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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 Hilda Garcia,

11 Plaintiff,

12 v.

13 Juana Cantero; Carlos Cantero  
14 Does 1 to 10 Inclusive,

15 Defendant.  
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Case No.: 17-cv-0983-GPC(BLM)

**ORDER:**

**(1) GRANTING PLAINTIFF'S  
MOTION TO PROCEED IN FORMA  
PAUPERIS;**

**(2) SUA SPONTE REMANDING  
ACTION TO STATE COURT**

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20 On May 12, 2017, Defendant, Carlos Cantero ("Defendant"), proceeding pro se,  
21 filed a motion to proceed *in forma pauperis* ("IFP") and a notice of removal of this  
22 unlawful detainer action from the Superior Court of the State of California for San Diego  
23 County. Having reviewed the motion to proceed IFP, the Court GRANTS the motion.  
24 Additionally, the Court finds it does not have subject matter jurisdiction over this action.  
25 Accordingly, the Court *sua sponte* REMANDS the action to state court.

26 **Discussion**

27 **A. Motion to Proceed *In Forma Pauperis***

28 All parties instituting any civil action, suit, or proceeding in a district court of the

1 United States, except an application for writ of habeas corpus, must pay a filing fee of  
2 \$400. 28 U.S.C. § 1914(a). An action may proceed despite a party’s failure to prepay the  
3 entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a).  
4 Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th Cir. 1999). The party must submit an  
5 affidavit demonstrating his inability to pay the filing fee, and the affidavit must include a  
6 complete statement of the plaintiff’s assets. 28 U.S.C. § 1915(a)(1).

7 The Court has reviewed Defendant’s declaration and finds that he is unable to pay  
8 fees or post securities required to maintain this action. Defendant has submitted an  
9 application, stating that he has fixed disability income at \$1,350 per month and no  
10 employment. He further states he has no assets and expenses of \$1,500 per month. Due to  
11 Defendant’s monthly expenses exceeding Defendant’s monthly income, the Court finds  
12 that Defendant is unable to pay the filing fee. Therefore, the Court GRANTS Defendant’s  
13 motion for leave to proceed IFP.

#### 14 **B. *Sua Sponte* Remanding Action to State Court**

15 Any action brought in state court may be “removed by the defendant or the  
16 defendants” to the district court. 28 U.S.C. § 1441; see also 28 U.S.C. §1446 (“A  
17 defendant or defendants desiring to remove any civil action from State court shall file . . .  
18 a notice of removal . . .”) “Federal courts are courts of limited jurisdiction.” Kokkonen  
19 v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). “It is to be presumed that a  
20 cause lies outside this limited jurisdiction, and the burden of establishing the contrary  
21 rests upon the party asserting jurisdiction.” *Id.* It is well-established that a federal court  
22 cannot reach the merits of any dispute until it confirms that it retains subject matter  
23 jurisdiction to adjudicate the issues presented. Steel Co. v. Citizens for a Better Environ.,  
24 523 U.S. 83, 94-95 (1988).

25 Federal subject matter jurisdiction may be based on (1) federal question  
26 jurisdiction under 28 U.S.C. § 1331; and (2) diversity jurisdiction under 28 U.S.C. §  
27 1332. Here, Defendant argues that the Court has subject matter jurisdiction under federal  
28 question. For an action to be removed on the basis of federal question jurisdiction, the

1 complaint must establish either that federal law creates the cause of action or that the  
2 plaintiff's right to relief necessarily depends on the resolution of substantial questions of  
3 federal law. Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for S. Cal., 463  
4 U.S. 1, 10-11 (1983). The presence or absence of federal question jurisdiction "is  
5 governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction  
6 exists only when a federal question is presented on the face of plaintiff's properly pleaded  
7 complaint." Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). It is well settled that a  
8 "case may not be removed to federal court on the basis of a federal defense . . . even if the  
9 defense is anticipated in the plaintiff's complaint, and even if both parties concede that  
10 the federal defense is the only question truly at issue." Id. at 393. Moreover, "[a] federal  
11 law defense to a state-law claim does not confer jurisdiction on a federal court, even if  
12 the defense is that of federal preemption and is anticipated in the plaintiff's complaint."  
13 Valles v. Ivy Hill Corp., 410 F.3d 1071, 1075 (9th Cir. 2005). "Federal jurisdiction must  
14 be rejected if there is any doubt as to the right of removal in the first instance." Gaus v.  
15 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

16 While a plaintiff may choose to file suit in state court and avoid federal question, a  
17 plaintiff may not use "artful pleading" to avoid federal jurisdiction by excluding  
18 necessary federal questions in the complaint. Franchise Tax Bd., 463 U.S. at 22 (citations  
19 omitted). The artful pleading doctrine states, a state-created cause of action can be  
20 deemed to arise under federal law (1) where federal law completely preempts state law[];  
21 (2) where the claim is necessarily federal in character[]; or (3) where the right to relief  
22 depends on the resolution of a substantial, disputed federal question []." ARCO Env'tl.  
23 Remediation, LLC v. Dep't of Health and Env'tl. Quality of Montana, 213 F.3d 1108,  
24 1114 (9th Cir. 2000).

25 A review of the state court's complaint in this case shows that Plaintiff, Hilda  
26 Garcia ("Plaintiff"), alleges a single cause of action for unlawful detainer under  
27 California state law. In the notice of removal, Defendant argues that a federal statute,  
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1 Protecting Tenants at Foreclosure (“PTFA”)<sup>1</sup>, provides the Court with federal question  
2 jurisdiction for two reasons: (1) the unlawful detainer action actually asserts a cause of  
3 action under the PTFA, and (2) the PTFA 90-day notice requirement preempts California  
4 state law on notice and thus is a required element of an unlawful detainer action.

5 Foremost, “the PTFA expired on December 31, 2014.” Fairview Tasman LLC v.  
6 Young, Case No. 15cv5493-LHK, 2016 WL 199060, at \*2 (N.D. Cal. Jan. 18, 2016)  
7 (citing Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-  
8 203, 124 Stat. 1376, 2204 (2010) (setting date of expiration)); see also Franks v. Franks,  
9 Case No. 17cv893-CAB-AGS, 2017 WL 1735169, at \*2 (S.D. Cal. May 4, 2017). Here,  
10 the unlawful detainer action was filed on March 6, 2017, and there is no indication that  
11 any of the facts constituting the unlawful detainer action occurred prior to December 31,  
12 2014. Even if the PTFA applied, Defendant’s arguments are without merit.

13 The PTFA does not create a cause of action for a tenant. Logan v. U.S. Bank Nat’l.  
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16 <sup>1</sup> The Protecting Tenants at Foreclosure Act of 2009 states that:

17 ... In the case of any foreclosure on a federally-related mortgage loan or on any  
18 dwelling or residential real property after the date of enactment of this title, any  
19 immediate successor in interest in such property pursuant to the foreclosure shall  
assume such interest subject to—

20 (1) the provision, by such successor in interest of a notice to vacate to any bona  
fide tenant at least 90 days before the effective date of such notice; and

21 (2) the rights of any bona fide tenant, as of the date of each notice of  
22 foreclosure—

23 (B) without a lease or with a lease terminable at will under state law,  
subject to the receipt by the tenant of the 90 day notice under subsection  
24 (1)[.]

25 See Pub. L. No. 111– 22, § 702, 123 Stat. 1632, 1660-61 (2009). The Protecting Tenants at Foreclosure  
26 Act was enacted to provide certain protections to tenants of foreclosed properties, including the right to  
live on the foreclosed property for the duration of the lease and the right to receive a 90 day notice to  
27 vacate. Nativi v. Deutsche Bank Nat. Trust Co., No. 09-06096 PVT, 2010 WL 2179885, at \*3 (N.D. Cal.  
28 May 26, 2010) (holding that the PTFA does not create a private right of action but rather created  
protections for tenants in state court proceedings.) The Court also questions whether Defendant’s  
property is subject to the PTFA as there is no indication that a foreclosure sale has occurred.

1 Ass'n, 722 F.3d 1163, 1169 (9th Cir. 2013). In Logan v. U.S. Bank Nat'l. Ass'n., the  
2 court analyzed the Congressional record to determine that Congress showed no implicit  
3 or explicit intent to create a cause of action under the PTFA. Id.; see also Nativi v.  
4 Deutsche Bank Nat'l Trust Co., No. 09-06096 PVT, 2010 WL 2179885 (N.D. Cal. May  
5 26, 2010). Subsequent to Logan, district courts have cited Logan to support holdings that  
6 the PTFA does not create a cause of action for landlords. Fairview Tasman LLC v.  
7 Young, Case No. 15cv5493-LHK, 2016 WL 199060, at \*2 (N.D. Cal. Jan. 18, 2016)  
8 (holding that the Logan reasoning also applies to an implied right of action for landlords);  
9 San Diego Pacificvu LLC v. Wade, No. 15-CV-00181-BAS RBB, 2015 WL 588561, at  
10 \*3 (S.D. Cal. Feb. 11, 2015). In Logan, the court held that the PTFA neither explicitly  
11 nor implicitly creates a cause of action, but instead explained that the PTFA is a defense  
12 in California state eviction proceedings. Logan, 722 F.3d at 1173. Therefore, the PTFA  
13 does not create a cause of action that could have originally been brought in federal court  
14 and the PTFA as a defense is insufficient to create jurisdiction. See Caterpillar Inc., 482  
15 U.S. at 393.

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17 “Preemption gives rise to federal question jurisdiction only when an area of state  
18 law has been completely preempted by federal law.” Perez v. Nidek Co. Ltd., 657 F.  
19 Supp. 2d 1156, 1161 (S.D. Cal. 2009) (citing Caterpillar Inc., 482 U.S. at 393); see also  
20 Wells Fargo Bank v. Lappen, No. C 11-01932 LB, 2011 WL 2194117, at \*4 (N.D. Cal.  
21 June 6, 2011). Defendant argues that the PTFA 90-day notice requirement preempts less  
22 protective state laws, such as those here in California, and that Plaintiff must show  
23 compliance with the PTFA’s notice requirement in order to make a prima facie showing  
24 of an unlawful detainer claim. However, Defendant has not demonstrated that the PTFA  
25 preempts any state provision and district courts have rejected the argument that the PTFA  
26 preempts state law and have held it is not a basis for federal question jurisdiction. See  
27 Bay Home Pres. Serv. v. Nguyen, 15cv506-LHK, 2015 WL 1262144, at \*2 (N.D. Cal.  
28 March 17, 2015); Wells Fargo Bank, 2011 WL 2194117, at \*4; BDA Invest. Props. LLC

1 v. Sosa, No. CV 11-3684 GAF (RZx), 2011 WL 1810634, at \*2 (C.D. Cal. May 12,  
2 2011) (citing Robinson v. Michigan Consol. Gas Co. Inc., 918 F.2d 579, 585 (9th Cir.  
3 1990) (“The scope of complete preemption as recognized by the Supreme Court is  
4 extremely limited, existing only where a claim is preempted by section 301 of the Labor  
5 Management Relations Act of 1947; where a state law complaint alleges a present right to  
6 possession of Indian tribal lands; and where state tort or contract claims are preempted by  
7 . . . the Employee Retirement Income Security Act of 1974.”)). Thus, Defendant’s  
8 argument is without merit.

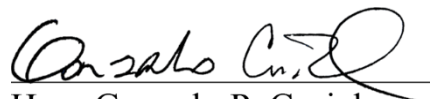
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10 In sum, Defendant’s assertion of federal subject matter jurisdiction is without  
11 merit. Plaintiff’s state law unlawful detainer claim does not confer federal question  
12 jurisdiction, and thus is not removable.

13 **Conclusion**

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15 Based on the above, the Court GRANTS Defendant’s motion to proceed IFP and  
16 the Court *sua sponte* REMANDS the action to the Superior Court of the State of  
17 California for San Diego County.<sup>2</sup>

18 **IT IS SO ORDERED.**

19 Dated: June 7, 2017

20   
21 Hon. Gonzalo P. Curiel  
22 United States District Judge  
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28 <sup>2</sup> On May 25, 2017, Plaintiff filed a motion to remand. However, after *sua sponte* review, the Court  
remands the case to state court without further briefing from the parties.