

HONORABLE RICHARD A. JONES

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CITY OF BURIEN, a municipal  
corporation,

Plaintiff,

v.

PATRICIA COLE-TINDALL, in her  
official capacity as the King County  
Sheriff and KING COUNTY, a home  
rule charter county,

Defendants.

CASE NO. 3:24-cv-00433-RAJ

**ORDER GRANTING MOTION  
TO REMAND**

**I. INTRODUCTION**

THIS MATTER is before the Court on Plaintiff’s Motion to Remand. Dkt. # 14. Defendants assert counterclaims against Plaintiff, Dkt. # 16, and oppose remand of this matter, Dkt. # 17. The parties do not request oral argument, and the Court does not find it necessary. The Court has reviewed the motions, the materials filed in support of the motions, the balance of the record, and the governing law. For the reasons stated below, the Court **GRANTS** Plaintiff’s Motion.

## II. BACKGROUND

1  
2 This matter arises out of a dispute regarding the non-enforcement of a local  
3 ordinance. Pursuant to the Interlocal Agreement (“ILA”), King County through King  
4 County Sheriff’s Office (“KCSO”) provides law enforcement services to Plaintiff, the  
5 City of Burien. *See* Dkt. # 14 at 5.

6 The City Council of Burien adopted Ordinance 832 (the “Ordinance”), titled  
7 “Unlawful Public Camping,” on March 4, 2024. Dkt. # 16 at 16-20. The Ordinance  
8 prohibits the use of nonresidential public property as a living space. *Id.* The Ordinance  
9 defines this as, “to camp, dwell, lodge, reside, sleep, or exercise nontransitory exclusive  
10 control over any portion of nonresidential public property.” *Id.* The nonresidential public  
11 property includes “any Burien park, street, sidewalk, or any other open area where Burien  
12 or another governmental agency has a property interest, including easements.” *Id.* There  
13 is an exception to the general prohibition when there is no available overnight shelter and  
14 the use of nonresidential public property as a living space occurs between 7 p.m. and 6  
15 a.m. the following morning. *See id.* Noncompliance with the Ordinance is classified as  
16 a misdemeanor offense. *See id.*

17 In providing services to Burien, Sheriff Patricia Cole-Tindall instructed her  
18 department not to enforce the Ordinance. *Id.* King County and Sheriff Cole-Tindall  
19 (“King County Defendants”) contend that the Ordinance violates federal caselaw. *See*  
20 Dkt. # 17 at 3. Defendants acknowledge that KCSO has refused to enforce the Ordinance  
21 to date. Dkt. # 17 at 2.

22 On March 11, 2024, Defendants in the instant action, King County and Sheriff  
23 Patricia Cole-Tindall, initiated a related lawsuit in federal court seeking declaratory and  
24 injunctive relief (“federal action”). *See Cole-Tindall v. City of Burien*, 24-cv-00325-RAJ  
25 (March 11, 2024). There, Plaintiffs ask this Court to evaluate the constitutionality of the  
26 Ordinance. *See id.*



1 the plaintiff’s cause of action.” *Philips Petroleum Co. v. Texaco Inc.*, 415 U.S. 125, 127  
2 (1974) (quoting *Gully v. First Nat’l Bank*, 299 U.S. 109 (1936)). This essential federal  
3 element must appear in the plaintiff’s own statement of its cause of action. *Louisville &*  
4 *N.R. Co. v. Mottley*, 211 U.S. 149, 152 (1908); *see also Franchise Tax Bd. of State of*  
5 *Cal. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 10 (1983) (“For better or  
6 worse . . . a defendant may not remove a case to federal court unless the plaintiff’s  
7 complaint establishes that the case ‘arises under’ federal law.”).

8         Whether a complaint raises a federal question is determined by the “well-pleaded  
9 complaint rule,” which provides that federal jurisdiction exists only when a federal  
10 question is present on the face of the plaintiff’s properly pleaded complaint. *Caterpillar*  
11 *Inc. v. Williams*, 482 U.S. 386, 392 (1987). “The rule makes the plaintiff the master of  
12 the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.”  
13 *Id.* The well-pleaded complaint rule does not permit a finding of jurisdiction “predicated  
14 on an actual or anticipated defense” or “upon an actual or anticipated counterclaim.”  
15 *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009). It is “settled law that a case may not  
16 be removed to federal court on the basis of a federal defense . . . even if the defense is  
17 anticipated in the plaintiff’s complaint, and even if both parties concede that the federal  
18 defense is the only question truly at issue.” *Caterpillar Inc.*, 482 U.S. at 393 (citing  
19 *Franchise Tax Bd.*, 463 U.S. at 12).

#### IV. ANALYSIS

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2 As all parties in this action are citizens of Washington, *see* Dkt. #1-1, removal is  
3 only proper if the court could have exercised federal question jurisdiction over this action  
4 when it was filed. *See* 28 U.S.C. §§ 1332, 1441. Burien argues this matter must be  
5 remanded to state court because the Complaint concerns a contract dispute and does not  
6 present a federal question. *See generally* Dkts. # 14, 18. King County Defendants assert  
7 removal is appropriate because Burien’s breach of contract claim raises federal questions  
8 and “Burien has ‘artfully pleaded’ its complaint as framed a by state claims.” Dkt. # 17  
9 at 2.

10 Under the artful pleading doctrine, “a plaintiff may not defeat removal by omitting  
11 to plead necessary federal questions.” *Hansen v. Grp. Health Coop.*, 902 F.3d 1051,  
12 1057 (9th Cir. 2018). Federal question jurisdiction will exist despite no federal claim  
13 appearing on the face of the complaint in a “small category of cases” in which a state law  
14 claim “necessarily raises a stated federal issue, actually disputed and substantial, which  
15 a federal forum may entertain without disturbing any congressionally approved balance  
16 of federal and state power.” *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Manning*,  
17 578 U.S. 374, 383 (2016); *see also ARCO Env’t Remediation, LLC v. Dep’t of Health &*  
18 *Env’t Quality*, 213 F.3d 1108, 1114 (9th Cir. 2000) (stating that a state-created cause of  
19 action can be deemed to arise under federal law “where the claim is necessarily federal  
20 in character”).

21 King County Defendants state that the “constitutionality of Ordinance No. 832 is  
22 an essential element of Burien’s breach of contract and injunctive relief claims.” Dkt. #  
23 17 at 7. Defendants are wrong. The Complaint alleges breach of contract and seeks  
24 injunctive relief and damages. Under Washington law, a breach of contract claim  
25 requires proof of three elements—the existence of a contract, its breach, and resulting  
26 damages. *See Nw. Indep. Forest Mfrs. v. Dep’t of Lab. & Indus.*, 78 Wash. App. 707,

1 713 (1995). The basis of this cause of action is King County Defendants' failure to  
2 perform and comply with the ILA's dispute resolution process. *See* Dkt. # 1-1 ¶ 5.2.  
3 Burien does not have the burden to plead or prove the constitutionality of the Ordinance  
4 in asserting a breach of contract claim. There is nothing to suggest that Burien pleaded  
5 the breach of contract claim in a manner to avoid asserting a federal question. Therefore,  
6 the nature of this dispute is not necessarily federal in character and the artful pleading  
7 doctrine does not support removal to federal court.

8 At most, the disputed constitutionality of the Ordinance relates to a potential  
9 defense against the breach of contract claim. King County Defendants do not dispute  
10 their nonperformance. *See* Dkt. # 17 at 2. Defendants seem to ask the Court to excuse  
11 their conduct based on the belief that the Ordinance is unconstitutional and ask this Court  
12 to rule on the constitutionality of the Ordinance. Dkts. # 16, 17. This is insufficient to  
13 support removal of the state law claims to federal court.

14 Defendants have failed to establish removal jurisdiction under the well-pleaded  
15 complaint rule or the artful pleading doctrine. The face of Burien's Complaint does not  
16 implicate a substantial federal question. Burien's state law contract claim is not  
17 necessarily federal in character. Nor is a federal question an element of their state law  
18 contract claim. Instead, Defendants' argument about the constitutionality of the  
19 Ordinance only raises a federal question defense. Likewise, Defendants' counterclaims  
20 seeking declaratory judgment of the constitutionality of the Ordinance are insufficient to  
21 support removal to federal court.  
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V. CONCLUSION

For the reasons stated above, the Court **GRANTS** Plaintiff's Motion. Dkt. # 14.  
The clerk shall remand this case to Snohomish County Superior Court.

Dated this 24th day of September, 2024.



The Honorable Richard A. Jones  
United States District Judge