

1 UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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4 CHARLES SMITH, an individual; and  
5 DEBORAH SMITH, an individual,

6 Plaintiffs,

7 v.

8 BANK OF AMERICA, N.A.; and QUALITY  
9 LOAN SERVICE CORPORATION; and DOES  
10 1-20,

11 Defendants.

1:11-cv-00141 OWW SMS

MEMORANDUM DECISION AND ORDER  
RE PLAINTIFF'S MOTION TO  
REMAND.

12 I. INTRODUCTION

13 Before the court is Plaintiffs' motion to remand the case to  
14 Fresno County Superior Court. Doc. 6. Defendant Bank of America  
15 ("BOA") opposes the motion. Doc. 12.  
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17 II. BACKGROUND

18 On December 27, 2010, Plaintiffs, proceeding in pro per,  
19 filed a Complaint against Defendants BOA and Quality Loan  
20 Services Corporation ("Quality") in the Superior Court of  
21 California, County of Fresno. Doc. 1, Ex. A. The Complaint  
22 asserts the following causes of action: (1) fraud - negligent and  
23 intentional misrepresentation; (2) rescission and damages  
24 pursuant to the Truth-in-Lending Act ("TILA"), 15 U.S.C. § 1601  
25 et seq.; (3) damages pursuant to the Real Estate Settlement  
26 Procedures Act ("RESPA"), 12 U.S.C. § 2601 et seq.; (4) damages  
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1 pursuant to the Fair Debt Collection Practices Act ("FDCPA"); (5)  
2 infliction of emotional distress; (6) damages pursuant to 18  
3 U.S.C. § 241; (7) California Business & Professions Code § 17200;  
4 (8) quiet title under California Code of Civil Procedure §  
5 761.010; (9) temporary restraining order and preliminary  
6 injunction; and (10) damages for violation of 18 U.S.C. § 2071.  
7 On January 25, 2011, Defendant BOA removed the case to this court  
8 under 28 U.S.C. § 1441(b). Doc. 1.

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10 Plaintiffs filed a motion to remand on January 31, 2011.  
11 Doc. 6. Plaintiffs contend that remand is proper because: (1) the  
12 court does not have subject matter jurisdiction; (2) the notice  
13 of removal does not allege specific facts demonstrating that the  
14 amount in controversy exceeds \$75,000; (3) Defendant BOA did not  
15 timely remove the case to federal court; (4) Defendant Quality  
16 did not join the removal; and (5) Defendant BOA did not remove  
17 the entire Complaint with its twenty original exhibits. Defendant  
18 BOA opposes the motion. Doc. 12. The motion was heard on March  
19 28, 2011.  
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### 22 III. LEGAL STANDARD

23 28 U.S.C. § 1441(a) provides in pertinent part:

24 [A]ny civil action brought in a State court of which the  
25 district courts of the United States have original  
26 jurisdiction, may be removed by the defendant or the  
27 defendants, to the district court of the United States for  
28 the district and division embracing the place where such  
action is pending.

1 "The threshold requirement for removal under 28 U.S.C. § 1441 is  
2 a finding that the complaint contains a cause of action that is  
3 within the original jurisdiction of the district court." *Hunter*  
4 *v. Philip Morris USA*, 582 F.3d 1039, 1042 (9<sup>th</sup> Cir. 2009) (quoting  
5 *Ansley v. Ameriquest Mortg. Co.*, 340 F.3d 858, 861 (9<sup>th</sup> Cir.  
6 2003). "A defendant may remove an action to federal court based  
7 on federal question jurisdiction or diversity jurisdiction."  
8 *Hunter v. Philip Morris USA*, 582 F.3d at 1042.

9  
10 To protect the jurisdiction of state courts, removal  
11 jurisdiction is strictly construed in favor of remand. *Harris v.*  
12 *Bankers Life and Cas. Co.*, 425 F.3d 689, 698 (9th Cir. 2005). Any  
13 doubt as to the right of removal must be resolved in favor of  
14 remand. *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992). It is  
15 presumed "that a cause lies outside [the] limited jurisdiction  
16 [of the federal courts] and the burden of establishing the  
17 contrary rests upon the party asserting jurisdiction." *Hunter v.*  
18 *Philip Morris USA*, 582 F.3d at 1042 (quoting *Abrego Abrego v. Dow*  
19 *Chem. Co.*, 443 F.3d 676, 684 (9<sup>th</sup> Cir. 2006) (alterations in  
20 original)).  
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#### 23 IV. ANALYSIS

##### 24 A. Subject Matter Jurisdiction

25 Plaintiffs contend that the case should be remanded because  
26 the court lacks subject matter jurisdiction.

27 To determine whether removal is proper based on "federal  
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1 question jurisdiction, the well-pleaded complaint rule 'provides  
2 that federal jurisdiction exists only when a federal question is  
3 presented on the face of the plaintiff's properly pleaded  
4 complaint.'" *Hunter v. Philip Morris USA*, 582 F.3d at 1042  
5 (quoting *Fisher v. NOS Commc'ns (In re NOS Commc'ns)*, 495 F.3d  
6 1052, 1057 (9th Cir.2007)). More specifically, federal question  
7 jurisdiction exists "if a well-pleaded complaint establishes  
8 either that [1] federal law creates the cause of action or that  
9 either that [1] federal law creates the cause of action or that  
10 [2] the plaintiff's right to relief necessarily depends on  
11 resolution of a substantial question of federal law." *Armstrong*  
12 *v. N. Mariana Islands*, 576 F.3d 950, 955-956 (9th Cir.2009)  
13 (quoting *Williston Basin Interstate Pipeline Co. v. An Exclusive*  
14 *Gas Storage Leasehold & Easement in the Cloverly Subterranean*  
15 *Geological Formation*, 524 F.3d 1090, 1100 (9<sup>th</sup> Cir. 2008)  
16 (internal quotation marks omitted).

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18 Here, there is federal question jurisdiction because the  
19 Complaint asserts causes of action under federal laws: TILA,  
20 RESPA, FDCPA, 18 U.S.C. § 241, and 18 U.S.C. § 2071. 28 U.S.C. §  
21 1331 ("The district courts shall have original jurisdiction of  
22 all civil actions arising under the Constitution, laws, or  
23 treaties of the United States."). There is supplemental  
24 jurisdiction over Plaintiffs' state claims because they are so  
25 related to the federal claims that they form part of the same  
26 case or controversy. 28 U.S.C. § 1367(a).  
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1           At the hearing, Plaintiffs stated that they would dismiss  
2 all their federal claims against Defendants. If all the federal  
3 claims are dismissed, the court will no longer have federal or  
4 supplemental jurisdiction, and remand is proper.

5           B. \$75,000 Threshold

6           Plaintiffs contend that remand is proper because the notice  
7 of removal does not allege specific facts demonstrating that the  
8 amount in controversy exceeds \$75,000. However, as Defendant BOA  
9 did not remove the case on the basis of diversity jurisdiction,  
10 the \$75,000 amount in controversy threshold is not applicable.  
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12 *See* 28 U.S.C. § 1332.

13           C. Timeliness of Removal

14           Plaintiffs assert that remand is proper because the case was  
15 not timely removed to federal court.

16           28 U.S.C. § 1446(b) requires that the notice of removal must  
17 be filed "within thirty days after the receipt by the defendant,  
18 through service or otherwise, of a copy of the initial pleading  
19 setting forth the claim for relief upon which such action or  
20 proceeding is based."  
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22           Defendant BOA contends that it has not been served with the  
23 Complaint; however, Plaintiffs provide proof of serviced summons  
24 that Defendant BOA was served December 28, 2010 and Defendant  
25 Quality was served December 29, 2010. Doc. 6, Ex. 1. Assuming  
26 Defendants were properly served December 28 and 29, 2010, the  
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1 notice of removal was due on or before January 27 or 28, 2011,  
2 thirty days after service. The notice of removal was timely filed  
3 on January 25, 2011. Doc. 1.

4 D. Unanimity of Defendants

5 Plaintiffs argue the case should be remanded because  
6 Defendant Quality did not join the removal.  
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8 Although the usual rule is that all defendants in a state  
9 action must join in a petition for removal, the rule of unanimity  
10 does not apply to "nominal, unknown or fraudulently joined  
11 parties." *United Computer Sys. v. AT&T Corp.*, 298 F.3d 756, 762  
12 (9<sup>th</sup> Cir. 2002). A nominal defendant is a person who "holds the  
13 subject matter of the litigation in a subordinate or possessory  
14 capacity as to which there is no dispute." *SEC v. Colello*, 139  
15 F.3d 674, 676 (9<sup>th</sup> Cir. 1998) (quoting *SEC v. Cherif*, 933 F.2d  
16 403, 414 (7<sup>th</sup> Cir. 1991)). "The paradigmatic nominal defendant is  
17 "a trustee, agent, or depository ... [who is] joined purely as a  
18 means of facilitating collection." *Id.*  
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20 Here, Defendant Quality filed a Declaration of Non-Monetary  
21 Status pursuant to California Civil Code § 2924 (Doc. 1, Ex. B),  
22 stating that it was named as a defendant solely in its capacity  
23 as trustee and not due to any of its acts or omissions. As  
24 Defendant Quality is a nominal defendant, its consent was not  
25 required for removal. See *Hafiz v. Greenpoint Mortg. Funding,*  
26 *Inc.*, 652 F.Supp.2d 1050, 1052 (N.D. Cal. 2009) (holding that  
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1 Quality Loan Services Corp. was a nominal party and not required  
2 to consent or join in the removal because it was named in a  
3 complaint solely in its capacity as trustee, and not because of  
4 any wrongdoing, and had filed a declaration of non-monetary  
5 status under Cal. Civ. Code § 2924.)

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7 E. Exhibits to Notice of Removal

8 Plaintiffs maintain that removal is proper because Defendant  
9 BOA did not remove the entire Complaint with its original twenty  
10 exhibits.

11 28 U.S.C. § 1446(a) provides that a defendant "desiring to  
12 remove any civil action . . . from a State court shall file in  
13 the district court of the United States for the district and  
14 division within which such action is pending a notice of removal  
15 . . . together with a copy of all process, pleadings, and orders  
16 served upon such defendant or defendants in such action."

17 However, the failure to file such documents should not be  
18 considered a jurisdictional defect but merely a formal omission  
19 which may be remedied by supplementation. *See Dri Mark Prod.,*  
20 *Inc. v. Meyercord Co.*, 194 F.Supp. 536, 539 (S.D.N.Y. 1961).  
21 Defendant BOA's failure to file the Complaint's original exhibits  
22 does not require remand to Fresno County Superior Court.  
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25 V. CONCLUSION

26 For the reasons stated:

- 27 1. Plaintiffs' federal claims against Defendants are DISMISSED  
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WITHOUT PREJUDICE.

2. Plaintiffs' motion to remand is GRANTED.

3. Plaintiffs shall submit a proposed form of order consistent with this memorandum decision within five (5) days following electronic service of this memorandum decision.

SO ORDERED.

DATED: April 6, 2011

/s/ Oliver W. Wanger  
Oliver W. Wanger  
United States District Judge