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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DENNIS SCHENDEL, an individual,)	Case No. 2:11-CV-02779 JAM-JFM
and CATHERINE SCHENDEL, an)	
individual;)	
)	<u>ORDER DENYING PLAINTIFFS'</u>
Plaintiffs,)	<u>MOTION TO REMAND TO STATE</u>
)	<u>COURT PURSUANT TO 28 U.S.C.</u>
v.)	<u>§§ 1441 and 1446</u>
)	
ACE MORTGAGE FUNDING, LLC., et)	
al.;)	
)	
Defendants.)	

This matter is before the Court on Plaintiffs Dennis Schendel and Catherine Schendel's ("Plaintiffs") Motion to Remand to State Court pursuant to 28 U.S.C. §§ 1441 and 1446 (Doc. #9).¹ Defendants Aurora Loan Services, LLC and Mortgage Electronic Registration Systems, Inc. ("Defendants") oppose the motion (Doc. #25).

I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

This action arises out of a dispute concerning the real

¹This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was originally scheduled on January 25, 2012.

1 property located at 8720 Pathfinder Court, Orangevale, California
2 (the "Property"). In short, Plaintiffs obtained a mortgage on the
3 Property and later defaulted. Defendants, claiming an interest in
4 the mortgage, instituted a non-judicial foreclosure on the Property
5 on September 23, 2010. The Property was subsequently sold at a
6 Trustee's Sale on March 25, 2011. The parties indicate that
7 Plaintiffs continue to occupy the Property, and an eviction action
8 is proceeding before the Superior Court of California, Sacramento
9 County.

10 The procedural background of this action involves three
11 different lawsuits. The first action concerning the Property was
12 filed before this Court by Plaintiffs on May 25, 2011. That
13 complaint alleged several federal causes of action, which gave this
14 Court jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367. The
15 unlawful detainer action was then filed against Plaintiffs in state
16 court. On October 5, 2011, Plaintiffs filed a second action in
17 state court, which was largely duplicative of their first federal
18 complaint except that it did not explicitly include any federal
19 causes of action.

20 On October 6, 2011, Plaintiffs moved to consolidate the
21 unlawful detainer action with their new state court lawsuit.
22 Before the motion to consolidate was decided, Defendants removed
23 Plaintiff's second action on the basis of federal question
24 jurisdiction to the Eastern District of California and it was
25 assigned to District Judge Mueller. Subsequently, the Superior
26 Court denied the motion to consolidate because Plaintiffs' second
27 action had been removed to federal court. On November 15, 2011,
28 Plaintiffs voluntarily dismissed their first action. The next day,

1 Plaintiffs filed the present motion to remand the second action to
2 state court. Their second action was then deemed related to the
3 first and reassigned to this Court on December 23, 2011. Thus,
4 Plaintiffs' first action filed in federal court is dismissed,
5 Plaintiffs' second action that was filed in state court is
6 presently before the Court after its removal, and the unlawful
7 detainer action filed against Plaintiffs is still before the state
8 court.

9 As stated above, Defendants claim that this Court has
10 jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367.

11 12 II. OPINION

13 A. Legal Standard

14 As this is a motion to remand pursuant to 28 U.S.C.
15 § 1447(c),² the issue to be decided is the Court's subject matter
16 jurisdiction or lack thereof. See 28 U.S.C. § 1447(c) ("If at any
17 time before final judgment it appears that the district court lacks
18 subject matter jurisdiction, the case shall be remanded."). The
19 court must remand an action sua sponte if it determines that it
20 lacks subject matter jurisdiction. See Kelton Arms Condominium
21 Owners Ass'n v. Homestead Ins. Co., 346 F.3d 1190, 1192 (9th
22 Cir.2003) ("[W]e have held that the district court must remand if
23 it lacks jurisdiction," citing Sparta Surgical Corp. v. Nat'l Ass'n
24 Sec. Dealers, Inc., 159 F.3d 1209, 1211 (9th Cir.1998)). The
25 ///

26 _____
27 ² Although the title to Plaintiffs' motion does not include a
28 reference to 28 U.S.C. § 1447, the statute that governs remand
proceedings, that statute is properly cited and addressed in the
body of their motion.

1 removal statute explains when removal is proper:

2 Except as otherwise expressly provided by Act of
3 Congress, any civil action brought in a State court of
4 which the district courts of the United States have
5 original jurisdiction, may be removed by the defendant
6 or the defendants, to the district court of the United
7 States for the district and division embracing the
8 place where such action is pending.

9 28 U.S.C. § 1441(a).

10 The Ninth Circuit "strictly construe[s] the removal statute
11 against removal jurisdiction." Gaus v. Miles, Inc., 980 F.2d 564,
12 566 (9th Cir.1992) (citing Boggs v. Lewis, 863 F.2d 662, 663 (9th
13 Cir.1988), and Takeda v. Northwestern National Life Insurance Co.,
14 765 F.2d 815, 818 (9th Cir.1985)). Thus, "[f]ederal jurisdiction
15 must be rejected if there is any doubt as to the right of removal
16 in the first instance." Id. (citing Libhart v. Santa Monica Dairy
17 Co., 592 F.2d 1062, 1064 (9th Cir.1979)). "The 'strong
18 presumption' against removal jurisdiction means that the defendant
19 always has the burden of establishing that removal is proper." Id.
20 (citing Nishimoto v. Federman-Bachrach & Associates, 903 F.2d 709,
21 712 n. 3 (9th Cir.1990), and Emrich v. Touche Ross & Co., 846 F.2d
22 1190, 1195 (9th Cir.1988)).

23 B. Discussion

24 Plaintiffs seek remand on the grounds that their first action
25 was voluntarily dismissed, leaving only the second action which
26 they argue contains no federal claims. Plaintiffs argue that if
27 there are no federal claims, Defendants' only stated basis for
28 removal, 28 U.S.C. § 1331 federal question jurisdiction, is not
29 valid. Defendants respond by arguing that jurisdiction is
30 determined at the time the action is removed, meaning that the
31 first action's related federal claims should be considered.

1 Federal question jurisdiction is presumed to be absent unless
2 a defendant, as the party seeking removal, shows that the plaintiff
3 has alleged (1) a federal claim, American Well Works Co. v. Layne &
4 Bowler Co., 241 U.S. 257, 260 (1916), (2) a state cause of action
5 that requires resolution of a substantial issue of federal law,
6 Grable & Sons Metal Products., Inc. v. Darue Engineering &
7 Manufacturing, 545 U.S. 308, 313 (2005), or (3) a state cause of
8 action that Congress has transformed into an inherently federal
9 claim by completely preempting the field, Avco Corp. v. Aero Lodge
10 No. 735, 390 U.S. 557, 560 (1968); Metropolitan Life Insurance Co.
11 v. Taylor, 481 U.S. 58, 65 (1987).

12 Defendants argue that the Court has subject matter
13 jurisdiction because Plaintiffs' first complaint alleged federal
14 claims, and their second complaint contains a claim under
15 California Financial Code § 50505 ("Section 50505") that
16 necessarily depends on substantial questions of federal law.

17 Section 50505 states:

18 Any person who violates any provision of any of the
19 following federal acts or regulations violates this
20 division:

21 (a) The federal Real Estate Settlement Procedures Act
22 ["RESPA"], as amended (12 U.S.C. Sec. 2601 et seq.).

23 (b) The federal Truth in Lending Act ["TILA"], as
24 amended (15 U.S.C. Sec. 1601 et seq.).

25 (c) The federal Home Ownership Equity Protection Act
26 ["HOEPA"] (15 U.S.C. Sec. 1639).

27 (d) Any regulation promulgated under any of the
28 federal acts in subdivision (a), (b), or (c).

Cal. Fin. Code § 50505.

Here, not only did the complaint in the first federal action
allege federal claims, but Plaintiff's § 50505 claim necessarily
depends on resolution of substantial questions of federal law. The

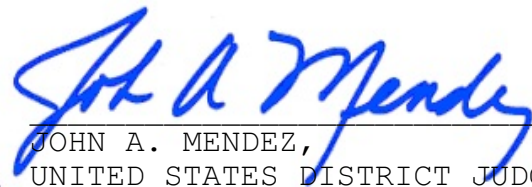
1 claim specifically requires the Court to make a determination of
2 whether the defendants violated TILA, HOPEA, and RESPA, which are
3 federal statutes. Further, Plaintiff seeks remedies available
4 under those federal statutes. Accordingly, the Court finds that it
5 has subject matter pursuant to 28 U.S.C. § 1331. Grable & Sons,
6 545 U.S. at 313. The Court also finds that it is appropriate to
7 assert jurisdiction over the remaining state law claims pursuant to
8 28 U.S.C. § 1367.

9
10 III. ORDER

11 After careful consideration of all of the papers submitted
12 with regard to this motion by all parties, the Court finds that it
13 has subject matter jurisdiction over this action pursuant to 28
14 U.S.C. § 1331, making remand improper. The Court also asserts
15 jurisdiction pursuant to 28 U.S.C. § 1367 over the additional state
16 law claims. Accordingly, Plaintiffs' Motion to Remand is DENIED in
17 its entirety.

18 IT IS SO ORDERED.

19 Dated: February 13, 2012

20 
JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE