. 1, 10 (1983); *Louisville & Nashville R.R. Co. v. Mottley*,
11 211 U.S. 149, 152 (1908). In other words, the grounds for federal jurisdiction must
12 be rooted in the complaint itself, rather than defendant’s anticipated response to the
13 complaint. *See, e.g., Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d
14 1083, 1086 (9th Cir. 2009) (“[T]he federal question on which jurisdiction is premised
15 cannot be supplied via a defense; rather, the federal question must ‘be disclosed upon
16 the face of the complaint, unaided by the answer.’”) (quoting *Phillips Petroleum Co.*
17 *v. Texaco, Inc.*, 415 U.S. 125, 127–28 (1974)).


18 Here, no such basis for federal jurisdiction exists. Defendant invokes federal
19 question removal presumably on the basis of a defense or counterclaim based on the
20 Protecting Tenants at Foreclosure Act. But this argument fails because *Plaintiff’s*
21 complaint states a single claim for unlawful detainer, a state law cause of action. That
22 Defendant intends to assert a federal defense or counterclaim does not establish
23 removal jurisdiction because such assertions do not form an essential part of
24 plaintiff’s complaint. *See, e.g., Holmes Grp., Inc. v. Vornado Air Circulation Sys.,*
25 *Inc.*, 535 U.S. 826, 831 (2002) (“[A] counterclaim—which appears as part of the
26 defendant’s answer, not as part of the plaintiff’s complaint—cannot serve as the basis
27 for [federal question removal] jurisdiction.”) (citations omitted); *Merrell Dow*, 478
28 U.S. at 808 (“A defense that raises a federal question is inadequate to confer federal

1 jurisdiction.”) (citing *Mottley*, 211 U.S. at 152). Further, in this case, plaintiff’s right
2 to relief does not depend on the resolution of a substantial question of federal law.
3 *See Proctor v. Vishay Intertechnology Inc.*, 584 F.3d 1208, 1219 (9th Cir. 2009).
4 Therefore, Defendant has not stated a proper grounds for removal, and the Court
5 lacks subject matter jurisdiction over this claim.

6 For the foregoing reasons, the Court **REMANDS** this matter to San Diego
7 County Superior Court. Defendant’s motion for leave to proceed IFP (ECF No. 3)
8 and Plaintiff’s ex parte motion to shorten time (ECF No. 6) are **TERMINATED AS**
9 **MOOT**. The Clerk of the Court shall close the file.

10 **IT IS SO ORDERED.**

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12 **DATED: April 7, 2017**


Hon. Cynthia Bashant
United States District Judge

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