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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 U.S. BANK NATIONAL
12 ASSOCIATION, As Trustee for
13 Harborview Mortgage Loan Trust 2005-8,
14 Mortgage Loan Pass-Through Certificates,
15 Series 2005-8, its assignees and/or
16 successors

Plaintiff,

v.

17 SALEM SOMO and Does 1-10 Inclusive

18 Defendants.
19

Case No.: 19-cv-1197-GPC-RBB

ORDER:

**GRANTING PLAINTIFF'S MOTION
TO REMAND TO STATE
SUPERIOR COURT**

20 On July 23, 2019, U.S. Bank National Association ("Plaintiff") filed a motion to
21 remand its unlawful detainer action against Salem Somo ("Defendant") to California
22 Superior Court. ECF No. 6. Defendant previously filed a Notice of Removal on June 26,
23 2019. ECF No. 1. The Court has identified that the Defendant's Notice of Removal and
24 underlying Complaint are substantively identical to Defendant's filings in *U.S. Bank
25 National Ass'n v. Somo et al*, 3:19-cv-00658-GPC-RBB. In that case, the Court passed
26 upon the moving papers and granted Plaintiff's Motion to Remand on June 10, 2019 on
27 the basis subject matter jurisdiction was absent. ECF No. 8. Having viewed the motion
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1 to remand in this case and the underlying Notice of Removal, the Court **GRANTS** the
2 motion and **REMANDS** the action to the California Superior Court for lack of subject
3 matter jurisdiction. The Defendant is also placed on notice that he may not again remove
4 the Unlawful Detainer action to Federal District Court as doing so is an improper means
5 of delaying the unlawful detainer trial and a sanctionable abuse of legal resources.

6 **Factual and Procedural Background**

7 The Plaintiff is the current owner of 13952 Olive Vista Dr., Jamul, CA 91935 after
8 purchasing the property through a non-judicial foreclosure. (Dkt. No. 6-2 at 2.)¹ On
9 October 2, 2018, in an earlier case before this Court, the Plaintiff served a notice for
10 possession of the property to the Defendant in accordance with California Civil
11 Procedure Code § 1161a(b)(3). (Dkt. No. 1 at 7, *U.S. Bank National Ass'n v. Somo et al*,
12 3:19-cv-00658-GPC-RBB.) On October 27 and 29, 2018, the Defendant served the
13 Plaintiff with an unlawful detainer complaint for failing to vacate the property. (Dkt. No.
14 6-2 at 2, *U.S. Bank National Ass'n v. Somo et al*, 3:19-cv-00658-GPC-RBB.) On March
15 13, 2019, the state court ruled on the Defendant's demurrer action, and on March 15,
16 2019, the Defendant filed an answer to the complaint. (Dkt. No. 1 at 5-8, 21, *U.S. Bank*
17 *National Ass'n v. Somo et al*, 3:19-cv-00658-GPC-RBB.)

18 On April 9, 2019, the Defendant filed a notice of removal with this Court, and on
19 April 11, 2019, he demonstrated proof of removal during the state court trial, thus
20 resulting in the trial being vacated. (*Id.* at 1; Dkt. No. 6-2 at 2, *U.S. Bank National Ass'n*
21 *v. Somo et al*, 3:19-cv-00658-GPC-RBB.) On April 17, 2019, the Plaintiff filed a motion
22 to remand back to California Superior Court. (Dkt. No. 6, 1, *U.S. Bank National Ass'n v.*
23 *Somo et al*, 3:19-cv-00658-GPC-RBB.) After reviewing the moving papers, the Court
24 granted the Plaintiff's motion to remand in that case on June 10, 2019.

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28 ¹ Page numbers are based on the CM/ECF pagination.

1 In this present case, Defendant has removed an identical complaint to this court.
2 ECF No. 1. Defendant has provided no additional materials or facts to support for this
3 Court to reconsider its prior ruling.

4 Discussion

5 I. Federal Question Jurisdiction

6 “Federal courts are courts of limited jurisdiction.” Kokkonen v. Guardian Life Ins.
7 Co. of Am., 511 U.S. 375, 377 (1994). “It is to be presumed that a cause lies outside this
8 limited jurisdiction, and the burden of establishing the contrary rests upon the party
9 asserting jurisdiction.” Id. It is well-established that a federal court cannot reach the
10 merits of any dispute until it confirms that it retains subject matter jurisdiction to
11 adjudicate the issues presented. Steel Co. v. Citizens for a Better Environ., 523 U.S. 83,
12 94–95 (1988). The Defendant contends that removal is proper under 28 U.S.C. §§ 1331
13 and 1441(a). (Dkt. No. 1 at 2.)

14 Federal subject matter jurisdiction may be based on (1) federal question
15 jurisdiction under 28 U.S.C. § 1331; and (2) diversity jurisdiction under 28 U.S.C. §
16 1332. The Defendant has not claimed diversity jurisdiction in this case. For an action to
17 be removed based on federal question jurisdiction, the complaint must establish either
18 that federal law creates the cause of action or that the plaintiff’s right to relief necessarily
19 depends on the resolution of substantial questions of federal law. Franchise Tax Bd. of
20 Cal. v. Constr. Laborers Vacation Trust for S. Cal., 463 U.S. 1, 10–11 (1983). The
21 presence or absence of federal question jurisdiction “is governed by the ‘well-pleaded
22 complaint rule,’ which provides that federal jurisdiction exists only when a federal
23 question is presented on the face of plaintiff’s properly pleaded complaint.” Caterpillar
24 Inc. v. Williams, 482 U.S. 386, 392 (1987). It is well settled that a “case may not be
25 removed to federal court on the basis of a federal defense . . . even if the defense is
26 anticipated in the plaintiff’s complaint, and even if both parties concede that the federal
27 defense is the only question truly at issue.” Id. at 393. “The burden of establishing
28 federal jurisdiction is on the party seeking removal, and the removal statute is strictly

1 construed against removal jurisdiction.” Emrich v. Touche Ross & Co., 846 F.2d 1190,
2 1195 (9th Cir. 1988). “Federal jurisdiction must be rejected if there is any doubt as to the
3 right of removal in the first instance.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir.
4 1992).

5 While a plaintiff may choose to file suit in state court and avoid a federal question,
6 a plaintiff may not use “artful pleading” to avoid federal jurisdiction by excluding
7 necessary federal questions in the complaint. Franchise Tax Bd., 463 U.S. at 22
8 (citations omitted). The artful pleading doctrine states, a state-created cause of action can
9 be deemed to arise under federal law (1) where federal law completely preempts state
10 law[]; (2) where the claim is necessarily federal in character[]; or (3) where the right to
11 relief depends on the resolution of a substantial, disputed federal question [].” ARCO
12 Envtl. Remediation, LLC v. Dep’t of Health and Envntl. Quality of Montana, 213 F.3d
13 1108, 1114 (9th Cir. 2000).

14 A review of the state court complaint in this case shows that the Plaintiff alleges a
15 single cause of action for unlawful detainer under California Civil Procedure 1161(a).
16 (Dkt. No. 1 at 5-8.) In the notice of removal, Defendant argues that a federal statute,
17 Protecting Tenants at Foreclosure (“PTFA”)², provides the Court with federal question
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20 ² The Protecting Tenants at Foreclosure Act of 2009 states that:

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

24 (1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least
25 90 days before the effective date of such notice; and

26 (2) the rights of any bona fide tenant, as of the date of each notice of foreclosure—
27 (B) without a lease or with a lease terminable at will under state law, subject to the receipt by
28 the tenant of the 90 day notice under subsection (1)[.]

See Pub. L. No. 111– 22, § 702, 123 Stat. 1632, 1660-61 (2009). The Protecting Tenants at Foreclosure 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 vacate. Logan

1 jurisdiction for two reasons: (1) the unlawful detainer action actually asserts a cause of
2 action under the PTFA, and (2) the PTFA 90-day notice requirement preempts California
3 state law on notice, and thus is a required element of an unlawful detainer action. (Dkt.
4 No. 1 at 3.)

5 Most relevantly, “the PTFA expired on December 31, 2014.” Fairview Tasman
6 LLC v. Young, Case No. 15cv5493-LHK, 2016 WL 199060, at *2 (N.D. Cal. Jan. 18,
7 2016) (citing Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No.
8 111-203, 124 Stat. 1376, 2204 (2010) (setting date of expiration)); see also Franks v.
9 Franks, Case No. 17cv893-CAB-AGS, 2017 WL 1735169, at *2 (S.D. Cal. May 4, 2017).
10 Here, on October 27 and 29, 2018, the Plaintiff served the unlawful detainer action and
11 there is no indication that any of the facts constituting the unlawful detainer action
12 occurred prior to December 31, 2014. (Dkt. No. 6-2 at 2.) Even if the PTFA applied,
13 without further evidence in the record, the Defendant’s argument are meritless.

14 In addition, The PTFA does not create a cause of action for a tenant. Logan v.
15 U.S. Ass’n, 722 F.3d 1163, 1169 (9th Cir. 2013). In Logan v. U.S. Bank Nat’l Ass’n, the
16 court analyzed the Congressional record to determine that Congress showed no implicit
17 or explicit intent to create a cause of action under the PTFA. Id; see also Nativi v.
18 Deutsche Bank Nat’l Trust Co., No. 09-06096 PVT, 2010 WL 2179885 (N.D. Cal. May
19 26, 2010). District courts have cited Logan to support holdings that the PTFA does not
20 create a cause of action for landlords. Fairview Tasman, LLC v. Young, Case No.
21 15cv5493-LHK, 2016 WL 199060, at *2 (N.D. Cal. Jan. 18, 2016) (holding that the
22 Logan reasoning also applies to an implied right of action for landlords); San Diego
23 Pacificvu, LLC v. Wade, No. 15-CV-00181-BAS RBB, 2015 WL 588561, at *3 (S.D.
24 Cal. Feb. 11, 2015). In Logan, the court held that the PTFA neither explicitly nor
25 implicitly creates a cause of action, but instead explained that the PTFA is a defense in

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28 v. U.S. Bank Nat’l Ass’n, 722 F.3d 1163 (9th Cir. 2013) (holding that the PTFA does not create a private
right of action but rather created protections for tenants in state court proceedings).

1 California state eviction proceedings. Logan, 722 F.3d at 1173. Therefore, the PTFA
2 does not create a cause of action that could have originally been brought in federal court,
3 and the PTFA on its own does not grant jurisdiction to this Court. See Caterpillar Inc.,
4 482 U.S. at 393.

5 “Preemption gives rise to federal question jurisdiction only when an area of state
6 law has been completely preempted by federal law.” Perez v. Nidek Co. Ltd., 657 F.
7 Supp. 2d 1156, 1161 (S.D. Cal. 2009) (citing Caterpillar Inc., 482 U.S. at 393); see also
8 Wells Fargo Bank v. Lappen, No. C 11-01932 LB, 2011 WL 2194117, at *4 (N.D. Cal.
9 June 6, 2011). Defendant argues that the Plaintiff failed to fulfill its obligations to
10 provide the required 90-day notice requirement before filing a claim in state court, and
11 that the federal statute is therefore drawn into controversy. (Dkt. No. 1 at 3.) However,
12 the Defendant has not demonstrated that the PTFA preempts any state provision and
13 district courts have rejected the argument that the PTFA preempts state law and have held
14 it is not a basis for federal question jurisdiction. See Bay Home Pres. Serv. v. Nguyen,
15 15cv506-LHK, 2015 WL 1262144, at *2 (N.D. Cal. March 17, 2015); Wells Fargo Bank,
16 2011 WL 2194117, at *4; BDA Invest. Props. LLC v. Sosa, No. CV 11-3684 GAF (RZx),
17 2011 WL 1810634, at *2 (C.D. Cal. May 12, 2011) (citing Robinson v. Michigan Consol.
18 Gas Co. Inc., 918 F.2d 579, 585 (9th Cir. 1990) (“The scope of complete preemption as
19 recognized by the Supreme Court is extremely limited, existing only where a claim is
20 preempted by section 301 of the Labor Management Relations Act of 1947; where a state
21 law complaint alleges a present right to possession of Indian tribal lands; and where state
22 tort or contract claims are preempted by . . . the Employee Retirement Income Security
23 Act of 1974.”)). Thus, Defendant’s claim is without merit.

24 Furthermore, if the Defendant had cited to a program created under 12 U.S.C. §
25 5201 that was still in effect, he has provided no evidence to support such a claim. 12
26 U.S.C. § 5201, includes the Emergency Economic Stabilization Act of 2008, which
27 empowered the Secretary of the Treasury with “the authority and facilities” necessary to
28 “restore liquidity and stability to the financial system.” 12 U.S.C. § 5201. From this

1 power, the Treasury Department created the Home Affordable Modification Program
2 (“HAMP”). Dias v. Fannie Mae, 990 F. Supp. 2d. 1042, 1051 (D. Haw. 2013). This
3 program required lenders to evaluate borrowers for loan modifications, grant
4 modifications to qualified borrowers, and forebear from foreclosure while an application
5 for loan modification is pending, amongst other responsibilities. Id. The Ninth Circuit
6 has additionally found this program could support a breach of contract claim in federal
7 court. See Corvello v. Wells Fargo, NA, 728 F.3d 878 (9th Cir. 2013) (holding a district
8 court was wrong to dismiss a breach of contract claim that was supported by evidence
9 that the plaintiff was utilizing the HAMP program). Regardless, here the Defendant
10 provided no evidence that he applied to these programs, that he had a pending
11 application, or that the Plaintiff violated any of its responsibilities under the program.
12 Therefore, the record simply does not support the contention that 12 U.S.C. § 5201
13 provides a hook to bring this case into federal court.

14 Finally, the Defendant, in addition to not claiming diversity jurisdiction, has not
15 claimed to be a federal officer, federal agent, or officer of the armed forces and the single
16 state unlawful detainer claim was not brought under 28 U.S.C. § 2410. Therefore, the
17 action is not removable under 28 U.S.C. §§ 1441(b), 1442, 1442a, or 1444. In sum,
18 Defendant’s assertion of federal subject matter jurisdiction is without merit. The
19 Plaintiff’s state unlawful detainer claim is not removable, and the Court must therefore
20 remand the case. See 28 U.S.C. § 1447(c).

21 **II. Procedural Defects**

22 **A. Timeliness**

23 For the reasons above, the Court has already found that it lacks subject matter
24 jurisdiction. However, even had the Defendant met his burden and proved that subject
25 matter jurisdiction exists, the Defendant’s removal of this case to the federal courts was
26 untimely. A Defendant must remove and notify the Plaintiff of a case’s removal to
27 federal court within 30 days of receiving the complaint. 28 U.S.C. § 1446(b). On
28 October 27 and 29, 2018, the Plaintiff served the Defendant with the complaint. (Dkt.

1 No. 6-1.) On March 13, 2019, the Defendant first responded to the complaint in state
2 court. Id. The five-month delay alone is reason enough to make this Court the wrong
3 forum for continued litigation.

4 **B. Waiver**

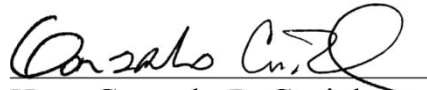
5 The Defendant has waived his right to utilize the federal court system by
6 participating in state court litigation, thus recognizing that court's power over him. See
7 e.g. Baker v. National Blvd. Bank, 399 F. Supp 1021, 1022 (N.D. Ill. 1975). On March
8 13, 2018, the state court ruled on the Defendant's demurrer action, and on March 15,
9 2019, the Defendant filed an answer to the complaint. (Dkt. No. 1 at 5-8, 21.) Indeed, on
10 April 11, 2019, the Defendant appeared at trial and presented evidence of his removal to
11 federal court. (Dkt. No. 6-2 at 2.) By utilizing the state court system for both his
12 demurrer and his answer, the Defendant has acknowledged that court's power, and he
13 cannot after the fact turn to the federal court to litigate his case.

14 **Conclusion**

15 Based on the above, the Court **GRANTS** Plaintiff's motion and **REMANDS** the
16 action to the Superior Court of the State of California for San Diego County.

17 **IT IS SO ORDERED.**

18 Dated: July 24, 2019

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20 Hon. Gonzalo P. Curiel
21 United States District Judge
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